Malcolm Montoya
Governor

E. Scott Paisano
Lt. Governor

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February 11, 2011

VIA ELECTRONIC MAIL TO REG.REVIEW@NIGC.GOV

Tracie Stevens, Chairperson
NATIONAL INDIAN GAMING COMMISSION
1441 L Street NW, Suite 9100
Washington, DC 20005

Re: Response to Notice of Inquiry and Request for Information;
Notice of Consultation published November 18, 2010

Dear Chairperson Stevens:

I transmit herewith the appended letter of comments prepared by the Sandia Tribal Gaming Commission in response to the above notice. Neither my staff nor I was involved in the preparation of the Commission comments, nor have they been reviewed and approved by the Pueblo's Tribal Council. Therefore, these comments should be understood as representing the view of the Commission and its executive staff, and not necessarily those of the Pueblo on all matters.

In addition to these comments of the Pueblo's gaming regulatory body, I provide the following brief comments on behalf of the Pueblo of Sandia.

1. The Pueblo does not favor adding to your regulations a definition of "Net Revenues – allowable uses" based on cashflow, as the Notice proposes. Beyond the statutory limitation on allowable uses of net revenues from gaming, tribes should have the maximum freedom and flexibility in the operation of their gaming businesses, management of cash flow and negotiation of agreements with lenders and other interested parties. Regulatory intrusion into this area is not warranted or constructive. The circumstances of tribes differ, and each should make its own decisions regarding business and financial management, limited only by the express statutory requirements.

2. The Pueblo does not favor expanding the definition of management agreement to include slot leases or other agreements based on a percentage of gaming revenue. Slot participation leases are a legitimate tool that can be used to structure business and financial terms between tribes and machine vendors. It is conceivable that participation arrangements could be used as part of an abusive management contract arrangement as the Notice suggests, but it is such transactions that should be addressed, and not a tool with legitimate uses that may be misapplied in certain circumstances. Broad regulatory intrusion into this area would be unnecessarily disruptive of industry practice and of questionable legal authority if management powers were not involved in a participation arrangement.

3. The Pueblo believes that it would be useful for the Commission to consider formulating regulations setting out the principles used to differentiate financing agreements on standard commercial terms from management contracts that have been developed by staff in dealing with declination requests. The memorialization of such principles might provide a basis upon which tribal counsel could opine to the satisfaction of a lender, and eliminate the need to use the declination process in clear cases. The Pueblo recently was required to obtain a declination letter in connection with a financing transaction with very tight time constraints. The Commission's General Counsel and his staff were very helpful and responsive in meeting the Pueblo's needs. However, the time and effort required to go through the declination process for transactions not posing close or unique questions is not productive. Some effort should be made by the Commission and the financing industry to find a way to satisfy lenders' legitimate needs while avoiding unnecessary work by Commission staff and transactional delays for tribes. It is not clear whether lenders may be satisfied short of the issuance of a declination letter, but improvements to the existing process should be explored, and a specific request made by the Commission to the financing for industry for comment regarding this matter.

4. Although the sole proprietary interest requirement is often addressed in the declination process as well, the Pueblo does not favor new regulations on that issue. Trying to more precisely define this standard by regulation would likely be a complicated and difficult process. The resulting regulations could well raise new issues and create uncertainty rather than provide clarity. Unlike the expression of principles concerning whether commercially standard financing terms involve management authority, the sole proprietary interest standard could arise in many contexts and is more difficult to apply. Therefore, the effort to define sole proprietary interest in regulations would more likely be counterproductive than useful.

The Pueblo appreciates the opportunity that the Commission has provided to tribes to consult and comment on the Commission's regulations. We recognize that the Commission has significant regulatory duties under IGRA, and that the promulgation and maintenance of regulations is an important part of discharging those duties. However, the Pueblo urges the Commission to carefully consider the necessity and purpose of each of its regulations, and that it provide tribes

with the maximum management freedom and flexibility concerning their gaming businesses consistent with the requirements of IGRA.

Thank you for considering my comments on behalf of the Pueblo, as well as the appended comments of the Pueblo's Gaming Commission.

