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STATEMENT OF

THE HONORABLE MONTIE R. DEER, CHAIRMAN

NATIONAL INDIAN GAMING COMMISSION

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**Oversight Hearing on the National Indian Gaming Commission**

Mr. Chairman, Mr. Vice-Chairman, members of the Committee, my name is Montie Deer and I am the Chairman of the National Indian Gaming Commission (NIGC). Thank you for the opportunity to appear before you today to testify on the activities of the NIGC. I, along with Vice-Chair Elizabeth Homer and Commissioner Teresa Poust thank you for your on-going support and interest in tribal governmental gaming regulation and the NIGC.

This statement will reflect three goals for today. First, I will highlight the magnitude of the rapid growth of the Indian gaming industry. Second, I will discuss the history, activities and accomplishments of the NIGC as the primary Federal regulator of Indian gaming. Finally, I will summarize some of the most pressing challenges facing the NIGC in our attempts to keep up with this growing industry.

GROWTH OF INDIAN GAMING

Before providing an update on the Commission, it is important to discuss briefly the dynamic nature and scope of Indian gaming. The Indian gaming industry has experienced exponential growth since the passage of the Indian Gaming Regulatory Act of 1988 1 when annual gross revenues totaled approximately \$100 million. In 2000, the industry generated over \$10.6 billion in gross gaming revenues. This represents an increase of more than two thousand percent over this short twelve-year period. We expect the industry to continue growing.

The passage of Proposition 1A in California in March of 2000, for example, has created new, dynamic growth, already affecting the Commission. Sixty-two of the 109 federally recognized tribes in California have negotiated Tribal-State gaming compacts, resulting in more and bigger

gaming operations. Revenue predictions for California are high and undeniably will impact this Commission.

HISTORY AND DEVELOPMENT OF THE COMMISSION

To understand the current phase of the Commission in its development as a federal agency, it is important to look at its short history. In June of 1990, the Commission consisted of a Chairman and two staff members. The first full Commission was not confirmed until April of 1991, and until 1993, the agency focused primarily on drafting basic regulations. By 1993, the Commission had 19 employees, five of whom were field investigators.

From 1993 until well into 1998, the focus of the Commission became the development of operating procedures and organizational infrastructure to implement those early regulations. It continued to operate on a budget of \$3 million, with a staff of twenty-six to thirty-five. While this Commission made a conscious effort to institute change at a deliberate pace, the industry has continued to grow rapidly.

In 1997, Congress amended IGRA in Public Law 105-83 to permit the NIGC to assess fees on class III tribal gaming and increased the authorization ceiling on assessments from \$1.5 million to \$8 million annually. This money is currently collected by assessing a fee rate of eight one-hundredths of a percent on tribal gross gaming revenues above the first \$1.5 million for each operation. Stated differently, a tribe that generates \$11.5 million in gaming revenue would pay an annual fee to the NIGC of \$8,000. Likewise, a tribe generating \$101.5 million in gaming revenue would pay \$80,000.

Since this increase in 1997, the Commission has taken a careful and disciplined approach to expanding its institutional capacity and presence in Indian Country. We made a conscious effort to institute change at a pace that the Commission could readily absorb, focusing on essential compo-

nents, especially the field elements, to achieve its regulatory responsibilities. Of our current seventy-seven employees, thirty-six, or more than forty-five percent, are assigned to work in the field.

Although the Commission's FY 2000 budget of \$7.8 million remains below the \$8 million dollar ceiling set by Congress, the growing industry demands on Commission resources are quickly exceeding our capacity to meet these regulatory needs effectively.

We were especially hard hit by the explosion in gaming in California. As you know, California passed Proposition 1A in March 2000. Prior to its passage, there were 39 Indian gaming operations in California, and they were generally limited in scope. Since the advent of legalized class III gaming, there have been 62 Tribal-State gaming compacts that are resulting in more and bigger gaming operations. Some industry predictions for California have ranged from \$3 billion to \$10 billion in annual revenues, but in any event, the impact on the industry, and ultimately this Commission, is undeniable.

The Commission, like every other federal agency, has developed through stages of drafting regulations, initial implementation, and organizational consolidation. While the NIGC has been meeting its responsibilities, the industry has simply outgrown the agency.

