

EXHIBIT D

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**CALIFORNIA GAMBLING CONTROL COMMISSION RESPONSE TO TRIBAL
TASK FORCE REPRESENTATIVES FINAL REPORT STATEMENT OF NEED
RE: CGCC-8, DATED FEBRUARY 13, 2008.**

April 23, 2008

INTRODUCTION

On February 13, 2008, the State Gaming Agency (SGA) Association and Task Force representatives to the Association and Task Force meetings at which CGCC-8 was discussed were presented with a copy of the report entitled, "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8, February 13, 2008" (Report). While the SGA representatives provided verbal input regarding the matters covered in the Report during the Association and Task Force meetings involving CGCC-8, the actual drafting of the Report was accomplished by Tribal Task Force representatives and their counsel. Accordingly, this Response is intended to provide the Association with the views of the California Gambling Control Commission (Commission, CGCC) regarding the Report's assertions and to provide the Commission's position with regard to the issues discussed in the Report, including the Statement of Need. The headings below and their content respond to the headings and content in the Report.

At the outset, the Commission wishes to acknowledge the hard work and professionalism of the Tribal Task Force participants. CGCC-8 prompted an unprecedented response from tribal representatives and the sheer number of Task Force participants made the process arduous. Nevertheless, in spite of strongly held feelings about many aspects of CGCC-8, all parties acquitted themselves with professionalism. This Response is made in the same spirit.

STATEMENT OF NEED

The Draft Statement of Need alluded to the CRIT decision and its effect on oversight of Tribal Gaming by the NIGC. While the Commission continues to believe that the decision did indeed leave a void in independent, non-tribal oversight of Tribal Gaming regulation, in response to widespread disagreement with that assertion and in response to language suggested by the Rumsey Rancheria, the Commission modified the Statement and the Purpose section of CGCC-8 (CGCC-8 section (a)) to reflect the other aspect of the need and purpose of the regulation: to provide an effective and uniform manner in which the SGA can conduct the compliance reviews contemplated in Compact Sections 7.4 and 7.4.4. The reviews include assuring Tribal (and TGA) compliance with the requirements of Compact Sections 6.1 and 8.1 – 8.1.14.

We agree with the Report that the CRIT decision does not and cannot change the terms of the Tribal-State Gaming Compact (Compact). However, we disagree that CGCC-8 attempts to amend the terms of the Compact. For reasons expressed in more detail in the section on Legal Authority, we believe the adoption of CGCC-8 is well within the Commission's authority, as provided in the Compact.

Moreover, while we agree with the repeated assertions of Tribal representatives that the NIGC MICS remain the applicable standards for tribal gaming operations in California, we reiterate that including the NIGC MICS as a baseline in CGCC-8 fosters the uniformity goals expressed in Compact Section 8.4 and facilitates the SGA's exercise of its compliance authority and responsibility found in Section 7 of the Compact. We also are constrained to point out that CGCC-8 does *not* require any tribe to adopt the NIGC MICS in carrying out its responsibilities under Sections 6 and 8. CGCC-8 requires that whatever MICS a Tribe may choose to adopt meet or exceed the requirements of the NIGC MICS. Further, CGCC-8 provides for variances (CGCC-8 section (l)) and for consultation between the SGA and individual tribes and the Association as a whole regarding the effect of changing technology on compliance matters (CGCC-8 section (m)).

Finally, we disagree with the Report's assertion that CGCC-8 provides for financial audits by the state. No such language was included in the draft upon which the Report was based and, in response to concerns raised by a number of Tribes, the version of CGCC-8 approved by the CGCC (March 27, 2008) for consideration by the Association contains specific language eschewing such authority. (CGCC-8 section (h).)

ECONOMIC IMPACT.

First, as outlined above, the Commission reiterates that CGCC-8 has not and does not provide for an annual financial audit by the SGA.

Second, while any outside review must entail the use of some gaming operation staff resources, the SGA is dedicated to working with individual TGA's to minimize the impact of compliance reviews. We believe that through consultation with Tribal regulators on a case-by-case basis, the impact that such compliance reviews may have on individual gaming operations will be minimized. We are acutely aware that our ability to efficiently conduct meaningful compliance reviews depends to a large extent on the cooperation of individual TGA's and gaming operation personnel.

APPLICATION TO CARDROOMS

As stated in more detail below, the State's authority to promulgate CGCC-8 is found in the Compact. When the 1999 Compact was signed, the California Gambling Control Commission was not even in existence. For a number of

years, the Commission's staffing levels were minimal and its focus with regard to regulations applicable to cardrooms was on the licensing process. Extensive regulations have been developed regarding licensing of owners, and key employees; work permits for other employees, registration of manufacturers and distributors, third party providers, the discipline process, emergency preparedness and evacuation, and responsible gambling; in addition to accounting and financial reporting regulations. Included in regulations currently pending in the formal Administrative Procedure Act rulemaking process are regulations pertaining to MICS for check cashing, extension of credit, automatic teller machines and abandoned property, MICS for drop and count procedures, cage requirements, security, and surveillance have been proposed to the cardroom industry in informal comment sessions and are pending the formal process. The Bureau of Gambling Control also has regulations regarding cardroom operation and the game authorization process.

The assertion that CGCC-8 represents a "discriminatory" approach to gaming regulations by the CGCC is unfounded. Commission and Bureau of Gambling Control cardroom regulations run some 130 pages, not including forms. The extent of the State's authority over cardrooms as demonstrated in the Gambling Control Act and the Discipline regulations compared to the division of authority between sovereign signatories to the Compact presents a stark comparison. Moreover, in contrast to the Report's assertions, CGCC-8 neither ignores the fact that California tribes follow the NIGC MICS – that assumption was implicit in the development of CGCC-8 – nor does the Commission "not respect the ability of tribal gaming agencies to enforce such standards." CGCC-8 is not discriminatory. It is an exercise of the State's compliance overview authority found in the Compact. The Compact is clear in providing that the SGA may inspect the gaming operation and associated documents to assure compliance with the Compact.

FOSTERING UNIFORMITY

The Report incorrectly conflates Tribal (and TGA) use of the NIGC MICS in carrying out regulatory responsibilities under the Compact with SGA review of Compact compliance. The Commission does not dispute the Report's assertion that gaming tribes played a major role in the development of the NIGC MICS, nor does the Commission dispute the Report's assertion that the NIGC MICS are the standard for California gaming tribes. On the contrary, those assertions were essential to the Commission decision to adopt the NIGC MICS as a baseline or bench mark for compliance review. The selection of a benchmark already employed by California's gaming tribes was seen as a way of avoiding arbitrariness in compliance reviews. The Commission reasoned that if Tribes in developing their own MICS used the NIGC MICS as a baseline, the use of the same baseline by the SGA assured uniformity of review and consistency with the uniformity goals of Compact Section 8.4.

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proposal. Much of the Purpose section of CGCC-8 (section (a)) is taken from the Rumsey proposal and the language in CGCC-8 section (f) regarding Agreed Upon Procedures Audits comes from the Attorney Work Group Proposal. Further, both the Attorney Work Group and Rumsey proposals adopt the NIGC MICS as a benchmark.

With regard to language inserting binding arbitration into the dispute resolution process, it has been the Commission's position that CGCC-8 derives its authority from the Compact and therefore, the dispute resolution process in CGCC-8 should follow that found in the Compact.

LEGAL AUTHORITY

It is the position of the Commission, as it has been throughout this process, that legal authority for CGCC-8 is firmly grounded in the Compact.

First, as a general proposition, the State, like the Tribe, has the right under the Compact to demand that the other signatory comply with the terms of the Compact. In fact, each signatory has waived sovereign immunity with regard to matters of Compact compliance. (See Sections 9.4 and 11.2.1(c).)

Second, Sections 8.4 and 8.4.1 clearly contemplate that the SGA may pass regulations regarding the Tribe's gaming operations in order to foster statewide uniformity of regulation of Class III gaming operations. Section 8.4 provides:

"In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1."

CGCC-8 is clearly such a regulation. It does not, as arguably it could, require the TGA to make its "rules, regulations, standards, specifications, and procedures regarding matters encompassed by Sections 6.0, 7.0, or 8.0 . . . consistent with regulations adopted by the State Gaming Agency;" (Section 8.4.1.) Instead, it establishes as a benchmark the industry standard for MICS, the NIGC MICS. It does not purport to require Tribes to adopt the NIGC MICS in whole or in part, (though throughout this process we have been repeatedly told that tribes have already adopted the NIGC MICS) but instead requires that whatever MICS each TGA adopts be equal to or more stringent than the NIGC MICS. The NIGC MICS were chosen as a benchmark because the Commission was repeatedly assured by gaming tribes that it was both the industry standard and the MICS of choice for California gaming tribes.

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CGCC-8 does not purport to usurp the primary role of TGA's in establishing and enforcing tribal MICS. CGCC-8 establishes guidelines and procedures for the SGA in exercising its authority under Sections 7.4 and 7.4.4 to independently ensure that the TGA's are carrying out their responsibilities under the Compact; in short, to ensure compliance with the Compact. Indeed, Compact Section 7.4 makes clear that notwithstanding the primary regulation and enforcement role of the TGA, the SGA may inspect the Tribe's gaming facility and gaming operation or facility records with regard to Class III gaming, subject to conditions outlined in Sections 7.4.1 through 7.4.3:

"Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto"

Further Section 7.4.4 makes clear the SGA's broad right of access to documents, equipment and facilities:

"Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

Thus, it is clear that the SGA may promulgate regulations in respect to matters encompassed by Sections 6.0, 7.0 and 8.0 in order to foster statewide uniformity of regulation of Class III gaming operations throughout the state. Further, it is clear that notwithstanding that the Tribe's have primary responsibility for administering and enforcing the Compact's regulatory requirements, the SGA has the right to inspect the Gaming Facility and Gaming Operation or Facility records and, notwithstanding any other provision of the Compact, the SGA is to be allowed access to papers, equipment and places where such access is reasonably necessary to ensure compliance with the Compact.

CGCC-8 is a regulation authorized under Section 8.4 to ensure uniformity in the regulation of matters encompassed by Sections 6.0, 7.0 and 8.0. It is an exercise of the SGA's authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact. Thus is it not an "amendment" of the Compact nor does it change the terms of the Compact. It is not, by its language or intent, an attempt to limit or reduce the primary role of the TGA in the regulation and enforcement of Class III gaming.

DUPLICATIVE

The Report points to the Governor Schwarzenegger's letter of March 30, 2007 to the Senate Committee on Indian Affairs, quoting the governor as follows:

"[California's] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate NIGC's activities."

CGCC-8 is not, as the Report asserts, "entirely inconsistent" with the Governor's message to the Committee. In fact, it is not at all inconsistent. As has been made clear at the Task Force meetings and as Chairman Shelton has made clear at the March 27, 2008 Commission meeting, the CGCC has and will continue to make every effort to coordinate with the NIGC. However, SGA compliance reviews are not duplicative of NIGC reviews; they are a legitimate exercise of the State's authority under the Compact. As NIGC Chairman Philip Hogen's April 17, 2008 written testimony to the Senate Indian Affairs Committee Oversight Hearing Committee indicated: "To put the regulation of tribal gaming in proper context, we need to appreciate that the vast majority of the regulation of tribal gaming is done by the tribes themselves, with their tribal gaming commissions and regulatory authorities. In many instances, where tribes conduct Class III or casino gaming, state regulators also participate in the [regulatory] process. NIGC has a discrete role to play in this process and is only one partner in a team of regulators." The SGA focus is Compact compliance; the NIGC has no interest in, nor authority with regard to Compact compliance. Further, to assert that because the NIGC has an oversight role with regard to internal controls the State should forbear from exercising its compliance review authority under the Compact is to ignore the State's role as a sovereign Compact signatory.

The fact that tribes have already put into place standards "at least as stringent as NIGC MICS" does not make CGCC-8 duplicative. Nor does the fact that a number of Tribes have changed their gaming ordinances or entered into agreements purporting to grant the NIGC "authority" to monitor and enforce tribal compliance with those standards. The loss of such authority as a result of the CRIT decision brought focus on the need for State compliance oversight. The authority for such oversight has always existed in the Compact.

Finally, the Report's assertion that CGCC-8 contemplates financial audits such as those found at 25 U.S.C. section 2710(b)(2)(C) is unfounded. The Commission has consistently indicated that CGCC-8 was not designed to facilitate such audits, and language added to the March 2, 2008 version of CGCC-8 (CGCC-8, paragraph (h)) makes that explicit.

As stated on many occasions, the Compact provides the State with the authority (and responsibility) to review tribal standards to ensure compliance with the Compact. Neither tribal regulatory activities, nor NIGC regulatory activities displace or substitute for such State compliance reviews.

RECOMMENDATION

The Commission is well aware of the widespread and persistent opposition to the proposed CGCC-8 among many Task Force and Association members. Nevertheless, we ask that you re-consider these positions.

As we have stated on many occasions during this process, the Commission expects that the vast majority of gaming tribes have standards in place and run their gaming operation according to those standards in compliance with the Compact. However, that does not alter the State's clear authority to conduct compliance reviews. Further, from the perspective of the SGA, the State not only has the authority to conduct compliance reviews, but the responsibility as well. The public as well as the legislative and executive branches of state government have made that clear. CGCC-8 simply outlines a process and sets a uniform benchmark for such reviews. It does not arrogate to the State any authority not already found in the Compact. It does not prescribe specific standards. Rather, it sets a uniform benchmark for such standards; a benchmark that the Report asserts the tribes already employ.

The Commission fully realizes that any on-site review takes time and resources on the part of the tribal gaming operation and is fully committed to working with tribes to accomplish these reviews in the most efficient manner possible. Additionally, the Commission realizes that the efficacy of such reviews is dependent in large part on the cooperation of the tribes.

CGCC-8 is respectful of tribal sovereignty. It does not purport, nor does its language suggest, an intent to infringe on the primary regulatory role of the TGA. It establishes a process and benchmark designed to foster statewide uniformity of regulation of Class III gaming while at the same time recognizing individual tribal sovereignty and wide-ranging differences in the size and scope of gaming operations.

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CALIFORNIA GAMBLING CONTROL COMMISSION



Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)

Compact section 8.4.1 sets out procedures for the State Gaming Agency (SGA) to propose uniform statewide regulations governing Class III gaming operations and for the Association of Tribal and State Gaming Regulators (Association) to approve or disapprove them. Section 8.4.1 (b) provides that the SGA may re-adopt a regulation in its original or amended form after disapproval by the Association, and then submit the regulation to each individual tribe, provided that the SGA prepares a detailed, written response to the Association's objections.¹² Compact section 8.4.1(e) states that tribes may object to a proposed statewide uniform regulation on any of four enumerated grounds: that is, that the regulation is "unnecessary, unduly burdensome, conflicts with a published final regulation of the [National Indian Gaming Commission], or is unfairly discriminatory"

At its September 4, 2008 meeting, the Association voted to disapprove proposed regulation CGCC-8, regarding Minimum Internal Control Standards (MICS), based upon the objections stated in the Association Task Force Report, dated February 13, 2008 and in letters received within 14 days of the vote.³

The following tribes, tribal gaming agencies, or commissions sent in timely comments: Cahuilla Tribal Gaming Agency, Dry Creek Rancheria Band of Pomo Indians, Elk Valley Rancheria, Paskenta Band of Nomlaki Indians Tribal Gaming Commission, Rincon Band of Luiseño Indians, Rumsey Indian Rancheria of Wintun Indians, and Torres Martinez Gaming Commission. The Department of Justice, Bureau of Gambling Control sent in a letter on September 29, 2008. (These comment letters are attached as Exhibits "A1-A8 respectively".)

¹ Compact section 8.4.1, subsection (b) provides "Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is readopted by the State Gaming Agency as a proposed regulation a proposed regulation in its original or amended form with a detailed written response to the Association's objections.

² The State believes that section 8.4.1, subsection (b) provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association. This readoption and response procedure constitutes a clear exception to the general requirement that the Association approve a regulation before it may be effective. Any other interpretation would render subsection (b) mere surplusage, and such a construction must be avoided. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495,503 [language in a contract must be interpreted as a whole and constructions that render contractual provisions surplusage are disfavored].)

³ The motion made at the meeting was to oppose the adoption of the CGCC-8 regulation based on the objections in the Task Force Report of February 13, 2008.

This document is the written response to the Association's objections as required by subsection 8.4.1. It includes the rationale for the CGCC-8 text (dated October 1, 2008) and a detailed response to the objections raised. The Commission's Response to the Task Force Report dated April 23, 2008 is also incorporated herein. (Attached as Exhibit "B".)

PART I. RATIONALE FOR MINIMUM INTERNAL CONTROL STANDARDS (MICS) (GCC-8 amended form dated October 1, 2008)

1. INTRODUCTION

Internal controls are the primary procedures used to protect the integrity of casino gaming operations, which is cash intensive, and are a vitally important part of properly regulated gambling. Inherent in gaming operations are problems of customer and employee access to cash, unrecorded cash transactions at table games, manipulation of credit, questions of fairness of games, and the threat or risk of collusion to circumvent controls.⁴ Internal control standards are therefore commonplace in the gambling industry and many tribes in California currently have some standards in place.

Inherent in an internal control structure are the concepts of individual accountability and segregation of incompatible functions. The existence of standards alone, however, is not enough. Any internal control system carries the risk of circumvention, which is why a process of *independent* oversight is so critical to the integrity of an operation. (Emphasis added.)⁵

Under IGRA, a tribe conducts Class III gaming pursuant to a compact with the state. (See 25 U.S.C. § 2710(d)(1)(c).) After the Secretary of the Interior approves the compact, the "*Tribal-State compact govern[s] the conduct of [class III] gaming activities*" § 2710(d)(3)(A) (emphasis added), and the tribe's class III gaming operations, including standards for operation, must be "conducted in conformance" with the compact, § 2710(d)(1)(C) and § 2710(d)(3)(C)(vi) and (vii).

2. NATIONAL INDIAN GAMING COMMISSION MICS

The National Indian Gaming Commission (NIGC) NIGC Minimum Internal Control Standards (MICS) were designed to establish a baseline, that is, **minimum** internal control standards, to be required of tribal gaming operations. Initially adopted in 1999, the NIGC MICS have been amended over the years to take into account advances in technology, and to clarify certain requirements.

⁴⁴ The most recent totals for the United States Indian gaming revenue for 2007 stood at over \$26 billion. Source: *NIGC Strategic Plan for Fiscal Years 2009-2014*, page four. The link is <http://www.nigc.gov/LinkClick.aspx?fileticket=gruAugiyc28%3d&tabid=36&mid=345>. Page four of the Plan is included as Exhibit "C."

⁵ Written Remarks of National Indian Gaming Commission Chairman Montie R. Deer before the Senate Committee on Indian Affairs, March 14, 2002. (See complete remarks attached as Exhibit "D.")

The NIGC MICS are structured by size of gaming operations rather than by type of game, thus recognizing that the requirements placed upon tribal gaming operations should differ based upon their annual gross gaming revenue. Costs involved in implementing controls are part of the regular business costs incurred by a gambling operation. Because different states have different compacts as to types of games offered (such as craps, roulette, or pari-mutuel wagering) or as to credit, or because certain tribes opt not to offer particular games or extend credit, the NIGC MICS cover some areas not applicable to all tribes. However, as long as the tribal internal controls met or exceeded the standards in the NIGC MICS for the applicable areas, uniform standards were achieved.

3. THE COLORADO RIVER INDIAN TRIBES (CRIT) DECISION

In *Colorado River Indian Tribes v. National Indian Gaming Commission (CRIT)*, 466 F.3d 134, decided October 20, 2006, by the United States Court of Appeals for the District of Columbia Circuit, the court held that NIGC did not have the authority to promulgate or enforce the MICS with regard to Class III gaming. This decision effectively eliminated the federal government's authority and jurisdiction to regulate Class III gaming in California, at least with regard to the Class III MICS. The court clearly held that the declared policy of shielding Indian tribes "from organized crime and other corrupting influences" and "to assure that gaming is conducted fairly and honestly by both the operator and players" for Class III gaming is accomplished through the only allowable statutory basis for such, through the Tribal-State compacts. (*CRIT, supra*, 466 F.3d, at p. 140; emphasis added.) The existing framework under IGRA of Tribal-State Compacts establishing the regulatory rules for Class III gaming did not change with the *CRIT* decision.

4. THE AUTHORITY OF THE STATE GAMING AGENCY

The Preamble to the Compact provides that the Compact is made pursuant to IGRA and that the system of regulation fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among three sovereigns – the federal government, the State, and the Tribe. The Compact recognizes the State's interest in ensuring, jointly with the tribes, that "tribal gaming activities are free from criminal and other undesirable elements" (Compact Preamble, paragraph (F)). One of the stated Purposes and Objectives of the Compact is to ensure that Tribal Class III gaming is "conducted fairly and honestly by both the operator and players" (Compact Preamble, paragraph A). See also Compact section 1(b) (compact purpose is to ensure "fair and honest operation" of Class III gaming in accordance with IGRA).

The primary responsibility for regulating the gaming operation rests with the Tribe. Specifically, the Tribe must adopt a gaming ordinance and conduct its gaming activities in compliance with that ordinance and rules, regulations, procedures, specifications, and standards adopted by the Tribal Gaming Agency (TGA). In addition to oversight by the TGA, NIGC has in the past performed the valuable role of providing independent outside oversight, as in the area of MICS compliance review.

The SGA also has a role and has the authority to promulgate regulations to establish statewide uniform operating procedures. Section 8.0 of the Compact is entitled "Rules and Regulations for

the Operation and Management of the Tribal Gaming Operation.” Section 8.1 of the Compact is entitled “Adoption of Regulations for Operation and Management: *Minimum Standards*.” (Emphasis added.) Section 8.1 states that that each Tribal Gaming Agency must adopt rules, regulations, and specifications concerning, *at a minimum*, thirteen enumerated topics “and to ensure their enforcement in an effective manner.” (Emphasis added.) Section 8.4 (no title) provides in substance as follows:

1. That the parties agree that the SGA, for the purpose of fostering “statewide uniformity of regulation of Class III gaming operations throughout the state,” has the power to adopt regulations on “any matter encompassed by Section 6.0, 7.0. and 8.0”. (Emphasis added.)
2. That the rules, regulations, standards, specifications, and procedures adopted by the Tribal Gaming Agency “shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1.”⁶

Essentially, statewide uniform regulations under Section 8.4 can encompass any matter within Compact Sections 6.0, 7.0 and 8.0, and the TGA rules, regulations and standards must be consistent with statewide uniform regulations adopted by the SGA. Section 7.1 of the 1999 Compact, and comparable sections of new or amended Compacts, requires the TGA to adopt and enforce regulations which ensure that the Gaming Operation “meets the highest standards of regulation and internal controls.” Section 8.1 of the 1999 Compact, and comparable sections of new or amended Compacts, charge the TGA with responsibility to promulgate such rules, regulations and specifications and to ensure their enforcement. Compact sections 8.1.1 through 8.1.14 outline the matters which, at a minimum, these rules, regulations, and specifications must address. Compact sections 7.4 through 7.4.4 provide the SGA the authority to inspect the Gaming Facility, as defined in the Compact, as reasonably necessary to ensure compliance with the Compact. The purpose of this regulation (CGCC-8), pursuant to Section 8.4, is to provide an effective uniform manner in which the SGA can conduct compliance reviews of the adoption and enforcement of these rules, regulations, and specifications by the TGA, and to protect the public as well as each tribe.

In light of the fundamental importance of MICS in protecting the integrity of the Gaming Activities and ensuring the successful functioning of Class III Gaming operations, it is appropriate for the SGA to adopt uniform, minimum requirements for MICS: that is, to require TGAs to adopt MICS which equal or exceed the MICS as promulgated by the NICG as of October 1, 2006 and to require each tribal Gaming Operation to implement internal control systems that ensure compliance with the TGA MICS.

⁶ Compact Section 8.4 provides in full:

“In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1. Chapter 3.5 (commencing with section 11340) or Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency in respect to tribal gaming operations under this section.” (Emphasis added.)

The California Gambling Control Commission (Commission) has specific responsibilities under the Tribal-State Gaming Compacts including the auditing of funds for the General, Special Distribution, and Revenue Sharing Trust Funds. The Commission has the obligation to verify the proper receipt of money due to the state under the compacts, and ensure that the State's interest in this revenue stream is protected. MICS provide safeguards that ensure the revenue is reported and provide the ability to check the accuracy of the numbers. The State in the Compact reserves the right to inspect and have access to the gaming operation and to copy papers, books, and records related thereto. (See Compact, Sec. 7.4.) Among those books and records available for inspection are those related to the matters set forth in Sec. 8.0 of the Compact. Among those matters in 8.0 are items related to MICS. (See, for example, Compact Secs. 8.1 – 8.1.14, inclusive, which covers such things as employee procedures designed to permit detection of theft, cheating or fraud, and maintenance of closed circuit television surveillance system and cashier's cage.) Therefore, the Commission has the authority under the Compact to inspect all books and records relating to a tribe's MICS.

For a variety of reasons, including the presence of the federal government assuming a prominent regulatory role, the State's oversight and auditing have to date been focused on the Revenue Sharing Trust Fund, the Special Distribution fund, and, under new and amended compacts, contributions to the General Fund. Now with the determination that the Compact provides the exclusive authority for Class III MICS oversight, the State must turn its attention to this oversight of Tribal Gaming Operations to ensure the integrity of the operation for the public, thus CGCC-8.

5. CGCC-8 -- MINIMUM INTERNAL CONTROL STANDARDS

CGCC-8 establishes a uniform basic standard and protocol for state oversight of tribal regulation of gaming operations. It does this by establishing the federal MICS as a baseline for tribal gaming operations. Using the NIGC MICS as a baseline standard ensures consistency and uniformity while taking into account the size of gaming operations. Further, since many tribes have been accepting this standard for years, this approach eliminates duplication or unnecessary promulgation of new rules, regulations, or specifications. The state has significant oversight authority as outlined above. CGCC-8 is not an expansion of that authority, but recognition that the authority existed all along, and is rather an exercise of that authority. CGCC-8 tracks the federal MICS as closely as possible; any provision of CGCC-8 that was even arguably inconsistent with or not authorized by the Compact has been eliminated. CGCC-8 has thus been drawn as narrowly as possible, while still protecting the integrity of tribal gaming.

Additionally, the CGCC-8 regulation reiterates the provisions in existing compacts that utmost care will be given in regard to protecting the confidentiality of information provided by the tribe. The extent of the information being shared under this regulation is generally the same as what the tribes were sharing with the federal government, and thus no new or additional information is being shared with an outside (non-tribal) governmental agency.

6. OTHER FACTORS MENTIONED IN THE PROTOCOL CRITERIA

- (i) **Economic Impact.** This proposed regulation should have no additional economic impact, since many tribes have been complying with the NIGC MICS since 1999 or

have some form of internal controls because such controls are considered essential to protecting gaming assets. Thus, this regulation is not unduly burdensome.

Under the NIGC MICS, gaming operations are tiered by revenues, with tighter and more controls imposed as the revenues increase.⁷ NIGC indicated in its Final Rule Revisions 25 CFR Part 542, 71 Fed. Reg. 277385 (May 11, 2006) at p. 27390, that compliance with the requirement that independent certified public accountant (CPA) testing occur will cost, for small gaming operations, between \$3,000 and \$5000. This testing measures the gaming operation's compliance with the Tribe's internal control standards. This cost, according to NIGC, is "relatively minimal" and "does not create a significant economic effect on gaming operations" and what little effect there is can be offset by performing the required yearly independent financial audits at the same time. Therefore, for these reasons these proposed regulatory standards do not disparately impact small tribal operations over large operations, and this regulation will not have significant economic impact. The regulation is thus not unduly discriminatory amongst tribes.

- (ii) **Application outside Tribal Gaming.** California cardrooms (gambling establishments) are governed not only by numerous provisions of the Penal Code⁸ and the Business and Professions Code,⁹ but also by regulations adopted by the Commission¹⁰ and by the Department of Justice, Bureau of Gambling Control.¹¹ Strict regulations are in place concerning cardroom accounting and financial reporting.¹² Cardrooms must, for example, maintain records of the drop for each table for a period of seven years, which records must be provided upon request to the State. The chart of accounts used in each cardroom's accounting system must be approved by the Commission.¹³ All cardrooms with a gross annual revenue of \$10 million or more must have an annual audit done by an independent California CPA, a copy of which audit must be provided to the State, along with the management letter and reply to the management letter, if any.¹⁴ Cardrooms with a lower annual gross revenue may be directed to have an audit performed if the State has concerns about the licensee's operation or financial reporting, including but not limited to inadequate "internal control procedures."¹⁵ In addition, the State may require the cardroom to

⁷ Under the NIGC MICS, the provisions do not apply to operations that have gross revenues under \$1 million. Tier A facilities are those with gross revenues between \$1 and \$5 million; Tier B facilities are those with gross revenues of more than \$5 but not more than \$15 million; and Tier C facilities are those with gross revenues of more than \$15 million.

⁸ See, for example, Penal Code sections 337j (e) (defining "controlled game") and 330 (listing prohibited games).

⁹ The Gambling Control Act, Business and Professions Code sections 19800-19987.

¹⁰ Commission regulations are found in Title 4 CCR sections 12002-12590.

¹¹ Bureau regulations are found in Title 11 CCR sections 2000-2142.

¹² See CGCC regulations at Title 4 CCR sections 12400—12406.

¹³ Title 4 CCR section 12402.

¹⁴ Title 4 CCR section 12403.

¹⁵ Title 4 CCR section 12403(a).

have a fraud audit performed by an independent CPA in the event that fraud or illegal acts are suspected.¹⁶

Further, following a 45-day comment period and a public hearing in April 2008, Commission-drafted MICS for extension of credit, check cashing and ATMs for cardrooms were sent out for a 15-day comment which ended October 8, 2008. Adoption of these latter regulations should be completed by the end of October 2008. The draft minimum internal control standards for cardroom security and surveillance procedures have been sent out for comment and are set for public hearing on November 18, 2008. The goal is to have these regulations in place by early 2009. Workshops are being conducted on the remaining phases and will be added as soon as possible through the State rulemaking process. As the tribes are aware from their participation in the NIGC MICS, the MICS process takes considerable time to complete. IGRA was enacted in 1988 and the NIGC MICS were not promulgated until 1999.

The California Horse Racing Board (Board) has detailed regulations as to the types of races, wagering, and pools, as well as requirements for outside audits to be performed and submitted to the Board.

CGCC-8 is thus not "unduly discriminatory" against tribes vis-a- vis others in the gaming industry, such as cardrooms and racetracks.

- (iii) **Uniformity.** By adopting the longstanding NIGC MICS, this draft regulation fosters uniformity in Tribal Gaming in continuing the baseline internal control standards. Some tribes have apparently entered into agreements with the federal government to perform MICS oversight or have voluntarily submitted to the federal government's "jurisdiction" via ordinance. These tribes assert that the Commission's CGCC-8 does not "foster uniformity" because uniformity is accomplished by the tribes voluntarily consenting to NIGC "jurisdiction and authority." However, that argument is fallacious for two reasons. First, both the agreements and the provisions in the ordinances related to MICS are *voluntary* and can be cancelled or amended at any time. Second, under the *CRIT* decision, the NIGC does not have jurisdiction or authority under IGRA to regulate class III gaming and that includes oversight, so its "exercise" of monitoring and enforcement, although an admirable attempt, is hollow. Moreover, it is significant that for six years, from 2000 to 2006, NIGC had completed on-site compliance reviews for only eight California tribes. At that rate, it would take 42.75 years to complete MICS compliance review for all California gaming tribes.¹⁷ CGCC-8 thus is necessary.

