

NATIONAL INDIAN GAMING COMMISSION
REGIONAL TRIBAL CONSULTATION

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1 Tuesday, January 11, 2011; 9:12 A.M.

2 San Diego, California

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4 CHAIRWOMAN STEVENS: To begin, I'd like to
5 introduce Chairman Daniel Tucker from the Sycuan Band of
6 Kumeyaay Indians to open our meeting.

7 CHAIRMAN TUCKER: Good morning, everyone.
8 Welcome to Sycuan. Good morning, Chairwoman Stevens,
9 commissioners and staff and fellow tribal leaders. We
10 are Sycuan Band of Tribes. Sycuan Band of Kumeyaay
11 Nation welcomes you to San Diego, and more importantly,
12 welcome to the U.S. Grant, aboriginal home to all the
13 Kumeyaay people.

14 The NIGC and their staff have a very important
15 role to play in tribal government gaming and the
16 protection of tribal assets and preservation of tribal
17 sovereignty. While the relationship between the tribes
18 and NIGC may not have always been perfect in the past, I
19 am personally encouraged by the leadership of Chairwoman
20 Stevens, truly a breath of fresh air.

21 I want to thank you for reaching out to the
22 tribes and undertaking a comprehensive review of all
23 regulations that the NIGC has adopted pursuant to IGRA.
24 And I look forward -- we all look forward to taking the
25 tribal-NIGC partnership to a new level in the month and

1 year to come.

2 So we ask our creator for some blessings.

3 Grand Father, we come to this day and thank you
4 for this day of life. We ask that You protect us and
5 guide us and make decisions that are very important to
6 us all. What know we do here is very important, to
7 protect what we have, protect our sovereignty, protect
8 each and every one of us throughout this day. We ask
9 for that guidance, and we ask that You do help us to
10 understand what's at stake here. We ask that the
11 leadership here in this room today would do the right
12 thing and with the NIGC, their leadership, that we all
13 work together. So we ask for forgiveness for the many
14 times that we fall short, and we ask that you protect us
15 and guide us in the manner that is pleasing to You.

16 And all this we pray in the name of Your son,
17 Jesus Christ.

18 (Amen)

19 Welcome to the U.S. Grant.

20 CHAIRWOMAN STEVENS: Thank you.

21 Thank you again, Chairman Tucker.

22 My name is Tracie Stevens, and I'm a member of
23 the Tulalip Tribes from Washington State. And I'm the
24 chairwoman of the National Indian Gaming Commission, as
25 you all know.

1 I just want to say welcome. I want to say, with
2 deep appreciation, thanks to Sycuan for hosting this
3 event. We endeavor to use tribal facilities when and
4 where it's possible, and they have been gracious hosts
5 and have been great to work with. So it's a beautiful
6 facility you have here, and we thank you very much on
7 behalf of the commission.

8 I'd also like to take this opportunity to
9 recognize the staff that we have here with us also.
10 Commissioner Dan Little, he'll be providing a few
11 comments here after I'm finished. We also have our
12 regional director Eric -- I think they're all out here
13 now, but our regional director Eric. We also have some
14 field investigators, Frank, and Manny, many of which you
15 know, and their assistants Angela and Kim. So without
16 their support we would not have been able to put this
17 together. So they're doing an outstanding job, and from
18 where I come from, it's really important to thank the
19 people that do the work that help us to do our jobs. So
20 thanks to our staff that are here.

21 I'd also like to recognize former commissioners.
22 I bet you-all didn't think I was going to do this.
23 Former Commissioner Norm De Rosiers, right down here;
24 Liz Homer, don't know where she got off to -- Liz Homer,
25 there she is; and Terry Poust. I know she's here as

1 well. So we appreciate your attendance on behalf of
2 those you represent.

3 You know, many of you have probably heard me
4 speak in many different conferences as we've developed
5 our strategies that have led us up to today. And I have
6 shared before, and we've established together as a
7 commission, four major initiatives that we've identified
8 and will be working on during our time in office, one,
9 consultation and relationship building. And today's
10 meeting represents a new day for the NIGC and how we
11 conduct consultations with tribes on matters that affect
12 tribes as a whole across the country. What we do has a
13 different effect on all tribes across the country. And
14 it's beneficial for us to sit together in this open
15 forum to hear how it affects tribes in different regions
16 and try to do the best we can for the majority as we
17 move forward.

18 Our second initiative is technical assistance
19 and training. And we're examining how we can improve
20 our services to tribes with regard to that, and there
21 will be more to come in the upcoming months on how we
22 evaluate and analyze our current program.

23 Third, and that's the purpose of today's
24 meeting, is a regulatory review, a comprehensive -- as
25 Chairman Tucker mentioned, a comprehensive review of

1 existing regulations or the need for additional or
2 further regulations. And I'll talk more about that in a
3 moment.

4 And the final initiative is agency operations
5 review. And that's sort of our look inward at how we
6 operate as an agency to ensure that we are effectively
7 and efficiently meeting our obligations under the law
8 and making sure that we're providing as much as we can
9 to tribes.

10 Much of what we do and what we're doing are
11 things that we ask that tribes do: Looking at budgets,
12 looking at operations, ensuring streamlined efforts and,
13 for us, eliminating redundancies or duplication or
14 finding and identifying gaps.

15 But back to the initiative that we're here for
16 today, which is regulatory review, as I said, this
17 meeting is the inaugural meeting on this process. And
18 Lael will talk more specifically about this notice of
19 inquiry that we published in November. But we use the
20 notice of inquiry as a method to communication with
21 tribes before we take up rule-making. This is a new
22 step that we've identified as a possible way to meet the
23 requirements of the executive order on consultation and
24 coordination with tribes, Executive Order 13175, to talk
25 about the need for regulations before we actually

1 initiate a rule-making process. That's what this
2 discussion and the notice of inquiry is intended to do
3 in the next several consultations that we will have
4 after this meeting. We have seven more that we will do
5 over the next three or four weeks in different regions
6 in the country so we can hear from tribes in different
7 regions and hear from them what their priorities are
8 with regard to regulatory review.

9 As I said, this is a different format, this
10 group format. And as I said, it provides us an
11 opportunity to hear how changes affect all tribes and
12 come up with solutions together.

13 What I would say about today's session is -- and
14 again, Lael will talk about this -- is that we're
15 talking about which regulations in what order
16 prioritywise and how do we go about this, not
17 necessarily a line-by-line drafting session, because
18 that will come later as we develop a process to address
19 regulations.

20 We do have a person, a transcriber down here on
21 the end. She will ask that anyone who has comments give
22 their name and who they're with. But this will all be
23 considered as we move forward and we're done with our
24 initial meetings with tribes about how to go about this
25 review.

1 So what I would say is that this is just the
2 beginning of what we're going to do over the next
3 several years. And we do have very limited time. As
4 you know, our appointments are only three years. I'm
5 six months into mine. Stephanie Cochran, vice chair, is
6 a year into hers. And Dan is eight months into his.
7 And many of you know regulatory review can be a long
8 process, or just the process of rule-making itself. So
9 we do want to move forward as quickly as we can but as
10 thoroughly as we can.

11 I will have Lael talk about the NOI
12 specifically, or in review of the NOI. But what I want
13 to say right up front is, you know, we're going to have
14 a PowerPoint that's just going to review the NOI. And
15 you're not going to sit up here and listen to me drone
16 on and on and justify what I'm trying to do here. Today
17 is meant for you. Today is meant for the tribes to give
18 us some solutions and to give us some ideas on how to
19 proceed, tell us what your priorities are for protecting
20 the industry together.

21 You know, we'll talk more about how this process
22 will go as Lael discusses the notice of inquiry and that
23 the outcome of this will be a plan. In a few months
24 we'll have a plan that we'll be very transparent about
25 and say, This is what we've heard from you, and this is

1 how we're going to proceed, these regulations, in this
2 order, through this process. And all of that will be
3 very transparent, so that's what we want to hear from
4 from you today. We look forward to working with
5 everyone as we move forward. We believe that the only
6 way that we can protect this industry is together and in
7 open dialogue.

8 Now, we may not always agree on everything, but
9 if we do disagree, we'll tell you why, and we're
10 certainly going to listen to solutions and alternatives.
11 And that's really all I have to say. I don't -- you-all
12 don't need to sit and listen to me talk about what we've
13 already published. Today is for you.

14 But before we move on and have Lael talk about
15 the notice of inquiry, I'm going to have Dan Little,
16 associate commissioner, provide a few words.

17 ASSOCIATE COMMISSIONER LITTLE: Good morning,
18 everyone. I'll be very brief. Welcome you all. Thank
19 you for coming today.

20 This is my second visit to Southern California.
21 We were in Rincon last summer, and I really, you know,
22 like coming out here. If there's anything that I can
23 kind of reiterate is that this whole process was created
24 from the commission, things that we've heard from tribal
25 leaders, from operators, from our staff. And these are

1 just questions. They're not positions that the
2 commission has taken.

3 I know this is something that, you know, we are
4 not accustomed to on how this commission operates. So
5 as we enter this process, please just keep that in mind.
6 What you see written is not the position that the
7 commission has taken. These are just questions to
8 stimulate some discussion.

9 So just want to thank you all for coming, and I
10 really look forward to hearing what everybody has to
11 say. Thank you.

12 CHAIRWOMAN STEVENS: Okay. I will then
13 introduce Lael Echo-Hawk. She's a member of the Pawnee
14 Nation out of Oklahoma, and she will be sort of our
15 traffic control today. She's also the point of contact,
16 as you'll see in the notice of inquiry, and also through
17 the PowerPoint.

18 You know, I know we get a lot of criticism about
19 PowerPoints, but they are actually useful, you know, as
20 a summary and as a reminder. And we endeavor to change
21 how we do PowerPoints. And she'll be handling
22 PowerPoint today to discuss, and as I said, she'll be
23 doing traffic control to solicit comments and keep the
24 conversation going.

25 So, Lael?

1 MS. ECHO-HAWK: Good morning. I just wanted to
2 also introduce myself, Lael Echo-hawk. I'm a member the
3 Kitkehaki Band of the Pawnee Nation of Oklahoma. I'm an
4 attorney, formerly worked at the Tulalip Tribes for 6
5 1/2 years, where I was also tasked with some major
6 revisions of the tribal code. So this is a familiar
7 process to me except that I'm doing it for the federal
8 government, which is very unfamiliar for me. So as we
9 move forward, this is going to be a learning experience
10 for everybody. But I'm excited, and I'm very grateful
11 for the opportunity that I have been given to help sort
12 of spearhead this process. Having sat on the other side
13 of the table for the past 6 1/2 years, I know that it is
14 a process, and I know that it's one that I personally
15 had some thoughts about when I was working for a tribe.
16 And I'm hopeful that the process that we come up with
17 today and into the future is going to be one that we
18 truly can have tribal input and we truly can hear what
19 the tribes have to say and go forward based on our
20 relationships and working together collaboratively.

21 So this is my contact information. You guys
22 will see me at all of these and in D.C. anytime you're
23 there. Please don't hesitate to reach out to us. You
24 can reach me at that e-mail, but when it comes to
25 regulation review, all the e-mails go here to this

1 e-mail Web address.

2 So why regulatory review? Aside from being one
3 of the initiatives of the commission, we knew coming in
4 that there were a number of regulations, and we heard --
5 as the commission was out this summer doing their
6 consultation, we heard that regulatory review was sorely
7 needed and that we needed to take a new look at what was
8 happening in the regs. IGRA provides that the NIGC, the
9 commission, enact and revise, amend the regulations and
10 implement IGRA. And so this is why we're doing it now.

11 We also have a process in the federal government
12 kind of governed by the -- this executive order here,
13 12866, and the Regulatory Flexibility Act that requires
14 all agencies to submit a semiannual regulatory review.
15 So that happens in April, and then in September we send
16 it in. So April is the date that we're shooting for.
17 It's what we're required to do by the executive order of
18 the Regulatory Flexibility Act. So that's why we sent
19 the notice out in November, and our deadline for us and
20 for you to know what our plan is will be in April.

21 But before we did this, before we went about
22 setting this agenda, we were very, very concerned and
23 we're very -- you know, as Chairwoman Stevens has said
24 over and over again, that consultation for this
25 commission is very, very important and that we want to

1 hear what tribes have to say, and we want to hear what
2 you have to say about something as important as
3 regulatory revision. We want to hear what your thoughts
4 are on how to go forward with that before we actually
5 begin doing revisions of our own.

6 In the past this agency, like many other
7 agencies that deal with tribes, and not just tribes, but
8 lots of agencies simply send out a notice of a proposed
9 rule-making. And before we did that, we wanted to reach
10 out to tribes. We wanted to really make the spirit and
11 the mandate President Obama has given to federal
12 agencies when dealing with tribes to consult, to engage
13 in regular, meaningful consultation and collaboration.
14 So this is our attempt at that and to -- hopefully it's
15 something that's new and that it is really meaningful.

16 The executive order, the section in the
17 executive order that was really sort of impactful to us
18 in the agency was this No. (C)(3) here that, in
19 determining whether to establish federal standards, that
20 we consult with tribal officials as to the need for
21 those standards and any alternatives to them, so that's
22 what we're doing today. This is what we're doing.
23 We're checking with you before we begin creating some
24 new federal standards. We want to hear if you have
25 alternatives in mind, but that's really what this notice

1 of inquiry process is about.

2 So what is a notice of inquiry? And I know I'm
3 moving quickly, but if I'm talking too fast, raise your
4 hand, and I'll slow down. But I don't want to be up
5 here blabbing at you. We really want to hear from
6 tribes. So I'm going to move through this fairly
7 quickly.

8 A notice of inquiry is a tool that is used in
9 many other agencies. The FCC, the copyright office,
10 Library of Congress, they send out those notices of
11 inquiry to their constituents and to the industry and
12 say, Hey, we're thinking about or we've heard that there
13 are some concerns in a particular regulation or policy.
14 Here's what we hear. What do you think about that? And
15 it's trying to solicit input before a rule is drafted,
16 before a policy is changed. And so that's what we're
17 doing. That's what this is all about.

18 And I know the notice of inquiry process is new.
19 I've never seen it used before in any agency that deals
20 with tribes. But I think it's a really good way of
21 reaching out before we begin to change policy based on,
22 you know, maybe our limited scope being in the federal
23 agency. Tribes have a much -- you have a different
24 picture than we do, and we want to hear what your
25 perceptions are before we begin creating policy.

1 So our notice of inquiry asks three questions:
2 What, when, and how? So the what is what regulations.
3 What regulations need addressed? You know, we've heard,
4 and you'll see as we move further into this, we've heard
5 a number of different regulations. We may have missed
6 something. We may have included something that we heard
7 that doesn't really need to be addressed. But that's
8 what we're asking. What regulations do we need to be
9 looking at, and then what? So what is the order of
10 priority where -- what regulations are sort of pressing
11 and need to be addressed immediately? What are some of
12 these sort of lower-level priority regulations that need
13 to be addressed but still need to be looked at, and then
14 how?

15 One of the criticisms that we've heard and
16 critiqued is that the tribal advisory committee process
17 has not been very successful in the past couple years.
18 And so is that a process that we use? Do we use
19 negotiated ** rule-making? Do we jut simply put forward
20 a notice of proposed rule-making and go forward with
21 written comments? We don't have an answer for that.
22 We're looking for tribes to give us some guidance on how
23 we go about making regulation revisions. So those are
24 the three primary questions that we ask in a notice of
25 inquiry: What regulations, what priority, and then how

1 do we go about doing it?

2 So we've had eight consultations. I'm not going
3 to read through all these, but suffice to say for the
4 next four weeks we'll be very, very busy traveling
5 around. And the point of this was that we wanted to
6 come out into Indian ** Country. We wanted to come and
7 meet you where you're at, put the burden of the travel
8 on us, and really go into each region and hear what your
9 thoughts are. So if you can participate at this one and
10 you can come to D.C. as well, we'd love to see you, but
11 that was the idea behind this little dog and pony show.
12 We're on for the next four weeks.

13 So the NOI was published November 18th. Comment
14 period closes on February 12th. You can submit your
15 comments to that reg.review@nigc.gov e-mail. You can
16 give us a packet like I received from San Manuel today.
17 If you want to see a good example of some comments that
18 were given recently, if you go to the Web site and you
19 click the button that says "tribal consultation," it
20 will say "2010, 2011 reg review." If you click on that,
21 that Web site is going to have everything associated
22 with this process on there. Every comment we receive
23 will be on there. All these transcripts of these
24 meetings will be posted online. Any executive summaries
25 we do will be posted online. We want to be as open and

1 as accountable and as transparent to you as we can. So
2 you can dig through that Web site. I imagine it's going
3 to get significantly larger, but San Manuel, the gaming
4 commission has provided some comments, and they did --
5 the format that they used was very helpful for us
6 because it does say, you know, these regulations, this
7 is a priority level. And then they did talk about what
8 the process that they thought. So if you want to see
9 sort of an example, if you're kind of curious on how
10 this might look when you comment, that's posted on the
11 Web site.

12 So say it one time, say it twice, say it a
13 hundred times. These are suggestions only. What is
14 included in the notice of inquiry, which you should have
15 all had a copy of on these desks, the commission has
16 taken no position, suggestions only, on which
17 regulations should be revised. It's very important,
18 something we should talk about when we have our
19 leadership meetings at the commission. But these are
20 things that we have heard. But there's absolutely
21 nothing set in stone. We want to hear from you and set
22 an agenda based on tribal concerns, industry concerns,
23 regulatory concerns from our side and try to be as
24 democratic as possible while getting the most done. We
25 really have a short period of time, and this process can

1 take a while. So we want to make sure that we get as
2 much done and as much meaningful work and important work
3 done as possible.

4 So quickly, you guys have the PowerPoint to also
5 follow along in the notice of inquiry. Section 4 sort
6 of went through the concerns that we've heard when we
7 were on the previous consultation over the summer.
8 Section 502, there were a couple definitions that we
9 thought might need looking at: Fees, calendar year
10 versus fiscal year, GAAP definitions, late payment
11 system for late fee submittals in lieu of enforcement
12 action. Again, these are just suggestions, and so kind
13 of beef up that particular regulation.

14 You know, one of the other things that we heard
15 about the net revenue section was that we might need to
16 address the bulletin that we submit, gaming revenue
17 bulletin. So we'd like to hear comments from the tribes
18 as to whether or not that's something they would like to
19 see us work on during this process.