MISSION

Under the IGRA, the Commission's mission is to shield Indian tribes from organized crime and other corrupting influences; ensure that Indian tribes are the primary beneficiaries of gaming revenue; and assure that gaming is conducted fairly and honestly by both operators and players. To achieve these goals, the Commission is authorized to conduct investigations and undertake enforcement actions, including the assessment of civil fines, and/or issuance of closure orders; review key employee background investigations; and review and approve tribal gaming ordinances.

In a few moments, I will describe how the Commission is organized to meet these goals, what we have accomplished to strengthen our institutional infrastructures, and some of the very significant challenges we face now during this period of dramatic growth in Indian gaming.

PHILOSOPHY

The Commission continues to recognize that the front line of gaming regulation -- effective regulation and enforcement at the tribal level --- is critically important. The Commission's philosophy reflects this belief and focuses on the benefits of voluntary compliance through education, training, and technical assistance.

At its core, the IGRA represents a new kind of federal-Indian relationship in which tribal governments and federal agencies share jurisdiction and coordinate responsibilities. Effective regulation at the tribal level, combined with close coordination between tribes and the NIGC, increases regulatory effectiveness, efficiency, and, most importantly, the overall integrity of tribal governmental gaming. While we have not hesitated to take strong enforcement action when warranted, the Commission believes that voluntary compliance is the best kind of compliance. Given our size and resources, it is critical. Fortunately, it is our experience that the vast majority of gaming tribes strive to be in compliance with the law.

STRUCTURE

The Commission's 77 full-time employees are divided among office headquarters and five field offices and we remain a lean organization. The NIGC is divided into seven divisions as follows:

Enforcement Division

The Enforcement Division's field investigators regularly visit tribal gaming operations to monitor basic compliance with the IGRA. As discussed briefly, the Commission has an institutional preference for assisting the tribes in achieving voluntary compliance. For that reason, in the course

of their more than 600 yearly site visits, our field investigators not only observe and document the level of conformity with the IGRA and the NIGC's regulations, but also provide assistance and training to help tribal gaming operations come into compliance. We have also observed that the physical presence of our representatives seems to be a factor in encouraging compliance. As Chairman, however, I do not hesitate to take action when warranted, and we will take necessary enforcement action when our efforts at achieving voluntary compliance are unsuccessful.

The Enforcement Division also plays a critical role in the processing of gaming employee background investigations. Since the Commission began operations, we have sent the Federal Bureau of Investigation (FBI) more than 100,000 finger print cards received from tribal gaming operations and reviewed more than 50,000 background investigations on key employees and primary management officials. At this point it looks as though, on account of the California surge, we will receive nearly twice as many fingerprint cards this year as we have in the past.

Audits Division

Recognizing that effective regulation of gaming requires the kind of expertise that only trained auditors can provide, the Commission created an Audits Division in 1999. The Commission's auditors assist Enforcement Division personnel with investigations, audit tribal compliance with the Minimum Internal Control Standards (MICS)⁷ and provide advice and assistance to tribal gaming operations. The NIGC has invested well over 400 man- hours in each of the thirteen MICS audits we have conducted, including the pre-visit preparation, time on property, and the writing of the report. This is time well spent because our audit findings, and post-audit work with the tribes, have proven valuable in helping the tribes implement the kind of solid internal control systems that are so critical to the protection of the gaming revenue stream. We have only had auditors on the Commis-

sion staff since 1999, and they prove their value on a daily basis. I only wish we had a lot more of them.

Contracts Division

The Contracts Division is responsible for reviewing all gaming management contracts between tribes and outside entities, and investigating the suitability of potential gaming managers. 8 The division employs both contract financial analysts and financial background investigators. Before a management contract can be approved, I, as Chairman must be satisfied that the terms of the contract meet the criteria established in the Act and that all persons and entities with a financial interest are suitable. Since many of these contracts involve construction and development, the contract approval process also requires Commission compliance with the National Environmental Policy Act (NEPA). As the Indian gaming industry grows, the workload of the Contracts division pending contracts, background investigations, and environmental reviews - grows proportionately.

