



MAY 3 2005

**Lytton Rancheria of California
Attn: Margie Mejia, Tribal Chairwoman
1250 Coddington Center, Suite 1
Santa Rosa, CA 95401**

**Heidi McNeal Staudenmaier
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Phoenix, AZ 85004-2202**

**Anthony Cohen
Clement, Fitzpatrick & Kenworthy
3333 Mendocino Ave, Suite 200
Santa Rosa, CA 95403**

**Sodak Gaming, Inc.
Attn: Legal Department
5301 S. Highway 16
Rapid City, SD 57701**

Dear Ms. Mejia, Ms. Staudenmaier, Mr. Cohen, and Legal Department:

In a letter dated March 11, 2004, Ms. Mejia requested that the National Indian Gaming Commission (NIGC) review several agreements between the Lytton Band of Pomo Indians (Tribe) and California Indian Gaming Development, LLC (CIGD), specifically:

- 1. Secured Revolving Promissory Note between the Tribe and CIGD**
- 2. Development Services and Financing Agreement between the Tribe and CIGD**
- 3. A letter of understanding between the Tribe and the Rumsey Indian Rancheria regarding the latter acting as a guarantor for part of the loan**
- 4. UCC-1 Financing Statements for CIGD's interest in the Tribe's collateral**

We determined in a letter dated May 25, 2004, that the documents created a management relationship between the Tribe and CIGD. The parties subsequently revised their agreements and submitted new documents on August 11, 2004, namely:

- 1. Amended and Restated Secured Revolving Promissory Note (Amended Note) between CIGD and the Tribe**

2. Amended and Restated Development Services and Financing Agreement
(Amended Development Agreement) between the Tribe and CIGD

The amended documents referenced a "Bridge Loan" to the Tribe. See Amended Note § 12.1.1(vii); Amended Development Agreement § 8.5(g). In response to our request, a copy of the Loan and Security Agreement (Sodak Loan or Bridge Loan) between the Tribe and Sodak Gaming, Inc. (Sodak) was submitted to the National Indian Gaming Commission (NIGC) for review.

On August 11, 2004, we issued a letter regarding our concern that section 1.4 of the Sodak Loan may violate the sole proprietary interest provision of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.* On September 23, 2004, we received an amendment to the Sodak Loan dated September 21, 2004.

The NIGC reviews these agreements pursuant to the requirements of the Indian Gaming Regulatory Act (IGRA). The purpose of our review is to determine whether the documents constitute a management contract or collateral agreement to a management contract and therefore subject to our review and approval under the IGRA. We conclude at this time that the agreements, taken together, do not constitute a management contract. However, the contract continues to raise a concern that the provisions may violate the requirement that the Tribe must retain the sole proprietary interest in the gaming operation; that review is ongoing.

Authority

The authority of the NIGC to review and approve gaming related contracts is limited by the IGRA to management contracts and collateral agreements to management contracts. 25 U.S.C. § 2711. The authority of the Secretary of the Interior to approve such agreements under 25 U.S.C. § 81 was transferred to the NIGC pursuant to the IGRA. 25 U.S.C. § 2711(h).

Management Contracts

The NIGC has defined the term "management contract" to mean "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. § 502.15. The NIGC has defined "collateral agreement" to mean "any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor)." 25 C.F.R. § 502.5.

Management encompasses activities such as planning, organizing, directing, coordinating, and controlling. *See NIGC Bulletin No. 94-5.* In the view of the NIGC, the performance of any one of these activities with respect to all or part of a gaming

operation constitutes management for the purpose of determining whether an agreement for the performance of such activities is a management contract requiring NIGC approval.

Determination

After careful review of these documents we have determined that the agreements do not establish a management relationship, although we still harbor concerns about whether the Sodak Loan will violate the sole proprietary interest requirement.

The Amended Note and Amended Development Agreement contain no indicia of management control. However, the CIGD documents reference the Sodak Loan. See Amended Note § 12.1.1(vii); Amended Development Agreement § 8.5(g).

On August 11, 2004, we issued a letter listing our concerns that section 1.4 of the Sodak Loan may violate the sole proprietary interest provision of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.* The IGRA requires that a tribe "have the sole proprietary interest in and responsibility for the conduct of any gaming activity." 25 U.S.C. § 2710(b)(2)(A). [

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On September 23, 2004, we received an amendment to the Sodak Loan dated September 21, 2004. The amendment altered section 1.4(b) and requires the Tribe to [

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Conclusion

We conclude that the agreements, considered as a whole, do not create a management relationship. We remain concerned that the Sodak Loan bestows a proprietary interest in gaming activity to Sodak in violation of IGRA, its implementing regulations, and the Tribe's gaming ordinance. Due to this concern, we request that the parties provide any explanation and information available that might establish that the contract terms do not violate the requirement that the Tribe maintain the sole proprietary interest in the gaming operation.

We will forward a copy of this Agreement to the Bureau of Indian Affairs for its review.

Please contact Staff Attorney Andrea Lord at (202) 632-7003 if you have any questions concerning this letter.

Sincerely,

A handwritten signature in cursive script that reads "Penny J. Coleman".

Penny J. Coleman
Acting General Counsel

cc: OIGM with incoming