



August 10, 2018

*Via U.S. Mail & Email*

Townsend Hyatt  
Orrick, Herrington & Sutcliffe LLP  
1120 NW Couch Street  
Suite 200  
Portland, OR 97209-4163  
thyatt@orrick.com

**Re: Review of financing agreements between  
Wells Fargo & the Viejas Band of Kumeyaay Indians**

Dear Mr. Hyatt:

On August 3, 2018, I issued a letter responding to your request for the National Indian Gaming Commission's Office of General Counsel's review of financing agreements between the Viejas Band of Kumeyaay Indians and Wells Fargo Bank National Association. Subsequently, you supplemented the documents and exhibits comprising the financing agreements and requested an opinion as to whether the financing agreements, as supplemented, are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the financing agreements violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents (collectively "the Financing Agreements"), all of which are unexecuted but represented to be in substantial final form:

- Credit Agreement, marked NIGC Submission Draft (8-3-18), US.118478115.09;
- Exhibits to Credit Agreement, marked NIGC Submission Draft (7-9-18), US.118559112.02;
- Schedules 8.6 and 8.6A to Credit Agreement (Insurance), marked NIGC Submission Draft (7-26-18), US. 118480733.02;
- Security Agreement, marked NIGC Submission Draft (7-9-18), US.118480721.03; and
- Deposit Account Control Agreement, marked US.119191636.01.

The Financing Agreements contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed, which are available at the NIGC's website. Applying the same analysis here, it is my opinion that collectively the Financing Agreements are

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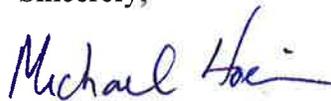
not management contracts and do not require the approval of the Chair. It is also my opinion they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Financing Agreements are represented to be in substantially final form with respect to terms affecting this opinion, and if such terms change in any material way prior to closing or are inconsistent with the assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Agreements listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

Please note it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld.<sup>1</sup> If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA),<sup>2</sup> please be advised that the information was voluntarily submitted and, as such, that any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter.** After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Austin Badger at (202) 632-7003.

Sincerely,



Michael Hoenic  
General Counsel

cc: Jennifer Miernicki, Faegre Baker Daniels (email only: [jennifer.miernicki@FaegreBD.com](mailto:jennifer.miernicki@FaegreBD.com))

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<sup>1</sup> 25 C.F.R. § 517.7(c).

<sup>2</sup> Freedom of Information Act, 5 U.S.C. § 552(b)(4) (1966).

<sup>3</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992).

<sup>4</sup> 25 C.F.R. § 517.7(c).