



**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**

Via U.S. Mail and e-mail to reg.review@nigc.gov

April 26, 2012

Ms. Lael Echo-Hawk
Counselor to the Chair
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

RE: Proposed Parts 543 and 547

Dear Ms. Echo-Hawk:

These comments regarding the proposed Minimal Internal Control Standards and Technical Standards for class II gaming are submitted on behalf of the Dry Creek Rancheria Band of Pomo Indians (the "Tribe") and the Dry Creek Rancheria Gaming Commission concerning the proposed regulations impact on the tribal regulatory authority for gaming activities of the Tribe. The Tribe operates the River Rock Casino, which does not presently offer class II gaming. However, because of the potential for these proposed regulations to set precedent for future regulations directed toward class III gaming, the Tribe's right to operate class II gaming, and our concern for maintaining the sovereignty of tribal regulatory authorities in all contexts, the Tribe submits the following comments.

We trust that the National Indian Gaming Commission ("NIGC") will enforce the Part 543 and Part 547 regulations in a manner that ensures tribal governments are able to exercise the maximum degree of tribal sovereignty and independence that federal law supports. Enforcement and interpretation of these regulations should always bear in mind the declared purposes of the Indian Gaming Regulatory Act ("IGRA") and the cooperative roles of the NIGC and the tribal regulators in furthering such purposes. Allowing these forces to drive NIGC enforcement practices will, we hope, ensure the federal agency does not unduly encroach upon the right of tribal agencies to exercise full sovereignty in regulating gaming within tribal jurisdictions.

Proposed section 543.3(c)(1) provides that tribal regulators are to establish and implement internal control standards that provide a level of control equal to or exceeding the NIGC regulations' minimum standards. Each gaming operation then must establish an internal control system that complies with the tribal standards. (Proposed § 543.3(d).) Failure to comply will

subject the gaming operation or management contractor to penalties under 25 U.S.C. § 2713. (Proposed § 543.3(g)(1).)

In proposed Part 547, section 547.4(a)-(d) describes the actions a tribal regulatory authority must undertake to comply with the NIGC's technical standards. Essentially, tribal regulators must impose the federal standards, along with "any additional technical standards," on gaming operators and testing laboratories.

These provisions create significant potential for overreaching of NIGC authority. What are the means (if any) that NIGC anticipates using to enforce tribal regulators' compliance with sections 543.3(c)(1) and 547.4(a)-(d), and under what authority? IGRA authorizes enforcement actions against gaming operators and management contractors, but not against tribal regulatory authorities. (25 U.S.C. § 2713.) IGRA empowers NIGC to approve or disapprove of gaming ordinances and resolutions, but only with respect to the topics provided in 25 U.S.C. § 2710(b)(2)-(3), none of which implicate the control standards and technical standards set forth in proposed Parts 543 and 547. The general authority given to NIGC in 25 U.S.C. § 2706(b) is insufficient to upset an Indian tribes' "exclusive right to regulate gaming activity on Indian lands" in a manner not expressly provided by Congress. (See 25 U.S.C. § 2701(5).) In short, NIGC has limited authority over tribal regulatory bodies, and we are deeply concerned about the potential for NIGC to exceed those limits in its efforts to enforce the proposed regulations against tribal regulators. Further clarification is needed as to how the NIGC intends to implement these proposed regulations. Any clarification should address how NIGC intends to do so without infringing on the Tribe's role as primary regulator for gaming activities on Indian lands.

In addition, the proposed regulations raise questions that go unanswered, creating the potential for confusion and, again, NIGC intrusion into tribal regulators' jurisdiction. The regulations do not discuss how it will be determined whether tribal standards equal or exceed the minimum standards and the consequences if they do not. Given that tribal standards need not be submitted to NIGC for approval (proposed § 543.3(e)), do the regulations intend that the sufficiency of the tribal standards will be untested until NIGC brings a potential violation to the attention of the tribe and tribal regulators pursuant to proposed § 543.3(g)(2)? Or is the procedure for approval of a variance under § 542.18 applicable, notwithstanding § 543.3(e)? What actions will NIGC take if a gaming operation complies with the tribal standards, but NIGC feels the tribal standards fail to equal the NIGC's minimum standards? NIGC should address these unanswered questions and provide further opportunity for comment by impacted tribal governments prior to adoption of the proposed regulations.

We hope NIGC will address these concerns in a manner that respects the government-to-government relationship between NIGC and tribal governments. We look forward to continuing to work alongside NIGC to ensure the honesty and integrity of Indian gaming.

Sincerely,



Chairman Harvey Hopkins

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