20 Self regulation, we've heard a lot about the
21 self regulation reg. Just about every time I talk to
22 someone about regulation, somebody says something about
23 this reg. And so we're interested in hearing what you
24 have to say about the use of it, how it can -- or if it
25 needs to be made better.

1 This Part 523, it seems like we've heard that
2 it's not -- no longer needed.

3 531, we've got management -- some significant
4 comments were made about management contracts and
5 collateral agreements having to do with sole proprietary
6 interest concerns that have been circulating around
7 Indian Country for some time now. So these issues are
8 included in that section as well.

9 Background information for ** Class 2 and **
10 Class 3.

11 Another issue that's come up is proceedings
12 before the commission. I'm an attorney. I like to know
13 what the process is. And I know that in that particular
14 ** reg it's not laid out with much specificity. So if
15 that's something that concerns you and your tribal
16 government, then please comment on that as well.

17 MICS and technical standards, Class 2, Class 3,
18 I understand there's a meeting following this meeting
19 that will address that. But, of course, this has been
20 the raging issue on Indian Country and one of the things
21 that I was doing for about four years before I came to
22 D.C. What do we do with Class 2 MICS? What do we do
23 with the current draft of the Class 2 MICS?

24 Technical standards and regulations, we have
25 already heard they need updated. So we need to hear

1 from you on that. That's a major issue.

2 The pilot program for background investigations,
3 do we need to formalize that into a regulation?
4 Fingerprinting of nonprimary management officials, key
5 employees just would be an option for tribes. Someone
6 sent that in and wanted to include it.

7 We've heard quite a bit about the facility
8 license regulation. So if you have concerns about that,
9 that's also something that we have been hearing.

10 Inspection and access to records at offsite
11 locations, we've heard concerns that tribes, even tribal
12 governments, seeking to get, say, some information from
13 their management company and NIGC's ability to subpoena
14 information from those third-party locations.

15 Enforcement, whether or not the chair should
16 have the authority or the discretion to withdraw an NOV
17 once it's been issued.

18 So those are the issues that we have heard that
19 just had to do with the current regulations that we have
20 today.

21 Potential new regulations, we've heard a number
22 of suggestions on those too. Do we formalize a process
23 for how we revise regulations, how we set up a tribal
24 advisory committee? Or, you know, how do we select the
25 members? So this is something that we're very, very

1 interested in hearing. We want to include tribes as
2 much as possible. How do we do it? Does it need a
3 regulation? We do want to hear from tribes on that.

4 Sole proprietary interest, this is kind of a
5 common thing these days, at least in our offices. We've
6 had numerous tribes coming to us with this issue, and so
7 the question came up: Do we have a regulation then to
8 identify when in the NIGC, when under IGRA is the sole
9 proprietary interest provision violated, and then to
10 provide an option for tribes at their discretion if a
11 tribe wants to submit their information to us, and then
12 we would make a determination.

13 Important here to note that this wouldn't be
14 something the NIGC would just go out and do, but it
15 would be something that tribes would bring to the NIGC.
16 We do want to hear about this. It is something that we
17 talk about regularly in the offices.

18 Communication policy, this has been a topic of
19 concern for us. How do we communicate with you? Do we
20 have these kind of sessions? Do we have individual
21 meetings? What is our process?

22 You know, sometimes this is a very formal
23 setting. This is a government-to-government
24 consultation. But there are times when, you know, we
25 have a field investigator talking to, you know, another

1 inspector at the TGRA. How do we do that? How do we
2 make sure you get all the information that you need and
3 that we have all the information that we need, formally
4 and informally? And it is a process. I've heard from
5 commissioners, and I've heard from tribal leaders, you
6 know, sort of, well, the government office got your
7 letter, but we didn't get your letter, so we didn't
8 know. How do we do this so that we're communicating
9 well and communicating often and that everyone has the
10 information that they need as we move forward?

11 Buy Indian Act, heard a lot about this. I know
12 there's the initiative, buy Indian initiatives in the
13 tribal gaming industry, but this would require the NIGC
14 give preference to qualified Indian-owned businesses
15 when purchasing goods or services. Kind of like what
16 we're trying to do here, wanted to make sure that as we
17 go forward, we're at tribally-owned facilities, but that
18 goes down into the agency as we're procuring things.

19 Once again, these are suggestions only. The
20 commission has taken no position, and we won't take a
21 position until we hear from you. And it's that this
22 is -- we do want to hear suggestions, and we want to
23 make sure that we're being as neutral as possible until
24 we gather all that information and we can make an
25 informed decision on where we need to go from here.

1 So we talked a little bit about this, what we're
2 doing to revise the regulations, by what method. One of
3 the things we talked about is, you know, we know about
4 the MICS and Class 2, Class 3 technical standards and
5 those issues. We know that it's something that is out
6 there, and it needs to be addressed somehow. But we
7 don't want to get bogged down in that process and
8 neglect the other things that need to happen. And so do
9 we have parallel tracks?

10 I'm figuring that I'm going to end up on the
11 road quite a bit over the next 2 1/2 years. But our
12 commitment to you, my commitment to you, is that we'll
13 work as hard as we can to get as much done over the next
14 2 1/2 years, and whatever that takes. If I give up my
15 apartment and end up sleeping in hotels for the next 2
16 1/2 years, we'll do it because there's a lot of work
17 that needs to be done.

18 So once again, back to the executive order,
19 there's another position in there that we really like
20 and I think will be helpful to tribes as we move
21 forward. Section 3(c)(2) says, "When undertaking to
22 formulate and implement policies that have tribal
23 implications, agencies shall, where possible, defer to
24 Indian tribes to establish standards." So this is your
25 opportunity to provide us alternatives, to establish

1 those standards. And we have an obligation under this
2 executive order and President Obama's mandate to look at
3 those standards and to, when possible, defer to tribes.
4 So please don't forget this provision. It's important
5 to us, and it's important to you.

6 Comment period closes February 12th. It's an
7 86-day comment period. All written comments and the
8 consultations transcripts are going to be posted on the
9 Web site. Once again, there's a new button on the Web
10 site. It says "Tribal Consultations." If you click on
11 that, it says "Regulation Review 2011." And all the
12 information that pertains to this process will be posted
13 on there. Anything we receive will be posted on there:
14 The federal register notices, the press releases,
15 everything. All of our agency material will be online.
16 I anticipate we'll put this PowerPoint on there as well
17 so people can see what we're doing as we go along -- as
18 we're going through these consultations

19 Comments can be sent by e-mail to
20 reg.review@nigc.gov. You can also hand them to me. You
21 can mail them to us. You can FedEx them to us. You can
22 Pony Express them, whatever you need to do to get them
23 to us. And then they will all be -- anything that we
24 receive, once again, will be posted on the Web site.

25 This is a commitment by the commission. Every

1 comment received will be reviewed and considered. We're
2 going to look at everything that you send us. The
3 regulatory review agenda will be accompanied with an
4 explanation for how we set that agenda, why decisions
5 were made that were made to go forward with one
6 regulation and maybe not another. We anticipate -- I
7 mean, we're trying to do the right thing. But if there
8 are disagreements in what the tribes -- what their
9 suggestion was, and we didn't go with that, we'll
10 explain why. You'll know what our thought process was
11 and that this decision-making process is going to be as
12 transparent as possible. Contact me. Contact the
13 commission. We look forward to speaking with you about
14 this as we move forward.

15 So the agenda will be finalized in April of
16 2011, and then the substantive work begins. Then we
17 begin line by line amending regulations and going
18 through that process. That's really going to be the
19 bulk of the work. But once we get this agenda set, we
20 can go forward and really begin making those changes.

21 So logistics, there's one seat here, and there's
22 a seat back there, I guess, looks like, on the table.
23 If there's tribal leaders in the room and you would like
24 to sit at the table, please come take these seats. We
25 are going to take a break in a minute, and, you know, we

1 can kind of reset. There's a microphone back in the
2 left-hand corner here. If you're at the table, we need
3 you to press the microphone button on so the red light
4 is on. Only three * mics can be on at the same time,
5 though. So just be aware of that as you're making your
6 comments.

7 Please speak into the ** mic. We need you to
8 state your name and what tribe you belong to or what
9 organization you represent if you're an attorney. But
10 because we're recording and transcribing all of this, we
11 do need that information. And at some point I may have
12 to * waive you down and be like, Could you please
13 restate your name? Our lovely transcriber up here is
14 going to be very diligent about trying to listen and
15 remember, but she has a lot of work to do, and so we're
16 we really need that for the record.

17 So are there any questions yet?

18 Good. Okay. Well, with that, I'm done talking.
19 And we'd love to hear from you. We do want this to be a
20 dialogue. Chairwoman Stevens and Commissioner Little
21 are not going to sit back there silently -- well, Dan
22 definitely won't sit back, but we do want this to be a
23 dialogue. And the conversation, keep in mind we are
24 recording it and it is being transcribed, and so we
25 might need to slow down at places. But as much as

1 possible, we want to have a conversation.

2 And so with that, thank you very much for your
3 attention. If you need anything, if you need copies of
4 documents or anything, then we're here to help you,
5 myself, Frank, Eric. Please let us know.

6 CHAIRWOMAN STEVENS: Thank you, Lael.

7 And I'll have Lael be traffic control because
8 it's hard to see everybody. So, you know, for comments
9 we'll try to make sure and not be disrespectful, but
10 we're going to try to be able to see if somebody has a
11 comment, try to get to everybody.

12 CHAIRMAN SMITH: Good morning. My name is
13 Robert Smith. I'm chairman of the Pala Band of Luiseno
14 Indians. I'd like to thank you for doing this
15 consultation and following through with the executive
16 order.

17 I'd first like to say I think the MICS is good.
18 That's why we have amended our ordinance in Pala. It's
19 good for tribe to establish this good industry standard.
20 It's also good for the patrons and the integrity of the
21 game. So again, I look forward, my staff looks forward
22 to working with the commissioners and step by step to
23 make this thing work for everybody.

24 Thank you.

25 CHAIRWOMAN STEVENS: Yes, sir.

1 CHAIRMAN LOMBARDI: Michael Lombardi, chairman
2 of the Augustine Desert Cahuilla Band Gaming Commission.
3 We would like to endorse the comments of Chairman Robert
4 Smith regarding the MICS. The MICS has been a blessing
5 to California tribes in terms of structuring and
6 developing our tribal gaming commissions. However, we
7 do have a tribal-state compact with the State of
8 California, and we're hoping that today some of the
9 discussion will allow us to educate the commission more
10 fully on the unique situation in California where we
11 have literally adopted as a statewide regulation a
12 uniform minimum internal control standard regulation.
13 Took us two years and a lot of fur flying. But today
14 your May 2003 version of the minimum internal control
15 standard is the guide and regulatory document in the
16 State of California. And there is confusion about the
17 role of the National Indian Gaming Commission in areas
18 of enforcement issue. Its notices of violation is an
19 example. So we've got a double layer of regulation in
20 California.

21 We'd like to talk about clarification,
22 particularly in view of the CRIT decision and the recent
23 decision of the * Ninth Circuit Court of Appeals
24 regarding Rincon. It creates problems and confusion for
25 our tribal governments as to exactly who has the

1 authority to issue a notice of violation in reference to
2 a MICS.

3 With that said, the MICS has been, as Chairman
4 Smith said, a blessing to the tribes. But it is a
5 two-edge sword. And our view is that the relationship
6 between our tribe and the state should prevail in the
7 area of enforcement of minimum internal control standard
8 issues and that the National Indian Gaming Commission's
9 role should be advisory.

10 If you publish another MICS, we would hope that
11 it would be in the form of a bulletin. The tribes would
12 be at their discretion to adopt, because our primary
13 oversight regulatory relationship in our tribal-state
14 compact is with the State of California in reference to
15 the operation of Class 3 gaming activities. So we're
16 hoping to have some discussion on that topic as well
17 today.

18 Thank you.

19 CHAIRWOMAN STEVENS: Can I ask you a question?
20 Chairman Lombardi? You mentioned the May 2003
21 standards. That was several years ago, at a time when I
22 believe there was no separation between Class 2 and
23 Class 3 in terms of the minimum internal control
24 standards. They've now -- when you're talking about
25 MICS, are you talking about Class 3 with regard to the

1 state?

2 CHAIRMAN LOMBARDI: Yes. Actually that's a --
3 Chairwoman, that's an interesting question. And I don't
4 speak for any of the other tribes, but it is our
5 position that the State of California actually has no
6 regulatory authority over Class 2 gaming in the state of
7 California. Rather, that is the proper function of the
8 Tribal Gaming Commission. Nothing that I've read on my
9 opinion ever conferred authority to the State of
10 California to regulate Class 2 gaming on reservations.
11 It was only Class 3 gaming. So that's the interesting
12 part of this * conundrum, if you will, is our
13 relationship with you is primarily in the area of your
14 regulating Class 2 gaming and our oversight role. And
15 the regulation of Class 3 gaming would be the bailiwick
16 of the state. At least that's how I understand it. And
17 we've got some brilliant legal minds here that can *
18 elucidate that further. But if there's some way that we
19 can avoid creating unnecessary confusion as to which
20 regulatory agency has authority in California, that
21 would make the future ever so much easier for our tribal
22 leaders. I hope that answered your question.

23 CHAIRWOMAN STEVENS: Yeah. I just wanted to
24 clarify when you say MICS, you know the difference
25 between II and III, and at one point in time as you were

1 referencing May 2003, before they were split apart into
2 two separate documents. As many of you know, the II
3 standards went into effect or were published and will be
4 effective next October unless we hear otherwise. And
5 also the Class 3 went through a tribal advisory
6 committee that has a pending draft that we put on hold
7 while we go through this process. So I just wanted to
8 clarify between II and III and what you would like to
9 have done in terms of their separation, their being
10 together, because you're not the only -- California's
11 not the only state with reference to NIGC standards that
12 were in place years ago. And that sort of changes the
13 game.

14 CHAIRMAN LOMBARDI: In the case of Augustine,
15 which I think is common in California, we were most
16 relieved that the decision was made for the National
17 Indian Gaming Commission to not add definition or
18 classification regulations because the plain language of
19 the Indian Gaming Regulatory Act necessitated that you
20 not do that. But the technical standards have been very
21 helpful. Our tribe has adopted those technical
22 standards, and today we operate both Class 3 and Class 2
23 games on our floor based on our gaming commission's
24 determination that those games, in fact, are Class 2.
25 And so there is a division, and we don't think that

1 there's a necessity for any more Class 2 regulations, to
2 be quite frank about it. It's working quite well.

3 And I just want to add that this was an issue in
4 California last year. The Sycuan Band conducted the
5 first ever public hearing of a tribal gaming commission
6 to address this question and took copious amounts of
7 expert testimony. Based on that, our tribe used their
8 Class 2 regulation that clearly elucidates the steps the
9 Tribal Gaming Commission must take when making a
10 determination as to whether a game is Class 2 and can be
11 licensed for operation on our floors as such.

12 The State of California doesn't like it. They
13 would like to have that authority. But the law doesn't
14 give it to them. So it is -- not being a lawyer, it is
15 difficult to parcel this. But these are some of the
16 complex issues that I think that we're trying, and
17 there's 59 tribes engaged in gaming in the state of
18 California. There's 110 tribes in the state. Those
19 tribes that don't have gaming benefit from gaming
20 through the revenue sharing trust fund. So everybody
21 sitting at this table has an interest in the resolution
22 of these questions. And we are all coming at it from
23 slightly different perspectives. That's the California
24 way.

25 CHAIRWOMAN STEVENS: Yes?

1 MR. POWLESS: My name is Mark Powless. I'm the
2 gaming commission director for the Big Sandy Band of
3 Western Mono Indians here in California. And I would
4 like to say good morning to you and the fellow
5 commissioner sitting there, and I'd like to thank the
6 Syquan Band for hosting this meeting here, and I
7 appreciate that. I'd also like to extend greetings to
8 the fellow tribes that are here.

9 What I'd like to do, as much as we're talking
10 about the Class 3, our MICS technical standards and
11 minimal internal control standards, I'd like to make a
12 few comments with regards to that.

13 This particular area is a primary concern for
14 Big Sandy. As you are aware, being located in
15 California, the federal MICS has become an issue with
16 regard to the tribal-state compact association
17 regulation referred to in CGCC8 that we're dealing with
18 here in California. As you may also be aware, the state
19 regulation provides a process whereby tribes can opt for
20 the NIGC to be the audit oversight entity in regard to
21 the MICS.

22 Not all tribes agree with the process or CGCC8.
23 We are of the opinion that Class 3 remains a
24 tribal-state compact issue. Of course, Big Sandy
25 recognizes that internal control standards are extremely

1 important to the Indian gaming industry due to its
2 intent to provide obvious protection of tribal assets as
3 well as providing for the integrity of the tribe's
4 gaming operation. In addition, Big Sandy also
5 recognizes that there needs to be consistency in the
6 auditing process of internal control standards in Indian
7 gaming.

8 Experience has shown that many tribes that offer
9 Class 3 gaming have used the NIGC bulletins as a clear
10 direction to follow certain guidelines and have used
11 said bulletins as primary guidelines for the purposes of
12 regulating Indian gaming. Big Sandy believes that the
13 tribes that offer gaming are just as technically
14 knowledgeable and professional as most nongaming
15 commercial gaming entities are and are very aware that
16 if they do not institute their own tribal internal
17 control standards, that they would be, in effect,
18 "shooting themselves in the foot" and "killing the
19 golden goose."

20 Big Sandy looks to industry standards in the
21 gaming area, and if it does not have the expertise or
22 technical ability in various gaming areas, it retains
23 someone or some entity to carry out what is needed to
24 protect its gaming for its tribal membership. It is Big
25 Sandy's belief that most of the other tribes perform the

1 same due diligence in relation to following and
2 instituting the industry standards and guidelines,
3 whether or not a regulation requires it.

4 Should Part 542 Class 3 MICS be eliminated and
5 replaced with guidelines, it is Big Sandy's opinion that
6 the tribes will continue to institute industry standard
7 internal control areas of Class 3. Also to those tribes
8 who have incorporated 542 Class 3 MICS in their
9 ordinance or it is part of their compact, there may be
10 resulting challenges, but we believe that most tribes
11 have appropriate internal control standards in place and
12 that the internal control guidelines would be used to
13 supplement what is in previously adopted ordinances.

