

NATIONAL INDIAN GAMING COMMISSION



Annual Report
2003

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INTRODUCTION TO TRIBAL GAMING

BACKGROUND

Tribal government-sponsored gaming is a relatively new phenomenon dating 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 about 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 the issue of whether tribal governments possess the authority to conduct gaming independently of state regulation. Although many lower courts affirmed the tribal view in the early cases, the matter was not finally resolved until 1987 when the U.S. Supreme Court confirmed the authority of tribal governments to establish gaming operations independent of state regulation provided that the state in question permits some form of gaming. *California v. Cabazon Band of Mission Indians* 480 U.S. 202 (1987).

THE INDIAN GAMING REGULATORY ACT OF 1988

Congress took up the issue of tribal gaming and conducted a series of hearings, ultimately culminating in the passage of the Indian Gaming Regulatory Act of 1988 (IGRA). Embodied in IGRA was a compromise between state and tribal interests. The states were offered a voice in determining the scope and extent of tribal gaming by requiring tribal-state compacts for Class III gaming. However, tribal regulatory authority over Class II gaming was preserved in full.

IGRA establishes the jurisdictional framework that presently governs Indian gaming. IGRA establishes three classes of games with a different regulatory scheme for each. Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes. Regulatory authority over Class I gaming is vested exclusively in tribal governments.

Class II gaming is defined as the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith) and, if played in the same location as bingo, pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo. Class II gaming also includes non-banked card games; that is, games that are played exclusively against other players rather than against the house or a player acting as a bank. IGRA specifically excludes slot machines or electronic facsimiles of any game of chance from the definition of Class II games. Tribes retain their authority to conduct, license, and regulate Class II gaming so long as the state in which the tribe is located permits such gaming for any purpose and the tribal government adopts a gaming ordinance approved by the National Indian Gaming Commission (Commission). Tribal governments are responsible for regulating Class II gaming with Commission oversight.

The definition of Class III gaming is extremely broad. It includes all forms of gaming that are neither Class I nor II. Games commonly played in casinos, such as slot machines, black jack, craps, and roulette, would clearly fall in the Class III category, as well as wagering games and electronic facsimiles of any game of chance. Generally, Class III gaming is often referred to as full-scale casino-style gaming. As a compromise, IGRA restricts tribal authority to conduct Class III gaming. Before a tribe may lawfully conduct Class III gaming, the following conditions must be met: (1) the particular form of Class III gaming that the tribe wants to conduct must be permitted in the state in which the tribe

is located; (2) the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and (3) the tribe must have adopted a tribal gaming ordinance that has been approved by the Chairman or the Commission.

The regulatory scheme for Class III gaming is more complex than a casual reading of the statute might suggest. Although Congress clearly intended regulatory issues to be addressed in tribal-state compacts, it left a number of key functions in federal hands, including approval authority over compacts, management contracts, and tribal ordinances. Congress also vested the Commission with broad authority to issue regulations in furtherance of the purposes of IGRA. Accordingly, the Commission plays a key role in the regulation of Class II and III gaming.

THE GAMING COMMISSION

The Commission was established as an independent federal regulatory agency of the United States pursuant to IGRA. The Commission is comprised of a Chairman and two commissioners, each of whom serves on a full-time basis for a three-year term. The Chairman is appointed by the President and must be confirmed by the Senate. The Secretary of the Interior appoints the other two commissioners. Under IGRA, at least two of the three commissioners must be enrolled members of a federally recognized Indian tribe, and no more than two members may be of the same political party.

The Commission maintains its headquarters in Washington, D.C., with six regional offices located in Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; Tulsa, Oklahoma; and Washington, D.C. In addition, satellite offices are located in Rapid City, South Dakota, and Temecula, California, with an additional office planned for Jackson, Mississippi in 2004.

MISSION STATEMENT

It is the mission of the National Indian Gaming Commission (Commission) to fulfill the mandates of the Indian Gaming Regulatory Act of 1988 (IGRA) in fostering economic development of Indian tribes by attempting to insure the integrity of Indian tribal government gaming on Indian lands and to insure that tribes are the primary beneficiaries. This will be accomplished by the promulgation of regulations to guide the operation of tribal government gaming; by direct regulation of certain aspects of such gaming activities, and coordinated regulation with tribal and other regulatory agencies; of other aspects of such gaming; by the review, and approval where appropriate, of tribal gaming ordinances and agreements; by reviewing backgrounds of individuals and entities to insure the suitability of those seeking to engage or invest in such gaming; by maintaining oversight and review of the actual conduct of such gaming and the financial performance of such gaming; and by seeking to detect any violations of IGRA, the regulations of the Commission, and instances relating to tribal government gaming which threaten the safety of the tribes, their assets, those engaged in the industry, and the public upon which the industry depends,

and by imposing appropriate sanctions on those committing such violations. As it fulfills these responsibilities, the Commission will be particularly vigilant for any indications of corrupting influences such as organized criminal elements known to be attracted to cash-intensive industries such as gaming.

In attempting to accomplish this mission, the Commission shall always be mindful of the trust relationship the United States bears to the Indian nations it serves and that prompt and efficient administration of IGRA is required to foster the economic development so urgently needed by Indian tribes. In all phases of its regulatory performance, the Commission and its staff shall observe due process rights of those who come before it and extend courtesy all individuals are entitled to expect from their government.

Where consistent with its regulatory role, the Commission will be responsive to tribes seeking guidance as they enter the dynamic gaming industry, will monitor trends in tribal government gaming, and report its findings to Congress and the Administration.

