The SHOSHONE-BANNOCK TRIBES

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GAMING COMMISSION
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September 16, 2011 SBGC11 (NIGC)-4223

Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Subject: NIGC Preliminary Draft Comments – Part 518, Class II Gaming

Dear Ms. Stevens:

The Shoshone-Bannock Gaming Commission of Fort Hall, Idaho submits the attached comments regarding the National Indian Gaming Commission's (NIGC) Preliminary Draft – Part 518 relating to NIGC's regulations on Class II Gaming and Self-Regulations as purposed by the authority under 25 U.S. C. 2710 (c).

Should you have any questions, please feel free to contact Marvin D. Osborne at (208) 237-8774, ext. 3024 or 3025.

Sincerely,

Lionel Q. Boyer, Chairman
Shoshone-Bannock Gaming Commission
P.O. Box 306
Fort Hall, Idaho 83203

Cc: file
Attachment: NIGC comments
Nathan Small, Chairman
Fort Hall Business Council
Jeanette Wolfley, Attorney
Office of Legal Counsel
Marvin D. Osborne, Executive Director
Shoshone-Bannock Gaming Commission

Preliminary Draft Part 518
Class II Gaming
September 16, 2011

Madam Chair and Members of the Commission, the Shoshone-Bannock Tribes and Gaming Commission (SBGC) is pleased to provide the following comments on the National Indian Gaming Commission's (NIGC) proposed Preliminary Draft on Part 518, Class II gaming.

In viewing the proposed Part 518 draft, there needs clarification to address the purpose of regulating class II gaming. Where it appears now, class II gaming is not regulated by any state, nor is the states allowed to collect fees as in some cases under III. Class II has all the similarities of class III, with the exception of not being regulated. It appears there is no purpose to justify class II regulation other than depriving the states fees. It is not worded or stated in the regulations; however there seems to be the appearance of merging class II with Class III. This concerns us because of the compact we now have in place, we do not share the same rational as those who manage or have in place class II devices. Why would we want to be pulled into legal challenges should a sudden change take effect?

In every step of the way in the proposed draft outline continuous existing criteria already in existence under class III requirements. It is almost repetitive which make it appear a merger is somewhere in line for a change. This needs to have better clarification to the purpose.

With respect to Class II gaming on Indian lands, tribes retain significant regulatory authority under IGRA "which remains within the jurisdiction of the Indian tribes" subject to the terms of

IGRA. 25 U.S.C. § 2710(a)(2). The NIGC and Chair have been delegated some approval, investigatory and reporting authority for Class II gaming. In material part, the NIGC, has power to approve an annual budget; adopt regulations for the assessment and collection and civil fines as provided in § 2713 (a); approve tribal ordinances as provided in §2710; establish the rate of fees as provided in § 2717; authorize the Chairman to issue subpoenas as provided in § 2715; order closure of an Indian gaming operation; monitor Class II gaming conducted on Indian lands and inspect the premises where conducted; conduct background investigations as may be necessary; inspect, examine and audit books, and records respecting gross revenue; and perform certain ministerial functions. 25 U.S.C.§2706.

It would seem much simpler to prepare a check list and draft certification petition than to respond to the existing similar MICS standards already in existence. Class III tribes already have standards of operating requirements in order to have gaming.

In 518.4(d) it says:"the Commission shall have complete access to all papers, books, and records of the regulatory body; the gaming operation premises; and any other entity involved in the regulation or oversight of gaming operations. The Shoshone-Bannock Tribes continues the position recommending NIGC adopt a more "hands off" policy as it relates to internal tribal gaming regulations so as not to interfere with tribal law and reduce tribal sovereignty, and embrace a more supportive and Commission-to-Commission relationship with tribes. In Section 3 of Executive Order 13175 provides that federal agencies defer to Indian tribes to establish their own standards where possible (Section 3(c)(2)), and where an agency is determining whether to establish federal standards, the consultation must include discussion of the need for federal

standards, and alternatives that would limit their scope and preserve tribal autonomy (Section 3(c)(3)).

As a reminder, NIGC now seeks comments on further changes to the Class II standards. It is still the opinion of the Shoshone-Bannock Tribes that until the *Colorado River Indian Tribes*, 466 F.3d 134 (D.C. Cir. 2006) decision is corrected or clarified, the Shoshone-Bannock Tribes maintain the Court of Appeals for the District of Columbia held that the Chairman and NIGC have no authority to adopt regulations governing the day to day operations of a gaming facility operating pursuant to a tribe-state compact that is in effect since Congress intended that such matters were to be determined via the tribal-state compact 466 F.3d at 137-40.

The Gaming Commission reemphasizes that any NIGC regulations and rulemaking must be in accordance with the principles of tribal self-government and self-determination. Care must be taken to remember that Indian gaming is tribal governmental gaming. It is an essential revenue source for the provision of governmental services and programs to tribal peoples. Tribal Gaming Commissions provide a critical role of regulating the gaming operations which should not and cannot be filled by the National Indian Gaming Commission.

Respectfully,

Lionel Q. Boyer, Chairman
Shoshone-Bannock Gaming Commission
Fort Hall, Idaho