



February 3, 2011

Derril B. Jordan
Fredericks Peebles & Morgan LLP
1730 Rhode Island Ave. NW, Suite 501
Washington, DC 20036
Fax: (202) 223-0894

Re: Review of financing documents for the Apache Tribe of the Mescalero Reservation and request for declination letter.

Dear Mr. Jordan:

This letter responds to your December 7, 2010 request on behalf of the Apache Tribe of the Mescalero Reservation for the National Indian Gaming Commission's ("NIGC's") Office of General Counsel to review the Tribe's transaction documents related to its exchange offer. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act ("IGRA"). You also asked for my opinion whether the transaction documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Transaction Documents") which were represented to be in substantially final form:

- Proposed Indenture [W&C (New York) Draft: February 1, 2011];
- Proposed Security Agreement [W&C (New York) Draft: February 1, 2011];
- Proposed Form of Control Agreement Regarding Deposit Accounts [W&C (New York) Draft: December 7, 2010];
- Proposed Form of Control Agreement Regarding Securities Accounts [W&C (New York) Draft: December 7, 2010];
- Proposed Blocked Account Control Agreement [Draft, February 1, 2011]

- Proposed Grants of Security Interest in United States Copyrights, Patents, and Trademarks [W&C (New York) Draft: December 7, 2010].

The Transaction Documents submitted by the Tribe contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See* www.nigc.gov/Reading_Room/Management_Review_Letters.aspx. Applying the same analysis here, it is my opinion that the Transaction Documents submitted by the Apache Tribe of the Mescalero Reservation are not management contracts and do not require the approval of the Chairwoman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement. I note, however, that the Transaction Documents have been submitted to us as unexecuted drafts that are in substantially final form. To the extent that they change in any material way prior to closing, this opinion shall not apply.

I anticipate that this letter will be the subject of Freedom of Information Act ("FOIA") requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and proprietary information the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the submitted Transaction Documents to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Staff Attorney Michael Hoenig at 202-632-7003.

Sincerely,



Lawrence S. Roberts
General Counsel