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July 19, 2000 CORRECTED COPY TESTIMONY OF THE HONORABLE MONTIE R. DEER,
CHAIRMAN NATIONAL INDIAN GAMING COMMISSION BEFORE THE SENATE
COMMITTEE ON INDIAN AFFAIRS Oversight Hearing on the Activities of 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 or Commission). 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. Since I last testified before you, the NIGC has undergone a dramatic change in size and make-up. The current Commission is just completing its first year together. I took office in March of 1999 and was joined by Commissioners Homer and Poust last summer. Together, we form the first Commission to be comprised wholly of enrolled tribal members and possibly the first to enjoy nearly concurrent terms, providing a measure of continuity particularly welcome during this critical period of transformation. The Indian gaming industry continues to grow at a rapid pace. From an annual total of \$500 million in annual gross revenue in 1988, the industry now garners over \$9.6 billion in annual gross gaming revenue. Currently, there are 195 tribes operating 309 gaming operations in 28 states. These governmental gaming operations span from Connecticut to California and vary in size from small, one-room bingo operations to an operation that boasts the largest casino floor in North America. Regardless of size, I know we all agree that Indian gaming requires strong regulation and effective oversight. Under IGRA, it is our responsibility to ensure that gaming is conducted in a way that strengthens tribal economies and governments and that tribal gaming is conducted free from potential corrupting influences. Quite frankly, until 1997 when Congress amended IGRA to permit the NIGC to assess fees on class III tribal gaming operations and increased the ceiling on assessments from \$3 to \$8 million annually, it was a real struggle for the Commission to carry out its mandate under IGRA even minimally. We have come a long way in the last year. I remember during a previous appearance before this Committee that one member commented that seven investigators working out of the trunks of their cars" was not the kind of oversight that Congress contemplated when

IGRA was enacted. Today, while we remain a lean operation, we are much better staffed and equipped to carry out the important responsibilities Congress has delegated to us. We recognize, however, that even with the additional resources available, we will not be able to do the kind of job needed without effective regulation and enforcement at the tribal level --- the front line of gaming regulation. At its core, 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 NIGC, increases regulatory effectiveness, efficiency, and, most importantly, the overall integrity of tribal governmental gaming. These reasons underlie this Commission's primary policy objectives of promoting strong, independent tribal gaming regulatory agencies within tribal governments and securing compliance with the law through education, training, and technical assistance. Voluntary compliance is the best kind of compliance and we have found that the vast majority of gaming tribes strive to be in compliance with the law. That is, when we identify a regulatory problem at a tribal governmental gaming facility, the tribes are quick to respond. In addition to our policy of obtaining voluntary compliance through education, training and technical assistance, the Commission has worked hard to institute a series of reforms designed to strengthen its operational capacity and to better equip its staff.

Regional Offices and Staff The centerpiece of the NIGC's expansion plan was the establishment of regional field offices. Regional field offices allow the NIGC to locate its resources closer to Indian country, where the tribal government gaming occurs. More importantly, the regional offices allow NIGC personnel to more efficiently and readily offer technical training and assistance to tribal gaming regulators and operators. In just the past year, five new field offices were opened in Portland, Sacramento, Phoenix, St. Paul and Tulsa. Each office is staffed with at least five (5) gaming regulators and include investigators, auditors and professionals certified in conducting back-

ground checks. We have estimated the operational costs of each field office to be between \$500,000 and \$600,000 per year, or approximately \$3 million in total. This figure includes housekeeping costs, salaries, benefits and travel. Further, in the past the Commission's limited staff could only make it to each of the 309 gaming facilities once a year - currently we are able to make quarterly site visits to each facility -- approximately 1,500 site visits each year. Importantly, 44 out of the Commission's current 77 employees are within the NIGC's Enforcement, Audit and Contract divisions. These divisions carry out the lion's share of the Commission's work. This is, no doubt, a far cry from just two years ago when, as you know, the NIGC had a handful of investigators, "working out of their cars." I am pleased to report to you that we have already received much positive feedback on the regional office concept. Both tribal gaming commissioners and tribal leaders have indicated to me that they appreciate ready access to our regional offices and staff. Headquarters Expansion As the Commission has expanded its presence in the field, we have also found it necessary to expand the Washington D.C. offices. A majority of the support for our field offices occurs here in Washington. As a result, we have experienced an increase in staff in every division. We were fortunate enough to locate some additional space on the 10th floor of our current building; accordingly, we were able to avoid expensive moving and relocation costs. The majority of our staff still resides on the 9th floor and we are currently renovating that space. Our new offices on the 10th floor house the Commission, Chief of Staff, General Counsel and the offices of Congressional and Public Affairs. We are proud of our new offices and invite you to come by and visit us at your earliest opportunity. Overall, the size of the NIGC staff more than doubled from 30 to 77 full-time positions, and two new organizational components were created - the Audits division, and the Office of Self-Regulation. The Regional offices house 37 of those 77 employees. To further improve operations, each staff member was equipped with reliable hardware supported by a new central network system.