¹⁶ Title 4 CCR section 12403(d).

¹⁷ The 42.75 year estimate is based on the following. It took six years to complete eight audits, indicating it took .75 years to complete one audit. In California, there are 57 tribes operating casinos. If you multiply .75 times 57 tribes, the result is that it would take 42.75 years to complete audits of all 57 tribes. See also Written Remarks of National Indian Gaming Commission Chairman Montie R. Deer before the Senate Committee on Indian Affairs, March 14, 2002 wherein he states that "at current [NIGC] staffing levels, it would take twenty to thirty years for the Commission to evaluate each of the existing gaming operations." (See Exhibit "D".)

- (iv) **Alternatives.** An alternative to adopting the NIGC MICS would be to create a new set of minimum internal control standards. This would take a great deal of time and energy, and would result in tribes having to re-test and perhaps change their internal control systems to make sure they were in compliance. Another alternative that has been suggested is for tribes to enter into agreements with the federal government to perform the oversight or to voluntarily submit to the federal government's jurisdiction" via ordinance. However, as explained above, that is not a viable alternative because consent can be withdrawn at anytime. Although NIGC still has authority to approve Class III gaming ordinances (see 25 U.S.C. section 2710(d)(1) and (2)), the *CRIT* decision held that they have no authority over Class III gaming operations. Thus, the problem with the ordinance approach is that a tribe may subsequently amend the ordinance to remove the MICS provision and the NIGC Chairman probably cannot disapprove the ordinance on that ground. (See 25 U.S.C. section 2710 (d)(2) (B)).

As noted above, it is significant that as of March 2007, NIGC had completed compliance reviews from 2000 to 2006 for only eight California tribes.¹⁸ The just recently published NIGC Strategic Plan (FY 2009-2014) notes on page six under Objective 1.1 (Effectively monitor and enforce Indian gaming laws and regulations), that "operational compliance audits have resulted in hundreds of findings of non-compliance with required minimum internal controls relative to cash handling and revenue accountability."¹⁹ Thus, there is a need for this regulation. The State has already completed two MICS reviews via MOUs²⁰ thus far in 2008 and plans on completing the remaining three by the end of the 2008/2009 fiscal year. Minimal or non-existent federal oversight is not a substitute or alternative for effective oversight by the State through the Compact.

It has been suggested that the State should enter into agreements with each tribe. First, this is unnecessary because the State has the authority through the Compact to adopt the regulation. Even if for some reason the State would want to enter into multiple agreements, there is no guarantee of uniformity because different tribes would want different standards. And finally such agreements would require the tribes to waive sovereign immunity.

- (v) **Legal Authority.** See section above.

¹⁸ NIGC provides federal oversight to approximately 443 tribally-owned, operated, or licensed casinos operating in 29 states. Source: *NIGC Strategic Plan for Fiscal Years 2009-2014*, Overview, page one. See Exhibit "C."

¹⁹ See Exhibit "C."

²⁰ The three effective MOUs and one MOA with various tribes specifically provide that they are in place so long as the statewide uniform MICS regulations are not yet in effect. (There are four MOUs but one has not been signed yet by the Tribal Chair.)

- (vi) **If Statement of Need Identifies Factual Basis as the Rationale for the Need, Address Whether Duplicative.**²¹ The Association's Task Force Report asserts that CGGC-8 duplicates a provision of the Indian Gaming Regulatory Act, 25 USC Section 2710(b)(2)(C) and the MICS portion of certain existing tribal regulations.

The Task Force Report at page 2 criticizes CGCC-8 for mandating "external financial audits" which are already required by IGRA and by section 8.1.8 of the 1999 Compact, and by comparable sections of new or amended compacts and asserts there is no legitimate basis for including the financial audit provision.

CGCC-8 subsection (e) specifically refers to section 8.1.8 of the Compact and it is true the subsection refers to the audit, and true that such an audit is mandated by federal law and the Compact. However, it is appropriate to mention the audit in CGCC-8 subsection (e) for several reasons.

First, this audit, although required by federal law for NIGC fee assessment purposes, was also the basic building block of the separate NIGC MICS outside oversight process. Before the *CRIT* decision, the NIGC practice was to review this audit to determine if problems had been identified suggesting that further review of compliance with MICS standards was appropriate.

Following this problem-centered approach, subsection (e) of CGCC-8 requires the tribe to provide not only the audit report itself, but also management letters and responses to management letters. The reason for this is that problems are typically highlighted in management letters; plans for resolving problems are typically highlighted in responses to management letters. (See 25 CFR § 571.13 requiring a tribe to submit to the NIGC a copy of audit reports and management letters.)

Second, subsection (e) of CGCC-8 makes clear that the tribe need not provide the complete audit because the audit will likely cover not only Class III gaming activities, but also other gaming activities. Alternatively, the tribe has option of providing the complete audit, but CGCC staff will only utilize or record those aspects of the audit affecting Class III gaming activities. This provision not only supplies specific, helpful guidance to both tribal and CGCC staff, but also clarifies the scope of state review of the independent-CPA audit.

The Task Force Report similarly suggests that CGCC-8 is duplicative because "a number of California gaming tribes" have amended their tribal gaming ordinances to

²¹ The Task Force objection on grounds of "duplicative" arises from the Protocol (B. 2(b) (vi)), which may have been inspired by the rulemaking part of the California Administrative Procedure Act (APA). According to Compact section 8.4, the rulemaking part of the APA does not apply to SGA uniform regulations. Under the APA, a proposed state agency regulation must satisfy the "non-duplication" standard (Government Code sections 11349.1 and 11349(f)). However, "non-duplication" is not one of the grounds that the parties to the Compact agreed could serve as a basis for an objection to a proposed regulation.

incorporate the NIGC MICS and to grant the NIGC authority to enforce those standards. We have also been informed that some Tribes have entered into agreements with NIGC, though we have not seen copies of any agreements. It may be that tribal representatives view adoption of an amendment to a tribal gaming ordinance as tantamount to a formal written agreement. In any event, these Tribes argue that, since they have voluntarily submitted to NIGC jurisdiction and authority, CGCC-8 is duplicative. The Commission rejects this argument for three reasons.

First, the MICS amendments to the ordinances are *voluntary* acts on the part of the tribes. It is true that NIGC retains authority to approve Class III gaming ordinances, as explicitly stated in IGRA section 2710(d) (1) and (2). *CRIT* dealt with *regulation* of class III gaming operations; it did not eliminate all NIGC authority concerning Class III matters. The problem with the ordinance approach, however, is that a tribe may subsequently amend its ordinance to remove the MICS provisions and the NIGC Chairman probably cannot disapprove the ordinance amendment on the ground that a tribal ordinance must contain a MICS provision. See IGRA section 2710(d)(2)(B).

Second, written agreements between individual California tribes and NIGC, if there are any, very likely can be cancelled at any time by the tribe.

Third, NIGC does not have authority under IGRA to regulate Class III gaming operations; no agreement or tribal ordinance can provide such regulatory authority. Additionally, the state's authority to regulate Class III gaming operations pursuant to IGRA is not secondary to that of the federal government. It is absurd to suggest that the State should, in essence, acquiesce in the delegation of state responsibilities to the federal government.

Moreover, pursuant to the agreement of the parties, provisions of uniform state regulations adopted under Compact section 8.4 are binding on the tribes. Only a binding regulation can fully protect the public interest.

(vii) **Unnecessary**

The Task Force "duplicative" comment may also be read as suggesting that CGCC-8 is "unnecessary." For the reasons noted above, we suggest that the Task Force Report has not met its burden of persuasion on this issue, that is, the Report has not demonstrated that CGCC-8 is "unnecessary" within the meaning of Compact section 8.4.1(e).²²

Finally, we note that section 8.4.1(e) states:

²² Under the California APA (expressly not applicable here pursuant to Compact section 8.4), the state agency adopting a regulation must demonstrate by substantial evidence that the proposal is "reasonably necessary" to effectuate the purpose of the statute (Government Code sections 11340(c), 11342.2, 11349(a) and 11349.1(a)(1)). Here, by contrast, the burden is on the tribe to show that the uniform tribal regulation is "unnecessary." Compact section 8.4.1(e).

“The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, conflicts with a published final regulation of the NIGC, or is unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0; provided that, if the regulation of the State Gaming Agency conflicts with a final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of the dispute resolution process.” (Emphasis added.)

This subsection indicates that conflict with a final published NIGC regulation was a matter of sufficient importance to the parties to warrant listing among the authorized grounds for objection to a proposed statewide uniform regulation. CGCC-8 cannot conflict with a published NIGC regulation because the NIGC MICS have been held unenforceable. Additionally, by contrast, there is no mention of duplication in 8.4.1(e).

Further, while the Compact clearly states that a conflicting NIGC regulation is to govern pending conclusion of the dispute resolution process, one may logically infer that a readopted statewide uniform regulation which is allegedly unnecessary, unduly burdensome, or unduly discriminatory (or which allegedly has a flaw other than those matters specifically listed by the parties as grounds for objection) shall govern pending conclusion of the dispute resolution process.

7. FURTHER RESPONSE TO “COMPACT AMENDMENT” COMMENT

The Association’s Task Force Report asserts that the State does not have the power under Compact section 8.4 to supplement or interpret Compact provisions and that uniform statewide regulations are valid only if tribes consent to them. If the State desires to address the topic of minimum internal control standards, the Association asserts that the State’s only option is seek compact amendments.

The Commission believes that the 1999 Compact did not leave the State defenseless and paralyzed, that is, that the State has the ability under the Compact to ensure that the tribes adhere to minimum standards consistent with those formerly mandated by NIGC. There are others who also agree with the Commission.²³

²³ May 28, 2007 Copley News Service article by James P. Sweeney, “New Deals worth Billions to 5 Tribes,” quoting tribal attorney George Forman as stating:

“The state did not leave itself defenseless and paralyzed [under the 1999 Compact].”

“[Forman] said the state has the ability under the compact ‘to ensure that tribes adhere to (minimum standards) consistent with those mandated by the National Indian Gaming Commission.’ ”

In sharp contrast, a substantial number of the comments made in the Task Force Report, though phrased in different ways, basically assert that the Compact does not authorize the SGA to adopt any regulation concerning MICS, at least if the regulation contains mandates.

Indeed, one could reasonably conclude that the authors of the Report believe that the SGA simply has no authority under the Compact to adopt regulations. This "nullity theory" essentially postulates that while it might appear on the surface that the compact (section 8.0) expressly grants a substantial degree of rulemaking power to the SGA (subject to review in the dispute resolution process) for purpose of fostering "statewide uniformity of regulation of Class III gaming operations," on closer analysis, they assert, it becomes clear that the only option open to the State is to negotiate individual compact amendments with each tribe.

Though we respect this view, we assert that the proper procedure for any tribe which rejects the State's role in developing uniform statewide regulations under section 8.0 would be to seek an amendment to its compact deleting or revising section 8.0. For instance, the 2004 Coyote Valley compact and the 2007 Yurok Compact both have a regulations section (section 9), but this section does not authorize the SGA to adopt uniform statewide regulations. Rather, those two compacts provide a process whereby the SGA may adopt a tribe-specific regulation.

Given the fundamental disagreement concerning the scope of SGA authority under the Compact to adopt a MICS regulation, CGCC staff has endeavored to ensure that CGCC-8 is drawn as narrowly as possible, while still protecting the integrity of tribal gaming.

8. CONCLUSION

In summary, CGCC-8 is an attempt to cooperatively develop reasonable standards and a protocol for increased state independent oversight of tribal gaming operations, in light of the *CRIT* decision. The adoption of the NIGC MICS as a baseline accomplishes a number of purposes, including use of a standard with which tribes have experience and are comfortable using. Increased state oversight will accomplish a number of worthwhile goals. It will give the State a basis for emphasizing publicly what has been an ongoing assumption: that many tribal gaming operations are run with efficiency and integrity. Further, it will allow the State to better ensure protection of its citizens who frequent tribal casinos and guarantee that its interest in the revenue sharing that is part of each compact is secure.

This article is included as Exhibit "E."

PART II. ASSOCIATION'S OBJECTIONS

1. AUTHORITY TO PROMULGATE MICS REGULATION

Regarding the legal authority of CGCC-8, the Commission received comments from Dry Creek, Paskenta, Rincon, Rumsey, Torres Martinez, and the Task Force. These comments contended that only a TGA is vested with the authority to promulgate and enforce rules and that the Association cannot displace a tribe's sovereign governmental powers. Comments argued that there was no authority for CGCC-8 in the compact.

Compact section 7.4.4 makes clear the SGA's broad right of access to documents, equipment and facilities:

"Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

It is clear that the SGA may promulgate regulations concerning matters encompassed by Sections 6.0, 7.0 and 8.0 in order to foster uniformity of regulation of Class III gaming operations throughout the state. Further, it is clear that notwithstanding that the tribes have primary responsibility for administering and enforcing the Compact's regulatory requirements, the SGA has the right to inspect the Gaming Facility and Gaming Operation or Facility records and, notwithstanding any other provision of the Compact, the SGA is to be allowed access to papers, equipment and places where such access is reasonably necessary to ensure compliance with the Compact.

CGCC-8 is a regulation authorized under Section 8.4 to ensure uniformity in the regulation of matters encompassed by Sections 6.0, 7.0 and 8.0. It is an exercise of the SGA's authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact.

See the Part 1 of this document, Section I.D., above, for further discussion of the State Gaming Agency's authority.

Some comments referred to the 2006 compact amendments, contending that the existence of a MICS-related section in the amendments proved that the State is aware of the lack of authority to implement MICS under the 1999 Compact. The four Memoranda of Agreement and one Letter of Agreement have the following language:

Section 104. Minimum Internal Control Standards (MICS).

Sec. 104.1 So long as the National Indian Gaming Commission does not have the authority to adopt, enforce, and audit minimum internal control standards (MICS) for class III gaming devices and facilities and the State Gaming Agency does not have regulations in effect that contain internal control standards that are no less stringent

than those contained in the MICS of the National Indian Gaming Commission, the Tribe agrees to maintain in full force and effect and implement minimum internal control standards for class III gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the National Indian Gaming Commission (25 C.F.R. 542), as they existed on October 19, 2006, and, during that period, to submit to enforcement and auditing by the State Gaming Agency to ensure that the Tribe is in compliance with such MICS. This section is intended to supplement the Amended Compact and is not intended to supersede or negate any provision of the Amended Compact or any regulation that may be adopted by the State Gaming Agency.

These agreements contemplate that state regulations will contain MICS, but the agreements are merely an interim measure to keep the NIGC MICS as the standard until the state regulation (CGCC-8) is promulgated. There is no language indicating that this provision required additional authority be granted to the State. In fact section 104.1 specifically provides that:

“[t]his section is intended to supplement the Amended Compact and is not intended to supersede or negate any provision of the Amended Compact or any regulation that may be adopted by the State gaming Agency.”

Further, all compacts have an express provision that makes clear that "neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in this Compact of language that is present in another tribal-state compact shall be a factor in construing the terms of this Compact."²⁴

Some comments asserted that CGCC had no authority to conduct a full financial audit. CGCC-8 does not contemplate financial audits such as those found at 25 U.S.C. section 2710(b)(2)(C). In response to concerns raised by a number of tribes, the version of CGCC-8 approved by the CGCC (March 27, 2008) for consideration by the Association contained specific language eschewing such authority. In any event, CGCC later amended CGCC-8 subsection (h) to delete the term “full” and to restructure the subsection to clarify the intent of the regulation. CGCC-8 does not purport to and does not require financial audits be conducted by the SGA.

2. NEED FOR REGULATION

Comments were received asserting that there was no need for the State to adopt a regulation setting minimum internal control standards. (Rincon, Task Force.) Since *CRIT*²⁵ validated what many tribes had believed for years, that is, that the NIGC had no authority with regard to internal controls related to Class III gaming, the legal landscape never changed and tribes have been and continue to be self-regulating. The question has arisen as to what events have occurred which demonstrate that the State has a greater need for oversight. (Rincon, Task Force.)

²⁴ Compact Section 15.3.

²⁵ See Part 1, Section 3 above for further discussion of the *CRIT* decision.

The Commission believes that the *CRIT* court by deciding that NIGC did not have authority did not so much leave a "void" but rather clarified that Congress intended to leave Class III gaming regulation to the State and the tribes, including independent, non-tribal oversight of Class III gaming operations by the State. In response to widespread disagreement with that assertion and in response to language suggested by the Rumsey Rancheria, the Commission modified the Statement of Need and the Purpose section of CGCC-8 (subsection (a)) to reflect the other aspect of the need and purpose of the regulation: to provide an effective and uniform manner in which the SGA can conduct the compliance reviews contemplated in Compact Sections 7.4 and 7.4.4. The reviews include assuring tribal (and TGA) compliance with the requirements of Compact Sections 6.1 and 8.1 – 8.1.14.

The Commission agrees with the Task Force Report that the *CRIT* decision does not and cannot change the terms of the Compact. However, we disagree with the proposition that CGCC-8 attempts to amend the terms of the Compact. For reasons expressed in more detail in the section on Legal Authority, Part 1, Section 4 above, we believe that the adoption of CGCC-8 is well within the Commission's authority, as provided in the Compact.

The Commission listened to the comments throughout the Association process and deleted references to *CRIT* in CGCC-8 because it became apparent that the citations themselves were unnecessary, although the regulation itself is nonetheless a valid exercise of authority under the Compacts.

Comments also stated that tribes employ many persons as regulators and spend a great deal of money in self-regulation. (Task Force, Torres Martinez.) While no doubt true, that is not a reason for the State to not exercise its oversight authority given the outcome of protection to the integrity of the gaming operation and the need to assure gaming is conducted honestly and fairly. As explained above, compliance with the requirement that independent CPA testing occur, which measures the gaming operation's compliance with the tribe's internal control standards can be offset by performing the required yearly independent financial audits at the same time.

In the cases in which a tribe pays a flat fee²⁶ under amended Compacts, the Task Force report suggests that the State has no interest in securing its revenue share through the compliance reviews proposed in CGCC-8. There are, however, provisions of the MICS that are applicable even to a flat fee tribe. Proper accountability of the number of machines in operation is essential. The NIGC MICS contain detailed processes, which in themselves cause an accounting of the number of machines operated.²⁷ Further, the MICS contain standards relative to information technology that protect the integrity of the data produced.²⁸ Another MICS section relates to the preservation of records, which is essential to validate the tribe's assertion of machines operated.²⁹ Additionally, all those compacts implementing a flat fee system also contain unique compact obligations relating to gaming devices in which MICS are invaluable for

²⁶ There are only five such tribes.

²⁷ NIGC MICS, 25 CFR 542.13(h)(7), (10), (14) &(15); (m)

²⁸ 25 CFR 542.16(a), (b) & (f)

²⁹ 25 CFR 542.19(k)

the tribe to carrying out its obligations. In the broadest sense, the NIGC MICS facilitate the credible operation of the gaming activity, which interest goes beyond the State's revenue share concerns, and is fundamental to the integrity of the entire gaming operation. (See also Section 6., "Unnecessary," below.)

Finally, some comments suggested that adopting the NIGC MICS by way of ordinance and providing for NIGC oversight eliminates the need for CGCC-8. (See Part 1, Section 6, (iii and iv) above and 7, Duplicative, below, for further discussion of this suggested alternative.)

3. REGULATION OR COMPACT AMENDMENTS

Some comments argued that CGCC-8 was viewed as an unauthorized or premature renegotiation of the Compacts and that separate government-to-government negotiations should be undertaken pursuant to Section 12.0. (Dry Creek, Rincon, Task Force.) Memoranda of Agreement were suggested as a separate negotiation.

From the Commission's perspective, Compact negotiations are not needed because the SGA's compliance review authority is clearly established in the existing Compact. While individual agreements could accomplish the same purpose, a uniform regulation adopted in accordance with the Compact provisions specifically authorizing such a regulation is much more efficacious. It ensures uniformity and fairness in SGA compliance review and, by taking into account the scope of individual gaming operations, assures a level playing field for all tribes and prevents arbitrariness. Both the tribe and the State are sovereigns. Each has sovereignty the other must respect; each has the right to demand that the other sovereign comply with its responsibilities and obligations mutually agreed to in the Compact.

It was also suggested that CGCC-8 is inappropriately and unilaterally supplanting the TGA with the Commission and that, since MICS were not discussed in the Compacts, they cannot be added now.

CGCC-8 does not usurp the primary role of the TGA in establishing and enforcing tribal MICS. CGCC-8 establishes guidelines and procedures for the SGA in exercising its authority under Sections 7.4 and 7.4.4 to independently ensure that the TGAs are carrying out their responsibilities under the Compact; in short, to ensure compliance with the Compact. Indeed, Compact Section 7.4 makes clear that notwithstanding the primary regulatory and enforcement role of the TGA, the SGA may inspect the tribe's gaming facility and gaming operation or facility records with regard to Class III gaming, subject to conditions outlined in Sections 7.4.1 through 7.4.3:

"Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto . . . "

The Compact provides the State with the authority (and responsibility) to review tribal standards to ensure compliance with the Compact. Neither tribal regulatory activities, nor NIGC regulatory activities can take the place of State Compact authorized compliance reviews.

See also Part I. sections 4, Authority, and 6 (iv) (Alternatives).

4. “UNFAIRLY DISCRIMINATORY”

The Task Force Report and separate comments from Rumsey indicate that because the State has not yet imposed MICS requirements in cardrooms, CGCC-8 is “unfairly discriminatory”. See Part I, Section 6(ii), above, for a response to this comment.

5. “UNDULY BURDENSOME”

Comments from Cahuilla and the Task Force Report indicate that CGCC-8 is “unduly burdensome,” but that adoption of the NIGC MICS or annual audits would not pose a significant economic impact because TGAs have already adopted the NIGC MICS and perform annual audits pursuant to IGRA. Revisions to CGCC-8, including the variance provisions, have been made to streamline the process and lessen any impact.

The Commission reiterates that CGCC-8 has not and does not increase any obligation on the tribes related to audits beyond that already provided for in Section 8.1.8 of the Compact.

While any outside review necessarily entails the use of some gaming operation staff time and resources, the Commission is fully committed to working with individual TGAs through consultation on a case-by-case basis to conduct compliance reviews in the most efficient manner possible and therefore minimize any impact on tribal gaming operations, TGAs, and California taxpayers. The Commission’s ability to efficiently conduct meaningful compliance reviews depends to a large extent on the cooperation of individual TGAs and gaming operation personnel.

6. “UNNECESSARY”

Comments contended that CGCC-8 provides significant and unnecessary auditing by the Commission (Rincon) and that there has been no showing that tribes are conducting gaming without standards to justify the implementation of CGCC-8 (Cahuilla). Further, for those tribes that provide flat fee rather than percentages based upon net win, the State’s interest in securing its revenue share through compliance reviews is lessened (Task Force).

Even for those tribes which provide a flat fee, the State has an interest in ensuring, through compliance reviews, that the TGA regulations and internal controls protect the gambling operation from criminal involvement or corrupting influences and maintain fair and honest gaming by both the operator and players.^{30 31}

³⁰ Compact, Preamble, Paragraph A and Section 1(b).

The NIGC has identified many instances of non-compliance in the limited number of MICS compliance reviews that they have conducted. See Part I, Section 6 (vi).

7. DUPLICATIVE

The Task Force Report and separate comments from Rumsey, Paskenta, and Torres Martinez argue that NIGC requires external auditing and if tribes adopt ordinances containing NIGC enforcement of MICS, then CGCC-8 is “duplicative.”

As has been made clear at the Task Force meetings and as Chairman Shelton made clear at the March 27, 2008 Commission meeting, the CGCC has and will continue to make every effort to coordinate with the NIGC. However, SGA compliance reviews are not duplicative of NIGC reviews; they are a legitimate exercise of the State’s authority under the Compact.

As NIGC Chairman Philip Hogen’s April 17, 2008 written testimony to the Senate Indian Affairs Committee Oversight Hearing stated:

“To put the regulation of tribal gaming in proper context, we need to appreciate that the vast majority of the regulation of tribal gaming is done by the tribes themselves, with their tribal gaming commissions and regulatory authorities. In many instances, where tribes conduct Class III or casino gaming, state regulators also participate in the [regulatory] process. NIGC has a discrete role to play in this process and is only one partner in a team of regulators.” (Emphasis added.)

The SGA focus is Compact compliance; the NIGC has no interest in, nor authority with regard to Compact compliance. Further, to assert that because the NIGC has an oversight role with regard to internal controls the State should forbear from exercising its compliance review authority under the Compact is to ignore the State’s role as a sovereign Compact signatory.

The Task Force Report points to Governor Schwarzenegger’s letter of March 30, 2007 (attached as Exhibit “F”) to the Senate Committee on Indian Affairs, quoting the governor as follows: “[California’s] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate NIGC’s activities.”

CGCC-8 is not, as the Task Force Report asserts, “entirely inconsistent” with the Governor’s message to the Senate Committee. In fact, it is not at all inconsistent. The fact that tribes have already put into place standards “at least as stringent as NIGC MICS” does not make CGCC-8 duplicative. Nor does the fact that a number of tribes have changed their gaming ordinances or entered into agreements purporting to grant the NIGC “authority” to monitor and enforce tribal

³¹ Even tribes with flat fee payments revert back to the net win calculation after 18 years of lump sum payments to the State. The flat fee payments are based on so much per machine, and thus the number of machines is important, and the MICS provide a valuable tool for the state to verify the accuracy of the amount paid.

compliance with those standards. The loss of such authority as a result of the *CRIT* decision highlighted the need for the State to step into compliance oversight. The authority for such oversight has always existed in the Compact -- it was just not exercised.

As indicated above, CGCC-8 does not require financial audits, so there is no duplication of auditing or conflict with Sections 5.3(c) or (d) other than what is already required under Compact section 8.1.8.

As stated above, CGCC-8 does not duplicate TGA regulatory enforcement, as suggested by comments from the Task Force Report, Cahuilla, Paskenta, and Torres Martinez.

The Commission expects that the vast majority of gaming tribes have standards in place and run their gaming operation according to those standards in compliance with the Compact. However, that does not alter the State's clear authority to conduct compliance reviews. Further, from the perspective of the SGA, the State not only has the authority to conduct compliance reviews, but the responsibility as well. The public as well as the legislative and executive branches of state government have made that clear. CGCC-8 simply outlines a process and sets a uniform benchmark for such reviews. The State has not arrogated to itself any authority not already found in the Compact.

8. SPECIFIC REGULATORY LANGUAGE COMMENTS

Ralph LePera, an attorney representing Bishop Paiute, sent in a letter in May 2008 noting that:

"Subsection (i) states that when on-site compliance review is conducted, the 'Tribe shall have sixty days . . . to respond to the CGCC draft report.' This appears to mean that all responses, whether accepting or rejecting the report, need to be received within 60 days. However, subsection (j) as written causes some confusion. Subsection (j) states 'If, after a 60 day review, the Tribe contests the draft report' This seems to contradict subsection (i) which says that all responses must be made within 60 days. Is subsection (j) an exception to the 60 day rule set out in (i)?"

Mr. LePera also commented that the second line of subsection (j) states:

"Upon notice by the Tribe of a disagreement and failure to resolve differences, the CGCC staff will finalize and deliver the report.' What if the Tribe never gives notice of a disagreement and failure to resolve differences? Does this mean that as long as the Tribe does not formally provide a notice of disagreement and failure to resolve differences that the report will be in so-called limbo?"

Subsection (i) and (j) has been revised to avoid any confusion and to clarify the process, and to more clearly distinguish between the *draft* Compliance Review Report and the *final* Compliance Review Report, in subsections (i) (1) and (2).

9. ALTERNATIVES TO MICS REGULATION

Tribal Task Force members proposed alternative language that contemplated either waiting for new federal authority for the NIGC or eliminating SGA compliance review via CGCC-8 if the tribe and the NIGC agreed to NIGC oversight through either MOU/MOAs or changes to Tribal gaming ordinances. Neither of these approaches takes into account the State's sovereignty as a signatory to the Compact. The SGA authority to inspect the gaming facility and all gaming operation or facility records relating thereto (Section 7.4) and the SGA's authority to be granted access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with the Compact (Section 7.4.4) are derived from the Compact. They are not and cannot be made dependent upon the statutory authority of the NIGC, or upon other arrangements between the NIGC and individual tribes. The State's authority is not secondary to the federal government's non-existent authority over Class III gaming operations and the State's is not obliged to delegate its authority to NIGC.

Dry Creek suggested a non-adversarial dispute resolution process. Changes to subsection (n) of CGCC-8 address those concerns by clarifying that the tribe has the option of seeking review by the full Commission before invoking the compact dispute resolution process. As CGCC-8 derives its authority from the Compact, the dispute resolution process in CGCC-8 follows that found in the Compact. However, there is nothing in CGCC-8 that would *preclude* the State and any tribe from agreeing to binding arbitration on a case-by-case basis, depending on the facts and circumstances of the dispute.

One alternative suggested (Elk Valley, Paskenta) was to follow the oral statement made on September 4, 2008 by the Attorney General/Bureau to individually consent to oversight. The Attorney General's suggestion is too vague, and it is unclear in what form the consent would come or how it would be enforceable and whose consent – the State of the NIGC?³² Dry Creek also suggests following a "safe harbor" approach by *recognizing rather than mandating* the NIGC MICS as a national standard.

CGCC-8 does *not* require any tribe to adopt the NIGC MICS in carrying out its responsibilities under Compact Sections 6 and 8. CGCC-8 requires that whatever internal controls standards a tribe may choose to adopt meet or exceed the requirements of the NIGC MICS. Further, CGCC-8 provides for variances (subsection (l)) and for consultation between the SGA and individual tribes and the Association as a whole regarding the effect of changing technology on compliance matters (subsection (m)).

10. RESPONSE TO "SAFE HARBOR" ALTERNATIVE

Dry Creek Rancheria asserts that the State should reach statewide uniformity through cooperative action with the Association without mandating conduct or amending the compacts. The Tribe contends that an example of that is uniform regulation CGCC-2 related to

³² It also appears that this September 4, 2008 oral comment from the Attorney General/Department of Justice may have been superseded by the formal written comment dated September 29, 2008.

registration of qualified bondholders, which did not mandate that it be followed, but provided that if followed, the tribes and their bondholders would be deemed to be in compliance with the compact. Dry Creek Rancheria argues that this process, even though voluntary, provided complete assurance ("safe harbor") that preserved the regulatory integrity of those financings. However, the CGCC-2 example is not comparable to the CGCC-8 situation. First, CGCC-2 was agreed to because it substituted a process that was easier to accomplish than the more complicated requirements of the Compact. Although CGCC-2 does find that TGA shall be "deem[ed] to satisfy suitability standards of the Compact" if the applicant meets the requirements for registration under the regulation, it allows a more streamlined process for a determination of a Finding of Suitability for a Financial Source. By contrast, CGCC-8 is not relaxing a Compact requirement, but is rather imposing a uniform requirement and thus very different than what occurred with CGCC-2. Further, although Findings of Suitability for Financial Sources are important, the process dealt with in CGCC-2 is not integral to the process of protecting the integrity of gaming. The minimum internal controls of CGCC-8 are integral to gaming and cannot be voluntarily agreed to with no ability on the part of the State to ensure compliance.