THE COMMISSION



Chairman Philip N. Hogen is an enrolled member of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation in South Dakota. Mr. Hogen was formerly Associate Solicitor for the Division of Indian Affairs, U.S. Department of the Interior. Mr. Hogen joined the Department in 2001 from the private practice of Indian law in Rapid City, South Dakota, where he was affiliated with the national law firm of Holland & Knight LLP. Mr. Hogen also served as an Associate Member and the Vice Chairman of the National Indian Gaming Commission and was the first Director of the Department of Interior Office of American Indian Trust. Mr. Hogen was United States Attorney for the District of South Dakota, serving in that position for more than ten years. Mr. Hogen earned his law degree at the University of South Dakota (1970) and his undergraduate degree at Augustana College in Sioux Falls, South Dakota (1967).



Vice Chairman Nelson W. Westrin served as the first Executive Director of the Michigan Gaming Control Board since 1996, having responsibility for developing, implementing, organizing, and managing every facet of the state agency. He worked closely with tribal officials while carrying out the state's oversight of the Native American casino gaming operations in Michigan. Mr. Westrin was the Assistant Attorney General for the State of Michigan from 1977 to 1993; and from 1984 to 1993, he was assigned to the Lottery and Racing Division. Mr. Westrin served as the Assistant Prosecuting Attorney for Ingham County, Michigan. Mr. Westrin received his Bachelor of Arts degree from Michigan State University in 1969. He holds a Juris Doctor from the Detroit College of Law, which was awarded in 1974.

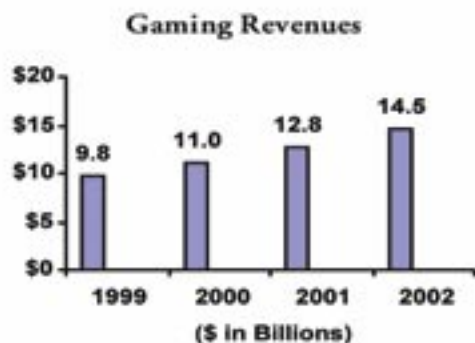


Commissioner Cloyce V. Choney is a member of the Comanche Nation of Oklahoma. From 1976 to 2001, Mr. Choney served as a Special Agent for the Federal Bureau of Investigation. During that time, he handled a variety of cases and investigations and was awarded several Federal Bureau of Investigation commendations. He also served as Chair of the Native American/Alaska People Advisory Committee. In 2002, Mr. Choney became the Chief Executive Officer for Indian Territory Investigations. In that capacity, Mr. Choney was responsible for business development, reporting and supervision of day-to-day activities related to the company's function of pre-employment background investigations. Between 1969 and 1975, Mr. Choney served in the United States Army, where he earned the rank of Captain. Mr. Choney has been a member of the National Native American Law Enforcement Association, and he served as its president from 1996-1997. He received a Bachelor of Science in Military Science from Oklahoma State University in 1968.

MESSAGE FROM THE CHAIRMAN

The new commissioners took their oath of office on December 12, 2002, and after a year of activity, we can point to a number of accomplishments. Overall, the year was a success. The past experience of the Commission members facilitated a smooth transition process; and this, along with a strong effort by all of the divisions, allowed the Commission to have an immediate impact on gaming regulation. In addition, the Commission and staff identified several initiatives that will provide longer-term benefits and further improve its regulatory and oversight functions.

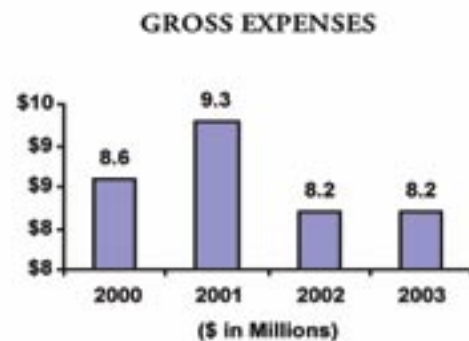
Revenues at Indian casinos, which are reported on a one-year lag basis, grew in the latest reporting period, albeit at a slightly lower rate than the prior year. Revenues increased by 13% or \$1.7 billion in 2002. The growth was a function of new casinos brought on-line in late 2001 and 2002 as well as growth at established casinos. Currently, 207 tribes operate 330 casinos in 28 states. We expect to see continued



growth, particularly in California where several casinos are in the expansion, construction or discussion stages.

Funding has been an issue since the Commission was established in 1991. The Commission is unique in

that it is a federal agency funded solely by the industry it oversees or regulates. To be effective, it must be knowledgeable of the regulatory framework of over 200 gaming tribes (dispersed geographically across the United States) and have an understanding of the interaction between tribal and state gaming authorities. Congress approved an increase in the Commission's funding from \$8 million to \$12 million for fiscal years 2004 and 2005, the first increase in funding since 1998. The growth in gaming has challenged the resources of the Commission. Gaming revenues increased 70% over the past four years while the Commission budget remained flat over the same period. The final fee rate the tribes pay to support the Commission activities was

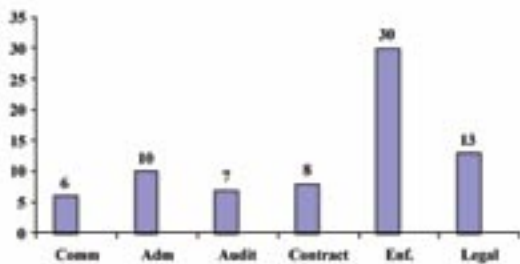


.0635% of Tier II and Tier III revenues for 2003. The preliminary rate for 2004, the first year of the budget increase, is .069% or less than one-tenth of 1% of gross gaming revenues.

