SOUTHERN UTE INDIAN TRIBE

February 8, 2011

Lael Echo-Hawk
Counselor to the Chair
National Indian Gaming Commission
1441 L Street, NW, Suite 9100
Washington, D. C. 20005
VIA EMAIL: reg.review@nigc.gov

Re: Notice of Inquiry and Request for Information (published November 18, 2010)

Dear Ms. Echo-Hawk:

This letter contains the response of the Southern Ute Indian Tribe (Tribe) to the Notice of Inquiry and Request for Information (Notice) published in the Federal Register on November 18, 2010. The Tribe is a federally-recognized Indian tribe with approximately 1400 members, most of whom reside on its reservation in southwestern Colorado. The Tribe began its first gaming operation in 1993, the Sky Ute Casino, and has steadily and carefully expanded its gaming operation on the reservation since then. The Tribe now operates the new Sky Ute Casino and Resort, which offers gaming, lodging, bowling and other recreation activities to our community.

The Tribe has successfully regulated the gaming operation for nearly 18 years in cooperation with the State of Colorado pursuant to the Southern Ute Indian Tribe – State of Colorado Gaming Compact (Compact). The Compact has served as the strong foundation that ensures the integrity of gaming at the Casino. State gaming regulations often serve as the basis for the Tribe's Internal Minimum Procedures (ICMP), giving the Tribe and the State a broad and comprehensive understanding of our mutual regulatory goals.

Over the past ten years, the Tribe has frequently submitted comments to proposed NIGC regulations, which have been premised on the Tribe's forceful application of its sovereignty to create a gaming operation that is financially successful and stable in a regulatory sense. The Tribe's comments have been aimed at steering NIGC away from regulatory enactments that would undermine the Tribe's sovereignty and destabilize its strong working relationship with the State.

On October 26, 2001, the Tribe commented that the Indian Gaming Regulatory Act (IGRA) did "not give the NIGC any authority for on-going regulation of environment, public health and safety [EPHS] once it has concluded its task of approving a tribal ordinance which establishes how the tribe will regulate in these areas." On June 30, 2006, the Tribe commented on proposed Facility Licensing Regulations, pointing out that the EPHS standards included in those regulations constituted additional, retroactive conditions on the Tribe's already approved gaming

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ordinance and were, consequently, in excess of the Chairman's authority under IGRA. On February 21, 2007, the Tribe commented on a number of issues proposed for the 2007 Government to Government Consultation. Of particular note were the Tribe's comments on the scope of NIGC's authority over Class III gaming. The Tribe pointed out that its self-regulation of Class III gaming in cooperation with the State of Colorado was a model of tribal self-determination and that NIGC's efforts to amend IGRA to provide for more NIGC regulation of Class III gaming would be toxic to this success. On May 15, 2007, and again on December 3, 2007, the Tribe commented that a second set of proposed EPHS requirements contained in facility licensing regulations infringed on tribal sovereignty and were in excess of NIGC's authority under IGRA. On January 24, 2008, the Tribe commented that NIGC's imposition of proposed Classification Standards, Minimum Internal Control Standards for Class II Gaming, Definition for Electronic or Electromechanical Facsimile, without any meaningful consultation was "little more than a return to the old paradigm of federal paternalism and dominance."

Not surprisingly, given this history, the Tribe's principal response to the Notice is to encourage NIGC to adopt regulatory amendments that end its incursions into Class III gaming and limit its activities in this area to supporting tribal self-regulation, as well as strengthening the relationships between tribes and states. NIGC should develop materials that assist tribes in such things as the development of their own Class III regulations and EPHS standards, rather than seeking to substitute its judgment for that of the tribes.

Although the Tribe does not support striking the Class III MICS, it strongly urges the NIGC to make clear that these regulations are not binding on tribes and should only serve the purpose of being drafting guides. The Tribe has no opinion concerning the formation of a Class III TAC, but notes that it will continue to use State of Colorado regulations as its primary guide to drafting its own ICMPs. Similarly, the Tribe strongly believes that NIGC should take all reasonable steps to encourage tribal self-regulation of Class II gaming and should take immediate steps to ease the process of obtaining authorization to do so. This should be a high priority for the Chairwoman.

Similarly, the facilities licensing regulations, and particularly the EPHS standards, should be stricken or there should be clarification that these are drafting guides for tribes to consider when developing their ordinances. As currently drafted, these standards are incursions into areas that should be reserved to the exercise of tribal self-governance and are in excess of NIGC's authority under IGRA. These are important substantive changes that should receive a high priority in the revision process.

The Notice repeatedly asks tribes to comment on the NIGC's prioritization of the various proposed regulatory revisions. The Tribe has no specific recommendations in this regard, other than to encourage the Chairwoman to focus on substantive revisions, rather than the development of politically-correct regulations that have little substantive impact on the day to day regulation of tribal gaming operations. For example, the Tribe is concerned that the current Administration has spent an undue amount of time and resources holding consultations on consultation, while doing little to address the actual substantive problems posed by some of the current regulations. While the Tribe has no objection to the development of such a politically-correct regulation, it believes that it should have priority below matters that have a direct impact on tribal sovereignty, such as Class II self-regulation and changing the Class III MICS to drafting guides. Similarly,

the Tribe has no objection to the formation of a TAC or the development of regulations to guide its operation. However, as a consequence of the Compact, the Tribe will continue to rely primarily on State of Colorado sources for the development of its regulations and this proposal, while perhaps politically attractive to NIGC, is a very low priority for the Tribe.

There is one matter, outside the scope of the Notice, which the Tribe wishes to address. At the Albuquerque Area consultation on January 20, 2011, NIGC expressly requested tribes to include their comments on revenue sharing with the states in their responses to the Notice. The Tribe thanks the Chairwoman for that request. The Tribe is adamantly opposed to revenue sharing and the Compact provides for none. The Tribe views such revenue sharing as inimical to the purposes of IGRA, which was to promote economic development for tribes and not to create an avenue for cash-strapped states to balance their budgets on the backs of Indians. In addition, the Tribe views revenue sharing as violating the express provisions of IGRA that prohibit states from imposing fees or taxes on tribal gaming revenue. The Tribe hopes that the Chairwoman will join it in opposing revenue sharing with states.

Thank you for the opportunity to provide comments. Please contact me if you have any questions.

Sincerely,

Matthew J. Box, Chairman