11. RESPONSE TO (1) THE VOTE BY THE DEPARTMENT OF JUSTICE, BUREAU OF GAMBLING CONTROL AT THE SEPTEMBER 4, 2008 ASSOCIATION MEETING AND (2) THE FOLLOW-UP LETTER FROM INTERIM BUREAU CHIEF MATT CAMPOY, DATED SEPTEMBER 29, 2008

At the September 4, 2008 meeting, the Department of Justice, Bureau of Gambling Control voted:

"Yes to oppose the regulation CGCC-8 with the following comments:

- 1) We encourage tribes to consent to oversight; and
- 2) If the tribes are unwilling to consent, we would generally support the idea of the application of the federal standards without modifications."³³

This Bureau comment is too vague to permit an effective response. In what form would the consent come, with whom and in what kind of vehicle? How would it be enforceable and would the State need a waiver of sovereign immunity from each tribe? CGCC-8 follows the NIGC MICS as closely as possible, given that certain things simply cannot follow the federal procedure. For instance, it would be nonsensical to appeal a variance to the CGCC-8 MICS to the NIGC Chairman. The "safe-harbor" language mentioned by Paskenta is suggested by the September 29, 2008 follow-up letter from the Bureau of Gambling Control. In that letter the Bureau suggests the following language in (b)(1):

³³See the letter from Paskenta advocating this position also.

“In recognition of the importance of adequate internal controls to the State, the State Gaming Agency regards either of the following to be a material breach of the Compact:

- (A) An unreasonable failure to maintain written internal control standards that are at least as stringent as the MICS;
- (B) An unreasonable failure to afford the Bureau of gambling Control access to, and an opportunity to copy, the Tribe’s written internal control standards or amendments thereto when requested.”

That suggested language attaches a condition of unreasonableness to any alleged breach. That, in turn, suggests that there can be conditions under which failure to adopt conforming MICS may be reasonable. While it seems obvious that not every failure to adopt or implement conforming MICS would constitute a material breach (as, for example, when a TGA adopts MICS that fail to meet or exceed the NIGC MICS in minor, inconsequential respects), the use of the term "unreasonable" in subparagraphs (1) (A) and (B) of the Bureau letter is too nebulous to effectively differentiate a material from an immaterial breach. At what point on what scale would a failure stop being reasonable and become unreasonable? The classic purpose of an administrative regulation is to interpret or make specific a provision of the underlying enactment, typically a statute, but in the case of CGCC-8, the Compact. It does not seem prudent or productive to adopt a uniform regulation which contains such a combination of ambiguous terms, thus increasing the likelihood of litigation.

Moreover, whether the SGA regards "unreasonable" noncompliance as a material breach of the Compact is not dispositive. Only the Governor is empowered to determine the State's position and enforce tribal obligations under the Compacts. Therefore, the SGA's view concerning what is a reasonable or unreasonable violation of CGCC-8 would be subject to the Governor's review and thus the language is ineffective. Additionally, how could either condition be a material breach when the language suggested in paragraph (b) does not require the tribes to have MICS, but rather is just the SGA "construing" the provisions of the Compacts as imposing certain obligations on the tribes?

Further, the MICS are a subset of a larger regulatory universe that the TGAs are required to adopt and implement for casino operation. The suggested draft language deems the obligation for adopting "internal control standards" to be satisfied if the standards meet or exceed the NIGC standards for MICS. However, it is not clear that the NIGC MICS are the standards. The term "internal control standards" is not defined in the Bureau’s text and could be susceptible to more than one interpretation in the context of the Bureau's suggested language. On the one hand, it could be argued that the term is restricted to those subjects expressly covered by the NIGC MICS and CGCC-8. On the other hand, it could also be argued that it covers anything that could possibly come within the ordinary meaning of "internal control standards." From an interpretive standpoint, ordinary meaning is preferred by the courts; in the absence of clear intent to ascribe a limited technical meaning to language. When terms such as "internal control standards" are used in their limited technical sense, a definition should be added to the regulation to make clear the intended meaning. Otherwise a much broader interpretation could be applied in litigation.

If no minimum standards are set or defined, as can be inferred from the Bureau's letter, the issue of whether or not there is a material breach becomes even more difficult and could cause more problems than the "safe harbor" approach solves.

Finally, paragraph 2 of the Bureau's comment is surplusage because nothing in the regulation could be construed to preclude the State and a tribe from agreeing to binding arbitration under Compact section 9.2, but by adding this paragraph, it makes it appear as though arbitration is the preferred method, thus undermining Section 9.

**Detailed Response to Association Objections to
Minimum Internal Control Standards (MICS) (CGCC-8)**

List of Exhibits

- A.1 September 12, 2008 letter from Cahuilla Tribal Gaming Agency
- A.2 September 18, 2008 letter from Dry Creek Rancheria
- A.3 September 30, 2008 letter from Elk Valley Rancheria
- A.4 September 11, 2008 letter from Paskenta Band of Nomlaki Indians
- A.5 September 18, 2008 letter from Rincon Band of Luiseno Indians
- A.6 September 4, 2008 letter from Rumsey Indian Rancheria
- A.7 September 18, 2008 letter from Torres Martinez Gaming Commission
- A.8 September 29, 2008 letter from Department of Justice
- B. April 23, 2008 California Gambling Control Commission Response to Tribal Task Force Representative Final Report Statement of Need
RE: CGCC-8, Dated February 13, 2008
- C. Excerpts from the NIGC Strategic Plan FY 2009-2014
- D. Written remarks of NIGC Chairman Montie R. Deer before the Senate Committee on Indian Affairs, March 14, 2002
- E. May 28, 2007 Copley News Service article by James P. Sweeney
- F. March 30, 2007 letter from Governor Arnold Schwarzenegger to Byron Dorgan, Chairman and Craig Thomas, Ranking Member, Senate Committee on Indian Affairs



Cahuilla Tribal Gaming Agency

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Phone: (951) 763-1200 ext. 138 Fax: (951) 763-4938

2008 SEP 25 AM 11:05

September 12, 2007

Evelyn Matteucci
State of California Gambling Control Commission
2399 Gateway Oaks Dr #100
Sacramento, CA 95833-4231

Re: Objection to the CCGC-8 Regulation

Dear Mrs. Matteucci,

The Cahuilla Tribal Gaming Agency (CTGA) was present for the Tribal-State Association meeting held at Rolling Hills Casino, Corning, CA on September 4, 2008. During this meeting the California Gambling Control Commission (CGCC) submitted CGCC-8 Regulation to the Tribes of California for approval. This Regulation would impose a State Minimum Internal Control Standards (MICS) on the Tribes. The motion to approve such regulation was denied by the majority of the Tribal-State Association, the motion was carried as final action on this proposed Regulation.

The CTGA objects to the above-mentioned Regulation for the following reasons:

- According to the Indian Gaming Regulatory Act (IGRA) Indian Gaming is Regulated by three (3) sovereign's; Tribe, Federal, and State. As agreed upon in the Tribal/State Compact the Gaming Commission is the Primary Regulator, with the State of California fulfilling an active role in a limited over-site capacity.
- The CTGA has adopted Tribal Internal Controls, monitors, enforces industry standards to protect the assets, integrity, fairness, honesty, and Security of the Tribes Gaming Enterprise. Our controls are more stringent than the proposed Regulation by the State.
- Tribal State Compact Section 8.4.1 (e): The Tribe may object to a State Gaming Agency Regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.
- This Regulation duplicates the duty and responsibility of the Tribal Gaming Agency while creating an unnecessary financial Burdon on the tax payers of California.
- The State's justification for the proposed Regulation fails to clearly identify valid concerns and or lack of Regulation by the Tribe to warrant such proposal.

There is sufficient Tribal Gaming Regulatory Authority which was established by IGRA to adequately protect the Tribe. This Regulation is not needed, and imposes a variety of challenges with the State. The time, effort, and resources already allocated to this proposed Regulation, has caused an undue hardship on the Tribe. The proposed Regulation adds new processes outside of those authorized in our Tribal State Compact. We ask the CGCC to withdraw its pursuit of this Regulation.

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Cahuilla Tribal Gaming Agency

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Respectfully,

Andrew Hofstetter, Chairman

Joseph Salgado, Commissioner

Cc: Tribal Council, CTGA File

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**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**

September 18, 2008

Dean Shelton, Chairman
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

Re: Supplement to the September 4, 2008, Association Meeting Record

Dear Chairman Shelton:

The Dry Creek Rancheria Band of Pomo Indians ("Tribe") respectfully submits the following comments as a supplement to the record of the Tribal-State Association ("Association") meeting held on September 4, 2008, during which CGCC-8 was disapproved by the Association. We note that the disapproval of CGCC-8 was based primarily on the objections raised in the Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8, dated February 13, 2008 ("Taskforce Final Report"). We note further that during the September 4th meeting, a motion was approved to leave the meeting record open for fourteen (14) days to allow tribes to submit written comments to supplement the objections made in the Taskforce Final Report. These supplemental comments are to be considered as part of the comments of the Association in accordance with that motion, as well as individual comments of the Tribe's gaming regulatory agency for general purposes. It is with this intent and understanding that we provide the following comments.

One of the key reasons that the Tribe voted against the passage of CGCC-8 was that, by mandating compliance with specific rules like the NIGC's Minimum Internal Control Standards ("MICS"), it purported to impose a duty and consequence on the Tribe that was in excess of what had been agreed upon in its compact. Most of the compacts that are now in effect, including the Tribe's compact (which, like approximately 57 other compacts, was entered into in 1999 and still constitutes the most prevalent form of compact model today within the state), contains no reference to the MICS. The objection is not with the standard itself, but the manner in which CGCC-8 attempts to mandate that it and various implementing rules be followed by the Tribe. For example, Section (b) provides that "[e]ach Tribal Gaming Agency (TGA) shall maintain" and Section (c) provides that "[e]ach Tribe shall implement and maintain"

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The extent to which the Tribe is placed under any duty to the State with regard to its gaming activities is solely a matter of federal law, as embodied in IGRA. The means for sharing regulatory responsibilities is through a compact. 25 U.S.C. §2710. We do not believe that any action by the Association, which is defined in Section 2.2 of the Compact, was or could have been intended to displace a tribe's sovereign governmental powers or to subordinate those powers to those of the State, even through agreement or majority vote of the Association. *Indeed, specific regulatory duties are placed directly on the Tribe, which is to be the primary regulator.*

For example: Section 6 of the Compact sets forth specific rules with regard to the *licensing* of persons and entities who interact with the gaming operation, and Section 8 requires the Tribe to promulgate and enforce rules that ensure sound regulatory practices for a gaming operation, such as the *physical safety of patrons and employees* (Sec. 8.1.2), the *physical safeguarding of gaming facility assets* (Sec. 8.1.3), the *prevention of illegal activity*, including appropriate employee procedures and surveillance systems (Sec. 8.1.4), the *recording of incidents that deviate from normal operating procedures* (Sec. 8.1.5), the establishment of *procedures designed to permit detection of irregularities, theft, cheating, fraud or the like, "consistent with industry practice,"* (Sec. 8.1.6), the maintenance of a *barred patron process* (Sec. 8.1.7), the conduct of an *audit of the operation by an independent CPA firm* at least annually in accordance with industry practices for auditing casinos (Sec. 8.1.8), adoption of *rules and regulation for each game* (Sec. 8.1.9) and the *publication to the public of those rules, including rules that address the method of play, odds, prize determinations, betting limits, industry standard resolution of patron disputes* (Sec. 8.1.10), industry standard *closed circuit televised surveillance systems* (Sec. 8.1.11) and *cash cage processes* (Sec. 8.1.12), *minimum staff requirements* for each gaming activity (Sec. 8.1.13), and *technical standards and specifications for Gaming Devices that meet the industry standards* for such devices (Sec. 8.1.14), as well as following specific procedures with respect to the *transportation of gaming devices* (Sec. 7.4.5).

In addition, the Tribe must also adhere to specific requirements and standards with regard to *food and beverage handling, water quality, public health conditions, building and safety code adherence, insurance coverages, occupational health and safety conditions, employment discrimination, unemployment and workers compensation, advancement of credit, limitations on accepting certain kinds of public issued checks or vouchers, alcoholic beverage control, Bank Secrecy Act and Internal Revenue Code compliance, emergency service availability, labor relations, and off-reservation environmental impact mitigation processes.* See generally Sec. 10.0.

In sum, virtually every corner of casino regulation already is covered and mandated as a tribal duty in the Compact. What isn't specified in some instances, but could have been, is the particular manner in which the Tribe must accomplish each of these assignments. Instead, through negotiation and agreement in accordance with federal law, the Compact left those details to the sound discretion of the Tribe. The Compact thus specifies that the Tribe's gaming agency is primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and its federally mandated gaming ordinance (Sec. 2.20), and that the Tribal agency has the responsibility "to conduct on-site gaming regulation and control in order to enforce the terms of

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this Gaming Compact..." Sec. 7.1. Needless to say, however, the rules and processes must be effective in meeting the specified goals, and the State is granted access to the premises and inspection rights (Sec. 7.4.3), including access to gaming operation papers, books, records, equipment, or places "where such access is reasonably necessary to ensure compliance with this Compact." Sec. 7.4.4.

The question here is thus whether the creation of regulations approved either by the Association or unilaterally by the State may be used, as CGCC-8 suggests, as a vehicle to amend each tribe's individual compact without its express agreement, through the sovereign process of each Tribe, to amend its compact to require it to abide by the proposed regulation's specific regulatory duties. We do not believe that our Compact so provides, and that CGCC-8's attempt to do so violates the Compact and state and federal law, and on that basis we objected to the adoption of that purported regulation as written.

Nevertheless, we respectfully suggest that other means for achieving sound statewide regulatory standards consistent with the Compacts, and particularly through the use of the Association process, exist and should be considered. These views are ours alone, however, and should not be construed as being submitted on behalf of any other tribe or even necessarily echoing their views.

Compact Section 8.4 contemplates the promulgation of regulations intended to "*foster* statewide uniformity of Class III gaming operations throughout the state [emphasis added]," as opposed to agreeing that there *must* be statewide uniformity. Section 8.4.1 therefore sets forth a cooperative process, through the Association, for drafting regulations that are presumably intended to reach that goal, as opposed to requiring the Tribe to abide by regulations which come out of that process, or that may be adopted unilaterally by the State. Were such an interpretation possible, it would effectively result in the Association or the State having the power to amend the Compact and subject the Tribe to State regulatory control. Nothing in the Compact creates that dynamic or opportunity. Indeed, the Compact has explicit dispute resolution provisions in the event that the State and Tribe disagree, which contradicts any notion that the State or even the other tribes, through the Association, can simply impose extra-Compact regulatory requirements on the Tribe without its consent.

But that does not mean that the Association process cannot be effective. A useful example of a successful attempt to reach statewide uniformity in tribal gaming through Association action without mandating conduct or amending the compacts is CGCC-2. That regulation sets forth a standard that both the State and tribes agreed could be followed in order to comply with the compacts' suitability standards for institutions engaged in bond and other complex financing transactions. The rule does not mandate that it be followed, but provides that if it is, the parties will be in compliance with the compact. Because it provides a practical and reasonable process that, even though voluntary, provides compliance assurance (i.e., a "safe harbor") that preserves the regulatory integrity of those financing transactions, it was acceptable to both the State and tribes. It has been in widespread use. Similarly, the fear (albeit unfounded) that there is a void in the regulation of tribal gaming in the absence of mandatory adherence to the federal MICS (the federal enforcement of which was placed in doubt by the CRIT decision) could be alleviated through acknowledgment by the Association that adherence to the MICS is a

means to meet the compact's regulatory requirements and providing a scheme that encourages, rather than mandates, its adoption and enforcement. The practicality of this suggestion is based on the following:

The federal NIGC MICS were created from several years of meetings and conferences in which federal and tribal gaming regulators met with each other and with the assistance of professionals from various disciplines in the gaming industry, including consultants affiliated with various gaming device laboratories with world-wide credibility in the gaming industry. The MICS thus reflect standards that many tribes and non-gaming jurisdictions already follow. They are not highly controversial in their own right, and thus their substance is not the issue.

In our own case, we have adopted the MICS as the *threshold* requirement for our own regulatory scheme and as the means to meet the generalized regulatory requirements in the Compact. We believe many other tribes within the State, and nationally, have done the same. Recognition of that fact and that doing so will provide certainty as to whether or not a tribe has promulgated the rules and regulations required under the compact, would encourage others to do so as well. If it did not, the worst case would simply be the status quo, so a failure to adopt the MICS under such a rule would not conflict with the compact and thus would not prejudice either the tribes' or State's rights.

If a regulation were proposed to the Association that, instead of mandating MICS compliance, merely declared that the MICS were viewed by the State and the tribes as a generally accepted means of compliance with the regulatory requirements in the compacts, our own opposition would be substantially diminished and perhaps eliminated (obviously the details are important, particularly in light of our and other tribes' sensitivity to the potential for usurping a tribe's sovereign power to negotiate for itself with respect to any amendment of the compact). A regulation that reflected a consensus that the MICS constitute a recognized standard by which compact compliance may be measured would encourage a tribe to incorporate the MICS into their own rules in order to remove any doubts about the acceptability and soundness of their rules. We submit that the removal of that uncertainty, coupled with the fact that so many of the tribes already follow the MICS, would result in a confirmation that the MICS are in fact in widespread use already, would provide a common baseline for determining compact compliance, and would thus accomplish the goal of fostering and implementing statewide uniformity.

Such a rule would also permit tribes to alter or vary the MICS to the extent necessary for individual circumstances¹ without creating a patchwork of inconsistent regulations, since it would provide a standard frame of reference against which a local alteration could be examined.

Finally, but importantly, we believe that to be effective, any such rule would have to include the availability of a voluntary process for resolving disputes regarding the adoption of and compliance with the MICS. Such a process would strive to avoid, whenever possible (but obviously not in the case of a true emergency), the severely adversarial nature of conflicts that can arise over such issues under the compacts, in which the issue is whether a tribe is in breach and subject to possible compact termination. The availability of an enforceable but alternative

¹ For example, for some small operations, some adaptation is necessary to avoid overkill, and thus the NIGC and most regulatory jurisdictions will consider such alterations.

dispute resolution process that is more in scale with the goal of obtaining effective and uniform regulation, provided the MICS are adopted by a tribe, would further encourage adherence to the MICS, and achieving such an alternative scheme would strengthen the role of the Association generally as a forum for discussing and resolving mutual regulatory concerns under the compacts.

Thank you for your consideration of these comments.



Harvey Hopkins, Chairman
Dry Creek Rancheria Band of Pomo Indians

Elk Valley
Rancheria,
California



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rancheria@elk-valley.com

September 30, 2008

California Gambling Control Commission
Attn: Evelyn Matteucci
2399 Gateway Oaks #100
Sacramento, California 95833

Re: CGCC-8 Comments

Dear Ms. Matteucci:

In furtherance of the September 4, 2008, Tribal-State Association meeting, the Elk Valley Rancheria, California provides the following initial comments.

The Elk Valley Rancheria, California, is a federally recognized Indian tribe ("Tribe") that signed the 1999 tribal-state compact. To date, the Tribe has not amended its tribal-state compact. The Tribe operates the Elk Valley Casino, which includes approximately 320 slot machines, nine (9) table games, and bingo. Pursuant to the express terms of its tribal-state compact, the Tribe does not pay any revenue to the Special Distribution Fund or to the Revenue Sharing Trust Fund.

Since March 2007 when the California Gambling Control Commission ("CGCC") notified California Indian tribes that had entered into tribal-state compacts that it intended to promulgate and adopt CGCC-8, Tribal representatives have participated in the various Tribal-State Association meetings and have periodically provided input regarding CGCC-8.

We understand that the CGCC seeks to promulgate and enforce CGCC-8 because of a perceived lack of national Minimum Internal Control Standards ("MICS") resulting from the court decisions in *Colorado River Indian Tribes v. National Indian Gaming Commission* ("NIGC").

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As you are aware, pursuant to the 1999 tribal-state compact, each individual tribe that entered into said tribal-state compact has primary regulatory authority over its tribal government gaming operation. The Tribe is no different. The Tribe responsibly regulates the Elk Valley Casino – as do other tribes in California. Further, in addition to the oversight provided by the CGCC and the Bureau of Gaming Control, the Tribe adopted provisions in its NIGC-approved Gaming Ordinance expressly providing for oversight and enforcement of the MICS by the NIGC.

In short, the Tribe disagrees with the CGCC's attempt to unilaterally seize new, unprecedented and unauthorized regulatory authority over tribal government gaming operations. Instead, the Tribe recommends that the CGCC adopt the Bureau of Gaming Control's position that California tribes should determine whether they individually: 1) wish to grant the State an oversight role; or 2) adopt the MICS, including appropriate enforcement authority.

The Tribe adopted the MICS and granted appropriate enforcement authority to the NIGC to enforce said standards. As such, the CGCC's stated rationale for adopting CGCC-8 is not supported in this instance. Likewise, CGCC-8, in large part, is contrary to the Tribe's tribal-state compact.

Based upon the foregoing, the Elk Valley Rancheria, California requests that the CGCC place appropriate conditions on the application of CGCC-8 to California gaming tribes and that those conditions be identical to the Bureau of Gambling Control's position, i.e., individual tribes may consent to State oversight; or 2) individual tribes take steps to ensure application of the federal MICS.

Thank you for your consideration.

Sincerely,



Dale A. Miller
Chairman

cc: Elk Valley Tribal Council
Elk Valley Tribal Gaming Commission
Office of Tribal Attorney

DM:bbd

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Paskenta Band of Nomlaki Indians

TRIBAL GAMING COMMISSION

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THEODORE PATA, Commission Chairman

JON PATA, Commission Vice Chairman

BRADIN PATA, Commissioner

September 11, 2008

California Tribal-State Association
 C/O Paskenta Band of Nomlaki Indians
 Tribal Gaming Commission
 2655 Barham Avenue
 Corning, California 96021

Re: Paskenta Band of Nomlaki Indians Tribal Gaming Commission's
 Comments in Support of Disapproval of CGCC-8

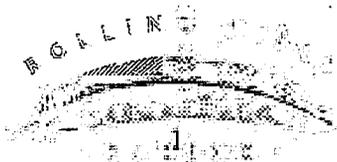
To the California Tribal-State Association:

The Paskenta Band of Nomlaki Indians Tribal Gaming Commission ("Paskenta TGC") submits the comments below as part of the minutes/record of the September 4, 2008 Tribal-State Association meeting. At the meeting, the Paskenta TGC voted to disapprove the California Gambling Control Commission's ("CGCC") proposed regulation CGCC-8 ("CGCC-8").

The Paskenta Band of Nomlaki Indians is a federally recognized Indian tribe ("Tribe") that entered into the 1999 tribal-state compact ("Compact"). The Tribe has not amended its Compact. The Tribe operates 773 gaming devices and 12 table games. Pursuant to the compact, the Tribe does not pay any revenue to the Special Distribution Fund. However, the Tribe contributes to the Revenue Trust Fund annual gaming device fees. Such payments, though, represent flat fees not based upon net win.

Under the Compact, the Paskenta TGC is the primary regulatory authority over the Tribal government gaming operation. In furtherance of its regulatory authority, the Paskenta TGC adopted by regulation the National Indian Gaming Commission ("NIGC") Minimum Internal Control Standards ("MICS") for Class III gaming prior to the opening of the Rolling Hills Casino. Subsequently, the Tribe amended its Gaming Ordinance to include the NIGC MICS as part of such Ordinance and to authorize the NIGC to monitor and enforce compliance with said standards. On May 13, 2008, the NIGC approved said amendment.

Pursuant to CGCC-8, the CGCC seeks to unilaterally impose regulatory standards upon the Tribe, authorize the CGCC to perform compliance reviews/audits of NIGC MICS and to review financials of the Tribe's gaming operations. The Tribe's Compact provides no authority for the CGCC to impose such standards and conditions on the Tribe. In addition, federal law provides no authority for such action.



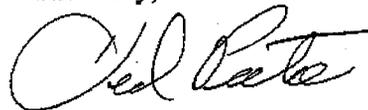
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In essence, CGCC-8 represents an amendment to the Tribe's compact that requires the Tribe's agreement. The Tribe does not agree to the amendment of its Compact under the terms and conditions set forth in CGCC-8. Further, the Tribe does not agree that Tribal-State discussions of CGCC-8 at Association meetings represent government-to-government negotiations for Compact amendment.

In part, the CGCC seeks to promulgate CGCC-8 because of a perceived lack of NIGC MICS resulting from the court decisions in *Colorado River Indian Tribes v. National Indian Gaming Commission*. As mentioned above, the NIGC MICS have been adopted and enforced in accordance with the Compact by the Paskenta TGC since the opening of the Rolling Hills Casino. Moreover, the NIGC approved the Tribe's amendment to its Gaming Ordinance to include NIGC MICS and NIGC oversight and enforcement authority of the Tribe's gaming operation. Based upon the action already taken by the Paskenta TGC and the Tribe, CGCC-8 is unnecessary, duplicative, and unduly burdensome.

Finally, at the meeting the Bureau of Gambling Control voted to disapprove CGCC-8 with the following recommendation: tribes should determine whether they individually: (1) wish to grant the state an oversight role; or (2) adopt the NIGC MICS, including appropriate enforcement authority. The Tribe recommends that the CGCC not readopt CGCC-8, or if it chooses to readopt the proposed regulation to place appropriate conditions on the application of CGCC-8 and that those conditions be identical to the Bureau of Gambling Control's position, i.e., individual tribes may consent to State oversight; or individual tribes take steps to ensure application of the NIGC MICS.

Sincerely,



Theodore Pata
Commission Chairman

cc: PBNI Tribal Council

Evelyn Matteucci
California Gambling Control Commission
2399 Gateway Oaks #100
Sacramento, California 95833

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Rincon Band of Luiseño Indians

PO Box 68 Valley Center, CA 92082 • (760) 749-1051 • Fax: (760) 749-8901



September 18, 2008

California Gambling Control Commission
2399 Gateway Oaks Drive #100
Sacramento, California 95833

Re: Opposition to CGCC-8

Members of the California Gambling Control Commission:

The Rincon Band of Luiseño Indians ("Rincon Band") is operating its Gaming Operation in compliance with the Rincon Gaming Commission's Minimum Internal Control Standards (which Minimum Internal Controls are no less stringent than those found at 25 CFR 542), and is subject to significant regulatory oversight and enforcement by the Rincon Gaming Commission. As a clear regulatory structure is currently in place and being enforced by the an independent regulatory agency for the Rincon Band's Gaming Operation, the Rincon Band opposes the effort by the CGCC to impose unwarranted and duplicative regulations in the form of CGCC-8 in the strongest of terms. In addition to adopting the Taskforce Report dated February 13, 2008 and opposing CGCC-8 for the purposes stated within, the Rincon Band opposes CGCC-8 for the following reasons:

1. If the State Intends to Pursue the Policy Objectives Behind CGCC-8, it Should Initiate Government to Government Negotiations.

Pursuant to the Compact between the State of California and the Rincon Band, the Tribal Gaming Agency ("TGA") is the primary regulator of all aspects of gaming, gaming operation and management of the Rincon Band's gaming operation. See Compact §§ 7.1, 7.2, 8.1 *see also* 25 U.S.C. 2701 et seq. The Tribal Gaming Agency (also "Rincon Gaming Commission") is solely vested with the authority and responsibility to promulgate and enforce rules and regulations regarding Minimum Internal Control Standards ("MICS"), and indeed the Rincon Band has adopted MICS which are enforced by the Rincon Gaming Commission. There is no language within the Compact, or elsewhere in federal law, which delegates promulgation and enforcement authority of MICS to the State Gaming Agency. It appears that the State may also hold this same position on this issue as the State has entered into Memorandums of Agreement ("MOA") with the Agua Caliente Band of Cahuilla Indians, Sycuan Band of Kumeyaay Indians, Pechanga Band of Luiseno Indians, Morongo Band of Mission Indians, and the San Manuel Band of Serrano Mission Indians which specifically provide each of those tribes submit to the enforcement of MICS by the State Gaming Agency. Should the State Gaming Agency wish to assume a regulatory role that is different that that described within the Compact, the appropriate avenue for such a change would be through government to government negotiations and an

Vernon Wright
Chairman

Bo Mazzetti
Vice-Chairman

Stephanie Spencer
Council Member

Gilbert Parada
Council Member

Charlie Kolb
Council Member

M-281

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amendment to the Compact or other mutual agreement. Should the State choose to engage the Rincon Band in government to government negotiations on the policy objectives behind CGCC-8, we suggest that the draft of CGCC-8 prepared by the Attorney Work Group clearly indicates our willingness to discuss this issue.

2. There is no Void in Regulation. The State has Shown no Need for this Regulation.

Even assuming for the sake of argument that the TGA is not the primary regulator of Indian gaming pursuant to the Indian Gaming Regulatory Act ("IGRA") and the clear terms of the Compact, the State has not shown any need to substantially modify the Compact to promulgate and enforce CGCC-8. The CRIT decision did not change the state of the law, nor did the CRIT decision vest additional authority within the State. See Colorado River Indian Tribes v. National Indian Gaming Commission, 451 F.3d 873 (D.C. Cir. 2006). The CRIT decision simply affirmed what we always knew – the NIGC does not have this authority – rather, regulatory authority is to be governed by the terms of the Compact, and under the Compact, the authority lies with the TGA. The CRIT decision did not change the law. The CRIT decision is simply being used by the CGCC as a reason to rewrite the Compact to minimize TGA authority and tribal sovereignty. There is no evidence that any TGA has reacted to the CRIT decision with an abandonment of internal controls.

As primary regulators of our gaming operation, the Rincon Gaming Commission takes its job very seriously and is vigilant in its comprehensive and strict regulation of the Gaming Operation. The Rincon Gaming Commission is staffed with experienced professionals with significant expertise in the regulation of Indian gaming. As further evidence of the Rincon Band's commitment to regulation of our Gaming Operation, the 2008 budget for our Tribal Gaming Agency is \$1,868,243, the 2008 budget for security and surveillance is \$3,663,869, and the 2008 budget for the Gaming Operation's compliance department is \$167,623. The total amount budgeted for gaming regulation and related costs for 2008 is \$5,699,735. Furthermore, in a survey conducted by the Rose Institute of State and Local Governments at Claremont McKenna College in 2007 stated that the estimated average annual tribal gaming agency budget for California Indian tribes was \$1,556,600 and the projected total amount spent on gaming regulation by Indian tribes in California is \$90,282,837 per year. Clearly tribal gaming in California heavily regulated.