14 Based upon the above explanation, Big Sandy
15 believes that Class 3 MICS should be developed by a
16 tribal advisory group process because of the ongoing
17 changes in the gaming industry and the differences in
18 tribal gaming operations and the importance of
19 considering tribal experiences in any guidelines issued.
20 More importantly, Big Sandy would recommend that said
21 internal control standards be issued as guidelines and
22 that they would be provided to the tribes in a bulletin
23 format and be updated on a regular basis and issued as
24 guidelines. Technology is changing so quickly that
25 governmental notice and rule-making process is not only

1 too slow to keep up with said changes but may prove to
2 be more costly in the long run. Therefore, Big Sandy
3 recommends that Class 3 MICS issues should be considered
4 one of the top four areas to have NIGC regulatory
5 review.

6 Thank you.

7 CHAIRWOMAN STEVENS: Thank you, sir.

8 CHAIRMAN MAZZETTI: Good morning. My name is Bo
9 Mazzetti, chairman of the Rincon Band Luiseno Indians.
10 I'd like to also thank our fine friends from Sycuan for
11 their hosting this meeting, and you folks for coming
12 this distance. We appreciate it.

13 I would like to turn this over at this time to
14 our attorney general, Mr. Scott Crowell, tribal attorney
15 general, to provide our position on the issues.

16 Thank you.

17 MR. CROWELL: Thank you. And, you know, again,
18 thanks for this opportunity.

19 I want to point out how much you have Rincon's
20 attention here today. In addition to Chairman Mazzetti,
21 Councilman Steve Stallings and Councilman Kenneth Kolb
22 are in the audience. I don't know if Stephanie
23 Spence --

24 CHAIRMAN MAZZETTI: Yes, she is. The full
25 council is present.

1 MR. CROWELL: The full council is present? The
2 full commission is present. Chairman Delisle Calac, Don
3 Calac, and Lorie * Bergman, our commission executive
4 director * Les Stanley is also here. And I believe our
5 general manager, * Janet Beronio is here. So we have
6 your attention.

7 You know, thank you for the opportunity to
8 address the NIGC on the important issues identified in
9 the published notice of inquiry. As Bo stated, I'm
10 Scott Crowell. I'm here today on behalf of the Rincon
11 Band, which I've had the privilege of representing and
12 the honor of representing for more than 15 years.

13 My comments today are preliminary. I say
14 "preliminary" because, frankly, the notice of inquiry
15 covers such a large swath of issues, that we are not yet
16 prepared to answer many of the specific questions,
17 although our remarks today will address several of them.

18 I have to change glasses. I'm getting old.

19 Rincon will observe and listen to the
20 consultation sessions such that we will then submit a
21 more detailed written response at a later date and
22 perhaps submit additional comments at a later
23 consultation session. I will focus my comments today on
24 four priority issues, which the Rincon Band hopes that
25 you take into consideration. And you'll see that we

1 have differing views already. I will spend most of my
2 time, by far, on Priority No. 1 because it is the
3 overarching concern of the Rincon Band.

4 Priority No. 1 is adhere to the limits of the
5 NIGC statutory authority as set out in IGRA and is
6 articulated by the several court decisions in CRIT
7 versus NIGC.

8 I want to put this in some historical context.
9 The tribes have had their issues with the original NIGC
10 chairman Anthony Hope. He was certainly hostile to the
11 tribes, and the present opportunity to revisit the
12 definition regulations promulgated by the Hope
13 commission is welcome and overdue. But Anthony Hope got
14 one key principle correct which all subsequent
15 commissions, with the exception possibly of the Monteau
16 commission, got wrong and which the Hogan commissions
17 got seriously wrong. The regulation of Class 3 gaming
18 is to be governed by the compact agreements reached
19 between tribal and state governments at the negotiation
20 table. It is not the province of the NIGC. The Hogan
21 commissions took a product of the NCAI/NIGA task force,
22 which was inspired by the tribe's self-governing desire
23 to pursue the goal of self-regulation and to share
24 resources and information amongst tribes. And then he
25 converted those into NIGC mandatory regulations with the

1 ever-present threat of severe enforcement action in the
2 form of large fines and closure orders. Tribes warned
3 Mr. Hogan at the time that he was exceeding his
4 statutory authority. He did it anyway. While imploring
5 with tribes to refrain from suing over the regulations,
6 he stated that this would be the outer boundaries of
7 NIGC's encroachment into Class 3 gaming. CRIT sued the
8 NIGC, and Rincon weighed in as amicus beginning with the
9 initial decision with the administrative law judge,
10 along with the growing number of tribes at the District
11 Court, and ultimately NIGA weighed in before the D.C.
12 Appeals Court. It was my honor to co-author the NIGA
13 amicus brief along with Frank Lawrence of the Holland &
14 Knight firm.

15 At every level of the litigation -- the ALG, the
16 Federal District Court, and ultimately the D.C. Court of
17 Appeals -- concluded that IGRA was straightforward in
18 defining the parameters of NIGC authority, and that did
19 not include Class 3 gaming. The Hogan commission was so
20 frustrated with the bright line drawn by the appeals
21 court, it filed a motion for reconsideration alleging
22 that NIGC could still assume the authority through other
23 means, such as approval of gaming ordinances and
24 incorporation into tribal-state compacts and possibly
25 other avenues; motion for reconsideration denied.

1 Despite the clear decision, the Hogan commissions
2 continued an illegal agenda, thus circumventing the
3 decisions and direction of the federal courts. This
4 includes the present practice of promulgating Class 3
5 MICS anyway, albeit as a voluntary suggestion, approving
6 ordinances that fiat regulatory authority to the NIGC
7 that is not based in the statute, and using tribal fees
8 paid to NIGC for unauthorized and improper purposes
9 relating to the voluntary compliance of Class 3 MICS.
10 Hogan promised that his intrusion into Class 3
11 regulation would end with the MICS, only to take two
12 unsuccessful stabs and then a third successful
13 encroachment with a new regulation that places NIGC in
14 the position to second-guess tribal governmental
15 decisions regarding health, safety, and welfare and
16 empowering the NIGC to compel tribes to change their
17 laws to meet NIGC's unqualified, paternalistic, and
18 arbitrary standards. These regulations go far beyond
19 NIGC authority under IGRA and far beyond the direction
20 and decisions of the federal courts.

21 Former Chairman Hogan dismissed the tribes'
22 fears, suggesting that except in extreme circumstances,
23 as long as he was chairman, the NIGC would not actually
24 use the self-appointed authority to compel tribes to
25 adopt or amend laws in a laundry list of areas:

1 Emergency preparedness -- accidents, injuries, medical
2 emergencies, natural and other disasters, fire, and
3 security threats -- construction, maintenance and
4 operations, drinking water and food, hazardous
5 materials, sanitation, waste disposal. Now, that sounds
6 hauntingly familiar to his statements that NIGC would
7 not aggressively enforce the Class 3 MICS. Such a
8 position is scary in that he was not contemplating the
9 enabling of potential abuses of future commissionions.
10 Now, we applaud the appointments of the Obama
11 administration to this commission. We can lose sleep at
12 night contemplating the would-have-been appointments of
13 a McCain administration. Our fears are well grounded.
14 IGRA does allow the NIGC to require facility licenses,
15 but that authority under IGRA does not empower the NIGC
16 to impose its paternalistic governance preferences upon
17 tribes.

18 It is refreshing that the NOI references the
19 CRIT decision in its introductory statements. It is
20 disappointing that the environment health and safety
21 regulations are framed and buried under the subset of
22 facility licensing regulations. They should be singled
23 out in the laundry issues that need to be reviewed. The
24 Rincon Band believes these regulations not only should
25 be added to the list but that the issue establishing

1 parameters of NIGC authority into Class 3 games should
2 be placed as the highest priority to be addressed by the
3 NIQC first, going forward.

4 The notice of inquiry properly notes that the
5 NIGC Class 3 MICS have taken on a life of their own.
6 NIGC has approved ordinances expressly empowering the
7 NIGC to promulgate and enforce them. Several compacts
8 refer to NIGC MICS as a baseline for compact standards.
9 I have even given prior testimony suggesting a level of
10 tolerance to NIGC continuing down this road so long as
11 it was clear that the MICS are purely advisory and that
12 NIGC staff be limited to providing technical assistance.
13 In hindsight, I was wrong. In hindsight, it is clear
14 that the Hogan commissions had a deliberate and zealous
15 agenda to circumvent and riddle the bright line drawn by
16 IGRA and the federal courts such that the NIGC is the
17 overlord of Class 3 MICS. This commission should run
18 away from the agenda of the Hogan commissions and stay
19 clearly within the parameters of authority set by
20 Congress and clarified by the courts. Those states and
21 tribes that embraced the NIGC Class 3 MICS and compacts
22 and ordinances did so at their own peril. I often hear
23 that NIGC had the authority to promulgate the MICS until
24 it lost at the D.C. circuit. That is pure nonsense.
25 The court ruled correctly. NIGC never had such

1 authority. Every regulator and every tribal attorney
2 who followed the issue knew that NIGC's legal position
3 at the time ranged from weak to meritless. Rincon
4 proposes that the NIGC establish a clear date to
5 withdraw Class 3 MICS from its body of regulations,
6 notices, and bulletins, providing those tribes with
7 defective ordinances or compacts sufficient time to take
8 corrective measures.

9 And that's a point I wanted to expand on because
10 I agree with some of the comments that Big Sandy made.
11 And we have to look at the history, that this all
12 started with the NIGC -- excuse me -- with the NIGA/NCAI
13 task force. We also now have developed a very solid
14 national association of tribal gaming regulators. There
15 are -- at the default to the NIGC, to establish the MICS
16 for what this perceived void is is an assumption that
17 needs to be challenged. That can be transferred back to
18 the task force, back to the national association of
19 tribal gaming regulators, or some other force because
20 the tribes have the incentive as a matter of
21 self-governance to see that MICS, which are needed,
22 continue.

23 Now, Rincon poses this question: If the NIGC is
24 to take on the role as chief watchdog of the regulation
25 Class 3 gaming, then why do tribes need to negotiate

1 compacts with the states? The regulation of games was
2 intended by Congress to be the very crux of compact
3 negotiations. That states have embraced the Seminole
4 decision and used that leverage to extract gaming taxes
5 and unreasonable encroachment on tribal self-governance,
6 instead of seriously negotiating the manner in which
7 Class 3 games should be regulated, created their own
8 problems by doing so. Now, here in California we think
9 that the compact adequately addresses the issue. But
10 Phil always said, you know, there's tribes -- there's
11 compacts out there that just don't properly address it,
12 in his humble opinion. The state's bad behavior does
13 not justify NIGC to fill what Commissioner Hogan
14 perceived as a void in the compacts. If this commission
15 in any way intends to follow its predecessors and go to
16 Congress with an agenda of amending IGRA to empower the
17 NIGC to regulate Class 3 games, it should at the same
18 time advocate for removing states from the process
19 altogether. Now, perhaps that's unrealistic and
20 unreasonable but no more so than subjecting tribes to
21 heavy paternalistic oversight that's duplicative and
22 conflicting between a tribal-state compact and the NIGC.

23 As you review the existing regulations, a
24 question to address each and every time should be to
25 identify the express authority in IGRA for the

1 regulation in question. The Class 3 MICS and the
2 paternalistic backdoor of the facility licensing
3 regulations are only the most heinous examples of the
4 overreaching of prior commissions. Rincon applauds the
5 current notice of inquiry and consultation because it
6 does provide an opportunity to put Pandora back in its
7 box.

8 Priority No. 2, deference and support of tribal
9 gaming agencies as primary regulators. The TGA is the
10 primary regulator of tribal gaming. The tens of
11 millions of dollars in authorized tribal commission
12 budgets, the sheer manpower numbers, and the common
13 presence of the most experienced regulators in the
14 industry quantify this basic fact. The tribe itself has
15 the highest incentive to ensure the games are fair and
16 honest. In the vast majority of circumstances, any
17 tribe out of compliance has the highest incentive to
18 come back into compliance. Rincon encourages the NIGC
19 to embrace a formal policy that ensures the NIGC will
20 take every effort to identify the problem for the TGA
21 and/or the tribal council, work with the tribe to come
22 into compliance, and only if those steps have been
23 taken, exhausted, and failed, then take appropriate
24 action in the form of an NOV with attendant threats of
25 fines and closures. I hear rhetoric that this is how

1 the Hogan commissions approached situations. But I know
2 too many circumstances where the NOV came as a surprise
3 to the tribe and forced the tribes at issue to panic at
4 the possibility of major fines and closure orders. Even
5 those situations were resolved ultimately with nominal
6 fees, the heavy-handed threat has no proper place in
7 government-to-government dialogue. In this vein Rincon
8 supports the idea suggested in the notice of inquiry to
9 clarify the NIGC's authority to withdraw an NOV.

10 Additionally, Rincon supports the idea suggested
11 in the notice of inquiry to replace NOVs in some
12 circumstances with fines. Now, you suggested this in
13 the context of late fees. We think it should also be
14 considered in the context of late audits. One gets the
15 impression that the prior NIGC used the ability to smack
16 a tribe for a late audit in order to rack up numbers for
17 enforcement actions because then they could submit a
18 scorecard to Congress that shows that they're out there
19 regulating tribes. Many in the news media then use
20 those same numbers for sensational headlines that tribes
21 are doing a poor job in regulating tribal gaming. In
22 many of these instances, the audit was only a few days
23 or weeks late. And in many, if not most of those, the
24 outside accounting firm poorly managed its own time
25 allocation, which is the fault of the accounting firm

1 and not the tribe. Replacing the status quo with late
2 fees would clearly place the issue of late audits in a
3 more proper context.

4 Priority No. 3, maintain a viable Class 2 gaming
5 industry. The Rincon Band encourages the NIGC to
6 maintain a vigorous position that ensures viable Class 2
7 games are available to tribes. The NIGC cannot look at
8 this issue in isolation. Many tribes, like Jena Choctaw
9 of Louisiana and the Kickapoo Tribe of Texas, cannot get
10 viable compacts because states hide behind the * 11th
11 Amendment immunity per the Seminole decision. Other
12 tribes, including Rincon, before it prevailed in
13 extensive litigation with the State of California, are
14 forced to accept only a very, very limited number of
15 Class 3 machines. For tribes in many states, a viable
16 Class 2 game is the only real leverage the tribe has to
17 compel the state to negotiate in good faith.

18 In this regard Rincon applauds the efforts of
19 the tribal gaming work group or Class 2 working group,
20 whichever name they go by these days, and Rincon looks
21 forward to the group's testimony. To date the group has
22 provided intelligent and thoughtful advice to the NIGC
23 consistent with Rincon's view that Class 2 devices must
24 be maintained as a viable alternative for many tribes
25 confronted by recalcitrant states hiding behind ** 11th

1 Amendment immunity. Fortunately for Rincon and the
2 other California tribes, we have the luxury of a state
3 statutory waiver in IGRA lawsuits, but most tribes are
4 in states where an effective waiver is not available.
5 In this vein, even if the NIGC does conclude that games
6 played by a noncompacted tribe are not Class 2, it
7 should then refrain from both threatening and taking
8 enforcement action against those tribes. The Hogan
9 commissions made such threats, playing into the state's
10 bad faith negotiations. Fortunately, the Hogan
11 commissions did not carry through with those threats,
12 but the threats alone played into the state's hand at
13 the negotiation table. This NIGC should revert back to
14 the sound policy of the Monteau commission, where the
15 message was clear. If a state was negotiating in bad
16 faith and hiding behind an ** 11th Amendment immunity,
17 such state should not look to the NIGC to carry its
18 water. The NIGC's trust responsibility to the tribes in
19 these circumstances should be of paramount importance to
20 the NIGC.

21 And lastly, Priority No. 4, sole proprietary
22 interest. This is a sticky wicket. My initial flippant
23 reaction was, Take it on if you know you're going to get
24 it right. We will listen closely to the testimony of
25 the other tribes on the issue before formulating a

1 formal response. The body of authority on this issue is
2 primarily in a series of NIGC opinion letters issued
3 between 2004 and 2007 and some low-level dicta in a few
4 reported court cases. You likely know that the
5 Schwarzenegger administration here in California
6 embraced an extortionist agenda for compacts wherein the
7 gaming operations of many of the signatory tribes paid
8 far more to the state as a gaming tax than they pay to
9 the tribe to fund tribal programs and operations. Sole
10 proprietary interest has been discussed in the context
11 of management, development, and finance agreements. But
12 the issue is germane to assessing the legality of gaming
13 compacts and county MOUs as well. All of these
14 collectively or singularly could, and quite likely often
15 do, violate the sole proprietary interest restriction in
16 IGRA. Many also likely violate the requirement the
17 tribe be the primary beneficiary of the gaming operation
18 as well. Defining "primary beneficiary" is not in your
19 published notice of inquiry, and it seems that if you're
20 going to address one, you should address both.

21 Our preliminary view is that the issue is best
22 left to the courts to resolve and that the circumstances
23 of whether these two rules are violated are going to be
24 very, very fact-specific and circumstantially specific,
25 such that generalized regulations will not be helpful.

1 Our view on this may change as we hear from other
2 tribes, but this issue could get very messy.

3 Thanks for the opportunity. We hope you will
4 take Rincon's comments today in serious consideration.
5 We applaud your efforts to take on hard issues, and we
6 look forward to commenting further on this process.

7 CHAIRWOMAN STEVENS: Thank you, Scott. Always
8 appreciate your passion, and I appreciate Rincon's
9 comments, your passion on behalf of your client. So we
10 will take them seriously, as we will everyone's.

11 CHAIRMAN MAZZETTI: I would like to add we want
12 to make sure the underlying factor is this is a
13 goverment-to-government relationship. You know, we have
14 these issues, but that's a paramount fact that we want
15 to make sure stays on the table.

16 Thank you.

17 MR. POWLESS: Madam Chairman, if I may, I'd like
18 to continue on. I plan to jump in on that mixed
19 duscussion for minute, but we do have further testimony
20 we'd like on submit here. So if you would, I'd like to
21 take this opportunity to say a few words with regards to
22 this process that is being conducted today.

23 Big Sandy Rancheria Band of Western Mono Indians
24 would like to express our thanks for being provided an
25 opportunity to offer our tribe's comments in regard to

1 the issues identified in the notice of inquiry. Big
2 Sandy would also like to express our thanks for the
3 approach that the NIGC has undertaken in relationship to
4 seeking comment and input from the tribes. I think it's
5 very important that we go forward with the sincere
6 interest in seeking input of the tribes. We want to
7 thank you for that process and for this ongoing process
8 that's going to be continuing.