Sincerely,

Malcolm Montoya
Governor

MM/sgd

Enclosure

cc: Felix Chaves, Chairman, Sandia Tribal Gaming Commission
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Sandia Tribal Gaming Commission

February 10, 2011

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Re: Notice of Inquiry and Request for Public Comment

Dear Ms. Stevens:

The Sandia Tribal Gaming Commission (STGC) takes this opportunity to submit written comments to the National Indian Gaming Commission (NIGC) regarding the Notice of Inquiry (NOI) published in the Federal Register dated November 18, 2010. We express our opinions only to those regulations that are necessary to conduct business of the tribal gaming agency and not regulations that are within the purview of the Pueblo of Sandia (Pueblo) and its gaming operation.

In reading the NOI it is uplifting that NIGC references the CRIT decision bringing to the forefront note worthy issues regarding the MICS, Tribal Advisory Committee (TAC), and its apparent authority in relation to the Indian Gaming Regulatory Act (IGRA). The STGC senses a need for change and effective regulatory management by the NIGC that encourages growth of the gaming industry, promotes newer technologies, and identifies the key stakeholders (tribal governments, TGA's or regulators, and NIGC) who play critical roles in the continuous evolution of our industry.

Regarding regulation contained in Part 514 Fees, the STGC provides the following comments:

1. Base-Fees
   Changing from a "calendar" to "fiscal" year is considered a low priority. The STGC calendar and fiscal year are one in the same with minimal difficulty making payment in a timely manner. On the subject of a 12 or 18 month period to make payment, it makes practical sense and use of funds to make payment on an 18 month period to compensate for accounting adjustments and reporting requirements noted on the financial statements. The STGC believes the proposed regulation may be of some benefit to other tribal gaming entities.

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2. Gross Gaming Revenue
   The STGC supports amending this definition to be consistent with GAAP that may be of importance to governmental gaming entities and generally a good business practice. This is a low priority.

3. Definition of Gross Gaming Revenue
   The STGC supports amending the definition of gross gaming revenue to be in alignment with other industry standards such as GAAP for governmental gaming entities. What is not included in the NOI and the STGC does not support is the increase of fees since the NIGC has limited authority over Class III gaming that is a mathematical variable used in the calculation of regulatory fees. There should not be any future increases without justification since NIGC has limited authority as determined by the courts.

4. Fingerprint Fees
   The STGC does not recognize any benefit or support including fingerprinting fees as part of revenue collected by the NIGC since we consider this activity as a processing fee that is paid by many tribes for this service.

5. Notice of Violation (NOV) vs. Late Payment
   The NIGC should consider establishing a late payment system in lieu of a Notice of Violation (NOV) with issuance only in circumstances where there is willful and wanton misconduct by the tribal government entities. The STGC supports the recommendation of a late payment system since it may be beneficial to some gaming tribes who submit payment beyond the deadline date, on a sliding percentage scale commensurate with the number of days late. The STGC considers this a medium priority.

Regarding regulation pertaining to management contracts, the STGC submits the following comment:

1. Upon STGC's initial review, makes no recommended changes to the provisions contain in parts 531, 533, and 537 and defer to the Pueblo to provide comment since it is our understanding that the Pueblo has its own right to choose who to conduct business within the context of management, development, or financing agreements. The STGC does not welcome NIGC's regulatory oversight regarding slot vendor contracts as this may hamper our competitive edge, ability to generate revenue, or resolve differences with the State regulatory body. This is a very low priority for the STGC.

Over the years, many tribal governments have allocated millions of dollars in the budgetary process to remain in compliance with the statutory requirements of the IGRA. The court's ruling in the CRIT decision denies NIGC's oversight and enforcement authority for Class III MICS that is applicable to all tribal gaming entities not specifically to the Colorado River Indian Tribes. The decision by the courts may have created a technical defect in the statutory requirements of the IGRA and potentially may affect the existing gaming compact with the State. As a result, we support NIGC's recommendation that the current MICS become industry guidelines and consider this a major priority of the NIGC.

Most tribal gaming entities in New Mexico, as well as in neighboring states, have historically relied on the NIGC MICS as the operational standards for Class III gaming. The STGC does not welcome any State initiative to create a uniform statewide regulation such as it was implemented in the state of California. The STGC has created a system of internal controls that are considerably more stringent than NIGC MICS and adopted a risk based audit model similar to other audit and accounting standards made use of by the American

Institute of Certified Public Accountants (AICPA) and the Institute of Internal Auditors (IIA). The STGC does not recognize any other alternatives.

