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VIA E-mail reg.review@nigc.gov

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

Re: Comments on Preliminary Draft of 25 CFR Part 518 – Self-Regulation

Dear Ms. Echo-Hawk:

On behalf of the Lytton Rancheria of California (Tribe), we hereby submit the following comments in response to the National Indian Gaming Commission's (Commission) Preliminary Draft of 25 CFR Part 518 – Self-Regulation. The Tribe appreciates the opportunity to submit comments on this proposed preliminary draft and welcomes the Commission's commitment to providing a comprehensive government-to-government consultation process. The Tribe supports the distribution of preliminary draft regulations as such supports a constructive government-to-government dialogue between tribes and the Commission, which ultimately will result in stronger and more effective regulations.

COMMENTS

Self-regulation is a hallmark of tribal sovereignty and should be supported and encouraged by Part 518. Unfortunately, the current Part 518 neither supports nor encourages self-regulation. As noted in our comments to the Commission's Notice of Inquiry, the current Part 518 contains requirements that are inconsistent with the Indian Gaming Regulatory Act (IGRA). These extra statutory requirements make it difficult for any tribe to qualify for self-regulation and unappealing for any tribe to attempt to do so because the burdensome requirements far outweigh the potential benefits.

The Tribe is pleased that the Commission has taken steps to revise Part 518 to remove some of the more onerous provisions. However, the Tribe believes that the preliminary draft still contains provisions that exceed the statutory requirements of the IGRA. In addition, some of the proposed new language needs further clarification. Thus, the Tribe believes further revisions are

needed to ensure Part 518 is consistent with the IGRA and clearly outlines the steps necessary to achieve self-regulation. Therefore, the Tribe provides the following comments:

518.4(a)(3) – This paragraph should be deleted as it exceeds the requirements for self-regulation outlined in the IGRA and, in any event, is overly broad. It would appear that this provision requires a Tribe to show that it has never had a single violation, however minor, of the IGRA, the Commission's regulations or the tribe's gaming ordinance or regulations. Even the most well-regulated gaming operation could not possibly meet the flawless standards required by this paragraph.

518.4(b) – The preliminary draft continues to list evaluation factors which bear no relationship to the criteria expressly outlined in the IGRA. Thus, the following subparagraphs should be deleted as they do not have any relevance to the statutory requirements set out in the IGRA: (2), (4), (5)(ix), 5(x) and (xii), (6), (7) and (10).

518.4(c) – The Tribe believes the burden of proof should be on the Commission to prove that the tribe has failed to meet the requirements for self-regulation. There is nothing in the IGRA that states that the burden of proof is on the tribe. Thus, because the Commission is mandated by the IGRA to issue certificates of self-regulation, we believe this dictates that the burden of proof should be on the Commission, not the tribe.

518.4(d) – This provision should be revised. The Tribe believes that this provision is overly broad and exceeds the Commission's authority. While the Commission is certainly authorized to request information from tribes seeking self-regulation status, the assertion that the Commission will have "*complete* access to all papers, books, and records of the tribal regulatory body, the gaming operation premises" and shall have the right to solicit information from any current or former employees of the tribe greatly exceeds the Commission's authority. Moreover, such an onerous provision will have a chilling effect as many tribes that may qualify for self-regulation will be discouraged from doing so to avoid subjecting itself, its operations, and its employees (both current and former) to such an expansive and seemingly unlimited inspection.

518.5(f) – Consideration should be given to requiring that a hearing be scheduled in a certain timeframe.

518.5(g) – Consideration should be given to including a deadline for the Commission to issue its decision after the hearing.

518.8 – Consideration should be given to revising this paragraph as it is vague. How does a tribe determine what is "material" to the approval criteria in 518.4 and what "may reasonably cause the Commission to review and reconsider the tribe's certificate of self-regulation." While we understand it is difficult to list every possibility, as currently written, the paragraph provides very little guidance to tribes as to what sort of changes need to be reported to the Commission.

518.9 – This paragraph should be deleted. This paragraph implies that the Commission retains significant investigative and enforcement powers over self-regulated tribes. The IGRA clearly removes the Commission's authority to monitor, inspect, or examine the gaming activities of

self-regulated tribes. Despite this, Section 518.9 states that the Commission retains all other investigative and enforcement powers over class II gaming activities and its powers to investigate and bring enforcement actions for violations of IGRA, its implementing regulations, and tribal gaming ordinances. This language appears to leave the Commission with a great deal of power over self-regulating tribes. Such a result is in direct contradiction to the IGRA. The very intent of self-regulation is that tribes are able to regulate their own gaming operations with only a minimal role for the Commission. If the Commission were to retain such broad powers, self-regulation would be illusory and would take away any incentive a tribe would have to go through the arduous process of obtaining a certificate of self-regulation.

518.11 & 12 – These paragraphs should be revised. We believe the intent of these two provisions is to give tribes an opportunity to seek both an informal reconsideration and a formal hearing before the Commission on a decision to deny a petition or remove a certificate of self-regulation. As currently written, however, the time periods in these provisions would result in tribes having to choose between one or the other.

CONCLUSION

On behalf of the Lytton Rancheria of California, we appreciate the opportunity to comment on the Commission's proposed revisions to these regulations. The Tribe looks forward to future discussions and/or consultations with representatives of Commission regarding these regulations.

Sincerely,

Kathryn A. Ogas

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Attorney for the Lytton Rancheria of California