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INDIAN GAMING COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR
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AGENCIES

NATIONAL INDIAN GAMING COMMISSION

WITNESS LIST

Thursday, May 11, 1995

TESTIMONY OF HAROLD A. MONTEAU

CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION

TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
Clearing House Congressional Testimony

BEFORE THE SENATE APPROPRIATIONS SUBCOMMITTEE ON INTERIOR AND
RELATED AGENCIES

May 11, 1995

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today. My name is Harold Monteau. I am the Chairman of the National Indian Gaming Commission. With me today is Commissioner Jana McKeag.

Background

The Indian gaming industry began in the 1970's but the National Indian Gaming Commission was not established until 1988. The first Chairman of the Commission was appointed in 1990 and the remaining two commission members were appointed in 1990 and 1991. The Commission developed, proposed, and issued regulations over the next 21 months. Finally, about 15 years after the industry began, the commission became operational in early 1993.

It was concern about the need for regulation and Federal oversight of the approximately 100 gaming operations existing in 1986 that led to the passage of the Act and the formation of this Commission. Meanwhile, Indian gaming has been growing in size and complexity. Approximately 200 Indian tribes have become, or are becoming, engaged in or have licensed over 225 gaming operations on Indian lands. Tribes continue to open new and expand existing gaming operations.

The Commission, an independent three-person regulatory agency administratively located within the Department of the Interior, was established by the Indian Gaming Regulatory Act (IGRA) which was signed into law on October 17, 1988. The IGRA was enacted as a response to the proliferation of tribal gaming establishments in Indian Country operating without federal regulatory oversight.

TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
Clearing House Congressional Testimony

The primary purpose of the Commission is to monitor and oversee the regulation of class II gaming such as bingo and pull tabs conducted on Indian lands. The Commission also approves class III tribal gaming ordinances and management contracts and has the authority to impose civil penalties or to close a gaming establishment for substantial violations of the IGRA, regulations promulgated by the commission, or tribal gaming ordinances.

The Commission conducts background investigations of entities and individuals with a financial interest in, or management responsibility for, class II management contracts, but not for class III management contracts. The regulation of class III gaming -- casino type gaming such as blackjack and slot machines -- is primarily the responsibility of the tribes and the states as set forth in the compacts negotiated between those parties.

While the authorities and responsibilities of the Commission as set forth in the IGRA are fairly straightforward, in reality they are considerably more extensive and complex. For example,

- The number and complexity of gaming operations have been increasing steadily.
- Many class III operations include class II games, activating the Commission's involvement and triggering the need for, among other things, background investigations of contractor entities and individuals.
- Many management contracts involve provisions calling for the construction of new or the expansion of existing facilities, triggering the requirements imposed by the National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act.
- Some of the other regulators of Indian gaming, both tribes and states, have been reluctant to, or at least slow to, begin undertaking their responsibilities under the Act, placing a greater burden on the Commission.

- Some tribes, management contractors, and gaming operations have not voluntarily complied with the provisions of the Act, creating an immediate backlog of serious compliance problems requiring action by the Commission.

- Many other government agencies, initially at least, have been reluctant to share important information with the commission in part at least because the Commission lacks status as a law enforcement agency.

Activities

Operational since 1993, the Commission is reviewing all tribal ordinances, management contracts, and reports on tribally conducted background investigations of key employees and primary management officials. The Commission itself is conducting or causing to be conducted background investigations and making suitability determinations on individuals and entities with a financial interest in, or management responsibility for, a management contract. The Commission is continuing to conduct introductory, on-site reviews of all gaming operations.

The review and approval of tribal gaming ordinances is important for three reasons:

- 1) their approval activates two Federal criminal statutes which concern theft from Indian gaming establishments;
- 2) their approval triggers the requirement that the tribe conduct background investigations on the key employees and primary management officials of a gaming operation; and
- 3) their approval triggers the requirements for an annual, independent audit.

We have reviewed over 200 ordinances and approved 170.

Charged with approving all class II and class III management contracts, the Commission has received a significant number of new management contracts for review and approval, and has begun calling in existing contracts that were approved by the Secretary of the Interior prior to the commis-

sion becoming operational in early 1993. Background investigations are being conducted in order to determine the suitability of the hundreds of individuals and entities involved. Sixteen (16) management contracts have been approved, about sixty (60) are in process at various stages, and approximately thirty-five (35) contracts previously approved by the Secretary of the Interior need to be called in for review.