Office of General Counsel

The Office of General Counsel (OGC) provides legal support for the agency. The Office is involved in every aspect of the Commission's operation, including administrative litigation of enforcement actions; review of tribal gaming ordinances and management contracts; support of the Department of Justice in federal litigation; issuance of advisory opinions on game classification; and general government law ranging from ethics and the Freedom of Information Act to the Administrative Procedure Act. Eight attorneys, one paralegal and one legal clerk staff the OGC.

Office of Self-Regulation

Since the early days of Indian gaming, tribal gaming commissions have gained significant experience and have become increasingly skilled in regulating gaming activities on Indian land. In 1998, the Commission issued a final rule that affords tribes the opportunity to assume greater regu-

latory control over their Class II facilities and decrease their fees owed to the NIGC. The Office of Self-Regulation has primary responsibility for processing tribal petitions for self-regulation. Tribes applying for certificates of self-regulation undergo an on-site visit by a team of NIGC investigators and auditors and must satisfy rigorous approval requirements. On December 1, 2000, the NIGC approved its first certificates of self-regulation for the Menominee Tribe of Wisconsin and for the Confederated Tribes of the Grand Ronde Community of Oregon. Office of Congressional and Public Affairs

The Office of Congressional and Public Affairs serves as the voice of the Commission and responds to requests for information from the public and Congress. Public and media relations have become an increasingly important aspect of the Office's work as the Commission continues its efforts to provide accurate and timely information to the media and members of the general public.

Regional Offices

One of the most challenging tasks for the Administrative Division the last two years has been the establishment of five regional offices and the integration of those offices into the Commission's computer, communications and administrative structures. Since 1999, we have opened field offices in Portland, Sacramento, Phoenix, St. Paul and Tulsa.

Fully staffed, each office has assigned at least four gaming regulators, including both field investigators and auditors. Prior to the establishment of these offices, as noted by a member of this Committee during a previous oversight hearing, we "had seven investigators working out of the trunks of their cars." The regional offices allow NIGC personnel to more efficiently and readily offer technical training and assistance to tribal gaming regulators and operators. In those early days, the Commission's limited staff was unable to visit all of the tribal gaming facilities during any one

year. Currently, our goal is to visit each site quarterly. Although, we have not succeeded in meeting that goal, we were able to make approximately 600 site visits last year.

Administration Division

In addition to handling the Commission's fiscal and budgetary matters, the Administration Division is responsible for overseeing the fee collection process. The Division provides vital support and essential services, including personnel management, procurement activities and information technology to all organizational components of the Commission.

MANAGEMENT INITIATIVES

When Vice-Chair Homer, Commissioner Poust and I, came to the Commission in 1999, it quickly became evident that we needed to improve the institutional infrastructure. After undertaking a management review process in 1999, we began to focus on three areas: (1) computer technology; (2) financial management (including standard operating procedures); and (3) records management.

Computer Technology

The existing computer systems were outdated, inadequate, and lacked the capacity to be modernized to meet the requirements of a growing NIGC or Y2K. We undertook a technology initiative to provide a computer system that would provide a solid foundation for future growth, including a new network system that links headquarters and regional offices. In order to be fiscally responsible, we planned ahead so that we could acquire this new technology in phases as resources become available.

Since 1999, we have replaced outdated desktops and business software, replaced our obsolete e-mail system and server, and upgraded our computer network and centralized phone system to be Y2K compliant. Recently, we installed an Altascan fingerprint scanner and server to facilitate elec-

tronic submission to the FBI. This new system will significantly increase our capacity to process fingerprint submissions from the tribes we serve in a substantially reduced amount of time.

This technology initiative has been successful in improving the overall effectiveness of the entire Commission. I am happy to report that the NIGC has a solid technological infrastructure that will accommodate enhanced capabilities in the future.

Financial Management and Establishment of Standard Operating Procedures

The Commission has also established step-by-step instructions to account for and monitor NIGC fees and other revenues made available for: (1) operations, (2) background investigations, and (3) fingerprinting. As the culmination of two years efforts, these standard operating procedures will enable the Commission to provide accurate, timely financial information now and in the future. The National Business Center provides accounting services to the NIGC and has transitioned to the Federal Finance System (FFS) in FY2000. The FFS provides the required financial information used by all Departments, entities and bureaus. This system has kept up with the federal accounting standards advisory board requirements under the premises of the Chief Financial Officer's Act of 1990.