As the Rincon Band retains the sole proprietary interest in our gaming operation, we have the most to lose in the event of any tribal MICS violations. Strong and appropriate tribal regulation by the Rincon TGA is beneficial to the Gaming Operation and the Rincon Band. Duplicative regulation in the form of CGCC-8 is not necessary or warranted. The Rincon Band does not oppose the idea of regulation in general. As the CGCC is well aware, our Gaming Operation is already subject to significant regulation by the NIGC, the TGA and pursuant to the express terms of the Compact. State regulation has not been absent as evidenced by the fact that the California Department of Justice - Bureau of Gambling Control has been conducting Compact compliance reviews of the Rincon Band's Gaming Operation since 2001. Through these years of compact compliance review by the Bureau, the Bureau has not alleged that the Rincon Band did not maintain internal controls or otherwise comply with Section 8.1 – 8.1.14 of

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the Compact. The absence of internal control and auditing violations is a testament to the effectiveness of the regulatory oversight of the Rincon Gaming Commission.

The Rincon Band opposes ceding any of the Rincon Band's hard fought and retained regulatory authority to the State without an accompanying cession of regulatory power from the State in the form of a Compact amendment.

3. The Compact does not Provide the CGCC Authority to Substantially Alter the Terms of the Compact.

The Compact agreed to by the Rincon Band and the State does not give the State Gaming Agency plenary power to modify the terms of the Compact at will. There is no provision within the Compact which states that the State Gaming Agency may promulgate and enforce the terms of CGCC-8. While the Compact provides the State with access to a Tribe's Gaming Facility and limited inspection rights of "papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance" with the Compact, there is no provision within the Compact which authorizes the State Gaming Agency to alter the terms of the Compact and enact and enforce regulations regarding MICS and auditing. See Compact §§ 7.0- 7.4.4.

Additionally, the argument that the NIGC MICS are an implicit and necessary part of the Compact also fails as the Compact does not include such language. The State was well aware of how to incorporate federal standards into the Compact as evidenced by Section 6.4.7 which requires a TGA to review and consider "all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees." Failure of the State not to include a reference to a specific requirement of 25 CFR 542 in the Compact does not provide the State Gaming Agency with authority to alter the express provisions of the Compact to include such standards.

Sections 7.0 and 8.0 clearly provide that the TGA, and not the State Gaming Agency, is vested with the authority to promulgate and enforce rules and regulations.

It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Compact Section 7.1.

The language in 7.1, and Sections 7.2 and 8.0, clearly state that it is the responsibility of the TGA to conduct on-site gaming regulation and ensure that tribal gaming meets the highest standards of regulation and internal controls. As tribal-state gaming compacts are governed by

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general principles of contract interpretation, the plain language and specific terms of the Compact must control. See *State of Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095, 1098, (9th Cir. 2006). As the plain language of the Compact vests the TGA with primary regulatory authority, attempted enactment of CGCC-8 by the State Gaming Agency which is contrary to the Compact's specific language would be without effect.

The closest the Compact comes to discussing enactment of the substance of CGCC-8 is in Section 8.1 where the Compact requires the Tribal Gaming Agency to enact rules and regulations regarding (and confirms that the TGA is vested with the primary authority for enforcement of such regulations) providing an audit of the Gaming Operation no less than annually by and independent certified public accountant, and internal controls. See Compact Section 8.1 – 8.1.14 see also Compact §§ 7.1, 7.2. The Compact clearly provides that the TGA is proper authority for promulgating and enforcing rules and regulations relating to auditing and internal controls. Without a specific delegation of authority within the Compact to provide that the State Gaming Agency may supercede tribal regulatory authority, then that authority must remain within the Tribal Gaming Agency. Implementation of CGCC-8 would render these express Compact provisions a nullity.

The proposed CGCC-8 circumvents the Compact amendment provisions of the existing Compact. It is a rewrite of sections 7 and 8, which designate the TGA as the entity establishing the minimum internal controls and enforcement of those controls, and replaces the TGA with the State Gaming Agency. The proposal supplants the TGA with the CGCC and as such is subject to the Compact amendment process, not the process for detailing baseline regulations identified in Section 8.4-8.4.1. As the substance of CGCC-8 is more properly the subject of the Compact amendment process, this is an issue that is more properly addressed in a government to government negotiation.

4. Additional Auditing and Compliance Review Requirements are Compact Amendments.

The auditing and compliance review provision of CGCC-8 provides for significant and unnecessary auditing by the CGCC. Such a new requirement is well beyond the scope of the Compact and would constitute a de facto amendment to the Compact. The authority to audit is one best discussed in the Compact amendment context. Currently the Rincon Band's Compact provides for auditing of those Gaming Operations which pay into the Special Distribution Fund ("SDF"). Compact § 5.3. The Rincon Band does not pay into the SDF as we did not operate any Gaming Devices prior to September 1, 1999. This concern appears to be resolved in more recent Compact amendments which provide for State auditing in the event the State receives a revenue share based upon the total "Net Win" of the Tribe. See 2007 Pechanga Compact Amendment at § 4.3.1. It is clear that it is helpful for the State to retain auditing authority when receiving a revenue share based upon Net Win. Based upon those recent Compact amendments, it is clear that the State is aware that inclusion of such authority within the Compact is necessary to ensure that such authority is retained. The fact that the Compact lacks broad auditing authority for the State Gaming Agency does not by itself serve as a source of authority for the State Gaming Agency to enact de facto Compact amendments on its own accord.

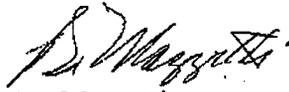
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Government to Government Discussions are Appropriate in this Instance.

The proper forum for State Gaming Agency authority over Minimum Internal Control Standards, auditing and additional enforcement authority is the Compact amendment process. Any effort other than a government to government negotiation for amendment of the Compacts is void ab initio.

The Rincon Band is encouraged by the fact that that State would like to see changes to the Compact. The Rincon Band would like to see changes to the Compact as well. We suggest that out of respect for the sovereignty of both the Tribe and the State that the CGCC encourage the Governor's office to meet with the Rincon Band to discuss amendments to our Compact which could be mutually beneficial. We do not feel that it is necessary for an additional state bureaucracy to be built up for the purpose of unnecessary, burdensome, and duplicative regulation, especially in these lean economic times. Nevertheless, the Rincon Band is always willing to consider any proposals that the State may have for amending the Compact.

Respectfully,



Bo Mazzetti
Vice Chairman
Rincon Band of Luiseño Indians

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Memorandum

TO• Tribal-State Association
 FROM• Rumsey Indian Rancheria of Wintun Indians of California
 DATE• September 4, 2008
 RE• Rumsey Band's Objections To CGCC-8

The Rumsey Band adopts in its entirety the Tribal-State Association's Regulatory Standards Taskforce February 13, 2008 Final Report regarding the California Gambling Control Commission's proposed regulation, CGCC-8. The Rumsey Band also raises the following specific objections to CGCC-8, and requests that the CGCC address these objections.

1. CGCC-8 IS AN ATTEMPT TO AMEND THE COMPACT THROUGH REGULATION

According to the CGCC's April 23, 2008 response to the Task Force Final Report, CGCC-8 "is an exercise of the [CGCC's] authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact." (Response, p. 6.) On their face, however, none of these Compact sections allow the CGCC to impose on the Rumsey Band or its Tribal Gaming Agency ("TGA") through CGCC-8 the requirement to adopt internal control standards at least as stringent as the federal Minimum Internal Control Standards ("MICS"), to submit financial audits to the CGCC, or to submit to MICS compliance reviews/audits by the CGCC. Indeed, no provision of the Compact between the State and the Rumsey Band anywhere even mentions MICS.

The Compacts the State signed with four Southern California tribes in 2006 proves that CGCC-8 is an improper Compact amendment. Those Compacts all included Memoranda of Agreement that imposed on the tribes at issue the obligation to maintain and implement MICS, just as CGCC-8 attempts to do. If the CGCC truly always had, as it claims, the power under pre-2006 Compacts to do all that CGCC-8 provides, it would not have had to include the Memoranda of Agreement in the 2006 Compacts.

Moreover, the Compact, at Section 8.1, expressly vests the TGA with the authority to promulgate rules governing the topics in Sections 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of the TGA's jurisdiction over these areas. Nothing in Section 8.1 confers jurisdiction on the State to enforce the TGA rules pertaining to the gaming operation.¹ As such, CGCC-8 is an attempt to adopt a regulation that materially alters express provisions of the Compact as it exists. This the CGCC may not do.

¹ Compact Section 7.4, which only authorizes the CGCC to inspect Cache Creek Casino's Class III records where reasonably necessary to ensure compliance with the Compact, cannot be read to wipe Section 8.1 out of existence. Section 7.4 simply allows the State to make sure rules governing the subjects of Sections 8.1.1 through 8.1.10 are in place, and to review whether the TGA has a mechanism in place to ensure enforcement of those rules.

If the State wishes to implement the provisions of CGCC-8, it must engage in government-to-government negotiations with the Rumsey Band (and every other tribe) to amend the Compact.

2. **THE RUMSEY BAND HAS SUBMITTED TO NIGC OVERSIGHT**

With respect to the Rumsey Band, at least, CGCC-8 is redundant, even if it were appropriate. On December 4, 2007, the Rumsey Tribal Council amended the Tribe's gaming ordinance to allow the NIGC to continue MICS enforcement, just as it had prior to the *Colorado River Indian Tribes v. NIGC* decision. The NIGC approved the amended ordinance on January 11, 2008. With the continued regulatory oversight from the NIGC, any claimed State authority is unnecessary, redundant and burdensome.

3. **THE RUMSEY BAND HAS SUBMITTED AN ALTERNATIVE, APPROPRIATE PROPOSAL**

Some months back, the Rumsey TGA submitted to the Tribal-State Association an alternative to CGCC-8. That proposal highlighted the authority the CGCC *actually has* under the Compact. Specifically, under the Rumsey proposal, each tribal gaming agency would maintain a System of Internal Controls ("SIC") that would equal or exceed the agency's established MICS. The CGCC, in turn, could ensure each tribe's compliance with the SIC by conducting compliance reviews of the tribe's gaming operation. The CGCC would then provide a draft written report of its findings to the tribe, which could either accept or dispute the findings. Disputes that could not be resolved informally or by the full CGCC would then be subject to the Compact dispute resolution process.

The Rumsey Band continues to believe that no additional regulation is necessary. If the CGCC insists on implementing a regulation, that prepared by Rumsey's TGA is the only proposal that complies with the Compact. In its April 23, 2008 response to the Task Force Report, the CGCC claims it integrated into CGCC-8 portions of the Rumsey proposal. Substantively speaking, that is not true. Moreover, the CGCC never provided the Rumsey TGA any formal comments or response to its proposal.

4. **THE CGCC TREATS TRIBES AND CARD ROOMS DIFFERENTLY**

The CGCC's April 23, 2008 response to the Task Force Report disputes the conclusion that CGCC-8 represents disparate treatment of card rooms and tribes by the CGCC. As proof, the CGCC cites the many pages of regulations it does have with respect to card rooms. The CGCC, however, does not dispute that it has no MICS in place for non-tribal gaming facilities in California.

The CGCC has plenary jurisdiction over non-tribal gaming facilities in California, yet does not impose on them MICS oversight. Tribal casinos such as Cache Creek Casino are subject to MICS oversight from tribal gaming agencies and the NIGC, and compact compliance oversight from the CGCC, yet the CGCC doggedly continues to assert its right to impose even further regulation on tribal casinos in the form of CGCC-8. It is hardly surprising that tribes view the CGCC's attempt to saddle them with CGCC-8 as discriminatory, and nothing in the CGCC's April 23 response to the Task Force Report demonstrates otherwise.



Torres Martinez Gaming Commission

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September 18, 2008

Evelyn Matteucci
State of California Gambling Control Commission
2399 Gateway Oaks Dr #100
Sacramento CA 95833-4231

Re: Objections to CGCC-8

Dear Mrs. Matteucci:

The Torres Martinez Gaming Agency (TMGA) was present for the September 4th Tribal-State Association meeting held at Rolling Hills Casino, Corning, CA. During this meeting the California Gambling Control Commission (CGCC) proposed CGCC-8 regulation to the gaming Tribes of California for approval to impose a State Minimal Internal Control Standard (MICS) on their tribal gaming enterprises. The motion to approve such regulation was denied by a majority vote of the Tribal-State Association that afternoon, followed by a motion made and passed (majority vote) to have a 14-day comment period for Tribes that want to present to the State their individual CGCC-8 regulation vote reasoning.

The TMGA recognizes and supports the importance of the CGCC's regulatory oversight per our State Compact; however it so happens that within this same Compact the TMGA is designated as primary regulator of our gaming facility and operation. Thus the TMGA believes the proposed CGCC-8 regulation means to create an unnecessary duplication of regulatory monitoring. In fact both the TMGA and the National Indian Gaming Commission (NIGC) have already been performing their regulatory roles above accepted standards. Conceptionally, we perceive the proposed CGCC-8 regulation as pairing both Minimum Internal Controls Standards (MICS) and Tribal Internal Control Standards (TICS) that the TMGA continues to adhere to since opening of our gaming facilities.

For the record the TMGA objects to the above-mentioned regulation for the following reasons:

- The State of California already plays a prominent regulatory role as agreed to in our gaming Compact.
- The TMGA has adopted Tribal Internal Controls, and monitors and enforces industry standard security regulations at our gaming facility that are, at minimum, as stringent as the federal standards proposed by the state.

Torres Martinez Gaming Commission

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- The NIGC, a federal regulatory agency, already audits and enforces compliance with our standards.
- The CGCC-8 regulation will duplicate the regulatory monitoring at our gaming facility and merely increases California's debt problem by creating more unnecessary costs for our Tribe and California state tax payers.

In conclusion, the TMGA has thoroughly considered the proposed CGCC-8 regulation and in our opinion it falls outside the scope of State authority to mandate such regulation over what already applies and works quite effectively and efficiently. The State's proposed regulation basically attempts to add new processes and procedures that are nowhere suggested or authorized in our Tribal gaming Compact.

It truly matters to us that this comment letter will assist State regulators in succinctly understanding our position and consideration due our sovereign status. Please contact me directly should you require further information or details on this important issue.

Sincerely,



Alex Sanchez
TMGC, Executive Director
Tribal-State Association, Delegate

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



2008 SEP 29 PM 4:43

DIVISION OF LAW ENFORCEMENT

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September 29, 2008

Mr. Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, California 95833-4231

RE: Minimum Internal Control Standards, CGCC-8

Dear Chairman Shelton:

As the law-enforcement component of the "State Gaming Agency" described in the tribal-state compacts, the Department of Justice is very concerned that tribal gaming operations in California be conducted in accordance with strict internal controls, and that those controls be enforced rigorously by the tribal gaming agencies having responsibility for them. Among other things, the purpose of the Compacts is "to Develop and implement a means of regulating Class III gaming . . . on the Tribe[s'] Indian lands to ensure it's fair and honest operation in accordance with [the Indian Gaming Regulatory Act]" (See Compacts, § 1.0(b).) By addressing matters such as cash handling and counting, documentation, game integrity, auditing, and surveillance, a gaming Tribe's maintenance and enforcement of internal controls furthers the State's legitimate interest in discouraging theft, embezzlement, and other criminal activity—conduct that is of proper concern to the Department of Justice in light of California's criminal-law jurisdiction on Indian lands. (18 U.S.C.A. §§ 1162, 1166(d); Compacts § 8.2.) And, of course, by virtue of its entitlement under the Compacts to share in gaming revenue (Compacts § 5.0), the State is properly interested in preventing loss of casino revenues to theft or embezzlement. It is, therefore, appropriate that the Commission should identify a system of internal controls, such as the Minimum Internal Control Standards (MICS) adopted by the National Indian Gaming Commission (NIGC; 25 C.F.R. Part 542) as the minimum standard against which California would measure the Tribes' compliance with their compact obligations.

Our opposition to the Commission's proposed CGCC-8 has not been about the need for internal controls in tribal casino operations or, indeed, about the merit of using the NIGC MICS as a minimally acceptable standard for internal controls. Our opposition has only been about the necessity for imposing a system of MICS on all tribal gaming operations in California when it appears that most gaming Tribes have either already adopted internal controls that are comparable to the NIGC MICS or that they are willing to do so as an exercise of their own sovereign discretion. Gaming Tribes are certainly no less concerned than is the State to prevent criminal activity within their casino operations and to safeguard against loss due to customer or

employee access to cash or cash equivalents. As you are aware, several Tribes from across the Nation, including Tribes from California, participated in the development of the NIGC MICS. (See 71 Fed. Reg. 27386 (May 11, 2006).)

Truly successful tribal-state regulation of Class III gaming in California can only be the result of genuinely cooperative efforts between the gaming Tribes and the State—efforts that reflect a recognition of the government-to-government relationship that necessarily informs joint regulation pursuant to compact. While we do not doubt the Commission's authority under the Compacts to establish uniform regulatory standards concerning internal controls, we do not believe that this authority need be exercised in the manner reflected in CGCC-8, nor do we believe that the public interest compels imposition of a regulatory standard in the manner proposed by that regulation.

Accordingly, we are suggesting that the Commission substitute the following language for what is presently in paragraph (b) of CGCC-8:

(b) The State Gaming Agency construes Sections 6.0, 7.0, and 8.0 of the Compacts to impose on tribes an obligation, among others, to adopt and maintain written internal control standards that apply to its operation and support of Class III gaming. The State Gaming Agency will deem a tribe to be in compliance with this obligation if the Tribal Gaming Agency (TGA) demonstrates that it has adopted and maintains written internal control standards that equal or exceed the Minimum Internal Control Standards set forth at 25 C.F.R. Part 542 (as in effect on October 1, 2006, as may be amended from time-to-time) (hereafter MICS).

(1) In recognition of the importance of adequate internal controls to the State, the State Gaming Agency regards either of the following to be a material breach of the Compact:

(A) An unreasonable failure to maintain written internal control standards that are at least as stringent as the MICS;

(B) An unreasonable failure to afford the Bureau of Gambling Control access to, and an opportunity to copy, the Tribe's written internal control standards or amendments thereto when requested.

(2) Nothing in subparagraph (1) should be construed to preclude the State and a Tribe from agreeing to binding arbitration as the means for deciding whether a Tribe's internal controls are at least as rigorous as the MICS.

In our view, this amendment would provide the Commission with a standard by which to measure a Tribe's compliance with the obligation to adopt adequate internal controls, while, at the same time, preserving the government-to-government relationship and emphasizing the importance of internal controls to the State.

Under Section 11.2.1 of the Compacts, the State may unilaterally terminate the agreement

MICS, CGCC-8
September 29, 2008
Page 3

upon a judicial determination that the tribe is in material breach. Maintenance and enforcement of an adequate system of internal controls by tribal gaming agencies is an essential part of preserving a casino operation free from criminal activity. The State has a right under the Compacts not only to assure itself that Tribes are meeting their part of the bargain in this critical area of regulation, but also the right to treat unreasonable non-compliance as a material breach.

Thank you for your consideration.

Sincerely,



MATTHEW J. CAMPOY
Interim Chief
Department of Justice
Bureau of Gambling Control

For EDMUND G. BROWN JR.
Attorney General

**CALIFORNIA GAMBLING CONTROL COMMISSION RESPONSE TO TRIBAL
TASK FORCE REPRESENTATIVES FINAL REPORT STATEMENT OF NEED
RE: CGCC-8, DATED FEBRUARY 13, 2008.**

April 23, 2008

INTRODUCTION

On February 13, 2008, the State Gaming Agency (SGA) Association and Task Force representatives to the Association and Task Force meetings at which CGCC-8 was discussed were presented with a copy of the report entitled, "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8, February 13, 2008" (Report). While the SGA representatives provided verbal input regarding the matters covered in the Report during the Association and Task Force meetings involving CGCC-8, the actual drafting of the Report was accomplished by Tribal Task Force representatives and their counsel. Accordingly, this Response is intended to provide the Association with the views of the California Gambling Control Commission (Commission, CGCC) regarding the Report's assertions and to provide the Commission's position with regard to the issues discussed in the Report, including the Statement of Need. The headings below and their content respond to the headings and content in the Report.

At the outset, the Commission wishes to acknowledge the hard work and professionalism of the Tribal Task Force participants. CGCC-8 prompted an unprecedented response from tribal representatives and the sheer number of Task Force participants made the process arduous. Nevertheless, in spite of strongly held feelings about many aspects of CGCC-8, all parties acquitted themselves with professionalism. This Response is made in the same spirit.

STATEMENT OF NEED

The Draft Statement of Need alluded to the CRIT decision and its effect on oversight of Tribal Gaming by the NIGC. While the Commission continues to believe that the decision did indeed leave a void in independent, non-tribal oversight of Tribal Gaming regulation, in response to widespread disagreement with that assertion and in response to language suggested by the Rumsey Rancheria, the Commission modified the Statement and the Purpose section of CGCC-8 (CGCC-8 section (a)) to reflect the other aspect of the need and purpose of the regulation: to provide an effective and uniform manner in which the SGA can conduct the compliance reviews contemplated in Compact Sections 7.4 and 7.4.4. The reviews include assuring Tribal (and TGA) compliance with the requirements of Compact Sections 6.1 and 8.1 – 8.1.14.

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We agree with the Report that the CRIT decision does not and cannot change the terms of the Tribal-State Gaming Compact (Compact). However, we disagree that CGCC-8 attempts to amend the terms of the Compact. For reasons expressed in more detail in the section on Legal Authority, we believe the adoption of CGCC-8 is well within the Commission's authority, as provided in the Compact.

Moreover, while we agree with the repeated assertions of Tribal representatives that the NIGC MICS remain the applicable standards for tribal gaming operations in California, we reiterate that including the NIGC MICS as a baseline in CGCC-8 fosters the uniformity goals expressed in Compact Section 8.4 and facilitates the SGA's exercise of its compliance authority and responsibility found in Section 7 of the Compact. We also are constrained to point out that CGCC-8 does *not* require any tribe to adopt the NIGC MICS in carrying out its responsibilities under Sections 6 and 8. CGCC-8 requires that whatever MICS a Tribe may choose to adopt meet or exceed the requirements of the NIGC MICS. Further, CGCC-8 provides for variances (CGCC-8 section (l)) and for consultation between the SGA and individual tribes and the Association as a whole regarding the effect of changing technology on compliance matters (CGCC-8 section (m)).

Finally, we disagree with the Report's assertion that CGCC-8 provides for financial audits by the state. No such language was included in the draft upon which the Report was based and, in response to concerns raised by a number of Tribes, the version of CGCC-8 approved by the CGCC (March 27, 2008) for consideration by the Association contains specific language eschewing such authority. (CGCC-8 section (h).)

ECONOMIC IMPACT

First, as outlined above, the Commission reiterates that CGCC-8 has not and does not provide for an annual financial audit by the SGA.

Second, while any outside review must entail the use of some gaming operation staff resources, the SGA is dedicated to working with individual TGA's to minimize the impact of compliance reviews. We believe that through consultation with Tribal regulators on a case-by-case basis, the impact that such compliance reviews may have on individual gaming operations will be minimized. We are acutely aware that our ability to efficiently conduct meaningful compliance reviews depends to a large extent on the cooperation of individual TGA's and gaming operation personnel.

APPLICATION TO CARDROOMS

As stated in more detail below, the State's authority to promulgate CGCC-8 is found in the Compact. When the 1999 Compact was signed, the California Gambling Control Commission was not even in existence. For a number of

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years, the Commission's staffing levels were minimal and its focus with regard to regulations applicable to cardrooms was on the licensing process. Extensive regulations have been developed regarding licensing of owners, and key employees; work permits for other employees, registration of manufacturers and distributors, third party providers, the discipline process, emergency preparedness and evacuation, and responsible gambling; in addition to accounting and financial reporting regulations. Included in regulations currently pending in the formal Administrative Procedure Act rulemaking process are regulations pertaining to MICS for check cashing, extension of credit, automatic teller machines and abandoned property. MICS for drop and count procedures, cage requirements, security, and surveillance have been proposed to the cardroom industry in informal comment sessions and are pending the formal process. The Bureau of Gambling Control also has regulations regarding cardroom operation and the game authorization process.

The assertion that CGCC-8 represents a "discriminatory" approach to gaming regulations by the CGCC is unfounded. Commission and Bureau of Gambling Control cardroom regulations run some 130 pages, not including forms. The extent of the State's authority over cardrooms as demonstrated in the Gambling Control Act and the Discipline regulations compared to the division of authority between sovereign signatories to the Compact presents a stark comparison. Moreover, in contrast to the Report's assertions, CGCC-8 neither ignores the fact that California tribes follow the NIGC MICS – that assumption was implicit in the development of CGCC-8 – nor does the Commission "not respect the ability of tribal gaming agencies to enforce such standards." CGCC-8 is not discriminatory. It is an exercise of the State's compliance overview authority found in the Compact. The Compact is clear in providing that the SGA may inspect the gaming operation and associated documents to assure compliance with the Compact.

FOSTERING UNIFORMITY

The Report incorrectly conflates Tribal (and TGA) use of the NIGC MICS in carrying out regulatory responsibilities under the Compact with SGA review of Compact compliance. The Commission does not dispute the Report's assertion that gaming tribes played a major role in the development of the NIGC MICS, nor does the Commission dispute the Report's assertion that the NIGC MICS are the standard for California gaming tribes. On the contrary, those assertions were essential to the Commission decision to adopt the NIGC MICS as a baseline or bench mark for compliance review. The selection of a benchmark already employed by California's gaming tribes was seen as a way of avoiding arbitrariness in compliance reviews. The Commission reasoned that if Tribes in developing their own MICS used the NIGC MICS as a baseline, the use of the same baseline by the SGA assured uniformity of review and consistency with the uniformity goals of Compact Section 8.4.

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CGCC-8 does not require any Tribe to adopt the NIGC MICS. Nor does it seek to amend the Compact. The Compact sets out the areas for which Tribes and TGA's must develop internal controls and must ensure the gaming operation is run pursuant to those controls. (See Sections 6.1, 8.1 – 8.1.14.) CGCC-8 does not seek to expand, nor by its terms does it expand those Compact terms. It sets a benchmark for compliance review, a benchmark that the Tribes have repeatedly asserted they already use, and thus the industry standard for tribal gaming in California. Further, it is a benchmark that explicitly takes into consideration the size and scope of the gaming operation.

ALTERNATIVES TO CGCC-8

From the Commission's perspective, Compact negotiations are not called for because the SGA's compliance review authority is clearly established in the existing Compact. While individual agreements could accomplish the same purpose, a uniform regulation adopted in accordance with the Compact provisions specifically authorizing such regulations seems much more efficacious. It ensures uniformity and fairness in SGA compliance review and, by taking into account the scope of individual gaming operations, assures a level playing field for all tribes.

Tribal Task Force members also proposed alternative language that contemplated either waiting for new federal authority for the NIGC or eliminating SGA compliance review via CGCC-8 if the Tribe and the NIGC agreed to NIGC oversight through either MOU/MOA's or changes to Tribal gaming ordinances. Neither of these approaches takes into account the State's sovereignty as a signatory to the Compact. The State/SGA authority to inspect the gaming facility and all gaming operation or facility records relating thereto (Section 7.4) and the SGA's authority to be granted access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with the Compact (Section 7.4.4) are derived from the Compact. They are not and cannot be made dependent upon the statutory authority of the NIGC, or upon other arrangements between the NIGC and individual tribes.

Both the Tribe and the State are sovereigns. Each has sovereignty the other must respect; each has the right to demand that the other sovereign comply with its responsibilities and obligations mutually agreed to in the Compact.

ALTERNATIVE LANGUAGE TO CGCC-8

As the report indicates, there were two alternate language proposals submitted. However, the Commission representatives were repeatedly and pointedly reminded at Task Force meetings that neither of these proposals was agreed to by the tribal regulatory Task Force members as a group and that there were a number of Tribes whose opposition to CGCC-8 would not be changed by language changes. Nevertheless, the Commission adopted language from each

proposal. Much of the Purpose section of CGCC-8 (section (a)) is taken from the Rumsey proposal and the language in CGCC-8 section (f) regarding Agreed Upon Procedures Audits comes from the Attorney Work Group Proposal. Further, both the Attorney Work Group and Rumsey proposals adopt the NIGC MICS as a benchmark.

With regard to language inserting binding arbitration into the dispute resolution process, it has been the Commission's position that CGCC-8 derives its authority from the Compact and therefore, the dispute resolution process in CGCC-8 should follow that found in the Compact.

LEGAL AUTHORITY

It is the position of the Commission, as it has been throughout this process, that legal authority for CGCC-8 is firmly grounded in the Compact.

First, as a general proposition, the State, like the Tribe, has the right under the Compact to demand that the other signatory comply with the terms of the Compact. In fact, each signatory has waived sovereign immunity with regard to matters of Compact compliance. (See Sections 9.4 and 11.2.1(c).)

Second, Sections 8.4 and 8.4.1 clearly contemplate that the SGA may pass regulations regarding the Tribe's gaming operations in order to foster statewide uniformity of regulation of Class III gaming operations. Section 8.4 provides:

"In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1."

CGCC-8 is clearly such a regulation. It does not, as arguably it could, require the TGA to make its "rules, regulations, standards, specifications, and procedures regarding matters encompassed by Sections 6.0, 7.0, or 8.0 . . . consistent with regulations adopted by the State Gaming Agency;" (Section 8.4.1.) Instead, it establishes as a benchmark the industry standard for MICS, the NIGC MICS. It does not purport to require Tribes to adopt the NIGC MICS in whole or in part, (though throughout this process we have been repeatedly told that tribes have already adopted the NIGC MICS) but instead requires that whatever MICS each TGA adopts be equal to or more stringent than the NIGC MICS. The NIGC MICS were chosen as a benchmark because the Commission was repeatedly assured by gaming tribes that it was both the industry standard and the MICS of choice for California gaming tribes.

CGCC-8 does not purport to usurp the primary role of TGA's in establishing and enforcing tribal MICS. CGCC-8 establishes guidelines and procedures for the SGA in exercising its authority under Sections 7.4 and 7.4.4 to independently ensure that the TGA's are carrying out their responsibilities under the Compact; in short, to ensure compliance with the Compact. Indeed, Compact Section 7.4 makes clear that notwithstanding the primary regulation and enforcement role of the TGA, the SGA may inspect the Tribe's gaming facility and gaming operation or facility records with regard to Class III gaming, subject to conditions outlined in Sections 7.4.1 through 7.4.3:

"Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto"

Further Section 7.4.4 makes clear the SGA's broad right of access to documents, equipment and facilities:

"Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

Thus, it is clear that the SGA may promulgate regulations in respect to matters encompassed by Sections 6.0, 7.0 and 8.0 in order to foster statewide uniformity of regulation of Class III gaming operations throughout the state. Further, it is clear that notwithstanding that the Tribe's have primary responsibility for administering and enforcing the Compact's regulatory requirements, the SGA has the right to inspect the Gaming Facility and Gaming Operation or Facility records and, notwithstanding any other provision of the Compact, the SGA is to be allowed access to papers, equipment and places where such access is reasonably necessary to ensure compliance with the Compact.