While the funding is small in comparison to the Nevada or New Jersey State regulatory agencies, it is important to keep in mind IGRA recognizes the tribes as having sovereign authority and responsibility with respect to the day-to-day operation and regulation of gaming on their tribal lands.

Staffing increased during the year. The Commission filled a number of vacant positions in both the Washington and regional offices. Two executive level positions, the Chief of Staff and Director of Congressional and Public Affairs, were filled with enrolled tribal members. The addition of three investigators and three auditors brought our total field personnel to 36 or approximately 50% of the total staffing. As the detailed budget shows, salaries and benefits represented 69% of total 2003 gross expenditures. Staff additions in the future will be directed toward field operations.

Staffing by Function



Consultations are an important and effective method of communicating with the federally recognized tribes and their authorized government leaders. Consultations, among other things, mean the Commission will engage in regular, timely and meaningful government-to-government dialogue on matters impacting Indian gaming. During the year, five consultations were held across the United States. While the consultations format was a work in progress in the initial meetings, we learned from each session. The initial consultations provided insight into the requirements of a formal consultation policy. A draft of a formal consultation policy was circulated to tribal leaders for their input and will be finalized in 2004. Consultations however are only one form of communicating with gaming tribes. The Commission feels that the visibility and accessibility of the Commission and staff are important. To provide information on Commission activities and respond to questions, the commissioners and staff participated during the year

in over 30 seminars, roundtables, and association meetings covering all aspects of Indian gaming.

Gaming Classification, or the distinction between Class II and Class III gaming, was one of the most important issues dealt with during the year. The issue is important primarily because Class III gaming requires a tribal state compact. Twenty-five of the twenty-eight states with Indian gaming activities have Class III gaming. The extent of the states' participation in the regulation of Class III gaming varies from state to state. The Office of General Counsel issued an opinion and bulletin on the topic, and the Commission will issue technical standards for classifying Class II games in 2004.

Training is an important part of the Commission's role in gaming, the idea being that well-trained gaming officials will better protect the integrity of gaming and assists us in our efforts. In addition to the general presentations made during the year, the Commission provided specific training to tribal leaders and gaming officials in all aspects of gaming. Minimum Internal Control Standards (MICS), environmental, safety, health, tribal gaming authority responsibilities, and land issues were the subjects of over twenty training sessions sponsored during the year.

Enforcement Actions are one of the least desirable, but necessary, parts of the Commission's oversight responsibilities. In spite of the intentions, experience and training of the tribes, there are times when enforcement action is required. During the year, the Commission issued Closure Orders to two casinos and issued four Notices of Violation. In most cases, the Commission prefers to issue a Potential Notice of Violation, giving the tribe an opportunity to correct the practice in question since this will ultimately result in improved gaming practices.

Information System upgrades and modifications were designated as a priority in 2003. A request for proposals was issued late in the year to (1) assess the

agency's current state of managing information, and (2) develop a desired model for capturing and sharing information. The system will serve not only the agency's needs but will have the capability of providing relevant information to gaming tribes. In addition, progress was made on the implementation of an electronic system for processing fingerprints through the Federal Bureau of Investigation (FBI). The system is referred to as "Live Scan." Tribes use the fingerprints in conducting background investigations for gaming license applicants. The process will make Criminal History Reports available to tribes within 24 hours of submitting fingerprints, compared to the present system that could take several weeks. The system will be available to all gaming tribes.

While significant progress was made during the year, the Commission has an aggressive plan for 2004 and 2005. Objectives for the new year can be broken down into three primary areas:

— *Improved Communications with Gaming Constituencies.* Adopting a formal consultation policy will be an important part of our communication plan. In addition, filling the Congressional and Public Affairs position and enhancing our information systems will better inform the tribes of activities impacting gaming.

— *Adapting to Changing Gaming Technology and Methods.* Regulatory changes are required as gaming technology and practices change. To address this important need, the Commission recently contracted with technical experts and established a tribal advisory committee to assist the Commission in developing and implementing necessary and appropriate technical standards to distinguish Class II and Class III gaming and related electronic, computer and technologic devices and regulate their operation in Indian gaming under IGRA. In addition, the Commission has also recently established a standing tribal advisory committee to help the Commission keep its Minimum Internal Control Standards (MICS) effective and current.

— *Improve Oversight and Enforcement Effectiveness.* This will be accomplished by a limited amount of cross training of the Audit/Enforcement personnel and Enforcement/Contract personnel. The number of comprehensive MICS audits and special MICS specific reviews will be increased. Better utilization of data base information and continued cooperation with other regulatory and law enforcement agencies will increase the effectiveness of the Commission.

Philip N. Hogen
Chairman
March 17, 2004

STRUCTURE AND OPERATIONS

FUNCTIONAL ORGANIZATION CHART



ADMINISTRATION

The Administration Division serves the financial, personnel, office services, and information needs of the Commission. Included in the four categories are fee processing and collection as well as procurement. The Administration Division also acts as liaison to the Department of the Interior, Office of Management and Budget (OMB) on fiscal matters, with General Services Administration (GSA) on procurement of goods, services and office needs. The Administration Division consists of a Director, three supervisory personnel, and a six-person support staff. A portion of the personnel activities are contracted to Minerals Management Service (MMS) and a portion of the accounting activities are contracted to the National Business Center (NBC).

The Administration Division initiated four major projects in 2003, all of which should be completed in 2004. These include:

- **Information System Review.** Proposals were requested to review the information system needs of the organization consistent with Commission objectives. Focus will be on data base design and administration, hardware needs and overall administration of the department.
- **Live Scan.** The Administration Division worked with the Enforcement Division to successfully complete the Live Scan electronic fingerprint system pilot project. For the project, a higher level of

security was put in place, additional hardware was purchased, and specialists were contracted to address interface challenges between the Commission and tribal computers.

