



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

January 27, 2022

NIGC Chairman Simermeyer
National Indian Gaming Commission
Department of Interior
1849 C Street NW Mail Stop #1621
Washington, DC 20002

Subject: NIGC Consultation Series B

Dear Chairman Simermeyer:

Please find the Yakama Nation Tribal Council comments in regard to Consultation B with the National Indian Gaming Commission (NIGC). The Covid-19 Pandemic hit many of our Tribal Gaming Regulatory (TGRA) Commissioners and staff causing a delay in the process to reply to the Consultation Series B--we apologize for it's late submission but hereby request our input be accepted for the record.

The first item NIGC asks: "Under IGRA, 25 U.S.C. § 2706(b) (3) – Consultation B seeks Tribes' views on whether NIGC should promulgate regulations for backgrounding and submitting fingerprints for gaming vendors, suppliers, equipment manufacturers, and consultants with physical or logical access to gaming machines, systems, software, supplies, cash and cash equivalents or secured/restricted areas of gaming operations as defined by TGA. Such background investigations would be mandatory if included in a gaming ordinance approved by the NIGC Chair."

Comments- We do not agree with 2706(b) (3) This NIGC section discusses adding gaming vendors to be fingerprinted and processed. This requirement may negatively impact how we do business and limit or decrease vendors--as most vendors live out of state or will not want to provide that type of information and/or have privacy laws preventing them to be able to provide such information. Also, we see this as an increase to tribes to require more staff to process that information. In addition it gives NIGC additional regulatory authority—whereas, the Yakama Nation Gaming Commission are the primary regulators and have approved policies and procedures for vendor licensing. The Licensing department conducts background investigations on all vendors and vendor employees that complete the Vendor Licensing Applications. Our Class III vendors are also certified by the Washington State Gambling Commission who conducts background investigations as well. The Yakama Nation Gaming Commission and Washington State

Gambling Commission conduct criminal background checks annually for all vendors and vendor employees.

However, we do agree and encourage support to the proposed language that NIGC stated, “instead of promulgating these regulations, use its authority under IGRA to request information from other government agencies, such as FBI, IRS, Fin Cen, and OFAC. to provide information necessary...” first, to work with the affected Tribal TGRA to investigate if violations of law are found.

The next one: “25 C.F.R. § 571 - Audits: – The Commission seeks input, feedback and suggestions concerning proposed amendments on 571, specifically as this part applies to required submissions of the annual audit.” There are extensive proposed changes made in which we recommend time be added to further study the proposed policies in a mindful manner to better understand them.

For example, in #1. Adverse and Disclaimed Opinions, 571.12(b)(3), and (d)(5), and (e) (5), “The current audit regulations do not directly address instances where an auditor finds that the financial statements may be incomplete or inaccurate. Regulators need complete and accurate information to identify and prevent theft and to make regulatory decisions.” There are four different types of audit opinions an auditor may express: “1. Unqualified Opinion 2. Qualified Opinion 3. Adverse Opinion 4. Disclaimer of Opinion.” ...” “Under the proposed changes, tribes that submit an Adverse or Disclaimed Opinion as part of their audit will therefore be subject to an action for failure to submit an audit. As always, the Chairman has discretionary enforcement authority.” There is no due process outlined if a Tribe is found to be out of compliance and subjected to an NIGC action for failure to submit an audit as it is written.

Continuing with #2. of 571.12(b) and 571.13(a-c) Clarification that the audit report and opinion is the required submission, language again raises concern about “disclaimed opinion and adverse opinion” does not satisfy NIGC’s requirements. There again there is no due process showing how regulatory compliance will be enforced upon a Tribe. Can NIGC provide support to help Tribes reach compliance in the process?

Next on #3 of 25 CFR 571(d) and (e), Prerequisites for consolidated audits. NIGC stated...”a tribe proposed a single consolidated audit for six operations owned and operated by separate non-tribally owned gaming enterprises....” Which prompted this proposed policy that only operations with the same owner may consolidate audits. We agree with this GAAP approved policy.

The next one, “25 C.F.R. Part 518 – Self Regulation of Class II Gaming: The Commission seeks your input on amendments to Part 518 to simplify self-regulation procedures. The Commission seeks to reduce the time it takes to obtain a certificate of self-regulation and clarify the Office of Self-Regulation’s functions. The Commission also seeks to clarify the submission requirements for tribes with a certificate of self-

regulation to ensure consistent NIGC practices, and explore the value of an annual Commission summit to promote and discuss best industry practices among self-regulated gaming operations.”

Comments- We are in agreement with Part 518: The changes to self-regulation would be beneficial, however, we do encourage NIGC to increase support to Tribes who desire to learn how to be approved for self-regulation. Increasing the self-regulation staff, increasing outreach to Tribes on this important area to truly support Tribes in their efforts and focusing training to learn how to achieve NIGC self-regulation is requested.

Next is “25 C.F.R. Part 514— Fees: The Commission seeks input on NIGC fee regulations, including: exploring a mechanism to adjust the year against which the fee rate is assessed to respond to extreme and unexpected variations in the industry; mandating a process for reporting on the carry-over status at fiscal year-end; requiring a budget commitment to maintain a two-quarter transition fund; and considering guidelines for the fee rate calculation for self-regulated tribes.”

Comments- Part 514: Fees, we agree with NIGC exploring fee mechanism and responding to extreme and unexpected variations in the industry. Covid-19 pandemic has hit the World harshly in all ways—including the economy. We look forward to learning more on this proposed policy change.

“25 C.F.R.585 - Administrative Appeals regulations proceedings before the Commission: The Commission seeks your input on updates to the Agency’s appeal regulations designed to expedite the process, allow the Commission to decide appeals in less time, and clarify the authority and process for settlement agreements.”

Comments- We agree the appeal process for NIGC should be completed faster. There are concerns of due process in that the NIGC Chairman is proposed to be able to respond to motions filed in appeals proceedings before the NIGC by a Tribal government. Adding this to the Chair’s authority for them to vote on whether to uphold or reverse the Chair’s prior decision appears to be a conflict of interest in their initial decision and the integrity of due process is not upheld. At this time we would ask for this to be further explained as to how due process for Tribal governments who appeal, will be provided.

In 25 CFR 585.8 What is the process for pursuing settlement in an appeal to the Commission? Comment: We agree and support that “Settlements” are in the best interests of all parties and request NIGC to work with Tribal governments to reach positive outcomes while pursuing settlement agreements.

We apologize again for the delay in submitting our comments due to the Covid-19 rippling affect to our regulatory team. Thank you for the opportunity to provide comments to this Consultation B Series, we will let you know if we have further comments on this.

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Sincerely,

A handwritten signature in black ink that reads "Delano Saluskin". The signature is written in a cursive, flowing style.

Delano Saluskin
Chairman

Cc: Law and Order Committee Members
Yakama Nation Gaming Commissioners