9 Many of the issues that were specified in the
10 Federal Register are of a concern to Big Sandy, but the
11 following comments are based on our tribe's experiences
12 and familiarity with said issues. Hopefully Big Sandy
13 experiences will assist with the formulation of revised
14 and/or amendment to NIGC regulations and will encourage
15 an enhanced review of the regulations from a day-to-day
16 regulatory perspective.

17 With regard to 25 CFR Part 502, definitions,
18 Section 502.15, management contracts, this is an area
19 that we feel requires clarification. The section says,
20 "Management contract means any contract, subcontract, or
21 collateral agreement between an Indian tribe and a
22 contractor or between a contractor and a subcontractor
23 if such contract or agreement provides for the
24 management of all or part of a gaming operation."

25 This this definition could be clarified so that

1 it is narrowed to reflect what is intended to define a
2 contract and agreement that provides for a direct
3 management of all or part of a gaming operation. The
4 term "collateral agreement" could refer to any other
5 agreement that a manager of a gaming operation has to
6 deal with, such as gaming machines, signs, et cetera, in
7 the daily operation of the gaming operation itself. In
8 addition, the word "any" could be interpreted to again
9 refer to any contract between the tribe and a
10 contractor. The second "or" seems to be misplaced, but
11 the following would be recommended for clarification
12 purposes: "Management contract" means a contract,
13 subcontract, or collateral agreement between an Indian
14 tribe and a contractor/subcontractor if such contract or
15 agreement provides for the management of all or part of
16 a gaming operation and an entity that is performing the
17 management responsibilities operation is receiving a
18 percentage of the revenues generated by the gaming
19 operation.

20 In addition, a definition of a consultant
21 agreement may assist in distinguishing between a
22 management contract and a consultant agreement. For an
23 example, a consultant agreement does not contain
24 language that provides for receiving a percentage of the
25 revenue. Therefore, it could not be a management

1 agreement. If the definition of "management contract"
2 is revised or not, the definition of "collateral
3 agreement" in Section 502.5 should be redefined because
4 a collateral agreement is a term that is general and not
5 associated with management contract in its ordinary use.

6 25 CFR Part 514, with regards to fees. It has
7 become apparent to Big Sandy that the past practice by
8 the NIGC to also issue an NOV if fees are paid late was
9 an extreme measure to impose upon a tribe unless it's
10 negligence by the tribes that can be shown as a pattern.
11 It would seem more reasonable to develop some type of
12 schedule of fines or penalties, either based upon
13 passage of time and/or number of times being late to
14 pay. This is a priority issue that could be revised by
15 regular notice and rule-making.

16 Management contracts. Just briefly, perhaps a
17 regulation could reflect specifications that identify
18 the maximum percentage of revenue that could be expended
19 in collateral agreements supporting a primary management
20 contract.

21 Based upon the number of concerns identified by
22 the NIGC and other tribes in regards to management
23 contracts in Parts 531, 533, and 537 and all other areas
24 of regulations associated with management contracts,
25 there is an indication that management contracts should

1 be a priority in the regulatory review process. In
2 addition, that a recent case which is presently in the
3 appeal process with regards to Wells Fargo and the Lac
4 du Flambeau Band of Lake Superior Chippewas contains
5 language that could directly impact areas of the
6 regulations that affect management contracts. This same
7 rationale may impact the development of a sole
8 proprietary interest regulation.

9 Big Sandy recommends that a tribal advisory
10 group be formed so that experiences of the tribes in
11 regard to management contracts could be gathered and
12 considered collectively. This would ensure that
13 relevant and pertinent language could be developed for a
14 revised regulation concerning management contracts which
15 would include consideration of experiences of tribes.
16 After the tribal advisory committee provides the actual
17 experiences of the tribes in regards to management
18 contracts, then the regular notice and rule-making
19 process might be the appropriate route to follow so that
20 as much input as possible from tribes can be collected
21 and assembled into a meaningful regulation. This
22 regulation would be recommended to be one of the top
23 three for the purposes of regulatory review.

24 Madam Chairman, on a closing note, I would like
25 to say on a personal note as well, is that it's a

1 pleasure meeting your acquaintance, and I'd like to
2 congratulate you on your appointment and also the
3 foresight of the Obama administration to appoint you.

4 Over the years I've met a lot of tribal members
5 throughout the United States, and I've had opportunity
6 to work with your former chairman Stan Jones during the
7 formulation of the Indian Gaming Regulatory Act. I've
8 visited the Tulalip Tribe on many occasions and saw what
9 transpired and the results of the Indian Gaming
10 Regulatory Act provided to the tribes throughout the
11 United States. So I just wanted to make a comment and
12 encourage you to continue this process in terms of
13 seeking the input from the tribes themselves. Coming
14 from a tribal background as you do, and coming from the
15 legacy of your former tribal chairman Stan Jones, in
16 protecting the tribal sovereignty, I know that you have
17 that concern; I know that you have that interest. So I
18 just wanted to personally congratulate you on your
19 appointment and thank you for this opportunity to
20 provide this testimony today.

21 Thank you.

22 CHAIRWOMAN STEVENS: Thank you, sir. And I will
23 certainly convey that back to my tribal leadership. I
24 am humbled by your words, and as they would be too, to
25 know that their daughter has learned well from them

1 through the process by which we should be good Indian
2 people. So thank you very much.

3 And on that note, I know there are probably
4 several people that want to make comment, but I do see
5 some rustling around which, according to the schedule,
6 we're on a break point, and that way we can use the
7 restrooms, which are right back here, respond to
8 e-mails, get our thoughts together, and come back in 15
9 minutes. So you're up to bat. Please hold your
10 thoughts.

11 Thank you.

12 (Off record)

13 MS. ECHO-HAWK: As everyone is getting kind of
14 settled down, we look forward to additional comments.
15 We're open to comments if someone wanted to start.

16 CHAIRWOMAN STEVENS: And we can ask everyone to
17 come on in and take their seat again while we resume our
18 discussions.

19 What I would like to highlight here is that --
20 and that's the beauty of this process and this open
21 dialogue, is that there are differences of opinions on
22 how we proceed, and our intent is to -- so that we can
23 hear how our decisions and our thoughts and others'
24 thoughts affect other tribes. And I was just stating to
25 a council member over here that I hope that we can come

1 up with some solutions together in that this is not a
2 dictatorial process from the NIGC's perspective. But
3 when we see these differences, I look to the tribes and
4 say, How can we find common ground even in light of
5 these differences, and how can we together best protect
6 the industry, as it is so important to so many of us?
7 So just keep that in mind. Despite varying opinions, we
8 will look back and also put the questioning back to
9 tribes again while there are these differences, whatever
10 they might be, and so how do we resolve them?

11 So encourage some comment. Do we have any
12 further comment from the table, and if not, in the
13 audience? We have a microphone up here.

14 Yes, Norm.

15 COMMISSIONER DesROSIERS: Thank you, Madam
16 Chairman, Commissioner Little, and thanks for coming out
17 here to California.

18 I think you'll get the sense probably throughout
19 the day that here in California our common, probably No.
20 1 priority is this MICS issue. And, of course, post
21 CRIT the state felt that now that NIGC had no
22 enforcement or oversight of authority, that they needed
23 to step in and fill that vacuum. And then we had at
24 least two, maybe three-year back and forth developing
25 this uniform state regulation citing the NIGC MICS as

1 the standard that the tribes would use. And that's --
2 of course, that's also in the compacts, and in seeking
3 oversight authority to the state with a couple of
4 exceptions, that there's a safe harbor which we have
5 tomorrow dedicated to in working with the state. I
6 mean, a new section of that regulation as well as the
7 exception for those tribes, and I think there are about
8 13 of them here in California who have modified their
9 ordinance confirming NIGC with oversight enforcement
10 authority of those MICS. And I think Pala's one of
11 those. San Manuel is one of those tribes. And there
12 are a number of others. That's another complication
13 that we have. And those ordinances, I might remind you,
14 are approved by you. So we appreciate that.

15 Scott Crowell and I don't -- you know, I think
16 we agree on more than we disagree on. And on this MICS
17 issue, my concern -- I mean, I think if we all had a
18 magic wand and could go back in time, we'd rather the
19 NIGC MICS were never born maybe, if we go back that far,
20 or at least back to the compacts, the NIGC MICS maybe
21 were never mentioned in the compacts as the standards.
22 We can't undo that.

23 My fear -- my biggest fear is this, that if NIGC
24 MICS just go away, just go to a bulletin or something
25 like that, that -- part of those MICS, let me remind

1 everyone, is the requirement for agreed-upon procedures,
2 you know, compliance and reviews by an outside
3 independent audit. And that's a big part of the CGCC8,
4 that tribes in the safe harbor portion will provide
5 those independent audit reviews to the state. So if the
6 MICS go away, the NIGC MICS go away, then so does -- do
7 the AUP, you know, the audit reviews, independent audit
8 reviews, so goes -- CGCC8 goes away. And when all that
9 goes away, my fear is the state is going to say, Well,
10 now we have an even bigger void. And they're either
11 going to want to amend the compacts for some kind of
12 internal controls, and that I fear just about as much as
13 amending IGRA. Once you open these compacts, a lot of,
14 I think, unwanted things can happen. Or they'll just
15 promulgate their own internal controls and take on
16 enforcement of internal controls. That's something that
17 we will have to be vigilant about and, perhaps years
18 down the road, engage in more battles with the state if
19 these NIGC MICS just simply go away. That's my biggest
20 fear.

21 So we -- you know, I and I know a few others
22 feel a need to have those continue in existence and to
23 have good ones, because right now they're kind of a
24 mess. And their existence I don't think anyone should
25 interpret as an automatic conference to NIGC for

1 oversight and enforcement authority. Obviously CRIT has
2 taken that away. So the mere fact these MICS exist
3 doesn't mean NIGC has enforcement authority. It just
4 means they're there for us to use as required by the
5 compact. And I go into a lot of other details in my
6 written comments. But I think I want to make those
7 points, at least, today.

8 Thank you for listening.

9 CHAIRWOMAN STEVENS: Thank you.

10 Yes?

11 MS. ZERBI: Jane Zerbi. I'm an attorney here
12 with the Pala Band as well as the United Auburn Indian
13 Community.

14 And I did want to -- these tribes have
15 additional comments, but I did want to follow up on
16 Norm's comments, which I think is an important point,
17 that both the NIGC MICS and other structures recognize
18 that it's a tribe that would adopt those standards. And
19 my understanding of that has always been that it was at
20 deference to the fact that the tribal gaming regulatory
21 agencies are the primary regulant under both schemes,
22 whether that's federal or state. And that's why you
23 have tribal minimum internal control standards. And the
24 role of the federal minimum internal control standards
25 has been to set a minimum. You have some tribes that

1 exceed it or some tribes that have additional items, and
2 either their mixed or they go into their internal
3 control system with those additional factors. But the
4 role that's played is to set -- have industry experts,
5 which have always included tribal industry experts, come
6 together to help set a standard, which has been very
7 useful, I know, on behalf of my own clients to be able
8 to have that standard in place.

9 So I think Norm makes an important point, that
10 maybe the really issue that's a little more
11 controversial is enforcement, but the fact that you have
12 a standard to begin with that has been in place since
13 the late '90s in California has really served an
14 important role in the development of Indian gaming over
15 the decade and ensuring the integrity of gaming for both
16 the tribes and patrons as well.

17 MS. ECHO-HAWK: I have, I guess, a question to
18 both of you regarding the CRIT decision. The CRIT
19 decision, last time I read it, says that the NIGC
20 doesn't have the authority to enforce or promulgate
21 regulations, Class III regulations.

22 What's your take on how -- if the NIGC should,
23 you know, put forward regulations, or in a bulletin, how
24 would that look? How would we get around the language
25 that is in the CRIT decision?

1 COMMISSIONER DesROSIERS: I don't know that you
2 can. My suggestion is that in the court's reasoning
3 there, if I recall correctly, it stated that that
4 responsibility or authority should lie between
5 agreements with the state and the tribes in their
6 compact.

7 I think that creates maybe a little bit of a
8 loophole that we can use in that, okay, our compacts and
9 agreements say that we'll have those, that we need those
10 NIGC MICS. So, I mean, that is -- that's probably weak,
11 and there are some smarter lawyers in here that probably
12 have other ideas. But I think you can -- I think you
13 can crack that door open just enough with that reasoning
14 by the court that if, in fact, it's an agreement between
15 the states and the tribes, well, that's what we've
16 agreed to is to use NIGC MICS.

17 MS. ECHO-HAWK: Well, then I guess the other
18 concern is one that Scott Crowell mentioned, and that is
19 the use of NIGC fees to create -- I mean, it's a very
20 costly process to create those MICS, and so then we run
21 into the comments that were made earlier about, is that
22 an appropriate use of the fees that are paid by tribes
23 that don't have those same provisions elsewhere in the
24 country? And so I'd like to hear more, I mean, maybe
25 not today but by any written comments, on how we address

1 those issues which we hear about frequently.

2 MR. CASAS: One possibility would be --

3 MS. ECHO-HAWK: I'm sorry. Excuse me.

4 MR. CASAS: Sure.

5 MS. ECHO-HAWK: Can you state your name and --

6 MR. CASAS: Dan Casas, tribal attorney for the
7 Table Mountain Rancheria, C-A-S-A-S.

8 One option, and again I'm just shooting from the
9 hip, is to maybe look at other organizations that have
10 come up with the same dilemma, the American Bar
11 Association, for example, who comes out with model rules
12 and model things for states to look at to see if they
13 want to adopt it. Either you put them out in the form
14 of the guidelines or as a proposed model minimum
15 internal control standards that are out there available
16 for states, tribes, or other entities that may want to
17 adopt them.

18 The other issue with respect to the fees is
19 possibility of creating a task force in which tribes
20 would voluntarily participate and pay into these
21 development -- the development of the MICS, because I
22 see the dilemma: If you don't have the statutory
23 authority, you really can't use the money that was
24 earmarked for the operation of the NIGC to promulgate
25 regulations that you have no authority to promulgate.

1 MS. HOUSE: Good morning. Thank you for
2 allowing me to speak. My name is Sharon House. I'm an
3 attorney with Santa Rosa Tachi, Tule River, and Big
4 Sandy with their gaming commissions in California.
5 Please excuse me. I have a bit of a head cold, but it's
6 not stopping me from talking.

7 With all due respect, Norm and I have disagreed
8 and agreed on many issues. And part of that comes from
9 working with regulation right from -- at the base. So
10 that makes -- that's serious. When Norm says something,
11 I do listen. Doesn't mean I agree, but I do listen.

12 So one of the comments that I'd like to make is
13 that when it comes to the MICS, I think it's extremely
14 important that we start looking at it a little
15 differently. We look at it as internal control
16 standards. Whenever you refer to MICS, there's an
17 inference that it's an NIGC MICS. Internal control
18 standards are what we're really attempting to have in
19 place for the tribes, and they know that. And I can
20 say -- and I'm probably one of the few that can say
21 that, since I was the co-chair to the original MICS
22 group that was adopted and started by the tribes.

23 We've made a complete circle now, and we're
24 getting back to that same situation where the tribes are
25 saying, Wait, we could do this. There's tribal advisory

1 groups, and there's other ways. We made a complete
2 circle, and now it's time to take that circle and
3 clarify it, in my mind.

4 In discussing this with some of my clients, one
5 of the recommendations is that within the NOI you put
6 something in there about looking at the approval and
7 disapproval of whether or not there should be ordinances
8 that are approved and disapproved and how that should
9 go. One of the ways you may want to consider also
10 viewing this is to say each ordinance shall have
11 internal control standards that are adopted. We need to
12 start recognizing -- and I think someone said that here,
13 the TGA, the tribal regulatory agency. When the MICS
14 first -- when was MICS was published, I believe a couple
15 years, and I can't remember the year, but that was the
16 first place that was ever -- that TGAs were ever
17 referred to IGRA was under the regulations. And I think
18 that might be a part of one of the problems is that your
19 tribal regulatory agencies are your primary -- they're
20 the first line of regulation. We see it in the compact
21 sometime, you know, sometimes, and we brought that
22 forward. It needs to be recognized by the federal
23 government and by means of NIGC, that they are the first
24 line of regulation.

25 And if we go back -- and I think is Terry still

1 here? The first time I testified before NIGC with
2 Terry, what did I continually say? We have to go back
3 to 25 USC and go back where it says tribes are the
4 exclusive regulators. That was the intent of Congress,
5 and I think we go back to that, and we use that as a
6 basis for determining what the MICS should be and that
7 there is -- and excuse me -- what the ICS, Tule River,
8 TICS, tribe, whatever you call it. But that's the
9 important issue is that you have the ICS. And if it
10 goes away under the federal government, it's my true
11 belief that no tribe wants to shoot themselves in the
12 foot. They know what's important, and what's even more
13 important is that they recognize in their own ordinance
14 when it's submitted to the NIGC, or it's recommended
15 that you place internal controls. There shall be
16 internal controls. And that's identified within the
17 ordinance. You don't put the ICS into the ordinance.
18 You say that they have to have some that meet industry
19 standards. And I believe industry standards is the key
20 issue here also.

21 So with that I'd like to say thank you, and
22 hopefully these comments will be taken under
23 consideration. Thank you.

24 COMMISSIONER BURRIS: Tracy Burris, gaming
25 commissioner for the Viejas Band of Kumeyaay Indians.

1 Madam Chairwoman, in the beginning you talked
2 about solutions, remedies, and all that. And I want to
3 just say on behalf of Viejas that we are listening
4 tentatively to both the comments being made and that
5 will happen across the country and submit our final
6 comments based on what we think will be part of the
7 solution. And it's important at this time that we be
8 part of the solution because of the factors involving
9 cost and time and what the future is. And we hope that
10 this commission, I believe, by what it's doing is taking
11 that into consideration. And we would concur that there
12 needs to be clarity, something I've testified before the
13 senate committee ten years ago, actually 11 years ago
14 about clarity on certain regulations. It's good to
15 finally see that someone may be -- we may be talking
16 about doing something of that nature.

17 And what I mean by that is that you talk about
18 advisory committees. We talk about negotiated
19 rule-making. And I'm a strong advocate of negotiated
20 rule-making, because it gives both parties the
21 opportunity to address something and it allows them to
22 bring the appropriate experts to the table. And I think
23 it's a method that the tribes in their process under
24 self-governments allows them to do. It's something that
25 they like to take under advisement and make those

1 decisions. So I think it would be appropriate for a
2 federal agency that works with tribal governments to
3 take that approach.