- *Paper Check Conversion Project.* The Commission collects fees from the gaming tribes based on gross gaming revenues. The paper check conversion project, which is sponsored by the U.S. Department of the Treasury Financial Management Service, will allow the Commission to improve its cash management and also streamline the documentation and recording of amounts collected.
- *Accounting Systems Upgrades.* The National Business Center (NBC) provides the accounting services for the Commission. However, the Commission still has needs for additional accounting information. During 2004, an accounting system will be installed at the Commission that will provide for better revenue and expense control, improved internal controls, and less clerical effort and duplication in recording transactions.

AUDIT

The Audit Division performs comprehensive MICS compliance audits and special purpose reviews and also assists the Enforcement Division in conducting inquiries of an investigative nature. The Audit Division also provides training to tribal gaming authorities and personnel.

An Acting Director and six auditors, with an additional auditor to be hired, presently staff the Division. Three new positions were filled during the year.

Tribes have primary regulatory responsibility for gaming operations. This includes, among other things, instituting MICS, establishing an internal

audit function, and requiring that an independent auditor audit all operations. As a result, the Audit Division does not routinely and systematically perform compliance audits similar to what might take place by state agencies in major gaming states such as Nevada or New Jersey.

Nine comprehensive MICS compliance audits were completed during the year. The selection process involved monitoring and collecting various sources of data that reflect on compliance with MICS. Operations that appear to pose a high risk of noncompliance and those considered to have a substandard control system were selected. Each of the assignments revealed internal control weaknesses posing an immediate and material risk to the tribe's investment as well as to the integrity of gaming.

After performance of an audit, the Audit or Enforcement Division works with the gaming operation in the development and implementation of remedial actions to achieve a position of substantial compliance with MICS. This may result in over a year of follow-up activities. All but one of the nine operations were successful in achieving substantial compliance. The unsuccessful gaming property was closed by mutual agreement between the Commission and the tribe.

The results of the Audit Division's special purpose reviews generally ended with an operation taking corrective action to the Audit Division's satisfaction. The results of the Audit Division's investigations with the Enforcement Division varied. Some were referred to other enforcement agencies, and others led to internal administrative actions.

During the year, audit personnel provided MICS training to twelve tribes and two independent CPA firms. Nine additional presentations were made at conferences, seminars, association meetings and consultations.

Objectives in 2004 include:

- **MICS Audits.** Increase the number of comprehensive MICS audits as a result of increased staff and cross-training Enforcement personnel to assist in follow-up activities.
- **Data Base Development.** Assist in the development of a data base which will allow the Audit Division to utilize computer-generated information to identify trends and changes in income statement and balance sheet ratios.
- **Training.** Continue to provide training to tribes and regulators on MICS.
- **Advisory Committee on MICS.** Establish an advisory committee to monitor and make changes in the MICS so that they are reflective of changes in gaming.
- **Communication.** Work closer with independent auditors to assure they are familiar with the regulations and reporting requirements of IGRA.

CONTRACTS

The Contracts Division is responsible for reviewing all management contracts and amendments to management contracts between tribes and gaming management contractors. Upon completion of a management contract review, the Contracts Division forwards a recommended action to the Chairman, who must approve the contract before it can become effective. This review and approval process is mandated by IGRA as a means of shielding Indian gaming from organized crime and other corrupting influences and to ensure that the Indian tribe is the primary beneficiary of gaming revenue.

The staff of the Contracts Division consists of a Director, one full-time and one part-time financial

analyst, a data base specialist, a chief of management contract background investigations, and two full-time and one part-time financial background investigators. A member of the Enforcement staff and an outside consultant carry out the requirements of the National Environmental Policy Act (NEPA) The Office of General Counsel provides legal advice and assistance.

In performing its function during the approval process, the Contracts Division staff works closely with all interested parties, including tribal officials, management contractors, attorneys, accountants, and tribal gaming commissioners, to ensure that all essential information is submitted. To recommend approval, the staff must be satisfied that the contracts meet all the requirements established by Congress in IGRA and that the collateral agreements do not violate federal law. Additionally, required investigations of persons and entities with a financial interest in, or management responsibility for, the contract must be satisfactorily completed and the related suitability criteria met. And, finally, the Commission must be in compliance with NEPA.

Two hundred management contracts have been submitted for review and approval in the eleven years since the Commission became operational in early 1993. Forty-two contracts have been approved, and eighteen contracts were in process as of December 31, 2003. One hundred and forty contracts have been withdrawn, disapproved, or closed for some other reason(s). In addition, several of the approved management contracts have been amended one or more times, each amendment requiring the staff's review and the Chairman's approval.

The Contracts Division also receives and tracks the annual audit reports submitted by all gaming operations, determines compliance, and extracts key financial information from each report. Such information is, among other things, used to report annually the size of the Indian gaming industry to assist the Audit and Enforcement Divisions in their oversight functions. The Contracts Division also refers non-compliance issues to the Enforcement Division and/or the Office of General Counsel for further action.