CGCC-8 is a regulation authorized under Section 8.4 to ensure uniformity in the regulation of matters encompassed by Sections 6.0, 7.0 and 8.0. It is an exercise of the SGA's authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact. Thus is it not an "amendment" of the Compact nor does it change the terms of the Compact. It is not, by its language or intent, an attempt to limit or reduce the primary role of the TGA in the regulation and enforcement of Class III gaming.

DUPLICATIVE

The Report points to the Governor Schwarzenegger's letter of March 30, 2007 to the Senate Committee on Indian Affairs, quoting the governor as follows:

"[California's] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate NIGC's activities."

CGCC-8 is not, as the Report asserts, "entirely inconsistent" with the Governor's message to the Committee. In fact, it is not at all inconsistent. As has been made clear at the Task Force meetings and as Chairman Shelton has made clear at the March 27, 2008 Commission meeting, the CGCC has and will continue to make every effort to coordinate with the NIGC. However, SGA compliance reviews are not duplicative of NIGC reviews; they are a legitimate exercise of the State's authority under the Compact. As NIGC Chairman Philip Hogen's April 17, 2008 written testimony to the Senate Indian Affairs Committee Oversight Hearing Committee indicated: "To put the regulation of tribal gaming in proper context, we need to appreciate that the vast majority of the regulation of tribal gaming is done by the tribes themselves, with their tribal gaming commissions and regulatory authorities. In many instances, where tribes conduct Class III or casino gaming, state regulators also participate in the [regulatory] process. NIGC has a discrete role to play in this process and is only one partner in a team of regulators." The SGA focus is Compact compliance; the NIGC has no interest in, nor authority with regard to Compact compliance. Further, to assert that because the NIGC has an oversight role with regard to internal controls the State should forbear from exercising its compliance review authority under the Compact is to ignore the State's role as a sovereign Compact signatory.

The fact that tribes have already put into place standards "at least as stringent as NIGC MICS" does not make CGCC-8 duplicative. Nor does the fact that a number of Tribes have changed their gaming ordinances or entered into agreements purporting to grant the NIGC "authority" to monitor and enforce tribal compliance with those standards. The loss of such authority as a result of the CRIT decision brought focus on the need for State compliance oversight. The authority for such oversight has always existed in the Compact.

Finally, the Report's assertion that CGCC-8 contemplates financial audits such as those found at 25 U.S.C. section 2710(b)(2)(C) is unfounded. The Commission has consistently indicated that CGCC-8 was not designed to facilitate such audits, and language added to the March 2, 2008 version of CGCC-8 (CGCC-8, paragraph (h)) makes that explicit.

As stated on many occasions, the Compact provides the State with the authority (and responsibility) to review tribal standards to ensure compliance with the Compact. Neither tribal regulatory activities, nor NIGC regulatory activities displace or substitute for such State compliance reviews.

RECOMMENDATION

The Commission is well aware of the widespread and persistent opposition to the proposed CGCC-8 among many Task Force and Association members. Nevertheless, we ask that you re-consider these positions.

As we have stated on many occasions during this process, the Commission expects that the vast majority of gaming tribes have standards in place and run their gaming operation according to those standards in compliance with the Compact. However, that does not alter the State's clear authority to conduct compliance reviews. Further, from the perspective of the SGA, the State not only has the authority to conduct compliance reviews, but the responsibility as well. The public as well as the legislative and executive branches of state government have made that clear. CGCC-8 simply outlines a process and sets a uniform benchmark for such reviews. It does not arrogate to the State any authority not already found in the Compact. It does not prescribe specific standards. Rather, it sets a uniform benchmark for such standards; a benchmark that the Report asserts the tribes already employ.

The Commission fully realizes that any on-site review takes time and resources on the part of the tribal gaming operation and is fully committed to working with tribes to accomplish these reviews in the most efficient manner possible. Additionally, the Commission realizes that the efficacy of such reviews is dependent in large part on the cooperation of the tribes.

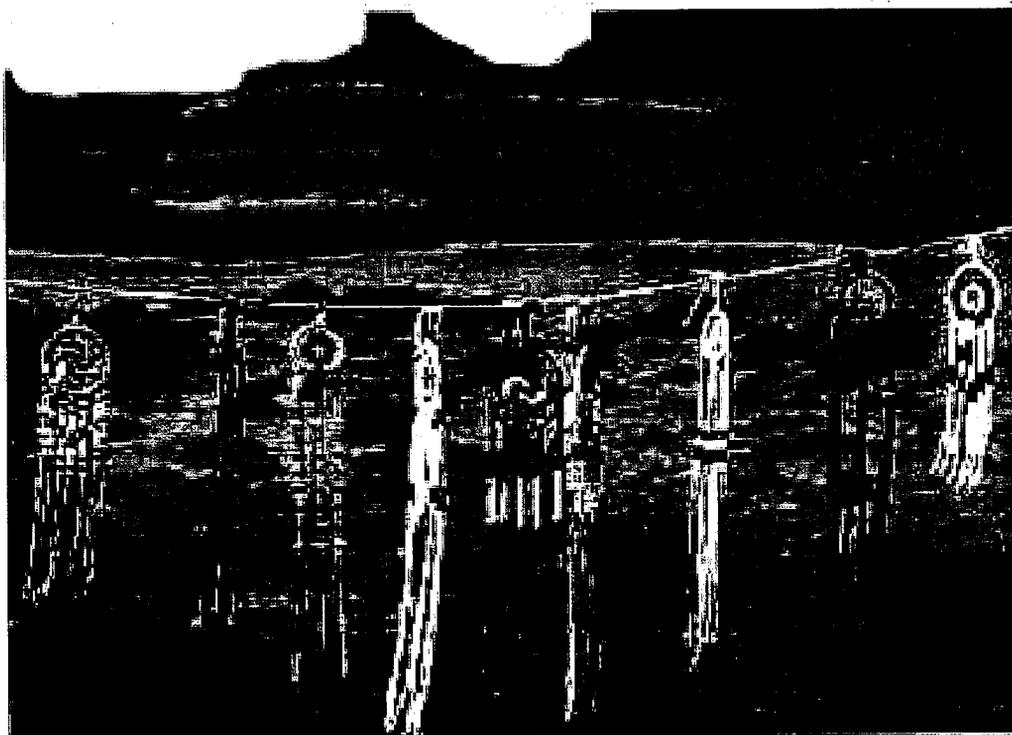
CGCC-8 is respectful of tribal sovereignty. It does not purport, nor does its language suggest, an intent to infringe on the primary regulatory role of the TGA. It establishes a process and benchmark designed to foster statewide uniformity of regulation of Class III gaming while at the same time recognizing individual tribal sovereignty and wide-ranging differences in the size and scope of gaming operations.

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National Indian Gaming Commission

**Government Performance and Results Act
Strategic Plan for Fiscal Years 2009 – 2014**



OVERVIEW

The Commission

The National Indian Gaming Commission ("Commission") is an independent regulatory agency of the United States established pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). The Commission was created to fulfill the mandates of IGRA of fostering tribal economic development. The Commission became operational in 1993, and is comprised of a Chairman and two Commissioners, each of whom are appointed to three-year terms.

The Commission establishes policy, oversees the agency, and is responsible for carrying out the duties assigned to it by IGRA. The Commission is authorized to: conduct investigations; undertake enforcement actions, including the issuance of notices of violation and closure orders, and the assessment of civil fines; review and approve management contracts; and issue such regulations as are necessary to meet its responsibilities under IGRA.

The Commission provides Federal oversight to approximately 443 tribally-owned, operated, or licensed gaming establishments operating in 29 states. The Commission maintains its headquarters in Washington, D.C., and has five regional offices and four satellite offices. The Commission established its regional structure to increase effectiveness and improve the level and quality of services that it provides to tribal gaming regulatory authorities. The regional offices are vital to executing the Commission's statutory responsibilities and securing industry compliance with IGRA. The Commission's efficiency and effectiveness have improved as a result of locating auditors and investigators geographically closer to Indian gaming facilities, as regular visits enable better oversight of tribal compliance with regulations and allows for timely intervention where warranted. In addition to auditing and investigative activities, the Commission field staff provides technical assistance, education, and training to promote a better understanding of gaming controls within the regulated industry, and to enhance cooperation and compliance. Further, the Commission serves as a clearinghouse for vital information sharing between the tribes, Federal agencies, and the states and other stakeholders, such as law enforcement and public safety agencies.

The Indian Gaming Regulatory Act of 1988

The rise of tribal government-sponsored gaming dates back to the late 1970's when a number of tribes established bingo operations as a means of raising revenues to fund tribal government operations. At approximately the same time, a number of state governments were also exploring the potential for increasing state revenues through state-sponsored gaming. By the mid-1980's, a number of states had authorized charitable gaming, and some were sponsoring state-operated lotteries.

Although government-sponsored gaming was an issue of mutual interest, tribal and state governments soon found themselves at odds over Indian gaming. The debate centered on

VISION

An Indian gaming industry in which Indian tribes are the primary beneficiaries of gaming revenues; gaming is conducted fairly and honestly by both operators and players; and tribes and gaming operations are free from organized crime and other corrupting influences.

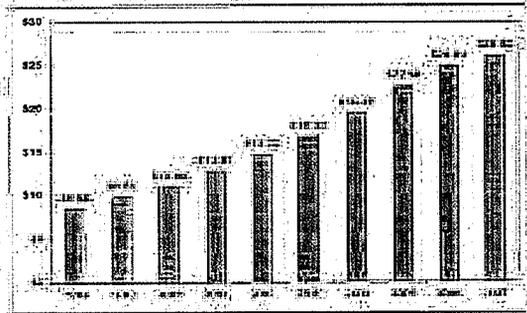
MISSION

To effectively monitor and participate in the regulation of Indian gaming pursuant to the Indian Gaming Regulatory Act in order to promote the integrity of the Indian gaming industry.

About the Vision and Mission

Indian tribes as the primary beneficiaries of gaming revenues...

Indian gaming revenues have grown at a rapid rate since IGRA was enacted in 1988. The most recent totals for Indian gaming revenue for 2007 stood at over \$26 billion. With these increased resources, tribes have been able to strengthen tribal governments, better provide for the general welfare of their respective tribal members, reinvest in the expansion of gaming facilities, and diversify into other economic growth opportunities. As this economic development and prosperity continues and expands to include a broader number of tribes and tribal members throughout the United States, the Commission intends to ensure such economic development benefits the participating tribes.



Growth of Indian Gaming Revenues (in Billions)

Gaming conducted fairly and honestly by both operators and players...

In the past, gambling and casino-style gaming has been highly susceptible to corrupt and dishonest operators and patrons. The fast-paced, cash intensive nature of casinos has often proven to attract those who would violate the rules and the law in order to realize a quick payout. Fortunately, the gaming industry, along with Federal and local law enforcement, has over the past several decades developed fervent policies and procedures to prevent cheating and fraud. IGRA envisions and enables the Commission to utilize these proven techniques to maintain the integrity of gaming as it has expanded to Indian lands.

Objective 1.1: Effectively monitor and enforce Indian gaming laws and regulations.

Monitoring and enforcing gaming laws and regulations is an essential function of the Commission. The Commission also works with other Federal agencies to ensure the integrity of the Indian gaming industry. In the past, tribes and their members have been subjected to public corruption investigations, prosecutions and fines for a variety of gaming-related offenses including (but not limited to):

- misappropriation of Indian gaming revenues, or unlawful receipt of funds from gaming contractors;
- internal theft or embezzlement of funds in Indian gaming operations; and
- tax-related violations for not reporting gambling winnings, and for non-compliance with the Title 31 money laundering statutes.

In addition, tribes have been subjected to numerous findings and enforcement actions by the Commission including:

- operational compliance audits that have resulted in hundreds of findings of non-compliance with required minimum internal control standards relative to cash handling and revenue accountability; and
- the issuance of numerous notices of violations, facility closure orders, and the imposition of substantial monetary fines totaling millions of dollars.

These findings and enforcement actions directly affect the profitability of the Indian gaming operation, and in relation to our mission, the integrity of the Indian gaming industry.

Means and Strategies for Achieving Objective 1.1

The Commission will utilize three strategies in order to effectively monitor and enforce gaming laws and regulations.

First, the Commission will ensure that tribes meet the statutory prerequisites to conduct gaming under IGRA by making timely determinations on tribal gaming ordinances, management contracts, and other statutorily-required activities.

Second, the Commission will conduct monitoring activities of Indian gaming operations in a uniform and consistent manner. Routine site visits will consist of compliance reviews and the use of standardized audit checklists. The Commission will, through its various field offices, develop and maintain positive working relationships with tribal gaming regulatory authorities. The Commission will also publish annual compliance reports and annual Indian gaming revenue reports.

Third, the Commission will conduct prudent regulatory enforcement actions as necessary. Working with tribal gaming regulatory authorities, we will provide advice and assistance,

Written Remarks of NIGC Chairman Montie R. Deer
Before the Senate Committee on Indian Affairs
March 14, 2002

Mr. Chairman, Mr. Vice Chairman and members of the Committee. Thank you for this opportunity to report to you on the work of the National Indian Gaming Commission. As you are no doubt aware, the other Commission members and I are approaching the end of our terms, and we would like to say that we appreciate the interest and support that the Commission has received from this Committee during our tenures.

My remarks can be summarized by saying simply that the tremendous growth in the Indian gaming industry, particularly in light of the recent, dynamic changes in California, have strained our ability to keep pace.

In 1988, when the Commission was created, Indian gaming was Indian bingo. Today, it is a major industry producing revenues on par with Nevada and New Jersey combined. While the Indian gaming industry has increased more than one hundred fold, the Commission in vast contrast, has barely doubled from its start-up capacity. It is becoming increasingly difficult for the Commission effectively to carry out its requisite functions under the Indian Gaming Regulatory Act, a situation that is both frustrating and potentially damaging to the industry as a whole. A solid, effective Commission is an important ingredient in the health of this industry.

To put the Commission's resource needs in proper perspective, Mr. Chairman, please note that there are more than 300 tribal gaming facilities in operation today. These facilities are located throughout our great country, from Eastern Connecticut to Southern California, and from South Florida all the way to Washington State. They vary tremendously in size and sophistication, from tiny bingo halls to some of the largest casino operations in the world. To provide proper oversight, the Commission must not only retain a top-notch professional workforce, but we must also equip them with the tools they need to do their job. Given the size and scope of the industry, we are finding it more and more challenging to meet these important obligations.

We come to the Committee today seeking a \$2 million appropriation for FY 2003. To be completely candid, we view this request as an interim measure while we work with the Congress and the Indian gaming industry to secure legislation needed to allow flexibility in our fee collection structure. The Administration supports this one-time budget request and our goal of statutory adjustments to the current limitations on our permanent financing.

The upcoming fiscal year marks the fifth consecutive funding cycle during which the Commission has operated under a flat budget. As the Committee will recall, the Indian Gaming Regulatory Act (IGRA) was amended in 1997 to increase the Commission's fee assessment authority to the present level of \$8 million. It was recognized that the significant growth in the Indian gaming industry necessitated increased capacity on the part of the Commission.

Since the 1997 increase, the industry has continued to grow. The industry now generates approximately \$11 billion per year – an increase of nearly fifty percent since our last adjustment. Despite this rapid growth, the Commission continues to operate under a cap designed for an industry much smaller than the present size.

As previously reported to this Committee, we again emphasize that the Indian gaming boom in California continues to place a severe strain on our resources. Prior to passage of Proposition 1A in March 2000, there were 39 tribal gaming operations in California. Today, there are 46. In addition to the new facilities, it is important to note that many of those original 39 operations have undergone significant expansion, further impacting our workload. This growth is sure to continue. The number of California tribes having compacts for class III gaming could ultimately reach as high as 70.

The nature of gaming in California has changed as well, as major commercial players, such as Harrah's Entertainment, Anchor Gaming, Stations Casinos, and Donald Trump, have submitted management contracts to the Commission. While the contract review process gives us the opportunity to ensure the goals of Congress for such arrangements can be met, this also means that Commission staff must conduct complex financial background investigations, review the many documents related to the contractual relationship, and evaluate the environmental impacts of the casino development. To do our job in a timely manner we have had to hire temporary employees and retain consultants, to conduct background investigations, to provide financial analysis of the contracts, and to develop necessary environmental assessments.

A regrettable casualty of our flat budget has been our regular government-to-government consultations with tribal officials. Until the realities of our limited resources forced us to stop, the Commission had been conducting quarterly consultations with tribes. These one-on-one sessions were held at our regional offices and provided an opportunity for tribal leaders and the Commissioners to meet and discuss matters of mutual interest or concern. We also used the occasion to provide training on wide array of topics, including internal control standards and ethical issues. These consultations not only resulted in better, more productive relations with tribal governments, but also helped keep enforcement costs in check.

Among our most important activities as an agency is rulemaking, and we have worked hard to carry out our activities in this arena in keeping with the highest principles of the federal-tribal relationship. The primary rulemaking activities initiated by this Commission have been undertaken through an advisory committee process, followed by formal hearing to secure the fullest level of input. But the many benefits derived from this method of rulemaking come with a price, in that they are more expensive than simply writing the rules and receiving written comment.

In our effort to manage costs, we have also had to reduce travel across-the-board and we have instituted a hiring freeze. The commission is solvent, but it is solvent because we have allowed vacant positions to remain unfilled and because we have

reduced our presence in Indian country. We are certain that this is not what Congress had in mind when it created the Commission.

When we produced our Biennial Report for the years 1999-2000, we estimated our 2001 work force at seventy-seven employees. In fact today we employ sixty-eight people, two of whom are temporary employees, because we are concerned about the sustainability of staffing beyond this level. By "sustainability" we mean more than simply covering the cost of salaries and benefits, but also equipping the staff and getting them to where they need to be. The oversight responsibilities of the commission require professional employees – field investigators, auditors and lawyers – and we do not have enough. But we do not have the money to hire more of these employees and fund the travel, overhead, and other operational expenses associated with a larger staff.

By way of illustration, let's look at our Audit Division and the Minimum Internal Control Standards (MICS), which became effective February 2000. We began FY 2002 with six (6) auditors. Through attrition, we have lost two. These positions, though critical have not been filled due to our need to impose a hiring freeze and a shortage of funds to allow auditors to travel.

Due to its cash intensive nature, gaming is an exceedingly vulnerable industry. And in contrast to an industry in which all transactions are documented by cash register receipts, gaming operations have hundreds or thousands operations each day that cannot be supported by such documentation. The lack of supporting documentation for bets and other transactions makes the industry especially vulnerable. To protect the assets of the operation under these circumstances, observers must carefully monitor the wagering activities. This makes the industry highly labor intensive.

During the early 80's, the Nevada Gaming Control Board recognized that pre-established procedures or "internal controls" were essential to identify and deter irregularities effectively. In 1985, Nevada promulgated a framework of minimum internal control standards deemed necessary to ensure the proper recognition of gaming revenues and to safeguard the interests of the gaming public. Other jurisdictions soon followed Nevada's lead. Inherent in an internal control structure are the concepts of individual accountability and segregation of incompatible functions. The existence of standards alone, however, is not enough. Any internal control system carries the risk of circumvention, which is why a process of independent oversight is so critical to the integrity of an operation.

Consistent with our peers, the Commission promulgated its own minimum internal control standards (MICS). Recognizing the complexity of this aspect of our oversight responsibility, the Audit Division has been staffed by accountants experienced in the performance of gaming compliance audits. Without regard to the venue in which the gaming is conducted, history had demonstrated that, left unregulated, gaming will fall victim to those intent on preying upon its vulnerabilities. Consequently, the Commission has profound appreciation for the need to measure and evaluate compliance with the MICS.

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One way to view the MICS is as a protective shield against threats to tribal gaming integrity. With an appropriate level of sampling, we believe we can measure compliance with the MICS and make a meaningful contribution to ensuring the overall integrity of Indian gaming. Unfortunately, at current staffing levels, it would take twenty to thirty years for the Commission to evaluate each of the existing gaming operations.

There are other needs as well. The Commission would like to complete several projects that will pay future dividends in terms of overall efficiency and effectiveness. We are in the final stages of our technology initiative and are ready to begin implementing the financial and records management components of our new database. We are also preparing to introduce an electronic accounts receivable capability that will provide a database interface for on-line payments of fees. We have plans to improve our public information system by introducing dedicated FOIA software.

We are in the final phases of a project to improve the speed with which we provide fingerprint results from the FBI to the tribes. In the nine years we have been handling fingerprints for the tribes, we have processed more than 145,000 sets. Last year, with support from the FBI, we established a high-speed direct connection. Once our hardware needs are fully met, we will be able to take full advantage of this connection, and reduce the time it takes to process criminal background information for tribal employees from weeks or months to days or hours, a tremendous benefit to gaming tribes.

As mentioned at the beginning, my term at the Commission is drawing to a close, as are the terms of the other Commissioners. Our successors will face some significant challenges, and we hope that my remarks today will help pave the way as they guide the Commission in the next three years. Thank you for your kind attention. Let me say for myself, Vice Chair Homer and Commissioner Poust, that we each appreciate the support and many courtesies that you have extended us.

Thank you. We would be happy to answer any questions that the Committee may have.

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More California news

Past could hurt state regulation of casinos

New deals worth billions to 5 tribes

By James P. Sweeney
COPLEY NEWS SERVICE

May 28, 2007

SACRAMENTO – To the surprise of many, the Schwarzenegger administration and the chairman of California's gambling commission recently declared that the state has all the legal authority it needs to step in and restore basic operating standards for Indian casinos.

The stance offered a fresh counterargument to Assembly Democrats who say pending gambling agreements for five big Southern California tribes must be reopened to address the loss of federal guidelines tossed out by a federal court.

The new gambling agreements, or compacts, are worth billions of dollars to the five tribes, which include Sycuan of El Cajon and Pechanga of Temecula. The state would receive a sizable cut, projected at more than \$22 billion over the 23-year life of the deals.

But echoes from the past, when an angry debate over the state's regulatory reach all but consumed the gambling commission, could undercut the administration's recent assertion and blunt any impact it might have on the stalled compacts.

It wasn't that long ago that most if not all of the five tribes with the pending deals insisted that the state had little power to regulate casinos in the first round of compacts signed in 1999.

"Under the compact, the California Gambling Control Commission has no direct role or authority in regulating tribal government gaming," Sycuan argued in a January 2003 letter to the commission.

Morongo, another tribe with a compact pending, made the same claim in a largely identical letter at the time.

Agua Caliente Chairman Richard Milanovich, whose tribe also has one of the pending deals, complained earlier that the commission was "overstepping its bounds" in the pursuit of uniform tribal gaming regulations and additional auditors.

Sen. Jim Battin, a Palm Desert Republican aligned with tribes, noted in a memo in June 2001 that tribal leaders believed the gambling commission was "attempting to over-assert its regulatory authority into tribal activities in which they have no jurisdiction."

At the time, the fledgling commission and its critics were sorting through murky compact language that clearly gave tribes the primary role in regulating and governing their casinos but left the state's position open to interpretation.

The National Indian Gaming Commission had just finished work on a comprehensive set of minimum

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standards for internal security at casinos, from cash handling to cash and credit operations, internal audits, surveillance and the games, whose standards included things from technical requirements to how often decks of cards should be changed.

The federal rules prevailed until late last year, when a federal appeals court upheld an earlier ruling that the national commission did not have the authority to establish and enforce such standards in most Indian casinos: those that offer conventional slot machines and other Nevada-style games.

The courts said the issue of operating rules should be resolved in the compacts.

The legal setback could "greatly impact California," Gov. Arnold Schwarzenegger warned in a March 30 letter to the Senate Committee on Indian Affairs. He urged Congress to restore the federal rules.

The administration also has supported a move by the state gambling commission and some tribes with pending compacts to develop a statewide regulation to require casino standards at least as stringent as the federal rules.

However, the proposal has drawn a cool response from many of California's more than 60 gaming tribes.

With the five big compacts stymied in the Assembly, attorneys for the governor and the commission -- which is appointed by the governor -- told an Assembly committee this month that the state could fill any regulatory void under the 1999 compacts.

"We determined that all of the compacts provide the commission with ample oversight authority and access related to tribal (internal standards)," Commission Chairman Dean Shelton told the Governmental Organization Committee. "This includes the authority to review tribes' gaming facilities and inspect related gaming operations or . . . records."

The commission simply lacked the staff and resources to exercise its power in the past, Shelton said.

Under questioning, Shelton said the commission could adopt and enforce the proposed statewide regulation on internal standards even if most tribes reject it.

"This is unprecedented," said Howard Dickstein, a leading tribal attorney. "No one from the state has ever taken this position before."

Assemblyman Alberto Torrico, a Fremont Democrat who is chairman of the committee, also wasn't convinced. Just last year, the commission had lamented the state's "limited compact authority" in its request for a budget increase, Torrico noted.

He asked why the governor appealed to Congress for help if the administration really believes the state has all the legal tools it needs to watch over Indian casinos.

"Either we're serious about coming up with a statewide solution or . . . we're going to admit here publicly we don't care, there is no federal regulation, we have these compacts pending," Torrico said. "Let the chips fall where they may."

Tribes did not testify, but representatives of some with pending compacts applauded the administration.

"There is a lot of concern about things we believe are already in place," said Nancy Conrad, a spokeswoman for Agua Caliente. "We believe the regulatory oversight is there."

George Forman, a prominent tribal attorney who represents both Sycuan and Morongo, said that despite widespread criticism of the 1999 compact, "The state did not leave itself defenseless and paralyzed."

He said the state has the ability under the compact "to ensure that tribes adhere to (minimum standards) consistent with those mandated by the National Indian Gaming Commission."

Earlier protests about the commission's regulatory reach have to be measured within the context of the debate at the time, he said.

"They were very different issues getting into very different areas that were, and in most cases remain, not appropriate for state gambling commission intervention," Forman said.

Others still aren't so sure.

I. Nelson Rose, a Whittier Law School professor who specializes in gambling law, said the state lacks clear authority to conduct broad audits of tribal casinos. He also recalled tribes' efforts to squeeze the gambling commission's early budgets.

"You can't regulate if your budget is dependent on the whims of politicians who are subject to political pressure from the tribes," he said.

Find this article at:

<http://www.signonsandiego.com/news/state/20070528-9999-1n28casinos.html>

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GOVERNOR ARNOLD SCHWARZENEGGER

March 30, 2007

The Honorable Byron Dorgan
Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

The Honorable Craig Thomas
Ranking Member
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Re: NIGC Class III Gaming Authority, Minimum Internal Control Standards

Dear Chairman Dorgan and Senator Thomas,

As you are aware, the Court of Appeals for the District of Columbia recently ruled in *Colorado River Indian Tribes v. National Indian Gaming Commission*, that the National Indian Gaming Commission does not have authority to enforce Minimum Internal Control Standards (MICS) for class III gaming. This ruling has the potential to greatly impact California, and I would support federal legislation that would confirm the NIGC's authority to establish and enforce the MICS for class III gaming.

California has over 100 federally-recognized Indian tribes. Currently, 66 of those tribes have tribal-state gaming compacts. There are 56 tribal casinos in operation in California and several more in the planning and development stage. Our gaming compacts require tribes to adopt and comply with rules and regulations governing various internal control areas and to provide for significant state regulatory oversight. Our approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC's activities. This has worked well for California. I believe that strong state, federal and tribal regulation and oversight of class III gaming best serves the public interest and furthers the goals of the Indian Gaming Regulatory Act.

I encourage and support efforts at the federal level to confirm and clarify the NIGC's authority.

Sincerely,

Arnold Schwarzenegger

cc: The Honorable Dianne Feinstein

EXHIBIT E2

EXHIBIT E2

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CALIFORNIA GAMBLING CONTROL COMMISSION**Supplement to the *Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)***

The purpose of this supplement is to add the Commission's response to four timely letters from tribes, tribal gaming agencies, or commissions to the CGCC's Detailed Response, dated October 9, 2008.

At its September 4, 2008 meeting, the Tribal-State Association voted to disapprove proposed regulation CGCC-8 Minimum Internal Control Standards (MICS), based upon the objections stated in the Association Task Force Report, dated February 13, 2008. In addition, at the time of the vote, according to the official minutes, (1) Jackson Rancheria Tribal Gaming Agency, (2) Picayune Rancheria of the Chukchansi Indians, (3) Rumsey Indian Rancheria of Wintun Indians, and (4) United Auburn Indian Tribal Gaming Agency indicated "they would submit written objections in support of their vote." Apparently, five tribes or tribal gaming agencies provided to the host Tribe Paskenta Band of Nomlaki Indians written comments at the September 4, 2008 meeting; (1) Jackson Rancheria Tribal Gaming Agency, (2), Picayune Rancheria of the Chukchansi Indians, (3) Rumsey Indian Rancheria of Wintun Indians, (4) United Auburn Tribal Gaming Agency and (5) Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribal Gaming Commission. Of these five letters, only Rumsey Indian Rancheria of Wintun Indians provided a copy to the Commission's delegate at the meeting.

These letters were apparently attached to the minutes of the meeting. However, the copy of the minutes that was sent to the Commission via facsimile from the Tribal Gaming Commission of the host tribe, Paskenta Band of Nomlaki Indians on October 2, 2008 included no attachments and there was no notation on the cover page that the minutes were being sent without attachments. Although Paskenta representatives indicated at the California Gambling Control Commission meeting on October 14, 2008 that the minutes with the attachments were emailed to the Commission's delegate(s), neither the email nor the attachments containing the four letters were received by the Commission's delegate(s) or alternates or, to the best of our knowledge, anyone else at the Commission until October 14 and 15, 2008.¹

We amend the list of the tribes, tribal gaming agencies, or commissions that sent in timely comments in order to add the above-mentioned four tribes to the other tribes that sent in letters and provide herein a detailed response to those letters. These four additional comment letters are

¹ Under section 3 of the Tribal-State Association Protocol for Submission of Proposed State Regulatory Standards to the Association (Amended January 21, 2004), "[n]otice to delegates as required herein shall mean notice in writing provided to each Delegate on the Association Roster via certified mail, overnight mail or facsimile followed by first class mail."

attached as Exhibits "A9-A12" respectively.² As will be seen from this supplement to the response, no new or different comments were received from these tribes that were not previously raised and answered in the Commission's October 9, 2008 Detailed Response to Tribal-State Association Objections to Minimum Internal Controls (MICS) CGCC-8.

As noted in the Commission's Detailed Response, Compact section 8.4.1 sets out procedures for the State Gaming Agency (SGA) to propose uniform statewide regulations governing Class III gaming operations and for the Association of Tribal and State Gaming Regulators (Association) to approve or disapprove them.³ Section 8.4.1 (b) provides that the SGA may re-adopt a regulation in its original or amended form after disapproval by the Association, and then submit the regulation to each individual tribe, provided that the SGA prepares a detailed, written response to the Association's objections.^{4, 5} Compact section 8.4.1(e) states that tribes may

² The letter from Picayune Rancheria of the Chukchansi Indians is Exhibit "A.9," the Jackson Rancheria Tribal Gaming Agency letter is Exhibit "A.10," the Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribal Gaming Commission is Exhibit "A.11" and the United Auburn Tribal Gaming Agency letter is Exhibit "A.12."

³ Compact section 8.4.1, subsection (b) provides:

"Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is readopted by the State Gaming Agency as a proposed regulation a proposed regulation in its original or amended form with a detailed written response to the Association's objections."