4 Now, we're going to often have conflict
5 because -- I would have conflict because it often
6 becomes the old issue of policy versus actuality. I'm
7 an actuality guy. I could live it and breathe it every
8 day. Sometimes some of our concerns and what our
9 councils have to deal with is the policy issue. And the
10 same for your agency dealing with the administration
11 that you work for, and those that -- in Congress. And,
12 you know, I'm concerned about the MICS. I'm concerned
13 about what it means and what its impact is. I think
14 there's a lot of positives, and I think there are a lot
15 of negatives. But I would like to think because of our
16 critics, if you will, both in Congress and outside of
17 Congress in states, that this process is good for this
18 industry at this time.

19 And I guess, to use Scott Crowell's deal, as
20 first it's the Hogan administration and now it's the
21 Stevens administration, there were some positives to the
22 Hogan administration. And it's a good example that we
23 can learn by that it was our critics driving that
24 administration. Maybe, maybe not. But we've all walked
25 the hills of Congress. We've all walked the halls of

1 the state capitol. And that gives us some of our -- we
2 would be foolish not to have that impact us just as we
3 sat and listened to different tribes and their concerns
4 as governments.

5 So I applaud this process. And again, we're
6 going to work toward the good things, and we're going to
7 try to find a solution. And mostly we want to be
8 effective and efficient, especially in these times. And
9 we don't know -- in a sense because of the economy, we
10 don't know what the future holds. And if someone's got
11 a crystal ball on that one, I'm willing to listen to it.
12 But I've seen a lot of things in my last 25 years. I've
13 seen the good of this industry, and I've seen the
14 reality that we thought it was going to last for another
15 15 years or ten years before we started worrying, been
16 in a lot of meetings in the last 15 years and a lot of
17 expectations on our leaders and have proposed and hoped
18 for for our tribal members. And, you know, it is going
19 to be interesting to see what we do as we go along this
20 process of comparing and contrasting.

21 And one thing I would say about the Class III,
22 I've always been an advocate that you always utilize the
23 bulletin process. It already exists. Why change it?
24 You have a lot of -- your agency has a lot of
25 credibility, a lot of deference as who said about the

1 bar association and stuff. Different associations,
2 different things have credibility out there in the
3 industry, in any industry. You have that. I mean,
4 obviously you wouldn't have the influence that you
5 possess now, the agency, and what you do in the future,
6 if you didn't have it. The point is don't underestimate
7 it, and don't underestimate those that would use it.
8 Those that are going to use it effectively and
9 efficiently will prosper, and it will prosper the whole
10 industry. Those that, for whatever reason, they don't,
11 that will be your job to find out why they don't.
12 That's the ones you focus on, and let the rest of us
13 continue to do the hard work that we're attempting to
14 do. Far from perfect that we will ever be, but we will
15 be doing it and doing it right. And the solution is
16 don't focus on those that's doing it right; focus on
17 those who are not doing it right. And, yeah, we'll take
18 some criticism for it. We have, and we always will.
19 Our critics will take advantage of it. Just don't use
20 it as the mallet to beat us up with to move us on
21 something.

22 And that would be my concern on my personal
23 thoughts. So in the end the recommendations and
24 comments that I will present for my council to submit to
25 your agency will be those collectively all across Indian

1 Country because even though we all have our own
2 interests in all states that exist and all the compacts,
3 there's still always an impact because we are considered
4 Indian Country. They don't say California. They don't
5 say Kumeyaay. They don't say Viejas. They don't say
6 Chickasaw. They say Indian Country. So when they do
7 that, it's the old saying: It's the melting pot. Our
8 critics in Congress, our critics at the state governors
9 association, the attorney generals association all start
10 throwing us in the same melting pot at some point. The
11 details will have to be worked out, but the other
12 overall will have to be addressed.

13 So with that we're going to do our best to help
14 this administration, the Stevens administration, because
15 you have great commissioners, and Dan Little and
16 Stephanie Cochran, to help you move this forward. And I
17 hope that -- my biggest concern would be is that I'm
18 sure that you have a lot of talk with your staff, and I
19 would be concerned about what its new direction is, you
20 know, because as others have alluded to, not to say that
21 they had a bad one, but, you know, they led with what
22 was going on at the time, as the overall administration
23 might be. Now that it's a different chief in town, if
24 you will, and different people, I hope the staff has a
25 different perspective instead of assuming that we're all

1 bad. I mean, we all balance our commissions to what we
2 need based on our size and everything and our true
3 needs, surveillance inspectors and all that, and we work
4 to influence them by what we want them to know. But
5 we've got to be careful about what we try to teach them,
6 that it's not a narrow -- you can't put the blinders on,
7 as I've said plenty of times. It has to be open because
8 we never know. We have to cross-train. We have to be
9 multiple in these times and eras, at least the local
10 level or actual work being done.

11 So I just want to reiterate that, and I look
12 forward to working with you guys in the future. Thank
13 you.

14 CHAIRWOMAN STEVENS: Thank you, Tracy.

15 CHAIRMAN LOMBARDI: Madam Chairperson, I just
16 wanted to come back to add a little additional
17 information to the question you asked me earlier this
18 morning regarding the MICS.

19 But before I do, I want to go back to something
20 that Scott Crowell said. You're probably aware of this
21 because you have years of experience in your own state
22 of Washington. But I want to make it perfectly clear
23 for the record that MICS, as Sharon House said, really
24 the most important part of the MICS is the internal
25 controls that derive from the MICS. That's what we're

1 really talking about.

2 But I want to make it clear that the MICS didn't
3 come on an asteroid from outer space. It actually was
4 created by the Wisconsin tribes in consultation with
5 Arthur Andersen. And it was the California tribes that
6 would then adopt that minimum internal control standard
7 before we ever had a compact because the feeling was
8 that that would give credibility to the Indian gaming
9 industry.

10 And I just want to -- I've heard it for 20 years
11 that, Oh, this is for you guys. This is going to
12 benefit you because the more regulations Indian gaming
13 has, the more people will think that it has integrity
14 and honesty. And I just got to tell you there isn't
15 enough regulation in the world to convince some members
16 of Congress on that. That's a bad way to go about
17 things. And Scott was kind of dancing around that.

18 We created the MICS, working with the former
19 great accounting firm Arthur Andersen. That's where it
20 came from. The National Indian Gaming Commission
21 basically piggybacked on what we had done as an
22 industry. And it spread across Indian Country because,
23 as Chairman Smith indicated, it was an important
24 document, a foundational document for gaming
25 commissions.

1 Now, the State of California took the position
2 that the May 2003 National Indian Gaming Commission MICS
3 was a floor, if you will, a basis upon which to start.
4 Almost every tribe sitting in this room, I can assure
5 you, that has adopted the MICS follows the practice of
6 having a more strenuous MICS than the baseline. There's
7 nothing that precludes Indian tribes in this room from
8 amending their tribal gaming MICS to adopt changes that
9 you may suggest would be in our best interest in an
10 advisory role by publishing it as a bulletin. Indeed, I
11 think you'd find that most tribes would probably welcome
12 that rather than like trying to force-feed it through a
13 tube down our throat. That might be a more respectful,
14 collaborative approach. And in California we are
15 constantly updating our MICSes and amending them by
16 tribal ordinance to adopt new and creative ways of
17 developing our minimum internal control standards. And
18 if you endeavor through a committee to do that, that
19 might be an approach that would work in California and
20 would be appreciated.

21 I want to end by -- this is not on the agenda,
22 but I know there are some tribes who are not here today
23 that are profoundly concerned about issues pertaining to
24 the Freedom of Information Act. So I just wanted to get
25 it on the record here that we are profoundly concerned,

1 and excuse -- I'm just going to talk the way I usually
2 talk. They're used to it -- is that some
3 ambulance-chasing lawyer in Miami Beach can get our
4 revenue allocation distribution plans is an outrage, and
5 it needs to stop. And that's what's happening in
6 California. It's because of a legal dispute in Florida
7 with a tribe there. We understand that an attorney
8 there has been able to obtain the name of a number of
9 California Indian tribes' revenue allocation
10 distribution plans. That's nobody's business but the
11 tribal government and tribal members. And we're
12 profoundly concerned that members of the media, members
13 of the legal profession continue to pursue this idea
14 that the public has a right to know how much Tribe A, B,
15 and C are making. We're not publicly traded
16 corporations. There is no obligation to share that
17 information with anyone else other than the National
18 Indian Gaming Commission, through our financial
19 statements, and the State of California.

20 And actually, we could criticize the State of
21 California a lot. But one thing they've done a pretty
22 good job of is keeping our financial statements and our
23 revenue statements and how much some tribal members get
24 paid and per capita payments between the state and us.

25 So as you go forward, I hope that you will be

1 diligent in protecting the precious information that we
2 share with you about how we're doing and keep some -- I
3 mean, just I'll end with this. It's an outrage in
4 America that people can contribute millions of dollars
5 to political campaigns to promote candidates, and we
6 don't even know who they are, but a lawyer in Florida
7 can find out how much Indian tribes in Riverside County
8 are paying their tribal members in per capita payments.
9 That's wrong. And hopefully, the National Indian Gaming
10 Commission will work with Indian Country to make sure
11 that that FOIA problem is fixed in the future.

12 Thank you.

13 MS. ECHO-HAWK: Thank you for that comment.

14 And one of the things that we are working on
15 internally is our FOIA process, refining it. When it
16 comes to revenue allocation plans, those plans are under
17 the authority and jurisdiction area of the Bureau of
18 Indian Affairs. And we will relate that concern back to
19 the Office of Indian Gaming, and we have been talking
20 about it with them because it is gaming and everyone
21 does come to the NIGC for that. But the Office of
22 Indian Gaming, over the Bureau of Indian Affairs, is
23 really responsible for that, and we are working with
24 them to, you know, relay these concerns and make sure
25 that those concerns, when it comes to the information

1 that we have in our office, that we protect it under the
2 freedom of information -- under the rules that we have
3 to abide by.

4 So there's a comment.

5 CHAIRMAN WALKER: Hello. My name is Tom Walker,
6 gaming commissioner for the Picayune Rancheria.

7 I'd just like to make a comment on the NIGC's
8 management contract authority. It's not about the
9 authority, but I just want to comment on my
10 understanding and experience. It's for the -- it's
11 really not regarding many tribes here that are not
12 planning on expanding or anything like that or obtaining
13 a management contractor. But what I know now is that
14 the general contractor, under an approved management
15 contract by the NIGC, is able to subcontract -- is able
16 to have provisions within their subcontract that a
17 subcontractor's not able to go above or directly to a
18 tribal council to notify them of any overruns in costs
19 or certain other problems. And that usually -- it
20 usually results in, you know, bad things happening.

21 And like I said, like I was trying to point out,
22 is that, like Tracy said, you know, a black eye for any
23 Indian tribe is a black eye for all of us. And in order
24 to avoid that, I think if this area can be addressed by
25 the NIGC when approving any management contracts, it

1 might avoid this kind of problem, because what's going
2 to happen -- what I know happened is that subcontractors
3 were not paid on a timely manner, for whatever reason.
4 And the tribe council was not notified of this. So time
5 came when the project is completed, subcontractors end
6 up protesting out on the streets, and it's all kind of
7 bad publicity. And I think this is basically resulting
8 from maybe a fault in the management contract that
9 prohibits the tribal councils from being able to be
10 notified of these kind of problems.

11 So I'm thinking that's a simple solution a lot
12 of us tribes can point out, you know, for future tribes
13 that are going to get into Indian gaming or some tribes
14 that want to. Hopefully that can be addressed.

15 MR. CASAS: Dan Casas on behalf of Table
16 Mountain Rancheria.

17 I just wanted to follow up on something that Mr.
18 Lombardi had mentioned with respect to the phrase, if I
19 can borrow your phrase, ambulance chasers from Florida.
20 One of the other concerns along that same thought
21 process is the -- I would recommend that the NIGC
22 consider treading very delicately in this consideration
23 of amending the definition of net revenue for lawful
24 uses, because once you set a quantified formula that an
25 outside person can look at -- it could be a Cheryl

1 Smith, it could be the ambulance chaser in Florida, or
2 it could be some other enemy of Indian Country -- they
3 will be able to now grasp at a quantifiable formula and
4 maybe raise the saber that says, Okay, X tribe is
5 abusing its authority or abusing its governmental lawful
6 use of money by taking money that they shouldn't --
7 shouldn't be using, for purposes that are in violation
8 IGRA.

9 I think it should be left up to the tribes,
10 should be left up to the tribal governments to decide
11 what's their available cash flow and to ensure that --
12 I'm confident that the tribes are in compliance with the
13 Indian regulatory mandates as well as their own revenue
14 allegation plans. And I think when you put in the
15 formula or floor that defines it and quantify it, we
16 tread into a dangerous territory that we may want to
17 refrain from going down the path.

18 MS. ECHO-HAWK: Can I ask a I follow-up question
19 on that?

20 MR. CASAS: Sure.

21 MS. ECHO-HAWK: Do you have any thoughts about
22 the current bulletin, the use of net gaming revenue, do
23 you have any thoughts about that as it may pertain to
24 changing that definition or in general?

25 MR. CASAS: I think -- are you talking about the

1 2005 bulletin? I think the bulletin is
2 self-explanatory. I've seen it quoted by some cases,
3 and I've seen it quoted by other individuals when they
4 start analyzing whether or not the tribe's in compliance
5 with the revenue allocation plan.

6 My fear is once you start putting a formula, it
7 gives additional ammunition to the people that we try
8 to -- from the Cheryl Smiths and the ambulance chasers
9 from Miami, from grabbing onto something else or raising
10 the saber that says, Look, the tribe is not only
11 violating their own plans, but they're also violating
12 IGRA, and that they would be able to go to the
13 legislators and say, You need to amend IGRA. You need
14 to take more control. That's my fear.

15 I think the bulletin itself provides excellent
16 guidelines for the tribal leaders and the tribal
17 government who are in charge of ensuring that their
18 tribal governments are in compliance with all the
19 different requirements of IGRA and how they use their
20 funds. I'm just more concerned that anytime you give an
21 outside entity the possibility to point to whether or
22 not you're using too much money or you're abusing your
23 funds, then you're opening up the door for other
24 potential problems.

25 And I'm not sure if this was as a result of

1 banks or other outside lenders wanting to have more
2 control. But if it is, that can be handled by the tribe
3 itself on negotiations with the lender or the financier.
4 And that should be left to the individual tribal
5 government to negotiate what the -- the financial
6 source.

7 CHAIRMAN LOMBARDI: If I could just follow up
8 real quick on the net win, there's one minuscule issue
9 that does pertain to efforts by the National Indian
10 Gaming Commission to identify operators of a wide area
11 of progressive games that are sweeping the nation is
12 management agreements, which is a huge mistake. They're
13 not management agreements. They don't have anything to
14 do with hiring or firing or supervising. But this has
15 now become our -- a blessing and a curse.

16 Indian Country is the reason that companies like
17 IGT have been able to create these fantastic nationwide
18 wide-area progressive games that create millions and
19 millions of dollars in jackpots and drawing people to
20 our facilities.

21 In California we have come to agreement on a
22 net win definition for those tribes that pay almost \$360
23 million a year to the state out of their revenues. And
24 even the State of California recognizes that in this new
25 world where we can't buy those machines, where they're

1 expensive to operate, they have copyright obligations
2 that the manufacturer pays, that when we don't own those
3 machines and we're sharing a percentage of the revenue,
4 that that's a good business deal for the tribe. That's
5 not a management agreement, and it should not be
6 considered as such.

7 The state even allows us to deduct those costs
8 from the calculation of our net win. The State of
9 California's recognized, and they don't -- the tribes in
10 this room don't get to deduct anything. The tribes here
11 at this table who are paying into the amended compacts
12 are the only businesses in California that pay their
13 fair share off the gross. Standard Oil, MGM,
14 Disneyland -- nobody pays on the gross but us, or them
15 that pay the money. And so at least the state
16 recognizes that when we use a wide-area progressive and
17 the tribe is getting a pinch and most of it's going to
18 the players and Rocket Bingo or IGT are paying the T
19 line expenses and paying for the machines and making
20 sure the jackpots are in pressed and paid, why shouldn't
21 we get to deduct that?

22 So I think that the National Indian Gaming
23 Commission should back off on the very poor idea of
24 defining a vendor or an operator as a management
25 agreement. Our future is in working together, taking

1 advantage of technological changes, which include
2 networking these games. And that just makes it harder
3 for us. And it doesn't make any sense, because it isn't
4 a management agreement. It never was considered to be a
5 management agreement.

6 And I'm glad that Dan brought that up, because
7 you should seriously consider that when you're looking
8 at the net win calculation, because this is the
9 direction for a little tribe like Augustine out in the
10 middle of a grape orchard. We can get people to come to
11 our casino because we have progressives that offer
12 million-dollar jackpots. The little tribes could never,
13 ever do that before. Players come to our facilities
14 asking for those games by name. This is our future.
15 And so we don't need to have a another tax or another
16 levy placed and ultimately do what? Restrict the
17 tribe's ability to do what we've always done: Take
18 advantage of technology.

19 So I'll end my little thing with what I always
20 say is -- and you've been around a long time. You saw
21 it happen in your state. Indian gaming has been the
22 most innovative form of gaming in the world. All the
23 big innovations that have swept the gaming industry
24 started in Indian Country: Video games, multiplay
25 games, touch screen, cashless wagering, using computers

1 to play bingo and letting people play 250 cards at one
2 time. Mega Bingo was the first company in the world to
3 use low-level altitude satellites to beam an
4 entertainment signal around the country. Before CNN and
5 all these big cable companies, Indians were paying a
6 million dollars on bingo games using a low-level
7 satellite with a game coming from Tulsa, Oklahoma.

8 Congress said we should be able to use current
9 and emergent computer technologies to expand our
10 customer base. If you don't do anything else, Madam
11 Chairperson, please don't handcuff us as we go forward
12 and exploit computer technologies that we don't even
13 know about, because when the California Indians started
14 down this path and we had the first eight-liner that
15 anybody had ever seen -- I want everybody to know we got
16 them from the Odidas in Wisconsin. They shipped those
17 illegal games across state lines, and the rest was
18 history. So it's all the Odidas' fault. They shipped
19 them so fast, they still had bushes and plants on the
20 side of them.