Objectives for 2004 include:

- **Process Review.** Review the process and procedures relating to the review and approval of management contracts for the operation of tribal gaming facilities to determine if changes can be made that will assist tribes in efficiently completing the process while continuing to ensure compliance with standards specified in IGRA.
- **Data Base Development.** Assist in the development and maintenance of a Commission financial data base of tribal gaming operations and make relevant information available to the Enforcement and Audit Divisions to assist in their oversight role.
- **Commission Environmental Role.** Review the environmental discipline needs of the Management Contract Division and make recommendations on how best to meet the objectives of NEPA.
- **Cross-training.** Provide cross-training to the financial background investigators in the Management Contract Division so they may provide assistance to the Audit and Enforcement Divisions as needs arise.
- Assisting tribes in developing a regulatory structure to comply with IGRA and Commission requirements. This includes offering advice on how best to structure a tribal gaming commission and reviewing operating procedures with tribal gaming commissions and gaming operation managers.
- Investigating matters relating to regulatory violations and alleged criminal activities. These investigations result in the issuance of Notices of Violation, Closure Orders, and Civil Fine Assessments by the Commission and, in some cases, the initiation of criminal investigations by various law enforcement authorities.
- Functioning as liaison to federal, state, and tribal law enforcement officials. Field investigators facilitate the flow of information between various regulatory authorities, and help coordinate investigative and monitoring activities related to Indian gaming operations, individuals, and companies employed by Indian gaming operations.
- Conducting background investigations of individuals and companies seeking approval of management contracts. The field investigators assist the Management Contract Division in reviewing pertinent documents and records, conducting interviews, and verifying the accuracy of information submitted by applicants.

ENFORCEMENT

The top priority of the Enforcement Division in 2003 was to ensure tribal compliance with the fundamental statutory and regulatory compliance obligations set forth in IGRA and Commission regulations. The Enforcement Division's oversight activities primarily involved the performance of five critical functions. These included:

- Monitoring Indian gaming operations for compliance with the Commission regulations. The monitoring activities range from reviews of gaming operation books and records to on-site inspection of steps taken by a gaming operation to ensure the health and safety of the public.

The staff of the Enforcement Division consists of a Director, fifteen field investigators, including six regional Directors, three tribal background employees, and six administrative personnel.

Field investigators conducted 446 site visits to tribal gaming operations during the calendar year 2003. The Enforcement Division issued twenty-five Potential Notices of Violation and provided evidence leading to the issuance of four Notices of Violation.

IGRA requires that Indian tribes conduct background investigations on their key employees and primary management officials and notify the Commission of the results of the background investigations before issuing a license to those individuals. The Enforcement Division plays a critical role in the processing of background investigations of employees at tribal gaming facilities. In 2003, the Enforcement Division received and processed 30,102 investigative reports and 41,505 fingerprint cards submitted by tribes in compliance with this obligation.

The Enforcement Division also made significant progress in implementing the Live Scan fingerprinting system for processing fingerprints through the FBI. Tribes that take advantage of this new technology receive Criminal History Record information reports within 24 hours after submitting the electronic fingerprints to the Commission. Last year, the Commission completed its pilot project to test the viability of the electronic fingerprint system and now offers access to this system to all interested gaming tribes.

In 2003, the Commission implemented its Environment, Public Health and Safety oversight program. The primary role of the Enforcement Division in this area is to review tribal gaming operations to ensure that tribal standards are in place. The Enforcement Division also provides assistance to tribes in locating relevant expertise from other governmental agencies. In 2003, the Enforcement Division initiated a series of training sessions to inform tribes about the Environment, Public Health and Safety program.

In 1997, the Commission began publishing a Compliance Report that reflected the compliance record of all gaming tribes with regard to seven regulatory requirements set forth in the Commission regulations. This report is published every six months and has helped to improve the efforts of tribal governments to meet their compliance responsibilities.

Last year, the Compliance Report was amended to include compliance with MICS in addition to the six critical areas previously covered. The Compliance Report has been a useful tool in aiding the Commission's efforts to increase voluntary compliance with its regulations.

In the past year, the Enforcement Division expanded its training activities for tribal gaming regulators. The Enforcement Division now attempts to offer at least one training conference a month in each regional office. These sessions cover a wide range of compliance and law enforcement issues.

In 2003, the Commission opened sub-offices in Temecula, California and Rapid City, South Dakota and announced the opening of an office in Jackson, Mississippi. Such offices are expected to both improve the Enforcement Division's oversight efforts and reduce travel costs.

During the last year, the Enforcement Division was an active participant in the Federal Indian Gaming Working Group. This group was formed to coordinate the investigative efforts of federal agencies with oversight authority in Indian gaming. The Enforcement Division participated in a number of working group conferences and is actively involved in ongoing investigative activities of the working group.

Objectives in 2004 include:

- **Training.** Provide training on the Environment, Public Health and Safety regulations in each of its regional offices.
- **Live Scan.** Significantly expand the number of tribes participating in the electronic fingerprint process.
- **Compliance Report.** Update and improve the Compliance Report by including qualitative factors.

- **MICS Follow-up.** Assist in implementing an approach to MICS oversight that will substantially increase the number of tribal operations that have been examined for MICS compliance.
- **Staffing.** Expand its investigative staff and have its sub-offices in Rapid City, South Dakota and Jackson, Mississippi become fully operational.
- **Regulation.** Maintain its commitment to ensure compliance with the basic statutory and regulatory obligation of gaming tribes and to protect Indian gaming from criminal influence.

OFFICE OF GENERAL COUNSEL

The Office of General Counsel serves as the legal staff of the Commission. It represents the Chairman and Commission in formal enforcement actions, coordinates litigation with the Department of Justice, reviews tribal ordinances and contracts, and provides legal advice on a wide variety of issues.

The current staff consists of the Deputy General Counsel, who also serves as the Acting General Counsel, the senior attorney, seven staff attorneys, a Freedom of Information Act (FOIA) officer, and three legal staff assistants. The staff was increased slightly with the addition of a legal staff assistant and two staff attorneys. These additions helped absorb some of the work resulting from new Commission initiatives.

