San Manuel Band of Mission Indians
Tribal Gaming Commission
OFFICE OF THE COMMISSION

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February 9, 2012

Ms. Tracie Stevens, Chairwoman
Ms. Stephanie Cochran, Vice Chairwoman
Mr. Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L St. N.W., Suite 9100
Washington, D.C. 20005

Dear Commissioners,

On or about January 31, 2012 the NIGC published proposed Rule 25 CFR Part 518 relative to certificates of self regulation for Class II gaming. The publication asks for public comment on the proposed rule to be submitted by April 2, 2012.

We are thankful for the opportunity to submit these comments, and would like to state in general, that we commend the Commission for its efforts in making self regulation petition and review requirements much less intrusive and burdensome than the existing process. However, we would like to comment on a number of proposed provisions that pose some confusing or problematic considerations.

Section 518.3 (b) states that a tribe would be eligible to petition, if for the three preceding years, "all gaming that the tribe has engaged in, or has licensed and regulated....is located within a state that permits such gaming....". Like wise paragraphs (c) and (d) of §518.3 reference compliance with portions or all of 25 USC 2710 (IGRA). This would strongly imply that for NIGC to determine eligibility, that it will have to verify Class III compact/gaming compliance for those tribal operations (most) that have both Class II and Class III gaming activity. If this is not the case, then § 518.3 (b) should read "all Class II gaming that the tribe has engaged in.....". Similarly, clarity by adding the words "Class II" would be helpful in paragraphs 518.5 (a) (1), (2), (3) and (4) (ii).

Section 518.4 (c) (v) requires the petition to include "a list of current regulators and employees of the tribal regulatory body, their complete resume's, their titles, the dates they began employment, and if serving terms, the expiration date of such terms". While we can see value in providing a detailed TGRA organization chart as requested in paragraph (ii), we see no value in this list. We have approximately 125 regulatory agency employees, many of whom do not have "complete resumes". Even if such an onerous box of paper were submitted, it would

likely not be accurate by the time NIGC personnel arrive for an eligibility review. We can find no such statutory requirement either. While we can imagine some value in verifying the good character of regulatory employees, as suggested in 518.5 (b) (2), it would seem to be more practical to require the TGA to "make available" employee names and background files at the time of NIGC's site visit/review.

Section 518.4 (c) (vii) asks for the submission of "a list of gaming activity internal controls at the gaming operation". We don't understand the need or value in being required to produce this list for the following reasons. It would seem reasonable to assume and expect that, at a minimum, the tribe has and is complying with the required NIGC MICS. One would also expect that your eligibility review would include a MICS compliance review. Additionally, it is a requirement of our annual outside independent audit, that we also have an "agreed upon procedures" (AUP) engagement whereby the independent CPA tests and attests that we have and comply with internal controls "at least as stringent" as the NIGC MICS. This AUP attestation would also seem to satisfy the "illustration" of eligibility criteria suggested in paragraph 518.5 (b) (1).

Section 518.5 (b) gives "illustrations" of what could satisfy eligibility criteria cited in paragraph (a) above it. It is a concern that 518.5 (b) (5) (ix) and (xii) suggest standards for vendor licensing. While we certainly believe it is a valuable practice, and suppose that most tribes engage the practice to some degree, there is no statutory requirement relative to vendor licensing excepting management contractors. There also are no other NIGC regulations relative to vendor licensing. We would respectfully request that vendor licensing not be tied to "what criteria must a tribe meet to receive a certificate of self-regulation?", as is suggested in the title of 518.5.

Section 518.10 (a) states that a tribe "shall be required to submit the following information on April 15 of each year...." (underline added). We would respectfully suggest changing the word "on" to "by". It may be a little difficult to orchestrate guaranteed delivery precisely "on" the 15th. There would be much more flexibility to allow submissions before the 15th as long as they are received "by" the 15th.

Section 518.10 (a) (2) requires annual submission of "a complete resume for all employees of the tribal regulatory body hired and licensed by the tribe subsequent to its receipt of a certificate of self-regulation to be filed with the office of self-regulation".

As well intended as this provision might have been, we believe it is essentially a useless submission requirement for the following reasons. With the exception of California, most jurisdictions do not require tribal regulators to be licensed. To do so would essentially require them to "license themselves". Therefore most employees of tribal regulatory bodies are not "hired and licensed" by the tribe, hence under this language, there would be few who would qualify for the need to be submitting complete resumes.

Unfortunately, while this may be a workable option, we don't see how this option satisfies the statutory IGRA requirement in 25 USC 2710 (c) (5) (b) which requires the tribe

to "…..submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation….".

In this jurisdiction alone, that could include over 800 employees per year, 90% of whom don't submit resumes with their license applications. This would be a more onerous paper requirement than what is practiced under the "pilot" program in issuing initial licenses.

It is genuinely unfortunate that this statutory provision alone would likely dissuade this agency from pursuing a certification of self-regulation, despite NIGC's best efforts to improve the process.

Again, thank you for the opportunity to submit these written comments and we hope that you find them helpful.

Sincerely,

Norman H. DesRosiers
Gaming Commissioner

cc: Jacob Coin
John Hay, NIGC Office of General Council