⁴ The Compact is a contract, or form of contract, between the State and signatory tribes subject to ordinary rules of contract construction. (*New York v. Onieda Nation of New York* (N.D.N.Y. 1999) 78 F. Supp.2d 49, 60-61. See also *Pueblo of Santa Ana v. Kelly* (10th Cir. 1997) 104 F.3d 1 546, 1556; *American Greyhound Racing, Inc. v. Hull* (D.Ariz.2001) 146 F.Supp.2d 1012, 1043, 1046, vacated on other grounds (9th Cir. 2002) 305 F.3d 1015;) Thus, state contract law is applied to interpret Compact terms. (See *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for West. Dist. of Mich.* (W.D.Mich. 2002) 198 F. Supp.2d 920, 937-938.)

Moreover, although the State does not believe there is any ambiguity (see footnote 5), the canon of Indian law that ambiguous provisions are to be interpreted to the benefit of the Indians applies only to federal statutes that are enacted for the benefit of Indians. (See *Artichoke Joe's California Grand Casino v Norton* (9th Cir. 2003) 353 F.3d 712,729.) The Compact was a government to government negotiation between equal parties.

⁵ Language in a contract must be interpreted as a whole (Civ. Code § 1641), and in the circumstances of the case, and cannot be found to be ambiguous in the abstract. (*Bank of the West v. Superior Court*, (1992) 2 Cal.4th 1254, 1265.) The State believes that the language in section 8.4.1, subsection (b) is not ambiguous and provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association. This readoption and response procedure constitutes a clear exception to the general requirement that the Association approve a regulation before it may be effective. Any other interpretation would render subsection (b) mere surplusage, and such a construction must be avoided. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495,503 [language in a contract must be interpreted as a whole and constructions that render contractual provisions surplusage are disfavored].)

object to a proposed statewide uniform regulation on any of four enumerated grounds: that is, that the regulation is “unnecessary, unduly burdensome, conflicts with a published final regulation of the [National Indian Gaming Commission], or is unfairly discriminatory . . .”

This document is the supplement to the Detailed Written Response to the Association’s objections which included and incorporated the rationale for the CGCC-8 text (dated October 1, 2008) and the Commission’s Response to the Task Force Report dated April 23, 2008. Part I of the Detailed Written Response is not repeated in this supplement, but is nonetheless incorporated by reference.

PART II. ASSOCIATION’S OBJECTIONS

1. AUTHORITY TO PROMULGATE MICS REGULATION

Regarding the legal authority of CGCC-8, in addition to the comments from Dry Creek, Paskenta, Rincon, Rumsey, Torres Martinez, and the Task Force, Jackson, United Auburn, Trinidad and Picayune also argued that there was no authority for CGCC-8 in the Compact. These comments contended that only a TGA is vested with the authority to promulgate and enforce rules. The CGCC incorporates all the earlier responses to this objection.

In addition, Picayune specifically mentions that IGRA provides that “Indian tribes have the exclusive right to regulate gaming activity on Indian lands,” citing 25 U.S.C. section 2701. We note that 25 U.S.C. section 2710(d)(3) provides that for class III gaming activity the tribe shall negotiate with the State for the purpose of entering into a Tribal-State compact and section 2710(d)(5) states that “nothing in this subsection [d] shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands *concurrently with the State*, except to the extent that such regulation is *inconsistent with or less stringent than the State laws and regulations made applicable by any Tribal-State compact.*” (Emphasis added.) Thus, under IGRA, the right to regulate gaming activity is not exclusive to tribes when there is a compact involved. Further, the Compact expressly grants to the SGA the authority to promulgate regulations concerning matters encompassed by Sections 6.0, 7.0 and 8.0 in order to foster uniformity of regulation of Class III gaming operations throughout the state. Therefore the Commission has authority concurrent with the tribes in this instance to set minimum internal controls and to require that the NIGC MICS be the minimum required.

See also Part I of the Detailed Response, Section 4, pages 3-5, for further discussion of the State Gaming Agency’s authority.

Jackson, Trinidad, and United Auburn referred to the 2006 compact amendments, contending that the existence of a MICS-related section in the amendments proved that the State is aware of the lack of authority to implement MICS under the 1999 Compact. This was previously answered in the Detailed Response. See pages 13-14.

Jackson, Trinidad and United Auburn also asserted that CGCC has no authority to conduct "some sort of review of financials of gaming operations (of unclear scope or consistency)." We interpret this to be the same comment as the assertion that CGCC has no authority to conduct "full financial audits." CGCC-8 does not contemplate financial audits such as those found at 25 U.S.C. section 2710(b)(2)(C). In response to concerns raised by a number of tribes, the version of CGCC-8 approved by the CGCC (March 27, 2008) for consideration by the Association contained specific language eschewing such authority. In any event, the regulation re-adopted by CGCC on October 14, 2008 amended CGCC-8 subsection (h) to delete the term "full" and to restructure the subsection to clarify the intent of the regulation. CGCC-8 neither purports to require nor requires that financial audits be conducted by the SGA.

2. NEED FOR REGULATION

Picayune and United Auburn assert that there is no need for the State to adopt a regulation setting minimum internal control standards and that there is no "void" because these tribes have amended their ordinances to allow the NIGC to monitor and enforce MICS. As explained, the Commission believes that the *CRIT* court by deciding that NIGC did not have authority to regulate Class III gaming operations did not so much leave a "void," but rather clarified that Congress intended to leave Class III gaming regulation to the State and the tribes, including independent, non-tribal oversight of Class III gaming operations by the State. In response to widespread disagreement with that assertion and in response to language suggested by the Rumsey Rancheria, the Commission modified the Statement of Need and the Purpose section of CGCC-8 (subsection (a)) to reflect the other aspect of the need and purpose of the regulation: to provide an effective and uniform manner in which the SGA can conduct the compliance reviews contemplated in Compact Sections 7.4 and 7.4.4. The reviews include assuring tribal (and TGA) compliance with the requirements of Compact Sections 6.1 and 8.1 – 8.1.14.

Picayune asserts that the current version of the regulation does not address the *CRIT* decision. The Commission listened to the comments throughout the Association process and deleted references to *CRIT* in CGCC-8 because it became apparent that the citations themselves were unnecessary, although the regulation itself is nonetheless a valid exercise of authority under the Compacts.

Picayune asserts, as others did, that tribes employ many persons as regulators and spend a great deal of money in self-regulation. While no doubt true, that is not a reason for the State to neglect to exercise its oversight authority given the outcome of protection of the integrity of the gaming operation and the need to assure gaming is conducted honestly and fairly. As explained above, compliance with the requirement that independent CPA testing occur, which measures the gaming operation's compliance with the tribe's internal control standards can be satisfied by performing the required yearly independent financial audits at the same time.

United Auburn asserts as others did that in the case in which a tribe pays a flat fee⁶ under amended Compacts, that the State has no interest in securing its revenue share through the

⁶ There are only five such tribes.

compliance reviews proposed in CGCC-8. There are, however, as noted earlier, provisions of the MICS that are applicable even to a flat fee tribe. Proper accountability of the number of machines in operation is essential. The NIGC MICS contain detailed processes, which in themselves cause an accounting of the number of machines operated.⁷ Further, the MICS contain standards relative to information technology that protect the integrity of the data produced.⁸ Another MICS section relates to the preservation of records, which is essential to validate the tribe's assertion of machines operated.⁹ Additionally, all those compacts implementing a flat fee system also contain unique compact obligations relating to gaming devices in which MICS are invaluable for the tribe in carrying out its obligations. In the broadest sense, the NIGC MICS facilitate the credible operation of the gaming activity, which interest goes beyond the State's revenue share concerns, and is fundamental to the integrity of the entire gaming operation. The argument that flat fee tribes do not need MICS oversight is belied by the fact that so many have amended their ordinances to voluntarily allow NIGC oversight. (See also Section 6. "Unnecessary.")

Picayune and United Auburn suggested that adopting the NIGC MICS by way of ordinance and providing for NIGC oversight eliminates the need for CGCC-8. These ordinance amendments, however, are clearly voluntary actions; we are unable to identify any basis in federal law for the NIGC to disapprove deletion of this kind of an NIGC enforcement provision from an ordinance if a tribe so requests.^{10 11} (See Detailed Response Part 1, Sections 6 (iii and iv) and 7, Duplicative, for further discussion of this suggested alternative.)

1. REGULATION OR COMPACT AMENDMENTS

Picayune, United Auburn, Trinidad, and Jackson argued that CGCC-8 is an unauthorized or premature renegotiation of the Compacts and that separate government-to-government

⁷ NIGC MICS, 25 CFR 542.13(h)(7), (10), (14) &(15); (m)

⁸ 25 CFR 542.16(a), (b) & (f)

⁹ 25 CFR 542.19(k)

¹⁰ See letter from United Auburn to NIGC Chairman dated November 29, 2007 from the Tribal Chairperson in which she indicates that the United Auburn Indian Community "consents to the jurisdiction of the NIGC" (emphasis added) with respect to the MICS and also that they "believe federal regulatory standards promote and support strong regulatory practices at Indian casinos and strengthen the public's confidence in the integrity of Indian gaming." (Attached as Exhibit "G.1")

¹¹ Although the NIGC "approved" these amended ordinances as it related to MICS compliance, the letters from the NIGC Chairman clearly show the acceptance of them as "consistent with" or "not in conflict with" IGRA, rather than as required by IGRA. As an example, see letter to United Auburn dated January 11, 2008, attached as Exhibit "G.2" wherein the Chairman states "the amended ordinance [making NIGC's MICS applicable to the casino] ... is consistent with the requirements of the Indian Gaming Regulatory Act and the Commission's regulations and is therefore approved." See also letter to Cabazon Band of Mission Indians dated February 28, 2008 from NIGC providing that "[t]his letter constitutes approval of the amendment because nothing herein conflicts with the requirements of the Indian Gaming Regulatory Act and the Commission's regulations." (Attached as Exhibit "G.3".) Compare with the earlier letter to United Auburn dated February 24, 2000 in which the Chairman stated "[w]e note that the Tribe and/or Tribal Gaming Agency *must* promulgate tribal MICS that are at least as stringent as the NIGC MICS found at 25 C.F.R." (Emphasis added.) (Attached as Exhibit "G.4".)

negotiations should be undertaken. Memoranda of Agreement were suggested as a separate negotiation.

From the Commission's perspective, Compact negotiations are not needed because the SGA's compliance review authority is clearly established in the existing Compact. While individual agreements could accomplish the same purpose, a uniform regulation adopted in accordance with the Compact provisions specifically authorizing such a regulation is much more efficacious. It ensures uniformity and fairness in SGA compliance review and, by taking into account the scope of individual gaming operations, assures a level playing field for all tribes and prevents arbitrariness. Both the tribe and the State are sovereigns. Each has sovereignty the other must respect; each has the right to demand that the other sovereign comply with its responsibilities and obligations as mutually agreed to in the Compact.

The Compact provides the State with the authority (and responsibility) to review tribal standards to ensure compliance with the Compact. Neither tribal regulatory activities, nor NIGC regulatory activities can take the place of State Compact authorized compliance reviews.

See also Part I. sections 4, Authority, and 6 (iv) (Alternatives).

2. "UNFAIRLY DISCRIMINATORY"

Picayune indicated that because the State has not yet imposed MICS requirements in cardrooms, CGCC-8 is "unfairly discriminatory". See Part I, Section 6(ii) for a response to this comment.

3. "UNDULY BURDENSOME"

Comments from United Auburn, Jackson and Trinidad indicate that CGCC-8 is "unduly burdensome."

The Commission reiterates that CGCC-8 has not and does not increase any obligation on the tribes related to audits beyond that already provided for in Section 8.1.8 of the Compact.

While any outside review necessarily entails the use of some gaming operation staff time and resources, the Commission is fully committed to working with individual TGAs through consultation on a case-by-case basis to conduct compliance reviews in the most efficient manner possible and therefore minimize any impact on tribal gaming operations, TGAs, and California taxpayers. The Commission's ability to efficiently conduct meaningful compliance reviews depends of course to a large extent on the cooperation of individual TGAs and gaming operation personnel.

6. "UNNECESSARY"

Comments from United Auburn, Jackson and Trinidad contended that CGCC-8 is unnecessary and Picayune asserts that the State has "yet to identify any actual need or concern that would require or justify the implementation of CGCC-8."

The NIGC has identified many instances of non-compliance in the limited number of MICS compliance reviews that it has conducted. See Part I, Section 6 (vi) and Exhibit "C" page 6). Additionally, there are some areas in which MICS non-compliance has been observed by CGCC staff during Special Distribution Fund audits, including violations of Drop and Count standards and Surveillance standards.¹²

7. DUPLICATIVE

Comments from Picayune, United Auburn, Jackson and Trinidad argue that if tribes adopt ordinances containing NIGC enforcement of MICS, then CGCC-8 is "duplicative."

As has been made clear at the Task Force meetings and as Chairman Shelton made clear at the March 27, 2008 Commission meeting, the CGCC has and will continue to make every effort to coordinate with the NIGC. However, SGA compliance reviews are not duplicative of NIGC reviews; they are a legitimate exercise of the State's authority under the Compact.

As stated in NIGC Chairman Philip Hogen's April 17, 2008 written testimony to the U.S. Senate Indian Affairs Committee Oversight Hearing:

"To put the regulation of tribal gaming in proper context, we need to appreciate that the vast majority of the regulation of tribal gaming is done by the tribes themselves, with their tribal gaming commissions and regulatory authorities. In many instances, *where tribes conduct Class III or casino gaming, state regulators also participate in the [regulatory] process.* NIGC has a discrete role to play in this process and is only one partner in a team of regulators." (Emphasis added.)

The SGA focus is Compact compliance; by contrast, the NIGC has no interest in, nor authority with regard to Compact compliance. Further, to assert that because the NIGC has an oversight role with regard to internal controls, that the State should therefore forbear from exercising its compliance review authority under the Compact would to ignore the State's role as a sovereign Compact signatory.

The fact that tribes may have already put into place standards "at least as stringent as NIGC MICS" does not make CGCC-8 duplicative. Nor does the fact that a number of tribes have changed their gaming ordinances or entered into agreements purporting to grant the NIGC "authority" to monitor and enforce tribal compliance with those standards. The loss of such federal authority as a result of the *CRIT* decision highlighted the need for the State to more actively exercise pre-existing compliance oversight authority. The authority for such oversight has always existed in the Compact – the State had not previously deemed it necessary to exercise it.

¹² Although the State believes the regulation is necessary for the reasons stated, it is the State's position that the under the Compact the burden to show the regulation is unnecessary is on the tribes (Section 8.4.1 (e)), not on the State to show it is necessary.

The Commission expects that the vast majority of gaming tribes have standards in place and run their gaming operations according to those standards in compliance with the Compact. However, that does not diminish the State's clear authority to conduct compliance reviews. Further, from the perspective of the SGA, the State has not only the authority, but also the responsibility to conduct compliance reviews. The public as well as the legislative and executive branches of state government have made that clear. CGCC-8 simply outlines a process and sets a uniform benchmark for such reviews. The State has not arrogated to itself any authority not already found in the Compact.

8. ALTERNATIVES TO MICS REGULATION

United Auburn and Picayune advocated eliminating SGA compliance review via CGCC-8 or that an exemption from such review should be allowed if the tribe and the NIGC agreed to NIGC oversight through either MOU/MOAs or changes to tribal gaming ordinances. Neither of these approaches takes into account the State's sovereignty as a signatory to the Compact. The SGA authority to inspect the gaming facility and all gaming operation or facility records relating thereto (Section 7.4) and the SGA's authority to be granted access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with the Compact (Section 7.4.4) are based on express Compact provisions. These State powers are not and cannot be made dependent upon the statutory authority of the NIGC, or upon other arrangements between the NIGC and individual tribes. The State's authority is not secondary to the federal government's non-existent legal authority over Class III gaming operations; the State's is not obliged to delegate its authority to NIGC.

CGCC-8 does *not* require any tribe to adopt the NIGC MICS in carrying out its responsibilities under Compact Sections 6 and 8. CGCC-8 rather requires that whatever internal controls standards a tribe may choose to adopt meet or exceed the requirements of the NIGC MICS. Further, CGCC-8 provides for variances (subsection (l)) and for consultation between the SGA and individual tribes and the Association as a whole regarding the effect of changing technology on compliance matters (subsection (m)).



PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS
TRIBAL GAMING COMMISSION

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46575 Road 417 #B • Coarsegold, CA 93614

Dear Tribal/State Regulators:

On September 10th, 1988, California Governor, Gray Davis and Roger Davis, Chairperson of the Chukchansi Indians signed the Tribal State Compact between the state of California and the Chukchansi Indians. Fifty-seven federally recognized tribes in the State of California (the "State") also entered into a government-to-government relationship with the State under the terms of the 1988 Tribal State Compact (the "1988 Compact"). Since that time, various Tribes have elected to renegotiate their compacts allowing more gaming devices, additional revenue disbursements for those devices, and State regulatory oversight beyond that set forth in the 1988 Compact, as those sovereign tribes and the State were entitled to do. These tribes negotiated terms with the State on a government to government basis. Each received its negotiated for benefit through this process.

The 1988 Compact established a government to government relationship between the Chukchansi Indians and the State. According to the preamble the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among three sovereigns: the federal government, the state in which a tribe has land, and the tribe itself. Nowhere in the preamble does it state subdivisions of these sovereigns have the authority to unilaterally re-negotiate the terms set forth in the agreed upon compact. Any changes to the terms set forth in the 1988 Compact must be renegotiated between the two sovereigns, and new or additional regulatory requirements must be agreed to through government to government negotiations. Specifically Section 12.0 of

the 1999 Compact establishes specific procedures and authority for any amendments and renegotiations of the terms of the compact.

On or about March 26, 2007, the California Gambling Control Commission (the "CGCC") notified the California tribes with tribal-state compacts that they intended to submit to the State Association a uniform tribal gaming regulation, CGCC-8, establishing further regulatory oversight, interpretation and changes to certain sections of the Compact. According to the Draft Statement of Need issued by the CGCC:

A basic premise of the Tribal-State Indian Gaming Compact ("Compact") was that pursuant to the Indian Gaming Regulatory Act, regulatory jurisdiction would rest with three sovereigns, the federal government, the state, and the Tribe. The decision of the District of Columbia Circuit Court of Appeals in *Colorado Indian Tribes v. NIGC*, changed that basic premise and altered the regulatory landscape for tribal gaming by concluding that the NIGC was not authorized to promulgate regulations establishing minimum internal control standards ("MICS") for Class III gaming, or to enforce compliance with those regulations. The purpose of CGCC-8 is to preserve the benefits of the MICS system that has been in place since 1999.

On April 11, 2007, in good faith, the California Tribal Regulators Network held a meeting where representatives from the CGCC were also present, including Mr. Cy Rickards, then Chief Counsel for the CGCC, Mr. Herb Sobz, commission attorney for many years and author of the draft regulation CGCC-008, as well as Ms. Heather Hoganson, to begin a dialogue on CGCC-8. In Mr. Rickards' introductory remarks he informed the group that, "As a result of the *Colorado River Indian Tribes v. NIGC*, 468 F.3d 134 (2006) (the "CRIT Decision") decision a vacuum has been created regarding regulatory oversight responsibilities. This has created pressure on the commission to develop an emergency MICS Regulation."

Since this meeting, further discussion regarding the proposed regulations, CGCC-8, continued, and the topic of the Colorado River Indian Tribes Court decision impact became such a concern that the Assembly Governmental Organization Committee held an information hearing on May 14, 2007. Again, according to the Compact preamble the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. Testimony for this informational hearing was provided by: Mr. Phil Hogen, Chairman of the NIGC, Mr. Dean Shelton, Chairman, CGCC, Mr. Paul Bullis, Director, Arizona Department of Gaming, and Ms. Sylvia Cates, Deputy Legal Affairs Secretary, Office of the Governor. Although IGRA provides that tribes are to have the exclusive right to regulate gaming activity on Indian lands, not one member or representative from any tribe was allowed to provide testimony.

On September 10, 2007 the Rose Institute of State and Local Government at Claremont McKenna College provided a study of "Gaming Regulatory Agency Expenditures of Tribes in California" for the Tribal Alliance of Sovereign Indian Nations. The 64 tribes that are covered in the report projected Tribal Gaming Commission budgets totaling \$80,282,837. The California Tribal Gaming Regulatory Agencies surveyed employ approximately 1,853 employees. The State has yet to identify any actual need or concern that would require adoption of proposed CGCC-8.

On July 11, 2007, prior to its adoption by the CGCC, the State Association, in accordance with its adopted Protocol for Submission of Proposed State Regulatory Standards to the Association, created an Association Regulatory Standards Taskforce (the Taskforce) to review CGCC-8. The first meeting was held on August 8, 2007. The CGCC then submitted a revised proposed regulation to the Taskforce on September 7, 2007. Subsequent meetings were held on September 11, 2007, November 7, 2007, January 9, 2008, and February 13, 2008.

These meetings were attended by a majority of the Tribal Regulators and representatives from the State. Throughout all of these meetings, most, if not all, of the Tribes have adamantly concluded that the CRIT Decision did not change anything within the regulatory jurisdiction because most of the Tribes had adopted the MICS in their tribal gaming ordinances, which are approved by the NIGC. Furthermore, on January 11, 2008 NIGC approved amendments to five tribal gaming ordinances, Picayune Rancheria included, that require compliance with the NIGC MICS. This was achieved through a government-to-government relationship which fully addressed the exact concern that led to the drafting of CGCC -8.

The last Taskforce meeting, held on February 19, 2008 produced a Final Report, which was provided to every member of the Taskforce, including, the State representatives. This report was delivered to the State Association on May 7, 2008 per the Protocol. The Taskforce recommendation to the State Association found that the draft CGCC-8 is unnecessary, unduly burdensome, and unfairly discriminatory.

Since February 13, 2008, the CGCC has released two new versions of CGCC-8. The first on March 11, 2008, and the second after a "closed" session meeting of the CGCC held on March 13, 2008. The current proposed version does not provide a legitimate basis for its need. The current version also does not address the CRIT Decision, which was the main basis of need stated by the CGCC throughout this process. The new version specifically states:

Nothing in this regulation shall modify or affect the rights and obligations of the SGA under the Compact, including but not limited to, the SGA entities' ability to share documents provided pursuant to this regulation, subject to the Compact's confidentiality provisions.

The Regulation itself is saturated with Compact citations implicating an interpretation that the CGCC already has these authorities. However, there is no

discussion of why, almost ten years after the 1999 Compacts went into effect, the State now has to exercise some new authority that it has not asserted in the past. There is also no discussion of why four tribes that recently renegotiated their compacts specifically agreed through government to government negotiations to allow the State the very oversight set forth in CGCC-8, while the tribes that have not chosen to renegotiate their 1999 Compacts are being told they must comply with this regulation, yet get nothing in exchange for this new assertion of authority by the State.

The regulation as currently drafted exceeds the authority granted to the State in the Compact by proposing to allow the CGCC authority that is specifically reserved to the Tribe through the Indian Gaming Regulatory Act ("IGRA"), and the Compact. IGRA specifically provides that "Indian tribes have the *exclusive right* to regulate gaming activity on Indian lands". See 25 USC § 2101 (emphasis added). Specific provisions of IGRA require Tribes to enter into compacts with the state in which the Tribe resides for class III gaming. See 25 USC § 2710 (d). The CRIT Decision held that the minimum internal control standards (MICS) are governed by the tribal state compacts for class III gaming, and that federal MICS regulations promulgated by the National Indian Gaming Commission ("NIGC") apply only to class II gaming. There is nothing in the CRIT Decision that authorizes a state to unilaterally assume regulatory responsibility of tribal gaming based on a "perceived" change in the regulatory landscape that resulted from a court decision interpreting existing law. Both IGRA and the 1999 Compact vest in the Tribe exclusive rights to regulate gaming on Indian lands with certain safeguards in place. These safeguards for class III gaming include a tribal gaming ordinance approved by the NIGC, a tribal state compact, and enforcement provisions at the federal level through NIGC adopted federal regulations. See 25 USC § 2710(d)(2)(A); Tribal Gaming Ordinance of the Piyayune Rancheria of Chukchansi Indians; Tribal State Compact Between the State of California and the Chukchansi Indians dated October 2, 1999, and 25 C.F.R. Part 573.

These latest versions of CGCC-8 were put forth without any consultation or consideration by the tribes that will supposedly have to comply with the regulations, despite the language set forth in the Compact requiring consultation and consideration by the Tribal State Association. The Taskforce has wasted nearly a year analyzing and providing comments to CGCC on the proposed regulations. Traveling to many meetings in various locations state-wide, utilizing attorneys and auditors to provide recommended language for the proposed draft regulations issued in March, 2007 and September, 2007. The proposed regulation is unduly burdensome and has cost California tribes thousands of dollars. The result is that the CGCC has blatantly ignored the legitimate issues and concerns raised by California tribes. This is particularly concerning when the State has openly acknowledged that the regulation has not been proposed to correct an actual problem or existing shortcoming in tribal regulation, but to address a perceived problem that the State has created through misrepresentations in the media.

The proposed CGCC-8 discriminates against tribes, because California Card Rooms do not have MICS in place concerning key areas of gaming. Tribal gaming establishments, however, adopted internal control standards from the beginning. NIGC MICS and Tribal Internal Control Standards are far more stringent than those set forth in proposed CGCC-8. With all due respect, the CGCC now wants to regulate the tribal regulators, but has not even treated or held the card rooms to the same standards. This demonstrates discriminatory behavior that forces tribes to be held to a higher standard than other gaming establishments that the State does in fact have authority to fully regulate.

The proposed CGCC-8 attempts to grant the CGCC authority not authorized in the Compact, and would undercut the Tribe's exclusive regulatory powers over Indian gaming on Indian lands as agreed to in the Compact. Despite the perceived regulatory gap raised by the CGCC, there is ample regulation in place at the tribal, federal, and state levels to ensure compliance with MICS. The existing regulations include, the IGRA, enforcement powers of NIGC set forth in 25

C.F.R. Parts 522 and 573, adoption of MICS in Tribal Gaming Ordinances and tribal regulations. The proposed regulation circumvents the government to government negotiation process mandated in IGRA and would allow the state to unilaterally regulate tribes in an area that was not agreed to in the compact negotiations.

There is regulation in place that protects class III Indian gaming at the tribal, federal and state level. The State has not effectively regulated the areas it has current authority over, yet it attempts to take on responsibility outside that authorized by the Compact without a government-to-government negotiation. Also, no enforcement mechanism exists to prevent abuse of this regulatory power by the State Gaming Agency as long as the outstanding procedural objections by the State continue to negate the dispute resolution process set forth in Section 9.0 of the Compact. At this time there does not appear to be a need for CGCC-8, nor is there authority within the Tribal State Compact for such regulation¹. If a CRIT fix is needed, it appears that tribes should pursue a federal option.

Therefore, the Picayune Rancheria of the Chukchansi Indians opposes adoption of CGCC-8, as the provisions of this regulation, regardless of the version, violate the 1998 Compact between the Chukchansi Indians and the State. Any provisions, interpretations, establishment of specific procedures and granting of authority being in compact negotiations between the State of California and the Tribe, as pursued in 2004 and 2007 with other 1998 Compact tribes.

Sincerely,



Thomas Walker, Chairman

Picayune Rancheria of the Chukchansi Indians

Tribal Gaming Commission

State Association Delegate

Exhibit A.10

Via Hand Delivery at September 4, 2008 Tribal-State Association Meeting

**Jackson Rancheria Tribal Gaming Agency
Position Statement On Proposed Regulation CGCC-8**

The Jackson Rancheria Tribal Gaming Agency ("TGA") opposes the proposed state regulation CGCC-8. There is no authority under the Tribal-State Gaming Compact for the promulgation of a state gaming agency regulation like CGCC-8, which attempts to provide for California Gambling Control Commission ("CGCC") compliance reviews/audits of federal minimum internal control standards (MICS), some sort of review of financials of tribal gaming operations (of unclear scope or consistency), and processes outside the negotiated Compact, including Sections 6, 7 and 8. CGCC-8 is an unauthorized extension of the state's authority under our Compact and would require instead a negotiated change in terms through a compact amendment, as was done recently with new compacts and memorandums of agreements, which specifically include these types of regulatory provisions. Additionally, we join in the Tribal-State Association Regulatory Standards Task Force Final Report of February 13, 2008.

We are dedicated to ensuring the integrity of Indian gaming and have worked cooperatively with the State Gaming Agency to implement the regulatory provisions of the Compact over the many years since our Compact was negotiated by the Governor, ratified by the California Legislature and approved by the United States Secretary of the Interior. However, we are very disappointed with the CGCC's approach taken with the proposed regulation CGCC-8 and cannot support it because it violates our Compact and is unnecessary, duplicative, and unduly burdensome.

Sincerely,


Kelly Brinkhoff, Executive Director
Jackson Rancheria Tribal Gaming Agency

Cc: Dean Shehon, Chairman CGCC

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Exhibit A.11

Via Hand Delivery at September 4, 2008 Tribal-State Association Meeting

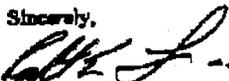
***Cher-Ae Heights Indian Community of the Trinidad Rancheria
Tribal Gaming Commission
Position Statement On Proposed Regulation CGCC-8***

The Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribal Gaming Commission opposes the proposed state regulation CGCC-8. There is no authority under the Tribal-State Gaming Compacts for the promulgation of a state gaming agency regulation like CGCC-8, which attempts to provide for California Gambling Control Commission ("CGCC") compliance reviews/audits of federal minimum internal control standards (MICS), some sort of review of financials of tribal gaming operations (of unclear scope or consistency), and processes outside the negotiated Compacts, including Sections 6, 7 and 8. CGCC-8 is an unauthorized extension of the state's authority under our Compact and would require instead a negotiated change in terms through a compact amendment, as was done recently with new compacts and memorandum of agreements, which specifically include these types of regulatory provisions.

Additionally, the proposed regulation CGCC-8 is unnecessary, duplicative, and unduly burdensome, and we join in the Tribal-State Association Regulatory Standards Task Force Final Report of February 13, 2008.

We have worked cooperatively with the State Gaming Agency to implement the regulatory provisions of the Compact which ensure the integrity of Indian gaming over the past many years. We are very disappointed with the CGCC's approach taken with the proposed CGCC-8 and cannot support it because it violates our Compact and is unnecessary, duplicative, and unduly burdensome and discriminatory.

Sincerely,


Robert Lantham, Executive Director
Cher-Ae Heights Indian Community of the Trinidad Rancheria Tribal Gaming Commission

Cc: Dean Shelton, Chairman CGCC

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Exhibit A.12



TRIBAL GAMING AGENCY

Via Hand Delivery at September 4, 2008 Tribal-State Association Meeting

United Auburn Tribal Gaming Agency Position Statement On Proposed Reg CGCC-8

The United Auburn Indian Community Tribal Gaming Agency ("UAIC TGA") opposes the proposed state regulation CGCC-8. As previously expressed, we believe that there is no authority under the Tribal-State Gaming Compacts for the promulgation of a state gaming agency regulation like CGCC-8, which attempts to provide for California Gambling Control Commission ("CGCC") compliance reviews/audits of federal minimum internal control standards (MICS), some sort of review of financials of tribal gaming operations (of unclear scope or consistency), and processes outside the negotiated Compacts, including Sections 6, 7 and 8. CGCC-8 is an unauthorized extension of the state's authority under our Compact and would require instead a negotiated change in terms through a compact amendment, as was done recently with new compacts and memorandum of agreements, which specifically include these types of regulatory provisions.