Historically, one of the most difficult legal challenges facing the Commission is the classification of games as Class II or III. To provide guidance to the regulated community, the Office of General Counsel issues advisory opinions on classifying games. With the development of guidance through advisory opinions and a bulletin, the industry was provided with major guideposts for the development of Class II electronic inter-linked bingo. As a direct result, many gaming operations that were previously offering Class III gaming without a compact are moving quickly

toward Class II compliance.

When the Chairman determines that formal enforcement actions must be pursued, the Office of General Counsel serves as the Commission's prosecutorial arm. Two significant enforcement actions brought by the Office in 2003 included the closure of the casinos owned and operated by the Sac and Fox Tribe of the Mississippi in Iowa and the Seminole Nation of Oklahoma. The Sac and Fox Tribe gaming operation was closed after a faction of the Tribe gained control over the gaming operation. However, within months of the closure, elections were held, and a new federally recognized tribal government gained control over the operation. Shortly thereafter, the Department of the Interior recognized the new government. The election and recognition of the new government eliminated the Commission's concerns, and the Tribe was allowed to reopen on New Year's Eve.

The Seminole Nation closure was the result of years of administrative and federal litigation which culminated in the issuance of substantial fines to the tribe and closure of the facility by the tribe. Despite the difficulties encountered, by the end of the year, the parties were able to agree on a process for allowing the operation to reopen its facility.

A third enforcement action, begun in 2001, was challenged by the Colorado River Indian Tribes on the theory that the Commission did not have the authority to demand access to Class III operations or to issue regulations establishing MICS for Class III operations. The Commission's 2002 decision affirmed the regulatory scheme that encompassed Class III operations. Subsequently, on July 17, 2003, the Commission found that the tribes denied Commission representatives access to the Class III gaming operation and were fined for this violation. While the tribes acceded to the Commission by permitting an audit of their internal controls, they recently filed suit in federal district court to obtain judicial review of the Commission's decision.

Two areas where the Office of General Counsel routinely responds to a number of requests are tribal

ordinances and contracts. Eighty-one tribal ordinances were submitted for review and approval in 2003. This year, the Chairman directed the Office of General Counsel to work extensively with tribes to assure that their ordinances could be approved. As a result, the number of ordinances that were disapproved was greatly reduced from previous years. In addition to providing legal advice on management contracts, the Office of General Counsel reviews other contracts to determine whether they are management contracts and therefore subject to the Commission's approval requirements. Forty-two of these contracts were submitted in 2003. One in particular raised the difficult question of whether the contractor's interest in the tribe's gaming operation was proprietary in violation of IGRA.

The Office of General Counsel also processes requests filed under FOIA. During the course of the last fiscal year, ninety requests for information were received. Despite a turnover in FOIA personnel, some of the FOIA backlog was reduced and 102 requests were processed during that same time period.

Other important actions included the development and referral of legislation to Congress to amend IGRA, issuance of an opinion concluding that the lands of the Mechoopda Indian Tribe of the Chico Rancheria could constitute restored lands, and participation on the FBI Task Force.

Objectives in 2004 include:

- **Regulatory.** Assist in several proposed regulatory initiatives including MICS revisions.
- **Game Classification.** Develop a workable framework for the classification of games. This latter initiative will prove difficult as the concepts are complicated and any decisions will greatly impact the regulated community.
- **Guidance to Tribes.** Continue to provide classification guidance and draft other Commission guidance while working with tribes to encourage compliance with IGRA.

- **Indian Lands Questions.** Resolve several difficult pending Indian lands questions.

Accomplishing these objectives will depend on staffing availability. If the level of enforcement actions increase or additional litigation is brought, staff will be diverted to that litigation.

OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS

The Office of Congressional and Public Affairs is responsible for the planning, coordination, and management of agency programs and activities relating to both legislative and public affairs. Among its principal duties, the Office of Congressional and Public Affairs monitors legislation affecting the Commission and advises on any necessary policy action. The Office of Congressional and Public Affairs coordinates submission of bills, resolutions, reports, testimony, and other statements on legislation to Congress, and also prepares agency press releases, speeches, reports, and policy statements.

From April through October 2003, an employee of the Department of the Interior, temporarily staffed the Office of Congressional and Public Affairs. In January 2004, the Commission permanently filled this position.

In 2003, Congress authorized an increase to the Commission's budgetary fee cap from \$8 million to \$12 million for fiscal years 2004 and 2005. While the authorization is a maximum of \$12 million, actual assessments should be well below this amount.

Although Congress has recognized and responded to the Commission's need to fund essential regulatory activities, the pattern of increasing the fee cap on an annual basis has hindered the Commission's ability to develop long-term plans. Further, future fee caps set by Congress may not necessarily reflect the growing size of the Indian gaming industry. In May 2003, the

Commission testified before the Senate Indian Affairs Committee and recommended a formula that would allow the Commission to collect fees based on the size of the industry, rather than maintaining the current fixed cap fee system set by Congress.

In July 2003, S. 1529, “Indian Gaming Regulatory Act Amendments of 2003,” was introduced. This legislation would make technical changes regarding the staffing, clarify the Commission’s authority over Class II gaming, direct that MICS be revised, and set a schedule of the maximum amount of fees the Commission is authorized to collect. S. 1529 is currently pending before the Senate Committee on Indian Affairs. The Commission will continue to work with members of Congress to pass legislation that will modernize the statutory structure under which the Commission operates and provide stability for the Commission funding stream.

