

**BIG SANDY RANCHERIA BAND OF WESTERN MONO INDIANS, TESTIMONY AND COMMENT IN REGARD
TO THE NOTICE OF INQUIRY ISSUED BY THE NATIONAL INDIAN GAMING COMMISSION**

US GRANT HOTEL, SAN DIEGO CALIFORNIA - JANUARY 11, 2011

OFFERED BY THE HONORABLE, CHAIRPERSON, ELIZABETH KIPP

The Big Sandy Rancheria Band of Western Mono Indians would like to express our thanks for being provided the opportunity to offer our Tribes comments in regard to the issues identified in the NOTICE OF INQUIRY. Big Sandy would also like to express our thanks for the approach that the NIGC has undertaken in relationship to seeking comment and input from the Tribes.

Many of the issues that were specified in the Federal Register are of concern to Big Sandy, but the following comments are based upon our Tribe's experiences and its familiarity with said issues. Hopefully Big Sandy's experiences will assist with the formulation of revised and/or amendment to the NIGC's Regulations and will encourage an enhanced review of the Regulations from a day to day regulatory perspective:

25 CFR PART 502 – DEFINITIONS

SECTION 502.15 MANAGEMENT CONTRACT - This section reads as follows:

"Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation."

This definition could be clarified so that it is narrowed to reflect what it was intended to define, a contract and/agreement that provides for the direct management of all or part of a gaming operation. The term "collateral agreement" could refer to any other agreement that a manager of a gaming operation has to deal with (gaming machines, signs etc). In addition, the word "any" could be interpreted to again refer to any contract between the Tribe and a contractor. The second "or" seems to be misplaced. The following would be recommended for clarification purposes:

Draft Language-

“Management contract means ~~any~~ a contract, subcontract, or collateral agreement between an Indian tribe and a contractor/subcontractor ~~or between a contractor and a subcontractor~~ if such contract or agreement provides for the management of all or part of a gaming operation and the entity that is performing the management responsibilities operation is receiving a percentage of the revenue generated by the gaming operation.

In addition, a definition of a “**consultant agreement**” may assist in distinguishing between a Management Contract and a consultant agreement. (For Example, a “Consultant Agreement” does not contain language that provides for receiving a percentage of the revenue...therefore it could not be a Management Agreement.) If the definition of Management Contract is revised or not, the definition of “**collateral agreement**” (Section 502.5) should be redefined because collateral agreement is a term that is general and not associated with Management Contract in its ordinary use.

25 CFR PART 514 FEES

It has become apparent to Big Sandy that the past practice by the NIGC to issue an NOV if fees are paid late was an extreme measure to impose upon Tribes unless there is negligence by the Tribes that can be shown as a pattern. It would seem more reasonable to develop some type of schedule of fines or penalties, either based upon passage of time and/or number of times of being late to pay.

This is a priority issue that could be revised by the regular notice and rulemaking process.

E. MANAGEMENT CONTRACTS

Parts 531, 533, and 537 etc

Collateral Agreements - Just briefly, perhaps a regulation could reflect specifications that identify the maximum percentage of revenue that could be expended in collateral agreements supporting a primary Management Contract.

Based upon the number of concerns identified by the NIGC and other Tribes in regard to Management Contracts in Parts 531, 533 and 537 and all other areas, of regulations associated with the Management Contracts, there is an indication that Management Contracts should be a priority in the regulatory review process. In addition, the a recent case which is presently in the appeal process, Wells Fargo v. Lake of the Torches, contains language that could directly impact areas of the Regulations that affect

Management Contracts. (This same rationale may impact the development of a **SOLE PROPRIETARY INTEREST REGULATION**)

Big Sandy recommends that a Tribal Advisory Committee be formed so that experiences of the Tribes in regard to Management Contracts could be gathered and considered collectively. This would insure that relevant and pertinent language could be developed for a revised regulation concerning Management Contracts which would include consideration of experiences of the Tribes. After the Tribal Advisory Committee provides the actual experiences of the Tribes in regard to the Management Contracts, then the regular notice and rulemaking process might be the appropriate route to follow so that as much input as possible from the Tribes can be collected and assembled into a meaningful regulation.

This regulation would be recommended to be one of the top three areas for purposes of regulatory review.

G. MICS & TECHNICAL STANDARDS

(1) Part 542 – Class III Minimum Internal Control Standards

This particular area is a primary concern to Big Sandy. As you are aware, being located in California, the Federal MICS has become an issue in regard to a Tribal/State Compact Association regulation referred to as CGCC 8. As you may also be aware, this State Regulation provides a process whereby the Tribes can opt for the NIGC to be the audit oversight entity in regard to the MICS. Not all Tribes agree with the process or CGCC 8. We are of the opinion that the Class III remains a Tribal/State Compact issue. Of course, Big Sandy recognizes that Internal Control Standards are extremely important to the Indian Gaming Industry due to its intent to provide the obvious protection of Tribal assets as well as providing for the integrity of the Tribes Gaming Operations. In addition, Big Sandy also recognizes that there needs to be consistency in the auditing process of Internal Control Standards in Indian Gaming.

Experience has shown that many Tribes that offer Class III Gaming have used the NIGC's Bulletins as clear direction to follow certain guidelines and have used said Bulletin's as primary guidelines for purposes of regulating Indian Gaming. Big Sandy believes that Tribes that offer gaming are just as technically knowledgeable and professional as most non-gaming commercial gaming entities and are very aware that if they did not institute their own Tribal Internal Control Standards that they would in effect be "shooting themselves in the foot" and/or "killing the golden goose." Big Sandy looks to

industry standards in the gaming area and if it does not have the expertise or technical ability in various gaming areas, it retains someone or some entity to carry out what is needed to protect its gaming for its Tribal Membership. It is my Tribe's belief that most other Tribes perform the same due diligence in relation to following and instituting industry standards and guidelines, whether or not a Regulation requires it. Should Part – 542 Class III MICS be eliminated and replaced with Guidelines, it is Big Sandy's opinion that the Tribes will continue to institute industry standard internal controls in area of Class III. As to those Tribes who have incorporated 542 Class III MICS in their Ordinance or it is a part of their Compact, there may be resulting challenges, but we believe that most Tribes have appropriate internal controls in place and that the Internal Control Guidelines, would be used to supplant what is in previously adopted Ordinances.

Based upon the above explanation, Big Sandy believes that the Class III MICS should be developed by a Tribal Advisory Group process because of the ongoing changes in the Gaming Industry and the differences in Tribal gaming operations, and the importance of considering Tribal experiences in any guidelines issued. More importantly Big Sandy would recommend that said Internal Control standards be issued as Guidelines and that they would be provided to the Tribes in a Bulletin format and be updated on regular basis and issued as guidelines. Technology is changing so quickly that a governmental notice and rulemaking process is not only too slow to keep up with said changes, but may prove to be more costly in the long run.

Therefore, Big Sandy recommends that the Class III MICS issue should be considered one of the top four areas to have NIGC Regulatory Review.

In conclusion Big Sandy will submit a complete list of comments in regard to the areas identified in the Notice of Inquiry as well as expressing its recommendations concerning its opinion as to the priority of what areas should be reviewed and how resulting regulations, if applicable, should be issued and handled.

Thank you for listening and if you have questions, please feel free to ask now or contact myself and/or the Big Sandy Gaming Commission