Records Management

Work is now progressing on a new central records and document management system. Our records management plan is being rewritten to take our new organizational structure that includes five field offices, into account. We are exploring the possibilities of electronic records to take full advantage of our state-of-the-art wide area network.

REGULATIONS

The Commission has made significant strides in terms of the substantive regulation of Indian gaming. In recent years, the Commission embarked upon an ambitious regulatory and policy agenda that included implementation of Minimum Internal Control Standards (MICS) regulations; regula-

tions for issuance of Certificates of Self-Regulation for Class II Gaming; promulgating a proposed Gaming Classification regulation; initiating a rulemaking addressing the Environment, Public Health, and Safety; and initiating a rulemaking regarding the definition for electronic facsimile.

These are summarized as follows:

Minimum Internal Control Standards (MICS). The MICS were published in January 1999, and were in force for all tribes in February 2000. These regulations were designed to protect the integrity of Indian gaming operations by setting standards for such critical areas as cash handling, game play, internal audits, and surveillance. Regulations of this nature require periodic review to capture both changes in technology and practical considerations arising since implementation. The NIGC has formed a tribal advisory committee to assist in doing just that and we anticipate a proposed rule by the end of this year.

Self-Regulation. Our Office of Self-Regulation ¹¹, operating under Commissioner Poust, had its first test this past year when petitions for certificates of self-regulation from the

Menominee Tribe of Wisconsin and the Confederated Tribes of the Grand Ronde Community of Oregon were approved. Commission staff, including auditors and field investigators, spent several weeks thoroughly evaluating the effectiveness of the Tribe's regulatory framework. Each certificate represents considerable work by the Commission over and above an already heavy workload.

Environment, Public Health and Safety Regulations (Notice of Proposed Rule Making).¹² This is another rulemaking in which we have employed a tribal advisory committee. The NIGC published its proposed rule to address the portion of IGRA that requires tribal gaming ordinances to provide for the protection of the environment, public health and safety on July 24, 2000. Public hearings have been held and significant comment has been received from interested parties. We are still in the process of digesting the public input.

Game Classification Regulations (Proposed Rule).¹³ The NIGC has proposed a rule that establishes a formal process for the classification of games played on Indian land under IGRA. The regulation was proposed in response to a growing number of requests by tribal gaming commissions and the gaming industry for advice as to whether a particular game is Class II or Class III. The regulation would require advance approval for play of a game as Class II and establish a process for contesting our classification decisions. This is in contrast to the current situation in which the only mechanism for challenging an advisory classification opinion is to be the subject of enforcement action by the NIGC or the

Department of Justice.

Definition of Facsimile. The Commission has recently published for comment a proposal to delete the definition of a "facsimile" from our regulations. Since the courts have been issuing classification opinions, it has been observed that some of the courts have turned to the dictionary definition of that term, rather than the Commission definition. In addition, because the current definition links classification of machines to the Johnson Act 15 any pronouncement in a classification determination by the NIGC can have the unintended consequence of foreclosing Johnson Act enforcement actions even outside Indian Country. Comments on this proposed regulation were due by July 23, 2001.

POLICY PRIORITIES

The Commission continues to place high priority on encouraging and supporting strong, effective and independent tribal gaming commissions. As governments, tribes provide front-line, day-to-day regulation of tribal governmental gaming activities, generally through a tribal gaming commission. Not all tribes have chosen to employ gaming commissions, and much like the diversity in tribal governmental gaming operations, tribal regulatory mechanisms vary in size and sophistica-

tion. Tribal gaming commissions that oversee large gaming operations have personnel and budgets nearly as large or larger than the NIGC's and employ experienced personnel with expertise from New Jersey or Nevada. Other tribal gaming commissions and regulators are not as fortunate and rely heavily on the NIGC to provide expertise and assistance. Regardless of the size of the operation or gaming commission, strong regulation and enforcement of the law at the tribal level is critical to the integrity of the operation and decreases the likelihood that federal enforcement will be warranted. To this end, the Commission embarked upon an aggressive training initiative for tribal gaming commissioners and regulators. Clearly the integrity of Indian gaming depends most heavily upon the efforts of these tribal regulators who work with the operations on a daily basis.