Improving communications is a priority of the Commission. In 2003, the Commission was featured in a variety of publications including Casino Enterprise Management, Indian Gaming Magazine, and Gaming Products and Services. These and other articles generally focused on providing an introduction of the newly appointed commissioners, explaining the role of the Commission, describing the Commission consultation meetings throughout Indian Country, outlining the challenges facing the Commission, and clarifying agency decisions.

Objectives in 2004 include:

- **Communication.** Work to increase communication with members on Capitol Hill and their staff to provide assistance on gaming related matters in Indian Country.
- **Congressional Briefings.** Provide briefings for staff in both the House and Senate regarding the role, responsibilities, and activities of the Commission.

- **Public and Media.** Increase communication with the general public and media resources by responding to all inquiries, posting press materials on the Commission website, and informing the media in advance about Commission events.
- **Contact Inventory.** Build on the existing list of media and congressional contacts to ensure that individuals with an interest in Indian gaming are provided regular updates on Commission activities.

OFFICE OF SELF-REGULATION

The Office of Self-Regulation’s primary responsibility is to process tribal petitions for self-regulation for Class II gaming. Self-Regulation status provides tribal governments with increased regulatory responsibility and greater autonomy by diminishing the role of the Commission in the areas of monitoring, inspection, and review of background investigations. Such status will also result in a reduction of fees paid to the Commission.

To participate in the Self-Regulation program, a tribal government must satisfy a number of requirements. First, it must demonstrate that it has a system for effective and honest accounting of all revenue. It must also show that a system for investigating, licensing, and monitoring all employees of the gaming activity is in place. Reviewers must determine whether the tribal government has established standards and practices to ensure that the facility is operated on a fiscally and economically sound basis. Another key element is compliance with IGRA, Commission regulations, and applicable tribal regulations and/or ordinances. Finally, a petitioning tribe must show that its operations have met the minimum requirements for a period of three years.

The final rule regarding the issuance of Certificates of Self-Regulation was issued in August 1998. Two tribes have been issued Certificates of Self-Regulation.

COOPERATION — OTHER REGULATORY AND ENFORCEMENT AGENCIES

The overall effectiveness of the Commission is enhanced because of relationships forged with other agencies and commissions that make determinations on Indian gaming or have a regulatory or statutory role in maintaining the integrity of the industry. The Commission has entered into memoranda of understanding with several agencies and commissions. Some of the memoranda outline services to be provided by other agencies, while others authorize the sharing of investigative information and establish protocols for working together. In addition, there are several agencies where no memorandum of understanding exists, but the subject matter requires or encourages notification of follow-up on issues of mutual interest.

The Commission works closely with the Department of Justice and works diligently to keep the Department of Justice abreast of activities in each of the regions. The Commission meets regularly with the Native American Affairs Subcommittee of the Attorney General's Advisory Committee of the United States Attorneys and cooperates with the Department of Justice and the subcommittee on its regulatory initiatives.

The U.S. Department of the Interior has responsibilities for the acquisition of lands into trust, per capita payments, and other areas under IGRA. The Commission meets regularly with Interior officials to coordinate activities and discuss matters of mutual interest. The Office of General Counsel participates in joint meetings with both Interior and Justice Department attorneys.

The following are memoranda of understanding with other federal agencies:

— *Interior Department Office of the Solicitor Division of Indian Affairs.* This memorandum details the process for cooperation between the Commission and the department on Indian lands determinations under IGRA

- *Interior Department Office of the Solicitor.* This memorandum establishes a process for receiving legal services from the Interior Office of the Solicitor.
- *Federal Bureau of Investigation.* This memorandum establishes the process for FBI processing of tribal employee fingerprints and criminal history checks.
- *Office of Personnel Management.* This memorandum establishes the process for the completion of routine background investigations initiated by the Commission.

Because a number of Class III tribal-state gaming compacts provide state agencies with a regulatory role in Indian gaming, the Commission has established memoranda of understanding with the following gaming commissions and law enforcement agencies: the Federal Bureau of Investigation, the Colorado Division of Gaming, the Michigan Gaming Control Board, the New York Racing and Wagering Board, the New York State Police, the Kansas Bureau of Investigation, the Oregon Department of State Police, the Illinois Gaming Board, the Indiana Gaming Commission, the North Dakota Office of Attorney General, the New Jersey Department of Law and Public Safety, the Arizona State Gaming Agency, the Washington State Gambling Commission, the Mississippi Gaming Commission, the New South Wales Casino Control Authority, the Nova Scotia Gaming Control Commission, and the Gaming Board for Great Britain. In addition, two other collaborative initiatives of note are presently under way.

DETAILED REVENUES AND EXPENSES

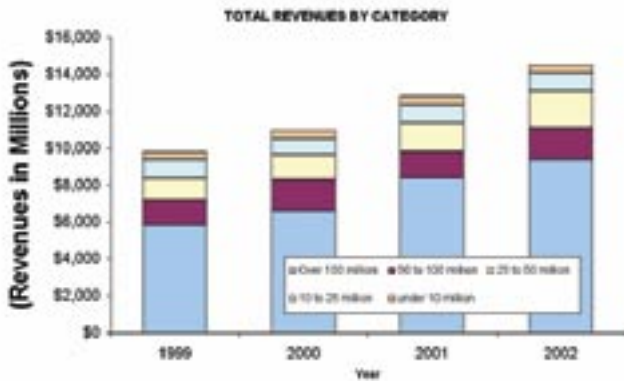
GAMING REVENUES AND OPERATIONS (\$ Amounts in Millions)								
	1999		2000		2001		2002	
\$100 Million and Over	\$ 5,846	28	\$ 6,606	31	\$ 8,398	39	\$ 9,399	41
\$50 to \$100 Million	1,324	19	1,694	24	1,416	19	1,698	24
\$25 to \$50 Million	1,193	33	1,361	41	1,529	43	1,978	55
\$10 to \$25 Million	1,029	59	856	50	997	58	984	61
Under \$10 Million	409	171	442	165	482	170	438	149
Total Revenue/Operations	\$ 9,801	310	\$ 10,959	311	\$ 12,822	329	\$ 14,497	330

REVENUES

The Commission is funded exclusively through fees paid by Indian gaming tribes on Class II and Class III gaming in excess of \$1.5 million. Indian gaming revenues grew at a 15% compound annual growth rate since 1998 while the number of operations increased by 33.

growth of Indian gaming in the heavily populated states, with California contributing to a high percentage of the growth.