The CGCC has identified its objectives as being to confirm tribal gaming integrity, protect citizens, and secure the state's interest in revenue share from Compacts in its April 6, 2007, Statement of Need for this potential regulation. We believe that these objectives are being met already and that the potential regulation CGCC-8 is unnecessary, duplicative, and unduly burdensome. In addition to the factors set out in the Tribal-State Association Regulatory Standards Task Force Final Report of February 13, 2008, in which we join, we want to specify here that the UAIC TGA provides on-site tribal gaming regulation at Thunder Valley Casino, which includes MICS compliance monitoring and enforcement, with oversight by the National Indian Gaming Commission ("NIGC"). The NIGC oversight includes enforceable MICS compliance monitoring, and the NIGC has conducted a MICS audit at Thunder Valley Casino after the CRIT appellate decision, *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006). Under our Compact, patrons have the right to independently arbitrate disputes over the play or operation of a game if dissatisfied with the resolution of such dispute by management and the TGA. Gaming devices are tested to ensure fairness to patrons by the TGA, independent auditors, and the CGCC, and the results of the independent audits completed by certified public accountants are provided to the CGCC. Our Compact provides for flat fee payments to the State rather than payments by percentages based upon net win, so the State has no interest in securing its revenue share at United Auburn's Thunder Valley Casino through the compliance reviews proposed in CGCC-8.

Additionally, it is difficult to understand how or why the CGCC has declined to include in its proposed CGCC-8 an exemption for tribal gaming operations over which the NIGC exercises jurisdiction to monitor and enforce MICS. As we have repeatedly stated, such an exemption would accomplish the core purpose the CGCC identified in its Statement of Need - oversight of MICS compliance.

Our practice over the many years has been to work with the State Gaming Agency to cooperatively implement the regulatory provisions of the Compact which ensure the integrity of Indian gaming. We are very disappointed with the CGCC's approach taken with the proposed CGCC-8 and cannot support it because it violates our Compact and is unnecessary, duplicative, and unduly burdensome. + similarly discriminatory.

Sincerely,

Ronald M. Jaeger, Chairman
United Auburn Indian Community Tribal Gaming Agency

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MIWOK MAIDU United Auburn Indian Community of the Auburn Rancheria

JESSICA TAVARES
CHAIRPERSON

KIM DUBACH
VICE CHAIR

DAVID KEYSER
SECRETARY

DOLLY SUEHEAD
TREASURER

GENE WHITEHOUSE
COUNCIL MEMBER

November 29, 2007

Philip Hogen, Chairperson
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Re: Amendment to Tribal Gaming Ordinance

Dear Chairman Hogen:

On behalf of the United Auburn Indian Community, enclosed for the review and approval of the National Indian Gaming Commission ("NIGC") under the Indian Gaming Regulatory Act, 25 U.S.C. Section 2701 *et seq*, is an amended tribal gaming ordinance along with the original Tribal Council resolution adopting the amended ordinance and authorizing its submission for review and approval.

As communicated to the NIGC Regional Director for California last year and stated in our previous correspondence to you, United Auburn Indian Community consents to the jurisdiction of the NIGC with respect to the monitoring and enforcement of minimum internal control standards adopted by the Tribe that meet or exceed the federal standards at 25 CFR Part 542 ("MICS"). A full MICS audit was conducted by the NIGC at our gaming operation Thunder Valley Casino several months ago.

We believe federal regulatory standards promote and support strong regulatory practices at Indian casinos and strengthen the public's confidence in the integrity of Indian gaming. The enclosed amendments to our gaming ordinance at Section VI affirm once again the Tribe's adoption of minimum internal control standards for the gaming operation that provide a level of control that equal or exceed those federal standards set forth in 25 CFR Part 542 and the monitoring and enforcement of compliance with such standards by the Tribal Gaming Agency as well as by the National Indian Gaming Commission.

A redline of the original ordinance approved in 2000 is also enclosed for your convenience. If you have any questions or comments regarding these amendments, please contact our tribal attorney Jane Zerbi at (916) 244-8550.

Sincerely,

Jessica Tavares, Tribal Chairperson

113007-4

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Jessica Tavares
Chairperson
United Auburn Indian Community
575 Menlo Dr., Suite 2
Rocklin, CA 95765

JAN 11 2008

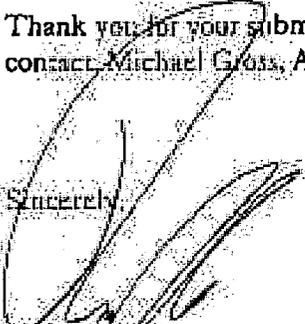
Re: Amended gaming ordinance, Resolution No. 11-28-07-01

Dear Chairperson Tavares:

This is in response to your November 29, 2007 submission seeking review and approval of the amendments to the United Auburn Indian Community's gaming ordinance enacted by Resolution No. 11-28-07-01. The amended ordinance makes NIGC's minimum internal control standards (MICS) applicable to the Community's Thunder Valley Casino and makes other, miscellaneous changes. It is consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) and this agency's regulations and is therefore approved. The NIGC looks forward to once again providing assistance to the Community in its regulation of Class III gaming.

Thank you for your submission. If you have any questions or require assistance, please contact Michael Gross, Associate General Counsel, General Law, at 202-632-7003.

Sincerely,


Philip N. Hogen
Chairman

Jane Zerbi, Esq.
Penny Coleman, Acting General Counsel
Michael Gross, Associate General Counsel, General Law



February, 28, 2008

Via U.S. Mail and Facsimile

John A. James
Chairman
Cabazon Band of Mission Indians
84-245 Indio Springs Drive
Indio, CA 92203
Fax: 760-347-7880

RE: Amendment to Cabazon Band of Mission Indians Gaming Ordinance

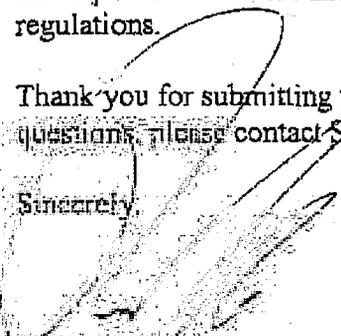
Dear Chairman James:

On February 13, 2008, you requested that the Office of General Counsel for the National Indian Gaming Commission (NIGC) review and approve the Tribe's amendment to the Cabazon Band of Mission Indians' Gaming Ordinance (gaming ordinance). The Tribe amended the gaming ordinance on February 7, 2008, via Resolution No. 02-07-08-1. In this amendment, the Tribe clarified its compliance with NIGC Minimum Internal Control Standards (MICS) for Class II and III gaming.

This letter constitutes approval of the amendment because nothing therein conflicts with the requirements of the Indian Gaming Regulatory Act (IGRA) and the Commission's regulations.

Thank you for submitting the amendment for review and approval. If you have any questions, please contact Staff Attorney Rebecca Chapman at (202) 632-7003.

Sincerely,


Philip N. Hogen
Chairman

NATIONAL
INDIAN
GAMING
COMMISSION

Exhibit G.4

FEB 24 2000

Honorable Jessica Tavares
Chairperson, United Auburn Indian Community
661 Newcastle Road, Suite 1
Newcastle, California 95658

Dear Chairperson Tavares:

This letter responds to your request to review and approve the tribal gaming ordinance, Ordinance No. 99-2, adopted on November 8, 1999, by the United Auburn Indian Community (Community). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

The gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA. It is our understanding, based on conversations with the Community's Legal Counsel, Howard Dickstein that the Community has made application to the Department of the Interior to have land taken into trust. Please be advised that no gaming may take place unless and until the Community has Indian lands upon which it may legally game.

In addition, the Secretary of the Interior has not approved a tribal-state compact between the Community and the State of California. Consequently, the Community may not legally engage in Class III gaming at this time. The Community may engage in Class III gaming only upon approval of a tribal-state compact. If and when a tribal-state compact is approved, please provide a copy to the NIGC.

You indicated that the Tribe plans to adopt the Minimum Internal Control Standards (MICS) once the tribal-state compact is approved. We note that the Tribe and/or Tribal Gaming Agency must promulgate tribal MICS that are at least stringent as the NIGC MICS found at 25 C.F.R. Part 542. In addition, the gaming operation must establish and implement an internal control system that is consistent with the tribal MICS prior to commencement of operation.

Thank you for submitting the ordinance of the United Auburn Indian Community for review and approval. The NIGC staff and I look forward to working with you and the Community in implementing the IGRA.

Sincerely yours,



Montie R. Deer
Chairman

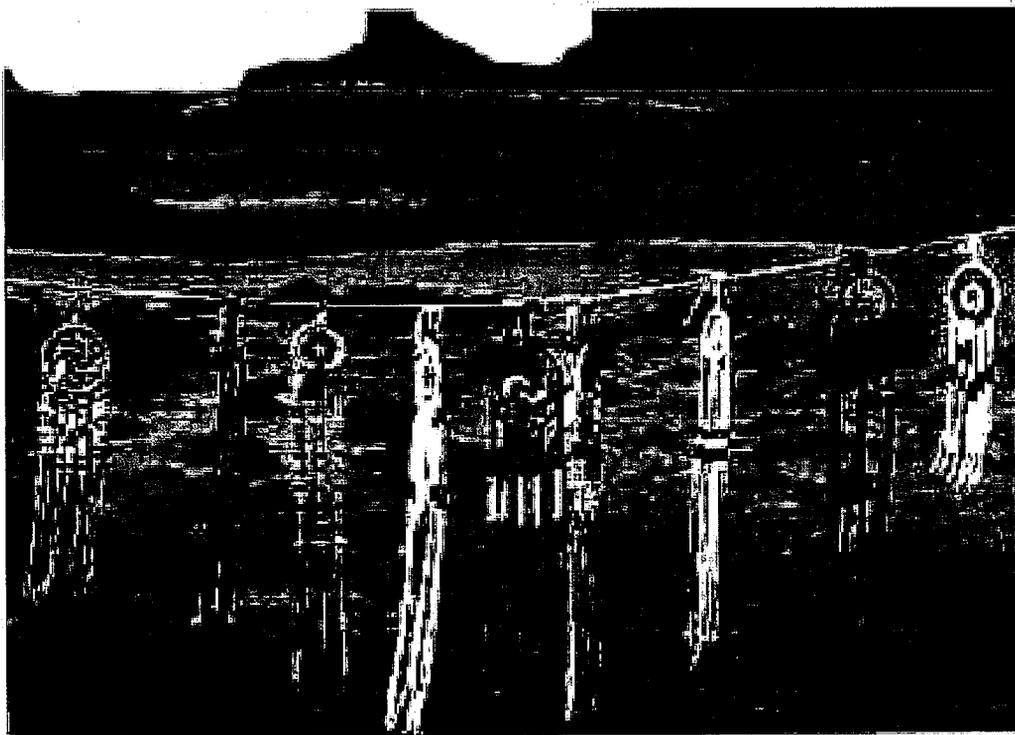
EXHIBIT F

EXHIBIT F



National Indian Gaming Commission

**Government Performance and Results Act
Strategic Plan for Fiscal Years 2009 – 2014**



OVERVIEW

The Commission

The National Indian Gaming Commission ("Commission") is an independent regulatory agency of the United States established pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). The Commission was created to fulfill the mandates of IGRA of fostering tribal economic development. The Commission became operational in 1993, and is comprised of a Chairman and two Commissioners, each of whom are appointed to three-year terms.

The Commission establishes policy, oversees the agency, and is responsible for carrying out the duties assigned to it by IGRA. The Commission is authorized to: conduct investigations; undertake enforcement actions, including the issuance of notices of violation and closure orders, and the assessment of civil fines; review and approve management contracts; and issue such regulations as are necessary to meet its responsibilities under IGRA.

The Commission provides Federal oversight to approximately 443 tribally-owned, operated, or licensed gaming establishments operating in 29 states. The Commission maintains its headquarters in Washington, D.C., and has five regional offices and four satellite offices. The Commission established its regional structure to increase effectiveness and improve the level and quality of services that it provides to tribal gaming regulatory authorities. The regional offices are vital to executing the Commission's statutory responsibilities and securing industry compliance with IGRA. The Commission's efficiency and effectiveness have improved as a result of locating auditors and investigators geographically closer to Indian gaming facilities, as regular visits enable better oversight of tribal compliance with regulations and allows for timely intervention where warranted. In addition to auditing and investigative activities, the Commission field staff provides technical assistance, education, and training to promote a better understanding of gaming controls within the regulated industry, and to enhance cooperation and compliance. Further, the Commission serves as a clearinghouse for vital information sharing between the tribes, Federal agencies, and the states and other stakeholders, such as law enforcement and public safety agencies.

The Indian Gaming Regulatory Act of 1988

The rise of tribal government-sponsored gaming dates back to the late 1970's when a number of tribes established bingo operations as a means of raising revenues to fund tribal government operations. At approximately the same time, a number of state governments were also exploring the potential for increasing state revenues through state-sponsored gaming. By the mid-1980's, a number of states had authorized charitable gaming, and some were sponsoring state-operated lotteries.

Although government-sponsored gaming was an issue of mutual interest, tribal and state governments soon found themselves at odds over Indian gaming. The debate centered on

VISION

An Indian gaming industry in which Indian tribes are the primary beneficiaries of gaming revenues; gaming is conducted fairly and honestly by both operators and players; and tribes and gaming operations are free from organized crime and other corrupting influences.

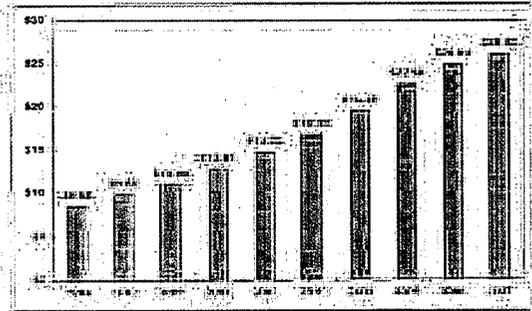
MISSION

To effectively monitor and participate in the regulation of Indian gaming pursuant to the Indian Gaming Regulatory Act in order to promote the integrity of the Indian gaming industry.

About the Vision and Mission

Indian tribes as the primary beneficiaries of gaming revenues...

Indian gaming revenues have grown at a rapid rate since IGRA was enacted in 1988. The most recent totals for Indian gaming revenue for 2007 stood at over \$26 billion. With these increased resources, tribes have been able to strengthen tribal governments, better provide for the general welfare of their respective tribal members, reinvest in the expansion of gaming facilities, and diversify into other economic growth opportunities. As this economic development and prosperity continues and expands to include a broader number of tribes and tribal members throughout the United States, the Commission intends to ensure such economic development benefits the participating tribes.



Growth of Indian Gaming Revenues (in Billions)

Gaming conducted fairly and honestly by both operators and players...

In the past, gambling and casino-style gaming has been highly susceptible to corrupt and dishonest operators and patrons. The fast-paced, cash intensive nature of casinos has often proven to attract those who would violate the rules and the law in order to realize a quick payout. Fortunately, the gaming industry, along with Federal and local law enforcement, has over the past several decades developed fervent policies and procedures to prevent cheating and fraud. IGRA envisions and enables the Commission to utilize these proven techniques to maintain the integrity of gaming as it has expanded to Indian lands.

Objective 1.1: Effectively monitor and enforce Indian gaming laws and regulations.

Monitoring and enforcing gaming laws and regulations is an essential function of the Commission. The Commission also works with other Federal agencies to ensure the integrity of the Indian gaming industry. In the past, tribes and their members have been subjected to public corruption investigations, prosecutions and fines for a variety of gaming-related offenses including (but not limited to):

- misappropriation of Indian gaming revenues, or unlawful receipt of funds from gaming contractors;
- internal theft or embezzlement of funds in Indian gaming operations; and
- tax-related violations for not reporting gambling winnings, and for non-compliance with the Title 31 money laundering statutes.

In addition, tribes have been subjected to numerous findings and enforcement actions by the Commission including:

- operational compliance audits that have resulted in hundreds of findings of non-compliance with required minimum internal control standards relative to cash handling and revenue accountability; and
- the issuance of numerous notices of violations, facility closure orders, and the imposition of substantial monetary fines totaling millions of dollars.

These findings and enforcement actions directly affect the profitability of the Indian gaming operation, and in relation to our mission, the integrity of the Indian gaming industry.

Means and Strategies for Achieving Objective 1.1

The Commission will utilize three strategies in order to effectively monitor and enforce gaming laws and regulations.

First, the Commission will ensure that tribes meet the statutory prerequisites to conduct gaming under IGRA by making timely determinations on tribal gaming ordinances, management contracts, and other statutorily-required activities.

Second, the Commission will conduct monitoring activities of Indian gaming operations in a uniform and consistent manner. Routine site visits will consist of compliance reviews and the use of standardized audit checklists. The Commission will, through its various field offices, develop and maintain positive working relationships with tribal gaming regulatory authorities. The Commission will also publish annual compliance reports and annual Indian gaming revenue reports.

Third, the Commission will conduct prudent regulatory enforcement actions as necessary. Working with tribal gaming regulatory authorities, we will provide advice and assistance,

EXHIBIT G

EXHIBIT G

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Written Remarks of NIGC Chairman Montie R. Deer
Before the Senate Committee on Indian Affairs
March 14, 2002

Mr. Chairman, Mr. Vice Chairman and members of the Committee. Thank you for this opportunity to report to you on the work of the National Indian Gaming Commission. As you are no doubt aware, the other Commission members and I are approaching the end of our terms, and we would like to say that we appreciate the interest and support that the Commission has received from this Committee during our tenures.

My remarks can be summarized by saying simply that the tremendous growth in the Indian gaming industry, particularly in light of the recent, dynamic changes in California, have strained our ability to keep pace.

In 1988, when the Commission was created, Indian gaming was Indian bingo. Today, it is a major industry producing revenues on par with Nevada and New Jersey combined. While the Indian gaming industry has increased more than one hundred fold, the Commission in vast contrast, has barely doubled from its start-up capacity. It is becoming increasingly difficult for the Commission effectively to carry out its requisite functions under the Indian Gaming Regulatory Act, a situation that is both frustrating and potentially damaging to the industry as a whole. A solid, effective Commission is an important ingredient in the health of this industry.

To put the Commission's resource needs in proper perspective, Mr. Chairman, please note that there are more than 300 tribal gaming facilities in operation today. These facilities are located throughout our great country, from Eastern Connecticut to Southern California, and from South Florida all the way to Washington State. They vary tremendously in size and sophistication, from tiny bingo halls to some of the largest casino operations in the world. To provide proper oversight, the Commission must not only retain a top-notch professional workforce, but we must also equip them with the tools they need to do their job. Given the size and scope of the industry, we are finding it more and more challenging to meet these important obligations.

We come to the Committee today seeking a \$2 million appropriation for FY 2003. To be completely candid, we view this request as an interim measure while we work with the Congress and the Indian gaming industry to secure legislation needed to allow flexibility in our fee collection structure. The Administration supports this one-time budget request and our goal of statutory adjustments to the current limitations on our permanent financing.

The upcoming fiscal year marks the fifth consecutive funding cycle during which the Commission has operated under a flat budget. As the Committee will recall, the Indian Gaming Regulatory Act (IGRA) was amended in 1997 to increase the Commission's fee assessment authority to the present level of \$8 million. It was recognized that the significant growth in the Indian gaming industry necessitated increased capacity on the part of the Commission.

Since the 1997 increase, the industry has continued to grow. The industry now generates approximately \$11 billion per year – an increase of nearly fifty percent since our last adjustment. Despite this rapid growth, the Commission continues to operate under a cap designed for an industry much smaller than the present size.

As previously reported to this Committee, we again emphasize that the Indian gaming boom in California continues to place a severe strain on our resources. Prior to passage of Proposition 1A in March 2000, there were 39 tribal gaming operations in California. Today, there are 46. In addition to the new facilities, it is important to note that many of those original 39 operations have undergone significant expansion, further impacting our workload. This growth is sure to continue. The number of California tribes having compacts for class III gaming could ultimately reach as high as 70.

The nature of gaming in California has changed as well, as major commercial players, such as Harrah's Entertainment, Anchor Gaming, Stations Casinos, and Donald Trump, have submitted management contracts to the Commission. While the contract review process gives us the opportunity to ensure the goals of Congress for such arrangements can be met, this also means that Commission staff must conduct complex financial background investigations, review the many documents related to the contractual relationship, and evaluate the environmental impacts of the casino development. To do our job in a timely manner we have had to hire temporary employees and retain consultants, to conduct background investigations, to provide financial analysis of the contracts, and to develop necessary environmental assessments.

A regrettable casualty of our flat budget has been our regular government-to-government consultations with tribal officials. Until the realities of our limited resources forced us to stop, the Commission had been conducting quarterly consultations with tribes. These one-on-one sessions were held at our regional offices and provided an opportunity for tribal leaders and the Commissioners to meet and discuss matters of mutual interest or concern. We also used the occasion to provide training on wide array of topics, including internal control standards and ethical issues. These consultations not only resulted in better, more productive relations with tribal governments, but also helped keep enforcement costs in check.

Among our most important activities as an agency is rulemaking, and we have worked hard to carry out our activities in this arena in keeping with the highest principles of the federal-tribal relationship. The primary rulemaking activities initiated by this Commission have been undertaken through an advisory committee process, followed by formal hearing to secure the fullest level of input. But the many benefits derived from this method of rulemaking come with a price, in that they are more expensive than simply writing the rules and receiving written comment.

In our effort to manage costs, we have also had to reduce travel across-the-board and we have instituted a hiring freeze. The commission is solvent, but it is solvent because we have allowed vacant positions to remain unfilled and because we have

reduced our presence in Indian country. We are certain that this is not what Congress had in mind when it created the Commission.

When we produced our Biennial Report for the years 1999-2000, we estimated our 2001 work force at seventy-seven employees. In fact today we employ sixty-eight people, two of whom are temporary employees, because we are concerned about the sustainability of staffing beyond this level. By "sustainability" we mean more than simply covering the cost of salaries and benefits, but also equipping the staff and getting them to where they need to be. The oversight responsibilities of the commission require professional employees – field investigators, auditors and lawyers – and we do not have enough. But we do not have the money to hire more of these employees and fund the travel, overhead, and other operational expenses associated with a larger staff.

By way of illustration, let's look at our Audit Division and the Minimum Internal Control Standards (MICS), which became effective February 2000. We began FY 2002 with six (6) auditors. Through attrition, we have lost two. These positions, though critical have not been filled due to our need to impose a hiring freeze and a shortage of funds to allow auditors to travel.

Due to its cash intensive nature, gaming is an exceedingly vulnerable industry. And in contrast to an industry in which all transactions are documented by cash register receipts, gaming operations have hundreds or thousands operations each day that cannot be supported by such documentation. The lack of supporting documentation for bets and other transactions makes the industry especially vulnerable. To protect the assets of the operation under these circumstances, observers must carefully monitor the wagering activities. This makes the industry highly labor intensive.

During the early 80's, the Nevada Gaming Control Board recognized that pre-established procedures or "internal controls" were essential to identify and deter irregularities effectively. In 1985, Nevada promulgated a framework of minimum internal control standards deemed necessary to ensure the proper recognition of gaming revenues and to safeguard the interests of the gaming public. Other jurisdictions soon followed Nevada's lead. Inherent in an internal control structure are the concepts of individual accountability and segregation of incompatible functions. The existence of standards alone, however, is not enough. Any internal control system carries the risk of circumvention, which is why a process of independent oversight is so critical to the integrity of an operation.

Consistent with our peers, the Commission promulgated its own minimum internal control standards (MICS). Recognizing the complexity of this aspect of our oversight responsibility, the Audit Division has been staffed by accountants experienced in the performance of gaming compliance audits. Without regard to the venue in which the gaming is conducted, history had demonstrated that, left unregulated, gaming will fall victim to those intent on preying upon its vulnerabilities. Consequently, the Commission has profound appreciation for the need to measure and evaluate compliance with the MICS.

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One way to view the MICS is as a protective shield against threats to tribal gaming integrity. With an appropriate level of sampling, we believe we can measure compliance with the MICS and make a meaningful contribution to ensuring the overall integrity of Indian gaming. Unfortunately, at current staffing levels, it would take twenty to thirty years for the Commission to evaluate each of the existing gaming operations.

There are other needs as well. The Commission would like to complete several projects that will pay future dividends in terms of overall efficiency and effectiveness. We are in the final stages of our technology initiative and are ready to begin implementing the financial and records management components of our new database. We are also preparing to introduce an electronic accounts receivable capability that will provide a database interface for on-line payments of fees. We have plans to improve our public information system by introducing dedicated FOIA software.

We are in the final phases of a project to improve the speed with which we provide fingerprint results from the FBI to the tribes. In the nine years we have been handling fingerprints for the tribes, we have processed more than 145,000 sets. Last year, with support from the FBI, we established a high-speed direct connection. Once our hardware needs are fully met, we will be able to take full advantage of this connection, and reduce the time it takes to process criminal background information for tribal employees from weeks or months to days or hours, a tremendous benefit to gaming tribes.

As mentioned at the beginning, my term at the Commission is drawing to a close, as are the terms of the other Commissioners. Our successors will face some significant challenges, and we hope that my remarks today will help pave the way as they guide the Commission in the next three years. Thank you for your kind attention. Let me say for myself, Vice Chair Homer and Commissioner Poust, that we each appreciate the support and many courtesies that you have extended us.

Thank you. We would be happy to answer any questions that the Committee may have.

EXHIBIT H

EXHIBIT H
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CQ Congressional Testimony

June 28, 2007 Thursday

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TESTIMONY-BY: PHILIP N. HOGEN, CHAIRMAN

AFFILIATION: NATIONAL INDIAN GAMING COMMISSION

BODY:

Statement of Philip N. Hogen Chairman National Indian Gaming Commission

Committee on Senate Indian Affairs

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June 28, 2007

Good morning Chairman Dorgan and members of the Committee. My name is Philip Hogen, and I am a member of the Oglala Sioux Tribe from South Dakota. I have had the privilege of chairing the National Indian Gaming Commission (NIGC) since December of 2002. Thank you for inviting me to discuss the draft legislation regarding the regulation of Class III gaming. I would like to offer some preliminary thoughts about it, and as you will see, those thoughts are informed by the role NIGC plays in the regulation of Class III gaming and the impact of the Colorado River Indian Tribes decision on NIGC's regulation of the Indian gaming industry.

The NIGC strongly supports Section 2 of the bill, which clarifies NIGC's regulatory authority over Class III gaming. In addition, NIGC has some concerns about Section 3 of the bill, which sets up a new mechanism for the regulation of Class III gaming. I must emphasize that those concerns are preliminary as the Commission is still reviewing and analyzing the draft. We stand ready to work with the Committee and the Committee staff to further review this concept and to best produce an effective structure to insure the continued integrity of the Indian gaming industry and its regulation.

The Draft Legislation

The draft legislation contains three short sections. The first simply names the act. The second section is what we have come, internally, to call a "CRIT fix." This refers to a recent decision by the United States Court of Appeals for the District of Columbia Circuit in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (D.C. Cir. 2006). The second section would clarify that NIGC generally has the same oversight authority over Class III gaming that it has over Class II gaming and specifically that it has authority to issue and enforce MICS for Class III gaming operations. The third and final section of the proposed legislation provides an alternative to NIGC

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regulation over some parts of Class III gaming. A "Regulatory Committee" appointed by the Secretary of the Interior would draft "minimum standards" for the regulation of Class III gaming. If NIGC then certifies that the regulatory standards in a tribal-state gaming compact meet or exceed those "minimum standards," this "shall preempt the regulation of Class III gaming by the Commission" at the operation that is the subject of the compact. As to Section 3, the Commission has not yet fully analyzed its provisions, but I have a few preliminary observations. We will send you a further and more complete analysis shortly. I am aware of the appropriate concern that tribes and states may have regarding how far NIGC might extend its oversight into Class III gaming activities if the changes proposed in Sections 1 and 2 of the draft legislation are enacted. I believe that the "Class III Regulatory Committee" created by Section 3 of the draft legislation is there, in part, to address this concern. The Committee would identify criteria that tribal-state compacts could meet and thus preclude NIGC's further participation in the oversight of that tribe's Class III gaming.

First, I think that history and past practice demonstrates that NIGC has always been careful to tailor its oversight of compacted gaming to complement, not duplicate, the regulation that compacts provide. As noted above, there is much diversity among compacts, and no doubt as future compacts are written, they too will vary from those now in effect. NIGC is a relatively small organization, and the depth and breadth of Indian gaming already tax its resources. Thus, where adequate oversight arrangements are addressed and implemented by compact, the Commission is careful not to replicate them. This practice saves budget dollars for the Commission and of course saves dollars for the tribes whose fees ultimately fund the Commission's efforts.

Second, history has revealed that in a number of instances, what is provided for in the compacts (in many cases in permissive rather than mandatory form) by way of a State oversight role is implemented only minimally, if at all. In those instances, NIGC has found it appropriate to be more

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engaged than it otherwise would. Were Section 3 of the proposed legislation enacted, it is possible that standards written by the Regulatory Committee could be met in approved compact language, but if those standards are not implemented, a serious regulatory oversight vacuum would develop, thereby impairing the integrity of the compacted operation.

Third and finally, IGRA tasks NIGC with many regulatory tasks for Class III gaming that are wholly independent from the NIGC MICS. These include:

Approve and enforce provisions of Class III gaming ordinances

Approve and ensure compliance with Class III management contracts

Ensure that Class III gaming is conducted in conformance with a compact

Ensure that Class III gaming is occurring on Indian lands

Ensure that net gaming revenues are used for the purposes outlined in IGRA

Ensure that tribal revenue allocation plans are followed

Ensure that tribes have the sole proprietary interest in their gaming activity

Ensure that tribes provide annual audits to the NIGC

Ensure that tribes issue facility licenses for their gaming facilities

Ensure that gaming facilities are constructed and operated in a manner that adequately protects the environment, public health and safety

Ensure that background investigations are conducted on primary management officials and key employees of gaming operations

Presumably there is not an intention in the draft legislation to displace NIGC in those areas, but if the concept of a Regulatory Committee remains in the legislation, clarity should be brought to this area.

Draft Legislation 2, CRIT fix

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As to Section 2, the need for a CRIT solution is paramount for the NIGC. I have testified to the facts and figures many times before your committee. Recently, I testified before the California General Assembly - Government Organization Committee on the need for MICS in an effective regulatory regime. The battle in California over the need for MICS in their new compacts highlights the importance of the Federal role in a balanced approach to the regulation of Indian gaming. IGRA envisioned a three legged stool, where balance depended upon all three legs. With the NIGC leg now off the stool, the imbalance has the very real prospect of upsetting the gains gaming has made for Indian people.