21 But Congress said we would have the right to
22 take advantage of current and emerging technology. We
23 know when we did that, there was no Internet. There
24 were no PCs. There were no iPhones. So here's the
25 thing. Our kids -- my daughter's an 18-year-old member

1 of the Morongo Band. Are our kids going to be able to
2 continue to take advantage of the revolution in
3 technologies to make our games better and better and
4 better? Las Vegas is chasing us. Atlantic City is
5 chasing us. We revolutionized the bingo industry
6 worldwide. Today computers drive the bingo industry
7 worldwide. It started in an Indian casino, in bingo
8 halls in Oklahoma and California. Please don't do
9 anything that limits our ability to utilize or exploit
10 existing or future technologies.

11 And I'll end by saying that we did something
12 that the states and Congress didn't think we could do.
13 Indians figured out how to make money off of bingo by
14 using computers. And the state's been mad at us ever
15 since because they can't get their talons into it. So I
16 just wanted to share that with you is that \$28 billion
17 Indian gaming industry essentially emerged because the
18 Indians were smart enough to use computer technologies
19 in ways that the Nevada people would never do. Out here
20 in California they were still pulling handles on real
21 devices while we were doing cashless wagering. The
22 first all-cashless wagering system in the world, using
23 IGT and CDS, was at Barona, the most advanced computer
24 floor in the world. The gaming industry worldwide has
25 copied everything that we've done. And I resent the

1 fact that some members, former members of the commission
2 went before the national -- went before the Indian
3 affairs subcommittee of the Senate and alleged that in
4 Oklahoma there was no regulation. No. It's not that
5 there's no regulation in Oklahoma. It's that the
6 Oklahoma Indians have figured out a way to make money
7 off of bingo, and the state can't get a dime of it, so
8 they're upset about it.

9 So thank you for the opportunity to share that
10 little bit of history with you.

11 CHAIRWOMAN STEVENS: The floor is open for
12 anyone that would like to come up to the microphones.

13 And in the absence of any comments, certainly
14 there's going to be seven more of these, certainly don't
15 expect everybody to be here, but we do have time still.
16 I know this is the first meeting, and as many have told
17 me, it's sort of a "sit and listen to see what other
18 people are saying."

19 I might make sort of the last call before lunch.
20 We may end up taking an early lunch in the absence of
21 comments, and maybe after lunch there may be some folks
22 who are prepared to make other comments or additional
23 comments.

24 Do you want to come back at 1:15, hour and a
25 half?

1 Okay. And we'll hope that we have additional
2 comments at that time.

3 * * *

4 LUNCH RECESS

5 * * *

6 CHAIRWOMAN STEVENS: Good afternoon, everybody.
7 I hope everybody had a nice break, got some food,
8 refreshed, have some ideas, some suggestions. Thank you
9 all for coming back.

10 Anybody wants to come up, please feel free.

11 MS. ECHO-HAWK: But just please remember to
12 state your name and either your tribe and who you're
13 representing so that we can get it for the record.

14 Thank you.

15 MS. MORAGO: Sheila Morago, executive director
16 for the Arizona Indian Gaming Association. Thank you
17 for breaking for lunch. Had a bunch of people that were
18 starving around here.

19 First I'd like say, you know, thanks for having
20 this hearing in Southern California, one of our favorite
21 places. However, we will have liked you guys to be in
22 Arizona for at least one of these eight so we didn't
23 have to travel so much.

24 The Arizona Indian Gaming Association will
25 submit its comments and its suggestions as a group. But

1 we do have some questions that we'd like to ask to sort
2 of clarify some of the comments we're going to be
3 making. And I have with me Glenn Feldman and Ed Roybal,
4 who have some different parts and pieces of that, just
5 to ask some questions so that we can get some clarity.

6 MR. ROYBAL: Ed Roybal, attorney for the Ak-Chin
7 Indian Community. For those of you who don't know,
8 Ak-Chin is located a little outside Phoenix. We also
9 have a management agreement with Harrah's, so a few
10 questions related to your management agreement language.

11 First thing was in your Part 533, approval
12 management contracts. You're asking to clarify the
13 trustee standard. And before we comment on that, could
14 you give a little more flesh to what you're looking for
15 there?

16 CHAIRWOMAN STEVENS: I'm going to defer to Lael
17 on this. And I think we've had some discussion about
18 when management contracts come in. And if you recall,
19 there's a portion of IGRA that talks about the trust
20 responsibility as any other trustee would have. I think
21 that question has been brought to our attention on a
22 number of occasions with regard to what kind of
23 provisions are in management contracts may not
24 necessarily be very super beneficial to tribes. I think
25 that's one of the questions that has been brought to our

1 attention by tribes.

2 MR. ROYBAL: It has disapproval grounds,
3 533(6)b, then 531, so I think it's --

4 MS. ECHO-HAWK: Yeah. This is actually a lot
5 simpler than it seems. Basically, the current Part 533
6 doesn't say that the contract can be disapproved when it
7 wasn't submitted in accordance with the submission
8 requirements. So basically, I mean, it's sort of
9 stating the obvious. We can disapprove a contract if it
10 hasn't been submitted according to the requirements of
11 Part 543 or if it doesn't contain the regulatory
12 requirements for approval that are listed under 531. So
13 we're just saying we can't approve a contract if it
14 hasn't been -- in this case, our contracts office, it
15 hasn't -- we can disapprove a contract if the
16 requirements of Part 533 and 531 have not been met. So
17 that's all this particular section is saying, that we
18 should include sort of the statement of the obvious,
19 that if you don't follow the provisions of the
20 regulations, we -- that can be grounds to disapprove a
21 contract.

22 MR. ROYBAL: So my comments can be as short as
23 that.

24 MS. ECHO-HAWK: Yeah, exactly.

25 MR. ROYBAL: Okay. I was -- okay. I don't want

1 to belabor this.

2 The second one I have then along those same
3 lines was Part 537, says some confusion whether the
4 contractor should be required to submit Class II
5 background information when the contract is only for
6 Class III.

7 MS. ECHO-HAWK: Yeah, that again was, you know,
8 when the -- IGRA gives the NIGC the authority to do
9 background -- to background anyone, Class II or Class
10 III management company, but people don't understand
11 that. And ever since CRIT has come out, there's been
12 confusion, and it's kind of been a back and forth where
13 we've had tribes or, you know, frankly, the management
14 company is coming to us and saying, Well, you don't have
15 Class III authority, so I don't have to submit these
16 background -- or, you know, we don't have to get these
17 people investigated and get backgrounds done through
18 you. That's not what IGRA says. And so in that regard,
19 we want to just maybe think about cleaning up some
20 language if it is a problem. If it's not an issue, you
21 know, we can say that as well.

22 MR. ROYBAL: We haven't had an issue, but when
23 you say there's some confusion, NIGC clarification would
24 go a long way towards helping us.

25 Then finally, at the beginning, your management

1 contract and concern about net revenues allowable uses,
2 I guess there's some concern amongst folks in Arizona --
3 we had our premeeting -- that although there may be some
4 benevolence in the direction you're going here, that it
5 could be a backdoor kind of enforcement authority for
6 the commission vis-a-vis wraps in Class III. And we
7 just kind of wanted to flesh that out a little bit more.

8 MS. ECHO-HAWK: We know the concern, and we've
9 heard the concern about the NIGC stepping into revenue
10 allocation plans, conducting investigation of wraps or,
11 you know, use of -- net use of gaming revenue but
12 outside of the gaming operation and into tribal
13 operations. We've heard that concern. And we're very,
14 very interested in hearing some more feedback from
15 tribes on that issue. It goes along with use of net
16 gaming revenue bulletin that's currently out there and
17 maybe taking a new look at that because, you know, we've
18 heard that concern and we hear it, and if there's a way
19 to address it in definitions, address the
20 appropriateness maybe of where -- you know, where the
21 definition of net revenue should stay at and sort of the
22 authority that the NIGC has to enforce or make those
23 definitions and then make -- enforce or not enforce
24 outside of a certain scope. We're interested in hearing
25 those thoughts from tribes about this.

1 Now, this --

2 MR. ROYBAL: I think this is another one where
3 earlier people commented on this might be beyond
4 statutory authority of the commission, you know, POI,
5 it's a big leap for the commission and revenue
6 allocation plans and then possible enforcement and those
7 types of concerns.

8 CHAIRWOMAN STEVENS: And it does tie into that
9 bulletin. What are your thoughts on that bulletin? It
10 exists. It's out there, and it was discussed earlier.
11 Not sure if he's still here or not. But it has been
12 cited in some investigations by DOJ or in some cases.
13 You know, do tribes have thoughts about that particular
14 bulletin, because it does talk about that revenue and
15 the uses and concerns I'm hearing today about that sort
16 of we don't want to you go down that road because we
17 question your authority to define that. Well, there's a
18 bulletin out there already that goes to that point of --
19 and does define it. So what are your thoughts on that
20 bulletin as it exists today?

21 MR. ROYBAL: I think there's a big difference
22 between bulletin and statutory authority is my short
23 answer.

24 MS. ECHO-HAWK: Well, if there's a way we can
25 address that in a regulation that sets in stone perhaps

1 the NIGC's authority and limitations on that authority,
2 then that would be something that we'd be interested in
3 hearing about because I do think that it's not clear,
4 and you combine the definition with the bulletin and all
5 of the sudden, you know, we're the -- we've expanded
6 somehow magically the scope. And so please do comment
7 on that.

8 MR. ROYBAL: That's all I have. Thank you.

9 MR. FELDMAN: Good afternoon. My name is Glenn
10 Feldman. I'm the attorney for several Arizona tribes.

11 And as Sheila indicated, the Arizona tribes have
12 spent a fair amount of time looking at this notice of
13 inquiry. And we have a number of -- we're not here
14 today to give substantive comments. We're here to get
15 better understanding of what the issues are. So I just
16 wanted to follow up on a couple of Ed's questions with a
17 couple of additional questions.

18 Before I do that, though, I just want to make
19 the point for the record, and I think it was discussed
20 earlier this morning, we're not going to go into the
21 Class III MICS issue here today in any depth. But it is
22 important that you understand that in Arizona the
23 compact has incorporated the NIG -- you know, done it a
24 different time, different era, and we have incorporated
25 the NIGC MICS into the Arizona compacts. So the

1 suggestion that they simply be repealed or, you know,
2 somehow eliminated completely would create some fairly
3 significant problems to the Arizona tribes in terms of
4 where does that leave us and does that require us to
5 reopen our compacts, something that we're not real
6 anxious to do at the moment. So again, we'll have
7 something more to say about that in our written
8 comments, but I just want to be sure that the
9 commissioners understood that there is that issue to be
10 addressed.

11 In terms of specific questions on specific
12 elements of the notice, I'm -- and these are just
13 questions. You know, we're just trying to understand
14 what the commission's concerns are. Under collateral
15 agreements, Part 531, there's a sentence in here which
16 says, "The commission has taken the position that
17 although the collateral agreements must be submitted,
18 the commission only approves management contracts."
19 Now, the definition of "management contract" includes
20 collateral agreements. So we're a little confused as to
21 what -- if that sentence is a completely accurate
22 statement or not. I mean, I assume that if you've got a
23 document that's called "Management Contract" and two
24 other related agreements that are collateral agreements,
25 you look at the entire package and you either approve or

1 disapprove the package. I mean, since "management
2 contract" includes collateral agreements, we were
3 confused as to what's meant here, sort of the
4 distinction between the two.

5 MS. ECHO-HAWK: I think that's correct. But
6 there is some -- when reviewing the management
7 contracts, you look for the management positions and all
8 that. One of the concerns that we have had recently in
9 the scope of sole proprietary interests is looking at
10 them cumulatively to make the determination about sole
11 proprietary interest and whether or not that's violated
12 when you put all the agreements together. And I think
13 for the contracts division, that was one of their
14 concerns. And it's also a concern that we've been --
15 I've been in I can't even count how many meetings where
16 these issues have come up where someone has had a
17 management contract and then subsequently there's an
18 employment contract and then a consulting contract and,
19 you know, developer agreements and all those things that
20 came along with it. And when you do all the math, it
21 adds up to -- I think we used an example in here, the
22 tribe paying in excess of -- I mean, this is a real
23 example -- 80 percent of the gross gaming revenue
24 with -- when all those contracts and those collateral
25 agreements sort of combined.

1 And so we're trying to figure out, I think, a
2 way -- what this goes to is to figure out a way to
3 approve or disapprove a management contract based on the
4 management contract's provisions but also being able to
5 take a look, if necessary, if we need to, I think, the
6 collateral -- additional agreements to see if they
7 violate the sole proprietary interest and whether or not
8 the tribe is actually a primary beneficiary or if
9 there's some other things in those agreements that might
10 turn it into a management contract. But I think there's
11 some confusion in our management -- in our contracts
12 division about how far can they go into looking in those
13 agreements to either approve or disapprove them based on
14 how they kind of add up cumulatively.

15 MR. FELDMAN: Thank you.

16 The next question we have had to do with
17 background investigations, Part 556, background
18 investigations and licensing, Item No. 2, fingerprinting
19 for nonprimary management officials and key employees.
20 While we think -- preliminarily, we think this is a good
21 idea. And we think that if a tribe wants to conduct,
22 you know, full background investigations on lower-level
23 employees or vendors, they should have the right to do
24 that. Our question is whether this would require an
25 amendment of your MOU with the FBI, which, as I

1 understand it, is fairly specific as to who the FBI has
2 agreed to provide fingerprint reports on.

3 MS. ECHO-HAWK: I haven't looked at that MOU in
4 a while. It likely could because of the -- the
5 specificity is primary management official or key
6 employee. It could, but is that something that maybe we
7 should consider if, you know, if we do want to go down
8 this road and at the tribe's option? And if it is
9 something that the tribes want to do, then we can talk
10 with the FBI about that. I know Larry Roberts, who's
11 chief counsel, has been working with the FBI, DOJ, IRS,
12 really trying to build this interagency coalition so our
13 relationships are strong. So if we needed to do
14 something like that, we could.

15 MR. FELDMAN: You think it could be done. You
16 hope that it could be done.

17 MS. ECHO-HAWK: We're always hopeful.

18 CHAIRWOMAN STEVENS: We can talk about it.

19 MR. FELDMAN: As I say, our general impression
20 was it sounds like a good idea. To simply do the change
21 would give tribes more options in terms of who they want
22 to process through this, you know, from the system. So
23 we think -- you know, assuming the FBI would agree to
24 this, we think it's a good idea. Again, we'll have some
25 written comments.

1 Last one has to do with, again, background
2 investigations, Part 556. In 1997 the NIGC began a
3 pilot program which allowed it to effectively perform
4 its duties of background investigations. Maybe we're
5 just missing something here, but none of us in Arizona
6 know what this pilot program is, so we're hoping that
7 somebody can sort of point us towards information about
8 the pilot program that's been around for a few years.

9 MS. ZERBI: Jane Zerbi. I'm an attorney with
10 tribes in California. My understanding of the pilot
11 program has been that when the federal regulations were
12 promulgated, it had some specific time lines and some
13 specific requirements that became very burdensome like
14 providing -- I think one of them, off the top of my
15 head, entire copies of applications, things like that
16 that the NIGC found was really not necessary over time
17 if the tribe, in fact, was maintaining them, and then
18 the NIGC could come in and review them. So my
19 understanding of the pilot program is a streamlined
20 process that retains the elements but enabled the
21 licensing process to be more efficient.

22 MR. FELDMAN: Is it in writing someplace?

23 MS. ZERBI: And to add onto that, there's an
24 understanding with the NIGC and tribes regarding that
25 pilot program.

1 UNIDENTIFIED MAN: And that's what we got a copy
2 of here.

3 MS. MORAGO: Which tribes actually use the pilot
4 program?

5 CHAIRWOMAN STEVENS: There's a number of tribes.
6 And actually I don't know the numbers, but I remember
7 having this discussion with our staff. We have a number
8 of tribes that do this. Matter of fact, I think my
9 tribe was one of the first tribes that signed up to do
10 this. And it was an effort to streamline the process.
11 And the tribes were doing really a lot of work. So not
12 sure why there's not more information.

13 MR. FELDMAN: Chairperson, is it possible to
14 post it on the Web site if it's available?

15 CHAIRWOMAN STEVENS: For some reason, I'm
16 thinking it's probably on the Web site. We'll have to
17 look. That's another thing we're doing is we're trying
18 to fix the Web site. It's not very user-friendly. We
19 recognize that. We actually had somebody plead not to
20 change it because they just figured it out. Let's make
21 it so it's easier to figure out from the beginning
22 instead of having to invest all this time. So if it's
23 not, we should have it up there. My apologies.

24 MS. MORAGO: Thank you.

25 Just one final question in terms of Part 559,

1 the facility licensing portion of it. We're not ready
2 to actually say if -- you know, we definitely have
3 opinions on that, but I think for the purposes of being
4 fair and offering suggestions, we were looking for some
5 maybe report from you on -- these regs have been out for
6 a while. And we were wondering what you have done with
7 them. Is there something you can give us that shows
8 their value to you as a regulator? because, you know,
9 let's face it. We're all in this together. So we don't
10 want to be arbitrary by saying we don't agree them, and
11 we want to see if you see value in it. And so we would
12 appreciate some feedback from you on what you have done
13 since these regulations have been in place.

14 CHAIRWOMAN STEVENS: Well, certainly that's a
15 very useful question to have and ask for information
16 before you submit new comment. So we can do that.

17 MS. ECHO-HAWK: This regulation particularly, or
18 the being put in the NOI in addition to it -- and this
19 is not -- the issues that we sort of fleshed out in more
20 detail are not the end of the universe. I mean, any
21 regulation is fair game. And if have you comments on
22 any of them or you think any of them need revised or
23 whatever, then, please, this is not -- this is just --
24 these are the things, sort of the issues that have
25 percolated to the top. But we here, you know, constant

1 criticism and critiques of the facility licensing and
2 the requirements that it lays on tribes in terms more of
3 their paternalistic sort of tone. That's what we hear.

4 We also hear that there is a general lack of
5 expertise in our agency to enforce or to monitor
6 environmental, public health and safety issues. Do we
7 have fire inspectors? No. We have gaming inspectors,
8 and those kind of things. So that's why it was included
9 in here, but we can certainly gather more information.
10 But that was the rationale for including it as one of
11 the regulations that we kind of highlighted that we've
12 heard a lot of concern about.