FEES AS PERCENT OF PRIOR YEAR ASSESSED REVENUE			
2000	2001	2002	2003
0.090%	0.075%	0.0665%	0.0635%



Although the gaming revenues have dramatically increased, the number of casinos has not grown in proportion to the growth of gaming. Casinos with more than \$100 million in revenues generated 59.6% of total gaming revenues in 1999 compared to 64.8% in 2002. Casinos with less than \$10 million in revenues generated 4.2% of total revenues in 1999, dropping to 3% in 2002 with the number of operations decreasing by 22 over the same time period. One big factor impacting both overall revenues and the number of large casinos is the

FEE RATE

The increase in Indian gaming revenue, along with the fee cap and expense control at the Commission level, has meant a decrease in fees as a percent of total revenues. In 2000, fees as a percent of the prior year's assessed revenues were nine hundredths of one percent of Class II and Class III gaming. In 2003, the number declined to less than seven one hundredths of one percent. With the increase in the fee cap, continued growth of gaming and expense control, the fee assessment should remain below seven hundredths of one percent in 2004.

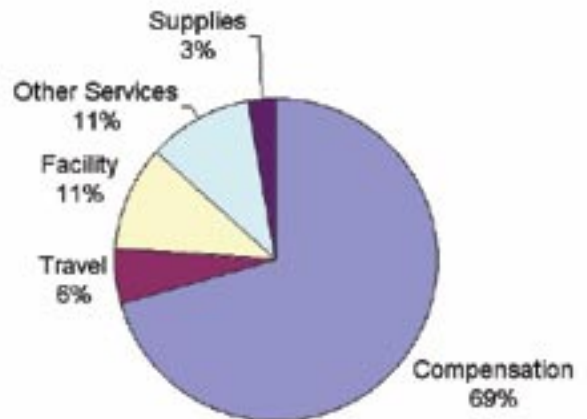
EXPENSES

The Commission operates on a lean budget in spite of the breadth of its mission. The Commission is involved in land issues, environmental health and safety, and financial, as well as the more typical issues dealt with by state gaming agencies.

Detailed Budget				
<i>(\$ Amounts in Thousands)</i>				
	2000	2001	2002	2003
Employee Count	71	74	67	63
Compensation	\$ 5,391	\$ 5,957	\$ 5,764	\$ 5,797
Travel	678	647	321	463
Facility	707	913	905	869
Print & Other Services	568	693	1052	876
Supplies and Equipment	200	481	149	221
One-Time Expenditures	1034	593		
	\$ 8,578	\$ 9,284	\$ 8,191	\$ 8,226
<i>Fingerprint & Background Fees</i>		1367	501	1128
Total	\$ 8,578	\$ 7,917	\$ 7,690	\$ 7,098

While Commission expenses have trended down over the last few years, the Commission has met the challenge and improved regulatory oversight in an industry exhibiting significant growth. Most of the Commission expenses are somewhat fixed. Compensation, which includes salary and benefits, makes up 69% of the Commission's 2003 expenditures. The Commission has been slow to fill positions due to funding concerns. However, with the increase in the fee cap, positions that were intentionally vacant have been filled. The Commission made payments to other governmental agencies for an additional 15.9% of its expenditures in 2003. This includes GSA (rent), Office of Personnel and Management (personnel and background services), MMS (payroll services), and NBC (accounting services).

2003 Gross Expenses by Category



SENIOR STAFF

Chief of Staff.....	Gary Pechota
Acting General Counsel.....	Penny Coleman
Director of Administration.....	Irene Schrader
Acting Director of Audits.....	Joe Smith
Director of Contracts.....	Fred Stuckwisch
Director of Enforcement.....	Alan Fedman
Director of Congressional and Public Affairs.....	Affie Ellis

STATISTICS

GAMING	Gaming Tribes-2002	207
	Gaming Operations-2002	330
	States with Indian Gaming	28
	2002 Gross Gaming Revenue	\$14.5 Billion
	Five-Year Revenue Growth Rate	15%
	Management Contracts Approved-Cumulative	42
	Tribes With Approved Revenue Allocation Plans	88
MARCH 2004 STAFFING	Commission and Support	5
	Administration	10
	Audit	7
	Enforcement	30
	Management Contract	8
	Legal	13
	Congressional and Public Affairs	1
Total Staff	74	
	2004 Budget	\$10.7 Million
ACTIVITIES 2003	Casino Visits	446
	FOIA Request Processed	102
	Fingerprint Cards Processed	41,505
	Investigative Reports Processed	30,102
	Potential Notices of Violation	25
	Notices of Violation	4
	Tribal Ordinance Submissions	81
	Tribal Contracts Submitted	42
	Management Contracts Approved	2

REGIONAL OFFICES



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503-326-5095

REGION 2

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REGION 3

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602-640-2951

REGION 4

John Peterson
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Suite 170
St. Paul, MN 55101
651-290-4004

REGION 5

Tim Harper
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REGION 6

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