In my view, what is at stake is the integrity of Indian gaming. This is not meant to criticize either the tribes or the states. Rather, it is a statement of the obvious. Gaming depends on the public perception and belief in the integrity of operations they choose to patronize. A balanced regulatory approach includes: (1) tribes as the primary regulator with the day-to-day responsibilities and heavy lifting; (2) states having whatever role is provided in the tribal-state compact, usually oversight insuring state policy and applicable laws are adhered to as well as assuring that any revenue sharing payments agreed to are properly calculated and made; and (3) NIGC having the role of making sure that the overall regulation is consistent and fair. Consistent, fair and stable regulation and oversight will continue to foster the growth of Indian gaming. The model envisioned by IGRA worked for 18 years producing \$25 billion in gaming revenue in 2006. The NIGC has the advantage of seeing Indian gaming all over the country enabling it to spot trends and react to negatives in ways that tribes and states are not usually equipped to do. Further, the NIGC provides a clearinghouse for vital information sharing between the three parties and other stakeholders, such as law enforcement and public safety agencies.

It is the combination of the three that provides the balanced approach that has allowed Indian gaming to succeed and thrive. The proposed legislation in Section 2 addresses this concern by clearly giving the NIGC authority to promulgate and enforce MICS for Class III gaming. As background about the CRIT case, in early 2001, NIGC attempted to audit a Class II and III gaming operation owned by the Colorado River Indian Tribes (CRIT). NIGC was looking to check compliance with minimum internal control standards or "MICS," 25. C.F.R. Part 542.

The MICS provide, in considerable detail, minimum standards that tribes must follow when conducting Class II and III gaming. They are intended to embody accepted practices of the gaming industry. To choose a few of many possible examples, the MICS prescribe methods for removing money from gaming machines and gaming tables and counting it so as best to prevent theft; they prescribe methods for the storage and use of playing cards so as best to prevent fraud and cheating; and they prescribe minimum resolutions and floor area coverage for casino surveillance cameras. Attached as Exhibit 1 is a copy of the MICS table of contents, which provides a more detailed overview of their comprehensive scope. More than this, though, the MICS attempt to embody overall controls that reasonably assure gaming transactions are appropriately authorized, recognized and recorded. They thereby assure the integrity of games and safeguard tribal assets, and they do so without displacing internal control requirements that tribes and states have negotiated into their compacts. In the event of a direct conflict between the terms of a compact and the MICS, the MICS specifically state that it is the compact terms that prevail and bind the operation.

In any event, CRIT refused to give NIGC access to its Class III gaming records. The NIGC Chairman responded with a notice of violation and civil fine. CRIT appealed to the full Commission, which upheld the Chairman's actions. On appeal, the District Court for the District of Columbia granted summary judgment in favor of CRIT, finding that IGRA does not confer upon NIGC the

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authority to issue or enforce MICS for Class III gaming. The District Court found that while IGRA grants NIGC authority over certain aspects of Class III gaming, MICS are not among them. On October 20, 2006, the U.S. Court of Appeals for the District of Columbia affirmed the District Court. Though some read the CRIT decision to say that the NIGC has no authority over Class III gaming, the actual holding was narrow: Congress did not give the NIGC the authority to promulgate minimum internal control standards for Class III gaming.

Background

I would like to attempt to explain, in somewhat more detail, my position through the history of the development and implementation of the regulation of this segment of the Indian gaming industry; the tools NIGC has developed and used over the years in which Class III gaming has grown to its present size; how the aforementioned court ruling has had a significant impact on this regulation; and how I think legislation might help insure that the integrity in the operation and regulation of Class III gaming, which has permitted it to become so successful, might be best maintained. As NIGC recently reported, in 2006, tribal gaming generated over \$25 billion in gross gaming revenues. While precise numbers are not required in this connection, NIGC and those who closely watch the Indian gaming industry estimate that nearly 90% of this revenue is generated by compacted, Class III gaming -- far and away the dominant means by which tribes generate gaming revenues.

History of IGRA

It is the NIGC's belief that in IGRA, Congress intended that the Federal entity established to provide oversight of Indian gaming would have an oversight role with respect to the dominant form of gaming in the industry, whether bingo in 1988 or Class III gaming now. If the NIGC's role with respect to its minimum internal control standards and Class III gaming is not clarified by the courts

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or legislation, most tribes will continue to operate first- rate, well-regulated facilities, and their tribal gaming regulatory entities will perform effectively. Others likely will not.

When the NIGC came on the scene in October of 1988, it believed - and still believes - that its mission was to provide effective oversight of tribal gaming. IGRA states that it established the NIGC as an independent Federal regulatory authority over Indian gaming in order to address Congressional concerns about gaming and to advance IGRA's overriding purposes. These are to ensure that tribal gaming promotes tribal economic development, self- sufficiency and strong tribal governments; to shield gaming from organized crime and other corrupting influences; to ensure that the tribes are the primary beneficiaries of their gaming operations; and to ensure that gaming is conducted fairly and honestly by both the tribal gaming operations and its customers. IGRA therefore authorizes the Chairman to penalize, by fine or closure, violations of the Act, the NIGC's own regulations, and approved tribal gaming ordinances. Historically, casino gaming has been a target for illicit influences. Nevada's experience provides a classic case study of the evolution of strong, effective regulation. It was not until Nevada established a strong regulatory structure -- independent from the ownership and operation of the casinos themselves -- and developed techniques such as full-time surveillance of the gaming operations that most potentialities for criminal involvement were eliminated from the gaming industry there. All jurisdictions that have subsequently legalized gaming have looked to Nevada's experience to help guide their own regulation and oversight.

Regulation of Tribal Gaming

IGRA mandates that tribes may conduct Class III gaming only in states where such activity is permissible under state law and where the tribes enter into compacts with states relating to this activity, which compacts require approval of the Secretary of the Interior. Compacts might include specific regulatory structures and give regulatory responsibility to the tribe, to the state, or to both in

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some combination of responsibilities. Since the passage of IGRA, 232 tribes have executed 249 Class III compacts with 22 states, and the allocation of regulatory responsibility, if addressed at all, is as diverse as the states and tribes that have negotiated them. In 1987, the Supreme Court decided the Cabazon case and clarified that tribes had the right to regulate gambling on their reservations, provided that the states wherein they were located did not criminally prohibit that activity. At that time, large-scale casino gaming operations existed only in Nevada and New Jersey. The Indian Gaming Regulatory Act was passed in 1988 and established the framework for the regulation of tribal gaming. That same year, Florida became the first state in the southeastern United States, and the 25th overall, to create a state lottery. In 1989, South Dakota legalized gambling in the historic gold mining town of Deadwood, and Iowa and Illinois legalized riverboat gambling. The following year, Colorado legalized gambling in some of its old mining towns, and in 1991, Missouri legalized riverboat gambling. By that time, 32 states operated lotteries, while tribes ran 58 gaming operations. Thus, not just in Indian country but throughout the United States there was at that time a manifest social and political acceptance of gambling as a source of governmental revenue. What is also evident is that when IGRA was adopted in 1988, very few states had experience in the regulation of casino gaming.

When IGRA was enacted, those tribes then engaged in gaming were primarily offering bingo. While there may have been an expectation in Congress that there would be a dramatic change in the games tribes would offer, I think it is reasonable to assume many expected tribal gaming would continue to be primarily Class II, or non-compact, gaming. After 1988, when tribes began negotiating compacts for casinos with slot machines and banked card games, most of the states they negotiated with had little or no experience in regulating full-time casino operations. Michigan, for example, first compacted with Tribes in 1993 but didn't create its own Gaming Control Board or author-

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ize commercial gaming until the end of 1996. Minnesota began compacting with tribes in 1990 and to this day has no non-Indian casinos within its borders. A review of compacts approved since 1989 shows that the more recent compacts often address the mechanics of the oversight and regulation of the gaming quite specifically but those earlier compacts, some of which were entered into in perpetuity, do not. Further, the dispute resolution provisions to resolve issues identified by a State's oversight authority in the compacts often employ cumbersome and time-consuming procedures like mediation or arbitration that do not necessarily foster effective regulation. For example, in the 22 states with Class III gaming, 12 provide for some form of mediation or arbitration with varying degrees of specificity and enforceability. Attached as Exhibit 2 is a chart summarizing the internal control and dispute resolution provisions of the compacts in these 22 states. Typically, the regulatory role a particular state undertakes in its compact was taken from and modeled on that state's experience with the regulation of its own legalized gaming at the time the compact was negotiated. Where such states develop effective regulatory programs, the need for NIGC oversight is greatly reduced. For example, in states where the tribal-state compacts call for regular state oversight, institute technical standards and testing protocols for gaming machines and establish internal control requirements, the NIGC's oversight role will be limited. This is the case, for example, in Arizona. Some states such as Michigan and North Dakota, however, have assumed a minimal regulatory role. In some cases, compacts have become little more than a revenue sharing agreement between the state and the tribe. Consequently, under circumstances where the states do not have a significant regulatory presence, the NIGC must be in place to undertake a broader range of oversight and enforcement activities.

The History of MICS

The diversity of tribal gaming operations is great. Both rural weekly bingo games and the largest casinos in the world are operated by Indian tribes under IGRA. As the industry grew from its

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modest beginnings, NIGC needed the appropriate tools to implement its oversight responsibilities. What the Commission lacked was a rule book for the conduct of professional gaming operations and a yardstick by which the operation and regulation of tribal gaming could be measured. During the early stages of the dramatic growth of the Indian gaming industry, some in Congress expressed concerns that uniform minimum internal control standards, which were common in other established gaming jurisdictions, were lacking in tribal gaming. The industry itself was sensitive and responsive to those concerns and a joint National Indian Gaming Association - National Congress of American Indians task force recommended a model set of internal control standards. Using this model as a starting point, in 1996, the NIGC assembled a tribal advisory committee to assist us in drafting minimum internal control standards applicable to Class II and Class III gaming. These were first proposed on August 11, 1998, and eventually became effective on February 4, 1999. With the adoption of the NIGC's MICS, all tribes were required to meet or exceed the standards therein, and the vast majority of the tribes acted to do so. NIGC's approach during that time was to assist and educate tribes in this regard, not to cite violations and penalize. When shortcomings were encountered by NIGC at tribal operations, NIGC's assistance was offered and grace periods were established to permit compliance.

I served as an Associate Commissioner on the NIGC from 1995 through mid-1999, and I participated in the decision to adopt and implement the MICS. I have now served as the Chairman since December of 2002. It is my confirmed view that the Minimum Internal Control Standards -- given the tribes' strong effort to meet and exceed them and the inspections and audits that NIGC conducts to ensure compliance -- have been the single most effective tool that our Federal oversight body has had to utilize to ensure professionalism and integrity in tribal gaming. The NIGC MICS

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were embraced by state regulators, several of whom adopted or incorporated NIGC MICS, or compliance therewith, in their compacts.

For six years, NIGC oversight of Class II and Class III gaming with the use of minimum internal control standards went quite smoothly. When necessary, NIGC revised its MICS, and it employed the assistance of tribal advisory committees in doing so. At the time of adoption, of course, many tribal gaming operations and tribal regulatory authorities were already far ahead of the minimums set forth in the MICS. Other tribes, however, had no such standards, and for the first time they had the necessary rule book by which to operate.

NIGC Enforcement of MICS

NIGC employed three methods of monitoring tribal compliance with its MICS. First, the MICS required the tribe to engage an independent Certified Public Accountant to perform what are called "agreed upon procedures" to evaluate the gaming operation's compliance with the regulations. The NIGC recommended testing criteria to be used by the external accountant. The results were provided to the tribe and NIGC within 120 days of the gaming operation's fiscal year end. Next, on a regular basis, NIGC investigators and auditors made site visits to tribal gaming facilities and spot checked tribal compliance. Finally, NIGC auditors conducted a comprehensive MICS audit of a number of tribal facilities each year. Typically those audits identified instances wherein tribes are not in compliance with specific minimum internal control standards. Almost always, the noncompliance was then successfully resolved by the tribe. As a result, NIGC was pleased that tribes have a stronger regulatory structure, and tribes were pleased that they have plugged gaps that might have permitted a drain on tribal assets and revenues. Although there have been instances where the noncompliance with the MICS was not resolved, in those instances the tribes were persuaded to voluntarily close their facilities until the shortcomings were rectified. NIGC has never issued a closure

order or taken an enforcement action resulting in a fine for tribal non-compliance with NIGC MICS. It is worth noting that the NIGC recognizes that its success in ensuring tribal gaming operations function in a manner sufficient to safeguard the interests of the stakeholders depends upon the tribes' voluntary compliance. Consequently, the ultimate objective of our audits was to persuade.

Although drawing conclusions based solely on the number of MICS compliance exceptions detected in an audit can be misleading, a look at some of our numbers in this regard can be instructive. Audit reports have reflected as few as ten findings and others over a hundred. However, of the 51 comprehensive audits conducted, only a few have not revealed material internal control weakness. Attached as Exhibit 3 is a table summarizing the number and kinds of MICS violations found from January 2001 through February Attached as well are representative MICS compliance audit reports.

MICS Compliance

The oversight responsibilities of the NIGC give it a unique view from which to report the variety of challenges confronting Indian gaming in terms of regulatory violations and enforcement actions taken. As said above, the primary responsibility for meeting these challenges is and ought to be on the shoulders of the tribes. The NIGC encourages strong tribal regulation and applauds the resources that Indian gaming currently applies to regulation and other oversight activities. As Indian gaming continues to grow and the sophistication of operations expands and as the levels of the revenues increase accordingly, regulation must stay ahead of this growth if the integrity of the industry is to be protected. I have attached as Exhibits 4 and 5 a timeline and growth chart depicting the growth of tribal gaming operations and revenues, the growth of the National Indian Gaming Commission's staff, and some of the benchmark developments that have occurred during this history. It is in this context that the following examples of the numbers and types of MICS violations the NIGC has uncovered are offered.

The NIGC has compiled the following review of Minimum Internal Control Standards ("MICS") Compliance Audits - January 2000 to May 2007. The number of tribal gaming operations is taken from those reporting financial information to NIGC.

Findings common to most compliance audits:

Lack of statistical game analysis;

Ineffective key control procedures;

Failure to secure gaming machine jackpot/fill system;

Failure to effectively investigate cash variances/missing supporting documentation for the cage accountability/failure to reconcile cage accountability to general ledger on a monthly basis;

Inadequate segregation of duties and authorization of player tracking system account adjustments;

Ineffective internal audit department audit programs, testing procedures, report writing and/or follow-up;

Deficient surveillance coverage and recordings;

Noncompliance with Internal Revenue Service regulation 31 CFR Part 103;

Failure to exercise technical oversight or control over the computerized gaming machine systems, including the maintenance requirements for personnel access;

Failure to properly document receipt and withdrawal transactions involving pari-mutuel patrons' funds and a lack of a comprehensive audit procedures of all pari-mutuel transactions;

Failure to adequately secure and account for sensitive inventory items, including playing cards, dice, bingo paper and keno/bingo balls; and

Failure to adopt appropriate overall information technology controls specific to hardware and software access to ensure gambling games and related functions are adequately protected.

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Although exact data is not available regarding losses to tribal gaming operations resulting from the above control deficiencies, based on the past experience of commercial gaming, we can conclude the amount to be in the millions each year. These violations show that certain tribes are not adequately protecting their gaming assets. In California, for example, between 2002 and 2006, the NIGC conducted 8 audits that produced findings indicating that one gaming operation possessed an exemplary system of internal controls, four were reasonably effective but had multiple material control weaknesses and three had a system of internal controls considered to be dysfunctional.

Breakdown in Tribal Regulation

Beyond the MICS, the NIGC oversight has uncovered serious breakdowns in regulation at Class II and Class III tribal gaming operations throughout the country. This is true even where there is apparent adequate tribal regulation and control in place.

Examples of instances where tribal gaming operational and regulatory efforts have been found deficient include the following:

During the course of investigations and MICS compliance audits, NIGC investigators and auditors discovered that an extraordinary amount of money was flowing through two Class III off track betting (OTB) operations on two reservations. The amount of money was so high in comparison to the amount that could reasonably flow through such OTB operations that our investigators immediately suspected money laundering or similar activities. These two operations were the first referrals to the FBI's working group in which we participate. The FBI investigations found that these operations were part of a wide spread network of such operations with organized crime links and several Federal criminal law violations. Unfortunately, the tribes' gaming management allowed them to gain access and operate as part of their Class III tribal gaming operations, and the tribes' gaming regulators completely failed to take any action against these illegal OTB operations.

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There are also examples where tribes continued to operate, without modification or correction, a gaming facility that permitted gaming activities to be conducted by companies owned by individuals with known criminal associations; distributed large amounts of gaming revenues without requisite approved revenue allocation plans or the financial controls necessary to account for them; knowingly operated gaming machines that were plainly illegal; and appointed gaming commissioners and regulatory employees and licensed and employed gaming employees whose criminal histories indicated that they were unsuitable and serious risks to the tribes' gaming enterprise. An accurate assessment of Indian gaming regulation must also reflect the unfortunate examples of tribes that are so politically divided that they are unable to adequately regulate their gaming activities, as well as instances where tribal officials have personally benefited from gaming revenues at the expense of the tribe itself. In addition, there have been many instances where apparent conflicts of interest have undermined the integrity and effectiveness of tribal gaming regulation. In all of these troubling situations, it was necessary for the NIGC to step in to address the problems. The above examples illustrate that Indian gaming has many regulatory challenges that without comprehensive, well informed oversight and enforcement the integrity of the industry would be in jeopardy.

The NIGC has compiled a list of potential risks to Indian gaming if strong oversight is not maintained:

Risk of not detecting employee embezzlement;

Risk of not detecting manipulations and/or theft from gaming machines;

Risk of not detecting criminal activity or the presence of organized crime influence;

Risk of not detecting misuse of gaming revenues by tribal officials;

Inability to effectively determine whether third parties are managing the gaming facility without an approved contract;

Inability to effectively determine whether imminent jeopardy exists with regard to the safety of employees and patrons of the gaming establishment;

Inability to effectively determine whether individuals other than the recognized tribal government are asserting authority over the gaming operation;

Inability to effectively determine whether outside investors have unduly influenced tribal decision-making or made improper payments to tribal officials;

Inability to effectively perform operational audits, which track the movement of money throughout the casino;

Risk that tribal surveillance and gaming commission funding could decrease rapidly, as these are expensive and are not seen as increasing the casino bottom line.

Potential Impact of CRIT Decision

Finally, I would like once again to return the significance of the CRIT decision and the importance that NIGC places upon a CRIT fix. IGRA, in effect, anticipated the wide range of regulatory structures in the various tribal-state compacts through the establishment of the NIGC as an independent federal regulatory authority for gaming on Indian lands. With respect to NIGC's regulatory oversight responsibilities, IGRA authorized the Commission to penalize violations of the Act, violations of the Commission's own regulations, and violations of the Commission-approved tribal gaming ordinances by the way of imposition of civil fines and orders for closure of tribal gaming facilities. A luxury that tribal gaming regulators have, when contrasted to the NIGC and state regulators, is that ordinarily their regulatory responsibility is confined to one, or in some cases several, tribal gaming facilities. The laser-focus this permits undoubtedly has advantages. However, states, and NIGC, have an advantage not permitted in such an arrangement, and that is ability to look at a broad range of gaming operations, permitting them to contrast and compare methodologies and trends, and

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perhaps thereby identifying issues that would not be apparent to a regulator with primary exposure to only one operation. (Such operation being owned by the entity which controls the purse strings for the tribal regulatory body itself.) Thus, the combined approach tribes having the heavy lifting the all day, every day responsibility and the NIGC and the states having a less immediate but independent oversight perspective, seeing multiple operations, affords an important perspective which would otherwise not be available. In an arrangement where states do not bring this perspective to the arrangement or where NIGC cannot bring it, this synergy envisioned by the authors of IGRA is lost.

More specifically, since the Colorado River Indian Tribes decision, the NIGC has discontinued the practice of Class III gaming reviews conducted by our auditors. There will be temptations, generated by demands for per capita payments or other tribal needs, to pare down tribal regulatory efforts and bring more dollars to the bottom line. There will be no federal standard that will stand in tribes' way should this occur. For the most part, the NIGC will become an advisory commission rather than a regulatory commission for the vast majority of tribal gaming. The very integrity of the now-smoothly-operating regulatory system, shared by tribal, state and federal regulators, will be disrupted. If there is one imperative change that needs to be made in the Indian Gaming Regulatory Act, in the view of this NIGC Chairman and consistent with the legislative proposal that the NIGC sent to this Congress in May of 2007, it is the clarification that NIGC has a role in the regulation of Class III gaming.

Not everyone agrees, of course. Some tribes argue that the CRIT decision should be read broadly to eliminate any NIGC authority over Class III gaming. This interpretation may impact on the ability of the NIGC to enforce its regulations as follows:

Activity Impact

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Bingo Unchanged

Pull-Tabs Unchanged

Card Games Unchanged

Keno No enforcement authority

Pari-Mutuel Wagering No enforcement authority

Table Games No enforcement authority

Gaming Machines No enforcement authority

Cage Scope limited - Bingo/Pull-Tab/Card Game Inventory Items

Credit Scope limited - Bingo/Pull-Tab/Card Game Inventory Items

Information Technology Scope limited - Bingo/Pull-Tab/Card Game

Related Software and Hardware

Complimentary Services and Items Scope limited - Bingo/Pull- Tab/Card Game Transactions

Drop and Count Scope limited - Bingo/Pull-Tab/Card Game

Cash, Cash Equivalentents and Documents

Surveillance Scope limited - Bingo/Pull-Tab/Card Game Areas

Internal Audit Scope limited - Bingo/Pull-Tab/Card Game Transactions

One of the daunting challenges facing the NIGC is answering the question: "Where does the Class II end and the Class III begin?" In most Indian gaming establishments there is no segregation of internal controls between Class II and Class III. We can audit Class II games without auditing Class III, for instance bingo versus blackjack. However, when it comes to comps and surveillance and other more general areas it gets tricky. In most instances, the proceeds are combined or commingled and auditors then can't look at one revenue stream without observing the other. This gray area has the potential to hinder our mission.

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The above examples illustrate that the regulation of Indian gaming is a complicated matter. At the tribal level it can often be impacted by political discord that may lead to uneven enforcement or at times little effect regulation regardless of overall intention. It is nevertheless clear that tribes have a very strong interest in assuring that their operations are adequately regulated.

Challenges to the Independence of Tribal Regulation

That said, some gaming commissions are not sufficiently independent of the tribal governments or the managers that operate the gaming operation. In this connection, the history of Nevada's regulatory structure may be instructive. Effective gaming regulatory authority in Nevada was a process that evolved over a forty year period and is continuing to improve and respond to change today. Only after creation of a separate gaming regulatory authority did oversight of the industry have an effective champion. Beginning in the late 70's, significant progress was made into the identification and removal of individuals and entities intent upon exploitation and corruption. Although many factors contributed to corruptive influences in Nevada, one aspect stood out. At the time gaming was legalized in Nevada, the state and local governments were in a rather deprived financial position therefore the governmental agencies charged with regulatory oversight were also dependent, albeit desperate, for the potential revenues this growing industry could provide. The Nevada experience demonstrates a critical policy question when gaming regulations are considered: that as the government charged with regulation becomes increasingly dependent upon the profitability of the industry being regulated, the effectiveness of the regulatory effort may diminish.

Generally, in tribal gaming, the tribal council is the ultimate governmental authority responsible for ensuring the gaming operation generates the greatest return on investment and that, in doing so, is effectively regulated. Such an organizational structure has challenges because the motivations lack congruity. Inevitably, from time to time, one objective may be foregone in pursuit of the other

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and, many times it is the oversight function. Although some tribes have recognized the organizational weakness and have installed procedures to counteract its effect, others have not and, as a result, the effectiveness of their regulatory processes is significantly diminished.

In sum, the result of the CRIT decision is that Class III gaming is left with tribal-state compacts as the remaining vehicle for oversight and enforcement. The information I have attempted to present here shows, I believe, many of the structural weaknesses of that situation. While NIGC has no role, compacts are lacking in the area of enforcement. Compacts might include specific regulatory structures and give regulatory responsibility to the tribe, to the state, or to both in some combination of responsibilities. In two states, Arizona and Washington, the tribal-state compacts call for regular state oversight, institute technical standards and testing protocols for gaming machines, and establish internal control requirements. Most states, however, have assumed a minimal regulatory role. In many cases, compacts have become little more than a revenue sharing agreement between the state and the Tribe. The absence of the NIGC in the regulation of Class III gaming removes an essential component of oversight and enforcement.

LOAD-DATE: June 29, 2007

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EXHIBIT I

EXHIBIT I

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Past could hurt state regulation of casinos

New deals worth billions to 5 tribes

By James P. Sweeney
COPLEY NEWS SERVICE

May 28, 2007

SACRAMENTO – To the surprise of many, the Schwarzenegger administration and the chairman of California's gambling commission recently declared that the state has all the legal authority it needs to step in and restore basic operating standards for Indian casinos.

The stance offered a fresh counterargument to Assembly Democrats who say pending gambling agreements for five big Southern California tribes must be reopened to address the loss of federal guidelines tossed out by a federal court.

The new gambling agreements, or compacts, are worth billions of dollars to the five tribes, which include Sycuan of El Cajon and Pechanga of Temecula. The state would receive a sizable cut, projected at more than \$22 billion over the 23-year life of the deals.

But echoes from the past, when an angry debate over the state's regulatory reach all but consumed the gambling commission, could undercut the administration's recent assertion and blunt any impact it might have on the stalled compacts.

It wasn't that long ago that most if not all of the five tribes with the pending deals insisted that the state had little power to regulate casinos in the first round of compacts signed in 1999.

"Under the compact, the California Gambling Control Commission has no direct role or authority in regulating tribal government gaming," Sycuan argued in a January 2003 letter to the commission.

Morongongo, another tribe with a compact pending, made the same claim in a largely identical letter at the time.

Agua Caliente Chairman Richard Milanovich, whose tribe also has one of the pending deals, complained earlier that the commission was "overstepping its bounds" in the pursuit of uniform tribal gaming regulations and additional auditors.

Sen. Jim Battin, a Palm Desert Republican aligned with tribes, noted in a memo in June 2001 that tribal leaders believed the gambling commission was "attempting to over-assert its regulatory authority into tribal activities in which they have no jurisdiction."

At the time, the fledgling commission and its critics were sorting through murky compact language that clearly gave tribes the primary role in regulating and governing their casinos but left the state's position open to interpretation.

The National Indian Gaming Commission had just finished work on a comprehensive set of minimum

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standards for internal security at casinos, from cash handling to cash and credit operations, internal audits, surveillance and the games, whose standards included things from technical requirements to how often decks of cards should be changed.

The federal rules prevailed until late last year, when a federal appeals court upheld an earlier ruling that the national commission did not have the authority to establish and enforce such standards in most Indian casinos: those that offer conventional slot machines and other Nevada-style games.

The courts said the issue of operating rules should be resolved in the compacts.

The legal setback could "greatly impact California," Gov. Arnold Schwarzenegger warned in a March 30 letter to the Senate Committee on Indian Affairs. He urged Congress to restore the federal rules.

The administration also has supported a move by the state gambling commission and some tribes with pending compacts to develop a statewide regulation to require casino standards at least as stringent as the federal rules.

However, the proposal has drawn a cool response from many of California's more than 60 gaming tribes.

With the five big compacts stymied in the Assembly, attorneys for the governor and the commission – which is appointed by the governor – told an Assembly committee this month that the state could fill any regulatory void under the 1999 compacts.

"We determined that all of the compacts provide the commission with ample oversight authority and access related to tribal (internal standards)," Commission Chairman Dean Shelton told the Governmental Organization Committee. "This includes the authority to review tribes' gaming facilities and inspect related gaming operations or . . . records."

The commission simply lacked the staff and resources to exercise its power in the past, Shelton said.

Under questioning, Shelton said the commission could adopt and enforce the proposed statewide regulation on internal standards even if most tribes reject it.

"This is unprecedented," said Howard Dickstein, a leading tribal attorney. "No one from the state has ever taken this position before."

Assemblyman Alberto Torrico, a Fremont Democrat who is chairman of the committee, also wasn't convinced. Just last year, the commission had lamented the state's "limited compact authority" in its request for a budget increase, Torrico noted.

He asked why the governor appealed to Congress for help if the administration really believes the state has all the legal tools it needs to watch over Indian casinos.

"Either we're serious about coming up with a statewide solution or . . . we're going to admit here publicly we don't care, there is no federal regulation, we have these compacts pending," Torrico said. "Let the chips fall where they may."

Tribes did not testify, but representatives of some with pending compacts applauded the administration.

"There is a lot of concern about things we believe are already in place," said Nancy Conrad, a spokeswoman for Agua Caliente. "We believe the regulatory oversight is there."

George Forman, a prominent tribal attorney who represents both Sycuan and Morongo, said that despite widespread criticism of the 1999 compact, "The state did not leave itself defenseless and paralyzed."

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He said the state has the ability under the compact "to ensure that tribes adhere to (minimum standards) consistent with those mandated by the National Indian Gaming Commission."

Earlier protests about the commission's regulatory reach have to be measured within the context of the debate at the time, he said.

"They were very different issues getting into very different areas that were, and in most cases remain, not appropriate for state gambling commission intervention," Forman said.

Others still aren't so sure.

I. Nelson Rose, a Whittier Law School professor who specializes in gambling law, said the state lacks clear authority to conduct broad audits of tribal casinos. He also recalled tribes' efforts to squeeze the gambling commission's early budgets.

"You can't regulate if your budget is dependent on the whims of politicians who are subject to political pressure from the tribes," he said.

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GOVERNOR ARNOLD SCHWARZENEGGER

March 30, 2007

The Honorable Byron Dorgan
 Chairman
 Senate Committee on Indian Affairs
 838 Hart Senate Office Building
 Washington, DC 20510

The Honorable Craig Thomas
 Ranking Member
 Senate Committee on Indian Affairs
 838 Hart Senate Office Building
 Washington, DC 20510

Re: NIGC Class III Gaming Authority, Minimum Internal Control Standards

Dear Chairman Dorgan and Senator Thomas,

As you are aware, the Court of Appeals for the District of Columbia recently ruled in *Colorado River Indian Tribes v. National Indian Gaming Commission*, that the National Indian Gaming Commission does not have authority to enforce Minimum Internal Control Standards (MICS) for class III gaming. This ruling has the potential to greatly impact California, and I would support federal legislation that would confirm the NIGC's authority to establish and enforce the MICS for class III gaming.

California has over 100 federally-recognized Indian tribes. Currently, 66 of those tribes have tribal-state gaming compacts. There are 56 tribal casinos in operation in California and several more in the planning and development stage. Our gaming compacts require tribes to adopt and comply with rules and regulations governing various internal control areas and to provide for significant state regulatory oversight. Our approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC's activities. This has worked well for California. I believe that strong state, federal and tribal regulation and oversight of class III gaming best serves the public interest and furthers the goals of the Indian Gaming Regulatory Act.

I encourage and support efforts at the federal level to confirm and clarify the NIGC's authority.

Sincerely,

Arnold Schwarzenegger

cc: The Honorable Dianne Feinstein