13 MS. MORAGO: We were just looking at it in terms
14 of duplication of efforts. We do this a lot with the
15 state when we're opening up facilities and we want to
16 make sure that there -- that, you know, if we're going
17 to really look at these regulations and be thoughtful
18 about them and what is smart and what is expedient for
19 everybody, then the question is, you know, I think a
20 fair one of let's find out what it is you're doing with
21 them and what are the duplications of efforts, because
22 if we're already doing it for somebody and somebody's
23 already checking on it, the question is, why do we have
24 to do it again? And I think that's where it -- the more
25 information we get from you, the better our comments, I

1 hope, will be, because we don't want to -- I mean, this
2 is a great undertaking that you've taken, and we
3 appreciate it greatly, so as much time as you're putting
4 into it, we feel it's only fair that we put in as much
5 time as you do in making sure that we comment on this.

6 CHAIRWOMAN STEVENS: That's it?

7 MS. MORAGO: That's it.

8 MR. FELDMAN: For now.

9 CHAIRWOMAN STEVENS: Well, and if you have any
10 additional questions, certainly get ahold of us, and
11 we're happy to answer your questions, provide
12 information.

13 MR. FELDMAN: Thank you.

14 MS. MORAGO: Thank you.

15 MS. ZERBI: Jane Zerbi. I had a question again
16 I think might help in the tribes that I work with
17 provide meaningful comment. You had asked a question
18 about whether the NIGC should move to a ticket system
19 rather than a notice of violation for late fee
20 submittals. And I'm just wondering what you had in mind
21 there and how that fits in with IGRA. Is this limited
22 to, for instance, late fee submittals? I heard today,
23 for instance, that one suggestion of audits as well.
24 How do you see that working in conjunction with your
25 overall role under IGRA?

1 MS. ECHO-HAWK: This idea came up actually out
2 of staff, and I can tell that you having worked for a
3 tribe that was recipient of a notice of violation for
4 late fees, audits and fees somewhere in the realm of 20
5 days and we got a notice of violation, well, notice of
6 violation is a substantial enforcement action. It
7 carries with it possible closures and significant fines.
8 And so we were trying to think of a way where tribes,
9 when something like this happens, you pay a bill late,
10 you know, they don't come take your house; they charge
11 you a little penalty fee type. And I see many people in
12 the room who were last year, I think -- I couldn't
13 even -- I don't even know how many NOV's went out for
14 late fees. And internally there was some thought that
15 perhaps there's another way of going about doing this,
16 that if a tribe submits a late fee, late audit, that we
17 can implement sort of a sliding scale, and there's no
18 really particular idea, but it would be sort of, you
19 know, if you pay your parking ticket late, you know,
20 that kind of idea. That way we're not being so punitive
21 in that, you know, a change in your -- you know, the
22 person who processes some of your payments in your
23 finance office, a change of personnel doesn't mean that
24 the tribe is then subjected to a notice of violation.
25 Not only does a notice of violation carry these punitive

1 things, but it is posted on the Web site, and, you know,
2 there's a number of things that happen that are, you
3 know, pretty punitive, and they're important. And if
4 it's something like this, then it might not -- it may
5 not rise to that level. That was the thought behind it.

6 MS. ZERBI: So your inquiry is really focused on
7 late fee submittals. Is that correct?

8 MS. ECHO-HAWK: This is not the end of the
9 universe. So if you have other ideas, please send them
10 to us as to how can we use this idea. If you like the
11 idea, then how can we use it?

12 CHAIRWOMAN STEVENS: Jane, are you asking,
13 though, is this idea limited only to late fees, or are
14 you thinking about applying it to other sections where
15 there might be a violation?

16 MS. ZERBI: I was really asking the question to
17 try to get an understanding of what the NIGC is asking
18 about and then how far you would see that applying. I
19 know, for instance, with the tribes that I work with
20 your letter process has been quite effective. And that
21 doesn't rise to the level of a ticket or a penalty, but,
22 you know, when you do get a letter and it has a
23 recommendation or something like that, it often is very
24 productive and folks respond to it and implement a
25 recommendation. So I'm just looking at it on balance as

1 to what, you know, what your thoughts were in talking
2 about a ticket system.

3 CHAIRWOMAN STEVENS: Well, I think there was one
4 period of time when we were checking with staff. A
5 number of years ago, there were a number of tribes that
6 were late constantly, and there didn't seem to be any
7 improvement. And, you know, a very large number of
8 tribes received notices of violation for late fees. And
9 that seemed to get everybody back in line, but it seemed
10 like a really extreme way to do that. And is there a
11 progressive way to deal with late fees rather than being
12 so harsh on everybody, and if there is a way to do this
13 progressively rather than a large hammer coming down on
14 everybody across the board. So I think that's what
15 prompted this.

16 I think in the past letters were being sent out
17 to tribes that were continually late with their fees,
18 late with their audits, and there just never seemed to
19 be any improvement. And there should be some sort of
20 structure to that, I think especially in terms of fees,
21 so that they can continue to operate. I think that's
22 just what we were thinking in terms of just fees.

23 I'm glad to hear that it's working in other
24 areas of enforcement where we're trying to preempt and
25 work with tribes in advance, before a notice of

1 violation comes. But we do need to think about fees in
2 another way in terms of getting everybody turning their
3 fees in on time.

4 MR. VAN NORMAN: Mark Van Norman, National
5 Indian Gaming Association, and I'm here with Elizabeth
6 Homer, who's our counsel on regulatory matters.

7 We have had some longstanding issues about the
8 NIGC regulations that were brought forward at the time
9 that the regulations were promulgated. So let me just
10 mention that in regard to the MICS, we've always had an
11 issue about the primacy of tribal-state compacts and
12 that tribal-state compacts should be recognized as
13 primary regulatory document along with tribal ordinances
14 for Class III gaming. Certainly that concern was
15 brought forward by the Colorado River Indian Tribe's
16 decision, and we think that decision should be respected
17 by the NIGC.

18 And there's also a question about functionality
19 of the regulations, and I'll let Liz talk in a little
20 bit more detail about these things.

21 On facility licensing we were concerned about
22 process when they went through. There was a first-round
23 preliminary notice of rule-making. There was some
24 dialogue about that that was questioning the
25 regulations. And then after that there was a notice of

1 rule-making and a 45-day comment period, which was
2 inadequate under the executive orders for rule-making.
3 And we also think that they were drafted in such a way
4 to exceed the NIGC's authority.

5 And there's a way to get things done, get the
6 business of the commission done without exceeding the
7 statutory authority under the IGRA, and we think that's
8 part of your job as well as the regulations. So I think
9 that issue needs to be looked at.

10 And then we also had outstanding issues under
11 the Class II regulations. Certainly we didn't think
12 there was a need for a classification regulation. We're
13 happy that that was set aside.

14 So I'm going to ask Liz to explain these in a
15 little more detail. And these are preliminary
16 observations, but we know you need some starting points
17 to think about, and these have been things that, you
18 know, we had provided notice to the NIGC in prior years.

19 Thank you very much

20 MS. HOMER: Thank you, Mark.

21 Members of the commission, thank you very much
22 for this process and this wonderful dialogue that we're
23 having today. It's very refreshing, and I think that
24 the conversation this morning, the discussion and the
25 suggestions were excellent. I didn't hear anything that

1 we couldn't kind of rally around and say, yeah, this is
2 good. And I think in particular the discussion about
3 the need for us to put our heads together and figure
4 out this conundrum with respect to the MICS has got to
5 be a No. 1 priority.

6 And I would lump into that the Class II MICS
7 issue as well. I think that, you know, we could argue
8 all day about whether or not the NIGC has authority to
9 issue Class II MICS of the nature of Part 542. I think
10 that arguments could be made that prescriptive
11 regulations of that scope are not within the authority,
12 and I sure that NIGC's counsel could argue that they
13 are. I think that from the NIGA position, regulations,
14 if they're going to go forward with respect to Class II,
15 really need to be at the highest level of generality,
16 not at this highly prescriptive da ta ta da ta ta da,
17 you know, where everything is prescribed federally,
18 which also brings us to --

19 CHAIRWOMAN STEVENS: Can I interrupt you just
20 for -- minimum as opposed to maximum?

21 MS. HOMER: Minimum as opposed to maximum.

22 CHAIRWOMAN STEVENS: Just want to clarify, make
23 sure I understood you.

24 MS. HOMER: The word "minimum" has to be
25 significant. That's a meaningful term, "minimum

1 internal control standards." And that brings us to the
2 issue of enforcement which is -- which I haven't heard a
3 lot of talk about this morning until just a few minutes
4 ago. But, you know, for the past several years, the
5 NIGC has kind of carried around a big stick and kind of
6 waved it and every once in a while thumped somebody with
7 it.

8 You know, and I think what is a much more ideal
9 relationship is one in which tribes have an incentive to
10 comply with best practices, with standards, whether
11 they're established as regulations or as guidance or any
12 of those kinds of documents. And there was a voluntary
13 compliance initiative in place prior to 2002, which was
14 if there was somebody who was going to get an
15 enforcement action, a preliminary notice of violation
16 giving notice of what is wrong, you know, what the NIGC
17 is perceiving and what the problem is, and a reasonable
18 opportunity for cure, you know. That was the process.
19 That whole voluntary compliance initiative has just
20 vanished.

21 And I'm really -- you know, and I'm not going to
22 represent NIGA or anybody else on this position, but
23 just as a former member of the commission, this whole
24 enforcement question is very important to me, and now
25 that I represent clients, even more so is that there has

1 to be a reasonable enforcement policy. And almost all
2 federal agencies have, you know, a notice, an
3 opportunity for cure approach in their enforcement.
4 That has not been the case at the NIGC.

5 And I think that, you know, even getting a
6 preliminary notice of violation, and I speak from -- I
7 speak as an attorney who represents Indian tribes, is
8 once that comes in, things get done. Things start
9 happening. If we get a notice of violation, on the
10 other hand, we have to go into defensive posture. Okay.
11 Now we've got to defend. Forget correcting. Forget --
12 you know, now we're all together, huddled together in a
13 defensive posture. If you get a preliminary notice,
14 though, what you get is a tribal counsel and your gaming
15 commissioners all going, What's going on here in this
16 operation? You get this fixed right now, and blah,
17 blah, blah. You know, it's a whole different dynamic
18 that is created in the tribal governmental situation.

19 So I would put, in addition to these items, the
20 MICS, the both the Class II and the Class III MICS, as
21 well as the facility licensing revisions, because
22 serious revisions are going to be needed, at least with
23 regard to the facility licensing at the top of the
24 agenda. But I think that we should really take
25 advantage of this opportunity to revisit the NIGC's

1 enforcement regulations and build in a notice and
2 opportunity for cure provision into that.

3 MR. VAN NORMAN: I would just say maybe you want
4 to start out with just a letter. You know, instead of
5 legal proceeding, you could send a letter and say, We
6 have this concern, and can you please respond. And that
7 could lead you to a better engagement. You know, I
8 think working between governments, it's appropriate to
9 expect government regularity of the other government and
10 that if you're going to provide notice of inquiry, like
11 you're doing here, you know, that that may be a good way
12 without creating adversarial process to begin with.

13 I would say, you know, in a Class II we had
14 concern about the entertaining display being required to
15 be tracked. That's not necessary according to the case
16 law. I think we're going to have a technical working
17 group meeting tomorrow and ongoing meetings and
18 discussions about that, so you'll probably see a lot of
19 activity on Class II.

20 I guess those are our preliminary points. I
21 think it's a good process to ask tribes to bring these
22 issues forward, because I think we can get regulations
23 that are a lot more workable for the commission and a
24 lot more effective for Indian Country.

25 So thanks for the opportunity to participate.

1 CHAIRWOMAN STEVENS: Thank you.

2 MS. HOMER: Thank you very much. And I'll look
3 forward to following you guys around and heckling you.
4 And I just want to say thanks a lot. Thanks a lot for
5 listening and making these opportunities available.
6 It's a heck of a schedule. You know, I know you guys
7 are going to be exhausted by the time you get through
8 with this. But I think it's going to be very
9 beneficial, so thank you for that.

10 CHAIRWOMAN STEVENS: Thanks, Liz.

11 Thanks, Mark

12 MS. ECHO-HAWK: Liz, can I ask a follow-up
13 question?

14 Do you have ideas right now -- if you just want
15 to put them in written comments, that's fine -- about
16 the revisions to the facility license regulation? And
17 not just that but also if you have thoughts on 518
18 self-regulation, the self-regulation regulation.

19 MS. HOMER: Oh, you're going to hear a lot from
20 me on self-regulation. Self-regulation is an
21 opportunity for all of us to reform our relationships,
22 you know. It's a great opportunity for tribes and the
23 NIGC to work together. The self-regulation regulations,
24 unfortunately, there's not much benefit. I mean,
25 there's really no reason for a tribe to go into

1 self-regulation, because with a little bit of, you know,
2 monetary benefit, which is pretty insignificant, they're
3 taking on this huge burden. And, in fact, the report
4 that they have to file even requires more information
5 than what a nonself-regulating would have to do. They
6 have to report, for example, on their use of their
7 gaming revenue, you know, their -- nobody else has to do
8 that, but if they're self-regulated, you would have to
9 do that. Self-regulation should be a carrot. It should
10 be something that you aspire to, not just for the glory
11 of it but because there's true benefit in it. And that
12 would be in terms of decreased regulatory oversight,
13 higher degrees of deference. You know, maybe even the
14 MICS issue could be put to bed through an appropriate
15 self-regulation regulation.

16 So we're really truly talking about consensual
17 relationships and consensual -- you know, sort of like
18 we do compacts with the state, why couldn't do the
19 self-regulation process -- the NIGC have compacts --
20 with tribe that address these regulatory issues, you
21 know, just food for thought, just something to throw out
22 there.

23 There was something else that you were asking
24 about in terms of self-regulation?

25 MS. ECHO-HAWK: Not self-regulation but the

1 facility licensing you mentioned --

2 MS. HOMER: You know, it's really funny. When I
3 was on the NIGC, this was like laid in my lap, this
4 whole facility licensing -- well, it was really the
5 environment, public health and safety. What the NIGC
6 did between 2002 and the last year or so was to, you
7 know, kind of cobble together this question of facility
8 licensing and the environment, public health and safety.
9 And really the licensing was a regulation -- the
10 facility license was basically a subterfuge for getting,
11 quote/unquote, enforceable environment, public health
12 and safety standards and to lock into place the NIGC's
13 authority to monitor environment, public health and
14 safety issues.

15 I don't know why the previous administration
16 wanted to do that. First of all, I think that's a huge
17 liability for the agency. You know, I think it created
18 a liability for the agency by taking on the whole
19 oversight over something over which they don't really
20 have clear authority and which is really truly a tribal,
21 you know, a tribal issue.

22 So, I mean, could somebody sue the NIGC because
23 some tribe burned down, killed hundreds of -- you know,
24 some gaming facility burned down and killed hundreds of
25 people and the NIGC didn't catch it beforehand? You

1 know, I mean, the agency has created liability for
2 itself here, which is one of the reasons that, as a
3 member of the NIGC, I was opposed to a prescriptive
4 regulation that would give enforcement and oversight
5 authority over environment, public health and safety to
6 the NIGC. That's why we went to the interpretive rule
7 that basically said this is how the NIGC interprets this
8 provision of IGRA. If a tribe is doing A, B, C, and D,
9 then that satisfies our federal governmental oversight
10 concern, and leave it at that.

11 I never did understand, frankly, why the
12 commission was so determined to get this regulation. I
13 think it's not good for Indian Country, and I don't
14 think it's good for the NIGC. I think it's kind of a
15 lose-lose scenario there, but that's just my personal
16 opinion.

17 MS. ECHO-HAWK: That was it. Thank you.

18 MS. ZERBI: One additional brief comment. In
19 the interest of being brief, both United Auburn and the
20 Pala Band are going to submit detailed written comments
21 on the question about the NIGC MICS, which we believe is
22 a top-priority question and plays an important role in
23 the industry.

24 But I wanted to follow up on Elizabeth's
25 comments about consensual regulation. I think that was

1 your term. And I think that was part of the concept
2 with the gaming ordinances for the tribes that I work
3 with in California. And that is, you know, a tribe and
4 their government makes the individual choice to put into
5 their gaming ordinance Class III MICS and the NIGC's
6 role in monitoring and enforcement, and then under IGRA
7 the NIGC has authority to enforce that ordinance. So I
8 just wanted to follow up on that concept. It's the
9 first time I've heard it spoken in those terms, but I
10 think that was the spirit, in many ways, of that effort.

11 MS. ECHO-HAWK: I have a question for people in
12 the audience, something to think about. One of my
13 primary concerns as we're going down this road after
14 April is, how do we make sure that the MICS -- Class III
15 MICS, Class II MICS, and the technical standards don't
16 take over, you know, our existence again in terms of
17 regulatory revision and review at the agency? because,
18 frankly, there are a number of other issues that are out
19 there that could enhance and help the industry and so we
20 need to make sure that there's a balance as we move
21 forward so that MICS doesn't dominate -- Class II, Class
22 III MICS don't dominate the discussion. And how do we
23 do that? So I don't know if you have any thoughts or if
24 it's something you want to think about and then put into
25 a written comment.

1 But it is very important to the commission that
2 sort of the lower-level issues that don't, I guess,
3 receive as much press as Class II and Class III MICS,
4 that they're not overlooked and that we don't accomplish
5 things that would be very helpful to the commission and
6 to the industry as we move forward simply because we get
7 too wrapped up in this Class II, Class III MICS issue,
8 which is important and we will be addressing. But how
9 do we do both? because for the past eight years, we
10 haven't been able to do both really, not successfully,
11 in my opinion.

12 MR. VAN NORMAN: Well, one of the problems with
13 the MICS was always the outlook of the agency that we're
14 a federal agency and we want to have a federal rule
15 that's uniformly applicable across the country. And
16 that is not really the structured statute, because the
17 states are brought in through the tribal-state compact
18 process, and that is automatically going to result in
19 variability based on different negotiating stances and
20 positions of the state versus the tribes and the way
21 that, you know, state law can be a background for the
22 state negotiating position.

23 So I think that one of the things is to look to
24 the primacy of the tribal-state compacts and to be aware
25 that those are the primary sources of regulation along

1 with the tribal ordinances and that the MICS are really
2 coming in through some kind of a voluntary incorporation
3 by reference, consensual regulation, however you want to
4 put it. And so actually there has to be flexibility at
5 the agency in terms of looking at the situation, looking
6 at the authority, and looking how the regulatory
7 structure is put in place. And there's going to be
8 variability in that. And so if that's recognized, the
9 agency can develop expertise and can accommodate that.

10 And it really wasn't credible when the agency
11 was saying, Well, we just need a federal rule because we
12 can't put up with all these different rules. Many
13 federal agencies put up with a myriad of different
14 rules, based on what reference they have to state bar or
15 county law, et cetera.