We have been building the Commission staff over the past four years fully aware of (1) the responsibilities given to the Commission, (2) the growth and complexity of the industry, and (3) the funding available. We have reached a size that can no longer be supported by the amount of appropriated funds and fees, and have thus begun using a portion of the remaining accumulated fees to make up the deficiency. We need to build the Commission staff for the long-term needs of the industry, not just to meet the short term or immediate needs alone. The funding uncertainties, the statutory limitations, and the growing needs of the industry dictate that we request and obtain maximum funding while retaining a portion of the fees to cope with unknown funding and industry driven needs.

1996 Budget Request

As you know, the President's FY 96 Budget requested \$1,000,000 for our agency. At the same time, as part of the President's Reinventing Government Initiative, all Federal agencies are reexamining their mission. This includes: addressing the mission based on "customer" input; asking whether the mission could be accomplished as well or better without Federal involvement; looking for ways to cut costs or improve performance through competition; and ways to put customers first, cut red tape, and empower employees. We are actively participating in this effort and will be keeping the subcommittee fully apprised of our review.

TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
Clearing House Congressional Testimony

Operating costs of the Commission are financed in part through annual assessments paid by class II gaming operations to the Commission to cover part of the operating costs it incurs in performing its required regulatory functions. Federal appropriations are requested to cover all other operating costs. Annual assessments and appropriations are each limited by the IGRA to \$1,500,000 thus providing the commission with a maximum annualized operating budget of \$3,000,000, with no provisions for industry growth or increases in operating costs.

The Act allows the commission to request appropriated funds in an amount equal to the amount of funds derived from assessments for the fiscal year preceding the fiscal year for which the appropriation request is made. The Commission's 1996 request for \$1,000,000 is based on the assumption that it will derive fees of \$1,500,000, thus enabling it to operate at a spending level of \$2,500,000.

Unfortunately, there is more work mandated and needed than can be done within the \$3,000,000 statutory limitation. Fortunately however, the Commission for now has available fees it collected but did not use in the first three and one-half years of its operation.

The Commission began collecting fees in FY 1991 but did not begin using them until FY 1993. The Commission decided to retain those fees and use them to process the backlog of reviews and investigations that accumulated while the Commission developed, proposed, and issued regulations. The Commission expects to use approximately \$1,500,000 of the remaining fees in FY 1995 and 1996 for operations, to process the backlog, and, as needed, to undertake special investigations and enforcement actions.

In addition, relative to its mission, the commission will incur costs and receive reimbursements for processing criminal records checks and conducting certain background investigations. The costs incurred and reimbursements received for these activities are estimated to be \$1,250,000. It should

be noted however that although the Commission receives reimbursement for processing criminal records checks and for the costs of background investigations, the Commission is also limited by the number of FTEs authorized. As a consequence, the Commission must limit certain program work to use FTEs for background investigations.

Positions

Through last calendar year, the Commission was limited to 28 FTES. However, 5 more FTEs for the current year and 4 more FTEs for 1996 have now been allocated to the commission giving it a total of 33 FTEs for 1995 and 32 FTEs for 1996. The Commission has been, and will continue using these FTEs to perform its various functions roughly as follows: 1995 1996

Commission Members 3 3

General Counsel 1 1

Executive Director 1 1

Ordinance reviews 2 1

Management contract reviews Financial reviews 2 2 Legal reviews 1 1 NEPA compliance 1 1

Background investigations 3 3 Administrative support 1 1

Tribal background investigations/ fingerprint card processing 4 4

Enforcement actions 2 2

Communications (including FOIA and Privacy Act) 1 1

Information systems and data base management 2 2

Accounting (fees, investigation expenses, etc.) 1 1

Field visits with tribes and gaming operations 2 2

Liaison with regulators/law enforcement agencies 2 2

Administrative appeals and litigation support 2 2

TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
 COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
 Clearing House Congressional Testimony

Other administrative support 2 2 Total 33 32

Fee Assessments and Use

As noted previously, a substantial portion of the Commission's FY 1996 operating expenses will be derived from sources other than appropriations:

Fees:

Current FY 1,500,000

Prior years' 1,445,000

Subtotal \$2,945,000

Reimbursements:

Costs of background investigations 1,000,000

Fingerprint checks 250,000

Subtotal \$4,195,000

Appropriations 1,000,000

Total \$5,195,000

In addition to the fees to be collected in FY 1996, the Commission will have collected approximately \$6,000,000 in fees before the end of FY 1995. Any unused fees remain available to the Commission without limitation.