Regarding regulation pertaining to Parts 542 and 543, MICS and Technical Standards the STGC submits the following comments:

1. Class III MICS and Technical Standards
   Since 2008, the NIGC has drafted recommended revisions to the existing MICS for Class III and Class II gaming and submitted to an advisory committee that was a consortium of tribal representatives, gaming operators, and NIGC staff. The advisory committee has proven to be ineffective by not producing the necessary operational standards, delaying newer technologies, or proposed standards opposed by some gaming tribes. The STGC understands that the MICS and technical standards are not static but rather dynamic and ever changing. How NIGC will move forward regarding updating these operational standards is a dilemma for many gaming tribes and if the gaming tribes are required to follow the same process described above this could take many more years to complete and update.

   The STGC suggests developing operational standards on a regional basis that would conform to the existing Tribal-State gaming compact and TMICS for each respective tribal regulatory agency that lends supports to industry guidelines. In this regard, regulatory agencies may adopt new technologies to meet its growing demand for innovative games and satisfy the statutory requirements contained in the IGRA.

   The technical standards from other gaming jurisdictions and independent gaming laboratories have been adopted into our regulatory requirements which the STGC understands meets and conforms to the statutory requirements of the IGRA. The STGC has done so because these technical standards meet our needs and growing demand for newer technologies that protect the integrity of games offered to the public.

2. Class II MICS and Technical Standards
   The current Class II MICS are incorporated by reference in Part 542, done without adequate review or examination to determine clear distinction between Class II and Class III gaming. The STGC supports additional testimony and guidance from the previous advisory committee to complete the regulatory process. For some tribes, Class II gaming is a strong viable economic or financial alternative to produce revenue and negotiate in good faith with other regulatory agencies. The STGC does not support the comingling of the two classifications of MICS and technical standards.

Regarding regulation pertaining to Part 559, Facility License, Renewals, and Submissions the STGC puts forward the following comment:

1. The STGC recommends that NIGC consider whether this regulation is required since many tribal governments and gaming entities have created and implemented their own procedures and processes that address areas such as emergency preparedness (medical emergencies, natural disasters, hazardous materials, and security threats), construction maintenance and operations within the uniform building codes, IHS compliance regarding drinking water and food, and sanitation and waste disposal.

   Additionally, there is no justifiable reason for NIGC staff to conduct an inspection of our facilities since the STGC has not received certification from any federal or state agency attesting to NIGC staff competencies in the areas of environmental, health, or public safety. The STGC believes this regulation

extends well beyond the NIGC's authority in meeting compliance with the statutory requirements of the IGRA that may create unwanted litigation in which NIGC will not cover the cost of litigation or defend the gaming tribes against the federal or state agencies.

Concerning regulation applicable to Part 571, Inspection and Access, the STGC makes the following comment:

1. The STGC doubts the NIGC has authority to examine Class II financial or gaming records that may be located at off-site locations and maintained by a third party contractor. The STGC understands that the financial or gaming records are considered confidential and under restricted access of gaming personnel, STGC, and tribal government employees. The STGC considers unrestricted access by NIGC personnel as intrusive and a waste of valuable resources (time, money, and human capital) to obtain and view Class II financial or gaming records retained by a third party contractor, for what purpose? In the past, the STGC has cooperated with federal and state authorities should an audit or an investigation be conducted regarding the malfeasances of our patrons or employees. Only in these circumstances does the Pueblo take into consideration or allow access to financial or gaming records. There is no need for revision and is considered an extremely low priority.

Lastly, regarding an additional communication policy or regulation, the STGC puts forth the following comment:

1. The STGC believes there is no need for an additional communication policy or regulation, tribal council resolution, NIGC fee, or audit to communicate with the tribal governmental entities. In today's bureaucratic world, there are too many channels or levels of review that are utilized by tribal governmental agencies; we deem these efforts of the NIGC as futile. The STGC is of the understanding that some conditions exist where the NIGC will communicate directly with tribal government or the regulatory agency, we accept this practice. The STGC does not recommend deviating from this protocol and views this as a low priority.

In closing, the STGC thanks you for providing an opportunity to comment on the proposed revisions and hope you take into consideration our written comments. The STGC welcomes your efforts taking on challenging issues and look forward to participating in the regulatory MICs review as this process unfolds.

Sincerely,

Felix Chaves,
Chairman

cc: Governor Malcolm Montoya, Pueblo of Sandia
Lt. Governor, Scott Paisano, Pueblo of Sandia
Jim Pierce, Executive Director

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