

**TESTIMONY OF JOHN SIMMONS, CHAIRMAN,
MEDICINE CREEK ENTERPRISE CORPORATION**

**NATIONAL INDIAN GAMING COMMISSION
GOVERNMENT-TO-GOVERNMENT CONSULTATION
REGARDING THE COMPREHENSIVE REVIEW OF
THE REGULATIONS UNDER IGRA**

LITTLE CREEK RESORT, SHELTON, WASHINGTON

JANUARY 14, 2011

INTRODUCTION

Good morning Chairman Stevens, Vice Chairman Cochran, Associate Commissioner Little and Members of the Committee. My name is John Simmons, Chairman of the Medicine Creek Enterprise Corporation. The Medicine Creek Enterprise Corporation (MCEC) is charged with the management of the Nisqually Red Wind Casino on behalf of the Nisqually Indian Tribe.

I want to thank the Committee for this opportunity to provide our views and input on NIGC's comprehensive review of the federal regulations promulgated under IGRA.

BACKGROUND OF NISQUALLY RED WIND CASINO

The Nisqually Indian Tribe, through the Medicine Creek Enterprise Corporation, operates a Class III gaming facility at the Nisqually Red Wind Casino on Nisqually tribal lands in Olympia, Washington. Consistent with the terms of the IGRA, the tribe conducts its gaming activities at Red Wind Casino in accordance with regulations enacted pursuant to a tribal ordinance, and rules contained in a Tribal-State Class III gaming compact with the State of Washington. Indian gaming is a beneficial sector of the Washington economy that benefits Washington Indians specifically and Washingtonians more generally.

COMMON GOALS WITH RESPECT TO TRIBAL GAMING REGULATION

I think it is fair to say that NIGC and Nisqually Red Wind Casino share the common goal of seeing Indian gaming succeed. To date, proceeds from Indian gaming at Nisqually Red Wind Casino have funded critical economic development and other social services for the Nisqually Tribe and its members. This is a very positive outcome of Tribal gaming – and the regulatory scheme provided in the Indian Gaming Regulatory Act.

I believe we both also agree that the industry is well regulated. In our view, the credit for this goes to tribal governments, Congress, the Commission, as well as the state gaming

authorities. Congress is owed special credit for empowering the tribes and elevating tribal capacity to be able to administer our responsibilities and regulate these affairs.

I hope it is also fair to say that we also agree on the importance of a relationship between the Commission and Tribal Governments based on mutual respect and understanding. Your Commission has repeatedly emphasized your commitment to renewing and building strong collaborative relationships with Tribal Governments to safeguard the Indian gaming industry and to foster economic self-sufficiency among Tribal Governments.

We all care about the integrity and success of the gaming industry on our reservations. Nothing Congress or the State or anyone has ever done has made a difference in our community like gaming. So we want to protect our rights.

SUGGESTIONS WITH RESPECT TO NIGC'S COMPREHENSIVE REVIEW OF IGRA GAMING REGULATIONS

- NIGC lacks authority to issue and enforce Minimum Internal Control Standards ("MICS") for Class III Indian gaming.

In *Colorado Indian River Tribes v. National Indian Gaming Commission*, the U.S. District Court for the District of Columbia ruled that the NIGC lacks the statutory authority to issue and enforce MICS for Class III Indian gaming. According to the court, "Congress plainly did not intend to give the NIGC the authority to issue MICS for Class III gaming. ... The intent of Congress to withhold this power from the NIGC is unambiguous"

The Court of Appeals affirmed the decision of the District Court. In so doing, the court noted, "The Commission is correct that Congress wanted to ensure the integrity of Indian gaming, but it is equally clear that Congress wanted to do this in a particular way." The court simply found no statutory basis empowering the Commission to regulate class III gaming operations.

Nonetheless, the Commission continues to assert its authority to issue and enforce MICS for Class III Indian gaming. With all due respect, the Commission's position is flawed. The District Court's opinion plainly included all Class III Indian gaming, not just Class III Indian gaming of the Colorado River Indian Tribes. Moreover, the Commission's insistence on issuing MICS for Class III Indian gaming is inconsistent with the Commission's emphasis on strong government-to-government relationships and will have several negative consequences for Indian gaming.

1. First, MICS envisioned by the Commission are not negotiated between governments. By contrast, the minimum internal control standards contained in the tribal-state gaming compacts are negotiated between governments, as specifically envisioned (and mandated) by IGRA. As such, the negotiated control standards can

address the particular needs and circumstances of each Tribal gaming facility and operation.