The Commission has been, and will continue, using these funds to supplement its operating costs, and in a one-time effort, to reduce the very large backlog of management contracts, ordinances and enforcement cases that have been accumulating. A portion will be used for investigatory and other necessary services on a contractual basis. Our legislation authorizes us to enter into contracts with Federal, state, tribal and private entities for activities necessary to the discharge of the duties of the Commission. We intend to, where appropriate, use this authority to acquire, as

TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
Clearing House Congressional Testimony

needed, necessary expertise and temporary personnel to avoid the build-up of an unwieldy permanent staff.

It is the Commission's intent that some of the funds obtained through assessments be kept available for use for special investigations and the support of law enforcement efforts.

Finally, I am pleased to be able to say that we are making progress in our regulatory efforts and in attaining cooperation in the field from most of the tribes. In the past 2 years we have brought 170 tribal ordinances into compliance with IGRA. We have approved sixteen management contracts, three modifications, and have some sixty more awaiting review, final revisions, or additional information from the tribe or contractor. We have also taken enforcement actions such as closing five illegally operating halls and curtailing illegal activity at a sixth, and causing unsuitable management contractors to leave Indian gaming as contractors. We have conducted workshops and participated in seminars to help tribes comply with our regulations and issued numerous Bulletins to inform and educate the Indian gaming industry. Our field representatives have visited almost all of the class II and most of the class III operations throughout the country to explain IGRA to the tribes and to make recommendations to the tribes on how to comply with our regulations.

Mr. Chairman, this concludes my opening statement. Again, I appreciate the opportunity to discuss these matters with you and will be pleased to answer any questions the Committee may have.

HAROLD A. MONTEAU

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TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
Clearing House Congressional Testimony

EDUCATION: University of New Mexico School of Law, Albuquerque, New Mexico Juris

Doctor, May 1986

University of South Dakota, Vermillion, South Dakota

M.A. ED., Ed. Admin., May 1977

Northern Montana College, Havre, Montana

B.S. Elementary Ed. 1975

Box Elder, High School

Box Elder, Montana, 1971

PROFESSIONAL

Chairman, National Indian Gaming Commission

October 1994 to present

National Tribal Coordinator, Joint Tribal, Department of Interior, BIA Task Force on BIA Re-
organization 1991-1994

Private Practice, Federal Indian Law emphasis

Monteau, Guenther, Smith & Parker, P.C.

June 1990 to September 1994

Tribal Attorney, Chippewa Cree Tribe

Box Elder, Montana

April 1989 to June 1991

Tribal Attorney, Confederated Salish and Kootenai Tribes of the Flathead Reservation

Pablo, Montana

June 1986 to May 1989

Instructor, Federal Indian Law, Stone Child College

TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
Clearing House Congressional Testimony

Rocky Boy, Montana

1989 (Fall semester)

Student Intern, University of New Mexico Law School

Clinical Legal Services

Fall 1985 to Spring 1986

Legal Research Assistant, Indian Pueblo Legal Services and American Indian Law Center, Inc.

Summer 1985

Indian Law Tutor, American Indian Law Center

Albuquerque, New Mexico

Summers 1984 and 1985

Principal (K-8), Rocky Boy Elementary School

Box Elder, Montana

1980 to 1983

Director of Tribal Health Department and Tribal Health Planning, Rocky Boy Health

Board

Box Elder, Montana

1978 to 1980

Principal (K-8), Brockton Elementary School

Brockton, Montana

1977 to 1978

Instruction, Coaching, Rocky Boy schools

Box Elder, Montana

1972 to 1980

TESTIMONY May 11, 1995 HAROLD A. MONTEAU CHAIRMAN NATIONAL INDIAN GAMING
COMMISSION SENATE APPROPRIATIONS INTERIOR FY96 INTERIOR APPROPRIATIONS Federal Document
Clearing House Congressional Testimony

ACTIVITIES AND AWARDS

Billings Area Representative, Secretary of Interior's Task Force on Reorganization of the Bureau of Indian Affairs 1991 to 1994

Board Member for Montana Human Rights Network 1992 to 1994

Board of Directors, Federal Indian Bar Association 1991 to 1992

Member National Congress of American Indians 1986 to present

Montana Gaming Advisory Council, Helena, Montana 1989 to 1990

Montana Indian Gaming Commission of the Montana/Wyoming Tribal Chairman's Association
1992 to present

UNM Law School Honor Roll Fall 1984 and Spring 1985

UNM Law School Dean's List Fall 1985

Panel member to American Bar Association Task Force on Minorities in the Law, ABA, Detroit, Michigan 1985

President, UNM Chapter of the American Indian Law Students Association, Member National AILSA, Student Member NCAI 1984 to 1986

ADMISSIONS

State Courts of Montana U.S. District Court 9th Circuit Court of Appeals Tribal Courts

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