EDUCATION, TRAINING AND TECHNICAL ASSISTANCE THROUGH PARTNERSHIP

The NIGC continues its efforts to provide education, training and technical assistance as a means to achieve regulatory compliance. We provide training in relatively formal sessions, where our representatives talk to gatherings of tribal representatives, and informal sessions, where field investigators or auditors work on-site with the tribe. It is probably safe to say that on almost every workday, somewhere, a representative of the NIGC is providing face-to-face advice or assistance on IGRA compliance to someone involved in the operation or regulation of an Indian gaming operation.

I am also pleased to report that the National Judicial College at the University of Nevada in Reno, is now offering a course entitled, "Essential Skills for Tribal Gaming Commissions" that has been successful. Ninety tribal gaming commissioners have attended the courses in its first two sessions, many of them on scholarships made possible by grants from the Department of Justice.

The Commission also accepted an invitation from the FBI to have one of its field investigators trained by the FBI Racketeering Records Analysis Unit, the division of the FBI responsible for in-

investigating illegal gambling activities. This training included instruction in the analysis and classification of gambling machines, the detection of money laundering activities, and the providing of expert testimony in cases where illegal gaming activities are alleged to have occurred.

CONSULTATION POLICY

Vice-Chair Homer, Commissioner Poust, and I are deeply committed to the principles of the government-to-government relationship with tribes and respect for tribal sovereignty. These principles are not always easily reconciled with our role as regulators, but we work hard to ensure effective communication with the regulated community. Our rulemaking has been carried out using tribal advisory committees and we hold public hearings on our proposed regulations in locations that are easily accessible to tribal representatives.

Further, the Commission holds quarterly consultations across the country in order to obtain input from tribal gaming representatives and leaders. On May 18, 2000, the NIGC held its first consultation in Sacramento, California. Since then, the Commission has conducted three additional government-to-government consultations with more than sixty tribes. The consultations consist of small meetings between the Commission and tribal representatives, as well as training sessions for all interested parties. The process by which we conduct these consultations has become a hallmark of the Commission and may serve as a model for other government agencies. The Commission's next consultation will be held in San Diego, California on November 6-7, 2001.

COMMUNICATIONS

The Commission continues to improve our communication with the regulated community. In addition to upgrading our computer and phone systems, we have created a website (<http://www.nigc.gov>), and are publishing a regular newsletter.

We, as a Commission, continue to try to visit as much of Indian country and as many Indian gaming establishments as possible. On each of these visits I have made an effort to talk face-to-face with the gaming commissions and tribal leaders to explain the activities of the NIGC as well as what we believe to be our role in the regulation of their facilities. I know that my fellow Commissioners have made numerous visits as well.

CURRENT CHALLENGES

In closing, the Commission finds itself at a critical juncture. Thus far, we have been able to meet the challenges presented by the industry during this period of dynamic change, though frankly, I am deeply concerned about our future. I have a staff of dedicated, skilled professionals who are committed to the proposition that gaming revenue can make a positive difference in Indian country and that effective regulation is the key to keeping the Indian gaming industry healthy. With the rapid growth in the industry, and the explosion of work coming out of California, we are simply not keeping up. For example, with my current force of auditors, it will take between twenty and thirty years to conduct an audit of the internal controls of every Indian casino. These audits should be occurring every five years.

Let me close by re-emphasizing the importance of working closely with tribal governments and tribal gaming commissions to secure voluntary compliance. It is even more crucial given the limited resources available to the Commission. From the agency standpoint, enforcement actions are time-consuming and resource intensive, often involving intense investment of legal resources. Moreover, in fighting such enforcement actions, tribes consume limited resources that are better spent for the purposes that IGRA intended, improving the welfare of tribal citizens. I hope that this testimony has been responsive to your request. I thank you for your attention and am happy to address any questions that you may have.

LOAD-DATE: August 1, 2001