



February 7, 2011

Lael Echo-Hawk
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, D.C. 20005

RE: Tribal Consultation Comments

Dear Ms. Echo-Hawk:

I am the chairman of the Barona Band of Mission Indians, formally known as the Barona Group of the Capitan Grande Band of Mission Indians. As a follow-up to the San Diego consultation, I am submitting the following comments regarding NIGC's Notice of Inquiry and Request for Information.

Records Retention Policy

We previously submitted comments regarding your records retention policy. We urge you to change the status to "temporary" or allow tribes to retain the audits on a permanent basis. I understand that private financial information **should** be FOIA protected; however, in light of the BIA release of tribal revenue allocation plans, we want to take all necessary precautions to protect the documents.

Fee Structure

25 CFR 514.1(a) applies annual fees to "Each gaming operation under the jurisdiction of the Commission...". IGRA says that the Commission shall establish fees to be paid by "each gaming operation that conducts a class II or class III gaming activity that is **regulated** by this chapter." 25 U.S.C. §2717(a)(1). As you know, in *Colorado River Indian Tribes v. National Indian Gaming Commission* 466 F3d 134 (D.C. cir, 2006), the Court of Appeals for the District of Columbia found that NIGC has no statutory authority to regulate Class III gaming activities.

Since NIGC does not regulate Class III gaming, and regulatory fees are paid to the state, no federal regulatory fees should be imposed on these activities. Your fee structure should therefore be modified to apply to only those gaming activities that you have the authority to regulate.

MICS

Following the CRIT decision, the Class III MICS developed by NIGC are now inapplicable. Despite the legal status of the MICS, most tribes, including Barona, have adopted the MICS, or a version that meets or exceeds the MICS. In addition, many states have referenced the MICS, either in the tribal/state compacts, or in regulations implementing the compacts.

The MICS have served as a useful resource for tribes and should be updated. One suggestion made at the San Diego consultation meeting was that the MICS be made available as a model that tribes and states could choose to adopt, at their discretion. We agree with this suggestion.

MICS updates should be drafted with a Tribal Advisory Committee made up of a cross-section of tribal regulators, that are chosen by those regulators to provide true representation.

Tribal Advisory Committee

In the past, NIGC hand-picked advisory committee members to include only those that may be like-minded. In addition, there were allegations by committee members that they were there only for “face value” and that no real tribal input was appreciated or considered.

Tribal Advisory Committees are a good idea when NIGC is addressing projects, such as the MICS or technical standards that are too large to rely solely on standard notices and comments. If TACs are formed, there should be a nomination process by region, so tribes have an opportunity to choose the representatives that most reflect their views. When meeting, positions taken by the TAC need to be addressed. It is a waste of time and money if tribal regulator views are ignored.

Non-Key Employee Fingerprint Processing

One of IGRA's stated purposes is to shield Indian gaming from organized crime and other corrupting influences. At the same time, NIGC limits the availability of fingerprint processing, which makes it more difficult to conduct background investigations.

Fingerprint reports often reveal criminal cases that have been omitted from background questionnaires and are not located using available databases. It would be very helpful, and would be an aid to IGRA's stated purpose, to have this access for vendors and independent contractors, particularly those that have access to non-public areas of the gaming facility.

Pilot Licensing Program

The "pilot program" for background investigation submission has been in place since the 1990s. At this point, it no longer seems like a trial program and should be made permanent through regulation. This could best be done with the notice and comment process, as should all proposed regulations, other than those complex issues that require a TAC.

Thank you for considering our comments. We appreciate the change in direction at NIGC, and look forward to a relationship based on mutual respect. If you have any questions, you may reach me at the address and telephone number on the letterhead.

Sincerely,



Edwin Romero
Chairman, Barona Band of Mission Indians