2. Second, changes to minimum internal control standards that have been in place for years will likely place unnecessary financial burdens on tribes.
3. Third, in light of the detailed nature of the standards, imposing one set of minimum internal control standards on all Tribal gaming facilities and operations will likely be impracticable. There is no “one size fits all” approach for handling this issue.
4. Fourth, also fully consistent with IGRA, Tribal gaming ordinances (in conjunction with tribal-state compacts) regulate gaming operations on Indian land and it is the sovereign right of Indian tribes to govern themselves, subject to the role for the Commission that IGRA establishes (and that I will touch on more below).

These practical considerations should not be disregarded. As the United States Supreme Court has eloquently stated, “[s]elf-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members through gaming activities.” *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 219-21 (1987).

We do not disagree with NIGC over the importance of gaming control standards or regulations. We simply agree with the court that Congress intended that the state-tribal compact process would govern the operation of Class III gaming and that is how the Indian Gaming Regulatory Act was constructed. Every gaming compact for a tribal casino in Washington requires minimum internal control standards, standards that are negotiated between each Tribal gaming agency and the Washington State Gambling Commission. The standards cover all of the areas that the Commission is apparently concerned about--accounting, audits, cash handling, security, surveillance, game standards, and player relations. In addition, each tribal gaming operation is subject to an annual audit by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

In addition, the NIGC already has and exercises substantial existing authority. IGRA authorizes the NIGC to review and approve tribal gaming regulatory laws, review tribal background checks and gaming licenses, receive independent annual audits of tribal gaming facilities, approve management contract, and work with tribal gaming regulatory agencies to promote tribal implementation of tribal gaming regulatory ordinances.

For the foregoing reasons, we respectfully urge the NIGC to abandon any further effort to issue and enforce minimum internal control standards for Class III Indian gaming.

CONCLUSION

The Indian Gaming Regulatory Act has worked well to promote “tribal economic development, self-sufficiency, and strong tribal governments,” just as the U.S. Congress intended, and, as discussed above, Indian gaming is a Native American success story – and indeed, a true American success story for the Nation as a whole, as many Native Americans begin to see the promise of the American dream of a job and economic self-sufficiency.

Indian Country is proud of its gaming regulatory history and we are working hard to ensure that tribal gaming regulation remains strong into the future.

NIGC remains an important part of the cooperative partnership that makes Indian gaming successful. Nonetheless, NIGC’s role must stay true to and not exceed the dictates of the Indian Gaming Regulatory Act. It is for this reason that we speak out so strongly against NIGC issuing and enforcing minimum internal control standards for Class III gaming.

Thank you.

**KEY POINTS FOR THE
TESTIMONY OF JOHN SIMMONS, CHAIRMAN,
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INTRODUCTION

- Good morning Chairwoman Stevens and and Commission Members and NIGC Staff
- My name is John Simmons and I serve are the Chairman of the Medicine Creek Enterprise Corporation which is the corporate board that oversees the management and operations of the Nisqually Red Wind Casino
- I want to thank the Committee for this opportunity to provide our views on NIGC's comprehensive review of the federal regulations promulgated under IGRA.
- I have submitted our written testimony and now I will highlight some of the Board's concerns:

CONCERN:

- our main concern today is with the NIGC's proposed Minimum Internal Control Standards for Class III Indian gaming (NIGC Class III MICS)
- We firmly believe and the courts have ruled, that the NIGC lacks authority to issue and enforce Minimum Internal Control Standards ("MICS") for Class III Indian gaming.
- We ask that with respect to the tribes that have negotiated internal control standards on a government-to-government basis, such as our tribes here in the state of Washington, that our negotiated standards be honored and upheld rather than having the Commission continue asserting its authority to issue and enforce MICS for Class III Indian gaming.
- With all due respect, we believe the Commission's insistence on issuing MICS for Class III Indian gaming is inconsistent with the Commission's emphasis on strong government-to-government relationships and will have several negative consequences for Indian gaming.
- We do not disagree with NIGC over the importance of gaming control standards or regulations. We simply agree with the court that Congress intended that the state-tribal compact process would govern the operation of Class III gaming and that is how the Indian Gaming Regulatory Act (IGRA) was constructed.

- Every gaming compact for a tribal casino in Washington requires minimum internal control standards which are negotiated between each Tribal gaming agency and the Washington State Gambling Commission. These cover all of the areas that NIGC is concerned about--accounting, audits, cash handling, security, surveillance, game standards, and player relations. In addition, each tribal gaming operation is subject to an annual audit by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.