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February 11, 2011

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L St., N.W., Ste. 9100
Washington, D.C. 20005

Re: Response to Notice of Inquiry dated November 18, 2010

Dear Chairwoman Stevens:

The North Fork Rancheria of Mono Indians is pleased to submit the following comments in response to the Notice of Inquiry published by the National Indian Gaming Commission on November 18, 2010.

In general, in conducting its regulatory review, we believe that the NIGC should consider the statutory basis for the NIGC's policies and regulation and amend those which are not clearly supported by the Indian Gaming Regulatory Act (IGRA). The NIGC also should avoid initiatives that would expand its jurisdiction and regulatory oversight role beyond the authority which is specifically granted in IGRA. Further, in many instances, the NIGC has adopted policies, practices and procedures which are not clearly set forth in current NIGC regulations, bulletins or other guidance. The NIGC should amend its regulations or issue bulletins or other guidance so that information regarding NIGC current practices and requirements is more easily available to tribes and the Indian gaming industry generally.

Our comments below are provided in the order presented in the Notice of Inquiry.

IV. Regulations Which May Require Amendment or Revision

A. Part 502—Definitions of this Chapter

(1) Net Revenues. The regulatory definition of "net revenues" was changed in the last revision of Part 502 in a manner which does not track the definition of "net revenues" as set forth in IGRA (25 U.S.C. § 2703(9)). Also, the definition of "net revenues" in IGRA does not appear to be consistent with the generally accepted accounting principle (GAAP) definition of "net

income." Therefore, if the NIGC decides to amend the regulatory definition of the term "net revenue," the regulatory definition should be conformed to the statute and any effort to incorporate generally accepted accounting principles into the definition should be undertaken only to the extent those principles are not inconsistent with the statutory definition of "net revenues."

(2) Management Contract. The definition of management contract should *not* be expanded to include any contract, such as slot lease agreements, which pays a fee based on a percentage of revenues. An equipment lease agreement does not become a management contract simply because the compensation is derived as a percentage of revenue. Unless the contract involves the "management" of a gaming activity, it is by definition not a "management contract" requiring NIGC approval according to NIGC's current regulations. Further, we agree with the views of other tribes that expanding the number and type of gaming-related contracts that require NIGC approval would be grossly inefficient and impact the ability of tribes to effectively respond to the proposals of prospective business partners or the marketplace generally.

B-D. Parts 514, 518, and 523

Other tribal comments sufficiently address these issues.

E. Management Contracts

(1) Part 531 – Collateral Agreements

The NIGC seeks comments on whether it should approve collateral agreements to management contracts. The Tribe recommends that the NIGC continue its current policy of requiring the submission of all collateral agreements to a management contract so that the NIGC has visibility over all contractual relationships between a tribe and its management contractor. However, the Tribe does not recommend that the NIGC change its regulations or previous interpretations of IGRA to require that collateral agreements must be approved by the Chairwoman in order to be legally effective. If the NIGC were to change its regulations or interpretations in this regard, the NIGC would inadvertently discourage private investment in Indian Country by casting doubt over the enforceability of collateral agreements and other agreements between tribes and its business partners.

(2) Part 533 – Approval of Management Contracts

Adding Grounds for Disapproval. The Tribe does not consider it appropriate or useful to add two additional grounds for the disapproval of management contracts. IGRA (at 25 U.S.C. § 2711(e)) and the regulations (at 25 CFR 5§ 33.6(b)) specify four grounds for disapproving a

gaming management contract. The NIGC should not expand the statutorily prescribed list by adding a fifth and sixth reason for disapproving a management contract. Rather, the NIGC should continue its current practice of advising the tribe and the management contractor why the management contract and/or submission package does not satisfy the NIGC's requirements and providing the tribe and the management contractor with the opportunity to correct the deficiencies.

General Updates to Management Contract Regulations. More generally, the Tribe notes that the regulations which govern the management contract approval process (25 CFR §§ 531, 533, 535, 537 and 539) were issued in 1993 and have remained unchanged since that time except for minor modifications in 2008. The Tribe recommends that the NIGC update the management contract regulations so that they conform more closely to the NIGC's current policies and procedures.

By updating the regulations, the NIGC could reduce the amount of time the NIGC, tribes, and management contractors need to invest in communicating and discerning the current NIGC requirements. Also, tribes and management contractors would be better able to prepare initial contract drafts and submission packages which more closely confirm to what the NIGC staff is willing to accept and the Chairwoman would be willing to approve.

While the Tribe recognizes that there are other regulations which should also be high priorities for the NIGC, the Tribe believes that amending the regulations relating to the approval of management contracts should be included within the list of the NIGC's top regulatory priorities. Management contracts represent new private investment in Indian Country, and their approval by the Chairwoman is a key component of IGRA. Yet, too often, investors shy away from management contracts and enter into other types of agreements with tribes because of the uncertainty, time, and expense of securing approval of management contracts. Updating the regulations could go a long way toward reversing these trends.

F-K. Parts 539, 542, 543, 547, 556, 559, 571, 573, and 577

Other tribal comments sufficiently address these issues.

V. Potential New Regulations

A. Tribal Advisory Committee

The NIGC has limited time to develop regulations in the areas it decides to address. If a tribal advisory committee is deemed likely to expedite the process of preparing and issuing draft regulations for comment, then an advisory committee should be used. If not, the NIGC should consider other mechanisms for receiving input from tribes and other experts in the process of

drafting regulations before they are noticed for comment in the Federal Register. The preparation of thoughtful comments and proposed revisions to regulations is an important consideration for ensuring that individual tribal concerns are adequately addressed in the process.

B. Sole Proprietary Interest Regulation

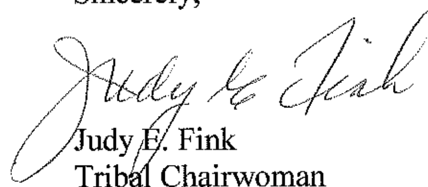
The Tribe is concerned that the sole proprietary interest requirement as interpreted by the NIGC is confusing and that the NIGC's past determinations regarding the application of the sole proprietary interest requirement are difficult to apply to new contracts. The Tribe believes that the NIGC should reexamine the legal foundation for the requirement and the NIGC's previous interpretations of the requirement. In that reexamination, the NIGC should take into account the rights to Tribal governments to exercise their independent judgment in relation to the operation of their gaming enterprises and the general uncertainty which the requirement creates in the marketplace.

Depending on the outcome of that reexamination, the NIGC should consider adopting regulations or other guidance which clarifies the criteria and methodology which will be used in determining whether the sole proprietary interest doctrine is violated, as well as the process whereby the tribe or its contractors can submit agreements to the NIGC for review. In the absence of specific written guidance, the requirement has a chilling effect on the ability of a tribe to negotiate and enter into contracts.

In the event the NIGC elects not to issue regulations regarding the sole proprietary interest requirement, it should nevertheless take some action which provides guidance to tribes and contractors regarding the NIGC's current interpretation of the requirement.

We wish to thank the NIGC for the opportunity to submit these comments.

Sincerely,



Judy E. Fink
Tribal Chairwoman