16 So I think that's important as you think about
17 the MICS that it's not really something that you have
18 authority to impose vis-a-vis tribes and tribal
19 self-government. They're really supplemental. They're
20 really guidelines. And it requires a different outlook.

21 Thanks.

22 CHAIRWOMAN STEVENS: I've been saying that to
23 various people throughout the day today about how we're
24 all going to -- all of us are going to have to strike a
25 balance on this particular subject with regard to Class

1 III MICS. Clearly there are differences of opinion, and
2 this is just our first stop. We've got seven more to
3 go, you know 28, 29 states with 230-something tribes,
4 and 430-something facilities out there that all have
5 different language.

6 I'm coming into this, you know, with as open
7 mind as I can have about how do we do this with all of
8 this variability, that we don't create more gaps, we
9 don't overstep our authority, and we're going to have to
10 come up with this together. You know, where I'm hearing
11 from some, Keep these regulations in place. I need them
12 because they're in my compact, or I've got them in my
13 ordinance, or I have a problem with the state, where on
14 the other hand, you have tribes who say, Hey, I already
15 negotiated this with the state. I don't need the
16 federal government in my business. I don't need another
17 layer, or they have a good working relationship with the
18 state.

19 You know, we're going to have to strike some
20 sort of compromise here or find some innovative,
21 creative way to do this that helps because in the end
22 what we are trying to do is protect this industry
23 together. And it's a matter of who's doing it and what
24 the authorities are and that it get done -- that's all I
25 care about, that it gets done -- and to make sure that

1 in the process of putting together whatever the process
2 or mechanism is, we're not making it worse for some
3 tribe in some area, whether that's a tribe that doesn't
4 have a good relationship with the state or it has it
5 already embedded in some other, you know, mechanism or,
6 you know, step on the toes of tribes in states who,
7 frankly, have shed blood over these and have already
8 been down this road and said, We don't want to go back
9 down that road. We're fine, thank you very much. Move
10 on.

11 So I'm going to look to all the tribes here to
12 help us find out a solution, an innovative way that we
13 do this that keeps the protections up and that this is
14 being done.

15 So I hear you, Mark. I hear you. There's just
16 inherently in the act itself built-in variations. You
17 know, and blanket regulations may not necessarily be the
18 way is what I'm hearing. And, you know, we'll just have
19 to be creative.

20 MR. VAN NORMAN: Well, and I think that one of
21 the outlooks is an outlook from inside the beltway that
22 there ought to be a federal rule, there ought to be
23 uniform, and it makes it easy; otherwise, it's
24 impractical. And I think that actually if it doesn't
25 comport with the statute, that that's just not an

1 option. And in our view, that doesn't comport with the
2 statute.

3 You're set up with regional offices. The
4 regional offices can develop relationships, working
5 relationships and expertise, and can take into account
6 the differences in tribal-state compacts and the
7 differences in the frameworks, by virtue of having
8 people that have some longevity in those offices that
9 can pick up that experience over a period of time. And
10 that's a federalism outlook, and that's generally the
11 outlook. So we think just acknowledging that at the
12 beginning is going to be helpful.

13 CHAIRWOMAN STEVENS: Going back to Lael's second
14 question, process, you know, there may need to be some
15 like parallel track so we can get some of this stuff
16 done that's easier to do, sort of the housekeeping
17 stuff, like the pilot program, once we get more
18 information from everybody about what exactly it is --
19 disappointing not to have tribes know what that is, but
20 we'll remedy that -- just some simple things and not,
21 you know, be bogged and have, you know, one of the major
22 initiatives which is very important kind of clog the
23 pipeline to get in some other much-needed work done on
24 other parts of the regs. So then there's that option of
25 doing parallel processes but, you know, would love to

1 hear more about how do we go about this.

2 I've heard some folks advocate for tribal
3 advisory committees. We also have the option in the
4 executive order that tribes can provide to us an
5 alternative standard. They can offer something to us.
6 We've heard about negotiated rule-making. You know, we
7 do want to do this in a way that is collaborative with
8 tribes, with tribes. But, you know, I have a countdown
9 clock on my desk, literally. I'm not kidding you. It's
10 a countdown clock that tells me how much time I have
11 left to get as much work done as I can. And so we do
12 have to be mindful. I certainly don't want to, you
13 know, and for the sake of time hurry through these
14 things. But I do need to be creative and innovative
15 with all of you about how to prioritize these and
16 processes that are thorough, yet timely. So if anyone
17 has some suggestions on process, we've heard a lot of
18 complaints about the process in past.

19 I think in the beginning, and what I'm hearing
20 from tribes and recalling from my own experience, you
21 know, the advisory committee started out ten, 12 years
22 ago, and it morphed into something different than how
23 they started.

24 Facilitators, that's one of the things I haven't
25 seen in my time working for my tribe, you know,

1 facilitators that direct traffic, that help when there's
2 differences. You know, some ideas on process. A lot of
3 the critiques and complaints that we've heard, at least
4 I have heard of in my time in office, is process. And I
5 hate getting caught on process when we've got substance
6 we have to get to. I'd like to, you know, get some
7 suggestions on process so that we can get that ironed
8 out and we can get some flow in our work ahead of us,
9 for all of us, that doesn't bog us down.

10 Many of you all know that there are times when
11 maybe the federal government gets bogged down in these
12 processes, and we don't ever really get out of the mud.
13 We don't get anything, you know, substantive done
14 because we're fumbling around in the process, so love to
15 hear, you know, any suggestions on process or the
16 preferred models from tribes.

17 MS. HOMER: I haven't heard anyone step up, so
18 I'll step in.

19 You know, I think that there -- I have said this
20 before publicly in my speaking, that there's really only
21 two things in the whole world, substance and process.
22 And they're equally important. I mean, they really are.
23 And you're exactly correct that some of the past
24 administration's rule-makings did breakdown in process.
25 But I think that that was largely due to the fact that

1 in the process the agency officials at that time were
2 really unwilling to accommodate tribal interest. It was
3 almost, when you would go to these processes, as though
4 that everyone's checking things off the tic list. Yes,
5 we met with this tribe. Yes, we met with that tribe.
6 Yes, we asked this and we asked that and we let everyone
7 speak. Okay. We're done. And so then we go and do
8 whatever we want to do because we're the federal agency
9 and we really, you know, are the final say.

10 And so everyone felt that that was a -- well, I
11 won't speak for everyone. But everybody in my circle,
12 we thought that that was basically, you know, not an
13 honest process. You know, there may have been checks
14 that were checked, but it wasn't an honest process of
15 dialogue. And I think that that's what things really
16 boil down to.

17 I think that if everyone understands that the
18 NIGC's policy is that, No. 1, we will accommodate the
19 tribal interest to the maximum extent we can,
20 recognizing that sometimes you're going to have to, you
21 know, split the difference, you know, when there's --
22 you know, where there's competing interests, that that's
23 really the referee job, but that we should approach
24 these things with a consensus goal, you know, maybe not
25 a requirement we have to achieve things by consensus but

1 at least a goal that we're going to achieve as much as
2 possible by consensus and that we need a practical
3 thing.

4 The advisory committees are good because they're
5 practical. You know, 15, 20 people can sit around a
6 table and actually can come up with a work product, you
7 know, and -- but that can't be the end of the process,
8 because ten or 15 people don't represent all of Indian
9 Country. You know, I could not even -- most of my work
10 is in Oklahoma. I could not represent all of Oklahoma
11 interests as a member of that committee, because it's
12 just it's too massive. You know, there's too many
13 tribes. You couldn't just know everybody's issues and
14 be able to get the authority to represent them.

15 So there has to be a second step in that
16 process. So you work with tribes, you get a draft, and
17 then there's a second step of consultation. And then
18 before a finalization of the rule, you know, where
19 you're really roping everyone in, and then there should
20 be a hearing process at the very end, you know, so that,
21 you know, that people that are -- are going to come
22 and -- and, you know, we've all got the benefit of
23 everyone's comments. We've got the benefit of having
24 read what everyone else is saying and have a chance to
25 think about it. Then there should be a final public

1 hearing process on the NIGC's regulations before they
2 ever go final.

3 You know, so I'm seeing this as a multiple-phase
4 project. And I think that people are going to be a lot
5 more comfortable with that, you know. And it gives
6 everyone the benefit of everybody else's thoughts and
7 ideas too.

8 CHAIRMAN LOMBARDI: If I could just add a
9 footnote to those comments, if you engage in a process
10 that involves industry experts, tribal leaders as
11 advisory committees providing valuable information to
12 the commission as you struggle with your decisions, you
13 should consider, unlike what the previous commission
14 did, allowing those committees to retain their own
15 experts, independent from the ones that the commission
16 is using.

17 I think that it's fair to say that there's a
18 prejudicial view in Indian Country, and it's not fair
19 that people who end up on those committees are
20 hand-picked because they will be pliable. And I don't
21 think that's true, but that is a perception. And that's
22 unfortunate for those that committed their time and
23 served. And I think that it makes individuals in our
24 industry less willing to serve in those positions when,
25 for example, when they were considering the Class III

1 machine technical standards and staff members from the
2 National Indian Gaming Commission were not able to
3 answer technical questions about the regulations, that
4 committee requested to get their own technical experts
5 to answer their questions. And the chairman of the
6 National Indian Gaming Commission, in a very gruff
7 manner, told them no. And I think there are people
8 sitting in the room that know what I'm talking about.

9 I just wanted to add to that is that if these
10 are going to be working committees, there should be some
11 level of independence in their structure so that they
12 can get their own lawyer to advise them or they can get
13 their own technical experts. And their contributions
14 would be published or valued as much as, say, NIGC's
15 staff that attempt to control those committees, and so
16 that the perception is not that the conclusion that
17 committee will reach has already been arrived at and
18 it's just a matter of the process getting to the right
19 answer.

20 I think that actually did happen, and there are
21 people here tomorrow that will be working on the Class
22 II MICS advisory group that has been formed that could
23 provide you with a lot more detailed information
24 about -- because those technical standards contain
25 elements that need to be revisited, like how they came

1 up with calculating what the random number generator
2 number was. Nobody's ever been able to answer that.
3 And we had access to technical experts that probably
4 could have come up with a better number or better way of
5 formulating that, but we're not allowed to do that
6 because the chairman didn't want to waste any more time
7 doing it.

8 So I just wanted to add to her comments that a
9 lot could be done to enhance the integrity of the
10 advisory committees and to encourage the people in this
11 room who really could provide valuable information to be
12 willing to serve, because I think that that damaged your
13 ability to get people like that to spend their time if
14 they think that they're going to be seen as being the
15 coconspirators, if you will. I hate to use that word,
16 but I think that happened.

17 Thank you.

18 CHAIRWOMAN STEVENS: Thank you, Chairman
19 Lombardi.

20 And I think that we -- I will say, not that I
21 think, we do accept comments on how you choose the
22 advisory committee members and not have it be so
23 restrictive that -- or targeted, I guess, that, you
24 know, are we really getting all the information that we
25 need, and then being open enough, at least I am -- you

1 should know this about me. I'm not the keeper of all
2 information. I readily admit this. Those who work with
3 me, when I don't have an answer, I'm digging around
4 looking for somebody who does have the answer. And we
5 should be flexible enough to change up as the situation
6 warrants and find the people who do have the answers.

7 Any other process? Any specific regulations
8 that anyone wants to address?

9 CHAIRMAN JAEGER: My name's Ron Jaeger. I'm
10 gaming commissioner -- chair of gaming commission for
11 United Auburn Tribe in Auburn, California.

12 And I'd like just to make some comments to your
13 question, and I would be happy to submit for the record
14 a process that I use here in California. I was the
15 regional director for the Bureau of Indian Affairs in
16 Sacramento for 12 years and had to work with 105
17 federally-recognized tribes in the state of California.

18 As Elizabeth said, it's very difficult to
19 communicate, 105 tribes, to consult and to give
20 consensus. So I, with the tribes of California, and a
21 lot of the tribal chairs were here this morning, and
22 they've left. Danny Tucker, Mr. Calac, and others that
23 were part of that group, Bo Mazetti, was part of the
24 tribes that I worked with, to come up with a process, a
25 consultation process, and we did that.

1 And it was -- and I don't want to go into a lot
2 of detail, but I'd be happy to submit that process
3 whereby we did come to consensus on an issue from all
4 105 California tribes. We had an agency policy -- we're
5 divided into three agencies here in California --
6 northern, central, and southern -- and where the 105
7 tribes resided.

8 And from those agency tribes, say the 25 tribes
9 here in Southern California, we established a policy
10 board. We didn't call it a advisory board. It was a
11 policy board that worked with the superintendent in all
12 three agencies. And we had office in Palm Springs with
13 the Agua Caliente Tribe.

14 But my point here is that from those agency
15 policy boards, we established a regional policy board
16 where issues were discussed, went back to the agency
17 boards. Those people on the agency board had a
18 responsibility with the superintendent to meet with
19 their 24 or 25 tribes or whatever the issue was.

20 I was trying to restructure the Bureau of Indian
21 Affairs in California -- this is five or six years
22 ago -- to come up with a California office of trust,
23 which I thought was more important than some of the
24 things we were doing at the agencies. And it involved
25 actually closing some agency offices, establishing and

1 transferring FTE and people to the region to establish
2 like a realty office with 30, 40 realty people, which
3 would be more helpful to tribes who wanted to deal with
4 trust issues, put land into trust, and those kinds of
5 things. So in the end I lost, but in the end it was a
6 vote of the California tribal people as to what the
7 decision would be.

8 And so I had that process. I actually -- I
9 don't mean to be talking about myself, but I did -- I
10 was provided to the Department of Interior of the Bureau
11 of Indian Affairs back in the day, and I was one of 60
12 federal managers within the entire federal government to
13 get a presidential rank award, and one of them was for
14 the consultation process that I established in
15 California. So I'd be happy to submit that to you if
16 you would like to look at it.

17 Thank you.

18 I'm not sure how it would work on a nationwide
19 basis with 400-and-some tribes in different states and
20 so forth, but it was a process that worked for the
21 situation in California. And, you know, I don't see any
22 of the tribal leaders here that was part of that
23 process, but it was successful.

24 But, you know, I just thought I'd share that
25 with you, and if you want to take a look at it, I could

1 submit it.

2 CHAIRWOMAN STEVENS: Well, many of you also may
3 be familiar with the tribal budget advisory committee
4 that is over at the interior. And that's a process
5 where the 12 BIA regions are left to select their
6 representative and an alternate, you know, and you don't
7 see interior BIA getting there telling them who they're
8 going to pick. They just say, Each region, figure it
9 out. Send us the names, and let us know who's going to
10 represent your region, who can actively participate.
11 You know, certainly we would consider those kind of --
12 that kind of deference. But certainly we want to make
13 sure that we have the experts in the room who can help
14 us, as Chairman Lombardi was sharing.

15 CHAIRMAN JAEGER: I would just add that the
16 tribal people that were elected to serve on the boards
17 were nominated and elected by the tribes in that agency,
18 not by the bureau or not by the superintendent, not by
19 the regional director. So it was people that they had
20 confidence in, people that wanted to be involved, and
21 people who could report back on a regular basis.

22 CHAIRWOMAN STEVENS: Any other comments?

23 Lael, did you want to bring up anything else
24 that hasn't been discussed yet?

25 MS. ECHO-HAWK: I think we've discussed most of

1 the things that were sort of, kind of percolated to the
2 top. Sole proprietary interests, I don't know if anyone
3 had any additional comments on that, primary
4 beneficiary. But I think that almost everything has
5 been touched on, at least, that we identified as sort of
6 hot topics or issues that have come up.

7 CHAIRWOMAN STEVENS: Jess, I'm surprised you
8 haven't said anything yet. I see you back there. I
9 know you're there.

10 MR. GREEN: (Inaudible)

11 CHAIRWOMAN STEVENS: Okay. Are you winding up?
12 Is that what you're doing? Not today?

13 MR. GREEN: (Inaudible)

14 CHAIRWOMAN STEVENS: You're going to wait until
15 I get to Oklahoma?

16 MR. GREEN: (Inaudible)

17 CHAIRWOMAN STEVENS: Are you coming up to
18 Squaxin Island? You can come to my home turf.

19 MR. GREEN: I'm afraid to go there. They might
20 not (inaudible).

21 CHAIRWOMAN STEVENS: Actually, they're the
22 hardest on you, so you've got a lot to live up to.

23 Everybody's waiting with baited breath. Am I
24 going to dismiss everybody? You know, because there
25 certainly, if there are -- you know, we can talk further

1 if anyone would like to. There's always other
2 consultations. You can always submit comments. Feel
3 free to contact Lael for clarification. We've had a lot
4 of folks come up to us, as you heard today, asking
5 clarifying questions about what certain parts of the NOI
6 meant.

7 Dan, did you want to add anything?

8 ASSOCIATE COMMISSIONER LITTLE: Yeah. One of
9 the things I was very pleased today is this has been
10 more of a discussion with tribes instead of at tribes,
11 and that's very important to this commission. And
12 actually, I like the fact that I haven't had to do a lot
13 of talking, because the tribes have been doing the
14 talking. And that is the whole purpose of this process
15 here is we want to hear from you. We want to hear from,
16 you know, your gaming commissioners and your tribal
17 leaders things on how things that we do that affect your
18 operation. So that's really all I want to say.

19 Thank you.

20 CHAIRWOMAN STEVENS: Okay. Well, if there is
21 nothing more, I hate to leave -- have everybody staying
22 here as we look at each other, kind of mull over the
23 same stuff we were just mulling over. But feel free to
24 contact us.

25 I want to say thanks to Sycuan for graciously

1 hosting and allowing -- and many of the other tribes for
2 allowing us to come into their territory and supporting
3 this process with your attendance and with your
4 comments. We strongly encourage questions. We strongly
5 encourage contact and your written comments.

6 I wish you all and bid you all safe travels
7 home. And again, thank you very much on behalf of the
8 commission.

9 Thank you.

10 (Proceedings concluded at 2:40 p.m.)
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REPORTER'S CERTIFICATION

I, R. Denise Marlow, Certified Shorthand
Reporter in and for the State of California, do hereby
certify:

That the foregoing proceedings were reported
stenographically by me and later transcribed into
typewriting under my direction; that the foregoing is a
true record of the proceedings taken at that time.

IN WITNESS WHEREOF, I have hereunto subscribed
my name this 26th day of January, 2011.

R. Denise Marlow, CSR No. 11631

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