The Commission also enhanced its data management capability with a new central database system. Work is now progressing on a new central records and document management system. Current Fee Structure Despite the growing demands, pressures, and increased availability of resources, the Commission has taken a careful and disciplined approach to its expansion initiative. A conscious effort was made to institute change at a pace that the Commission could readily absorb. The Commission's FY 2000 budget of \$7.2 million remains well below the \$8.0 million dollar ceiling set by Congress. This money is collected by assessing a fee rate of .09% on tribal gross gaming revenues above the first \$1.5 million for each operation. Careful planning and cautious execution has enabled the Commission to keep the assessment of tribal fees below the permissible threshold while at the same time increasing service effectiveness. Further, I must note that it is highly probable that the rate will be reduced based on the increase in tribal gross gaming revenues. NIGC Regulations Let me also share with you what the increase in funding and staff has meant in terms of the substantive regulation of Indian gaming. In the past 18 months, the Commission embarked upon an ambitious regulatory and policy agenda that included, finalizing the Minimum Internal Control Standards regulations; finalizing Self-Regulation rules for Class 11 gaming; promulgating a proposed Gaming Classification regulation; and initiating a rulemaking addressing the Environment, Public Health, and Safety. These are summarized as follows: 1. Minimum Internal Control Standards (MICS) (Final Rule) - These rules are designed to protect the integrity of Indian gaming by setting standards for such critical areas as cash handling, game play, licensing documentation, auditing, security and surveillance. The NIGC formed a tribal advisory committee that assisted in the drafting of these regulations. In developing the MICS, the NIGC evaluated and considered control standards from other sources, including New Jersey, Nevada and the National Indian Gaming Association. 2. Self-Regulation (Final Rule) - These regulations afford tribes the opportunity to assume greater regula-

tory control over their Class 11 facilities and decrease their fees owed to the NIGC. Tribes applying for a self-regulation certificate will undergo an on-site visit by a team of NIGC investigators and auditors and must satisfy rigorous approval requirements.

3.Environment, Public Health and Safety Regulations (Notice of Proposed Rule Making) - The NIGC has formed a tribal advisory committee which will soon submit a proposed rule. The rule will address the portion of IGRA that requires tribal gaming ordinances to provide for the protection of the environment, public health and safety.

4.Game Classification Regulations (Proposed Rule) - 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 NIGC held a field hearing on the proposed rule in January in Tulsa, Oklahoma.

Independent Tribal Gaming Commissions Among its highest policy priorities is the Commission's objective to encourage and support strong, effective and independent tribal gaming commissions. As governments, tribes, generally through a tribal gaming commission, provide front-line, day-to-day regulation of tribal governmental gaming activities. Akin to the diversity in tribal governmental gaming operations, tribal gaming commissions vary in size and sophistication. Tribal gaming commissions that oversee large gaming operations have personnel and budgets nearly as large or larger than the NIGC's and have experienced personnel with expertise from New Jersey or Nevada. Other tribal gaming commissions 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 local level is critical to the integrity of the operation and decreases the likelihood that federal enforcement will be warranted. To this end, the Commission issued a bulletin on the independence of tribal gaming commissions and embarked upon an aggressive training initiative for

tribal gaming commissioners and regulators. With 309 gaming establishments operated by 195 tribal governments in 28 states, effective tribal regulation is vitally important from the Commission's perspective. Education, Training and Technical Assistance The NIGC has made a strong effort to provide education, training and technical assistance as a means to secure regulatory compliance. We believe our efforts are paying dividends. During the past year, the NIGC provided over 20 training seminars on topics such as the MICS, self-regulation, employee background checks, tribal gaming ordinances, management contracts and tribal gaming commissions. These training sessions were, of course, free and attended by over 1000 tribal gaming officials and leaders. The Commission has received much positive feedback on these training sessions and many tribal gaming officials have asked the NIGC to provide even more, training. I am also pleased to report that on July 31 to August 4, 2000, the National Judicial College at the University of Nevada in Reno, will offer a course entitled, "Essential Skills for Tribal Gaming Commissions." I am an adjunct faculty member of the judicial college and have taken the lead in creating this course. Along with former NIGC Chairman Tadd Johnson and former Vice- Chairman Phil Hogen, I sit on the curriculum committee. The National Judicial College has implemented its Department of Justice grant to provide full scholarships to 40 tribal gaming commissioners to attend this training session. This course has drawn the largest amount of applicants for any single course offered by the college. Consultation Policy In the spirit of the government-to-government relationship, respect for tribal sovereignty and the President's Executive Order on Coordination and Consultation with Indian Tribal Governments, we have adopted a policy of tribal consultation when we consider substantive regulations. As previously discussed, we formed tribal advisory committees for the formulation of the MICS and the environment, public health and safety rules. The advisory committees consisted of about 10 members and included a cross section of large to small gaming operations from the various regions of the

United States. Further, the Commission has begun holding 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. The Commission discussed with tribal gaming commissions and industry representatives, the various concerns surrounding California Indian gaming. The Commission's next consultation will be held in St. Paul, Minnesota on September 27-28, 2000. Increased Communications Still another aspect of our expansion has included updating and improving the ways we communicate with the regulated community. We have upgraded our computer and phone systems, created a website (www.nigc.gov <<http://www.nigc.gov>>), and are publishing a regular newsletter. In a simple, but perhaps more important way, we as a Commission have tried to visit as much of Indian country and as many Indian gaming establishments as possible. I know personally, I have toured over 40 reservations in the past year. In each instance 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. Office of General Counsel The Office of General Counsel (OGC) is responsible for, among other things: providing legal support to the agency for enforcement actions initiated under IGRA; reviewing and recommending to the Chairman the approval or disapproval of tribal gaming ordinances and contracts; coordinating federal litigation with the Department of Justice; issuing game classification opinions; and providing all other necessary legal support. The expansion of investigators and auditors in the field has increased the need for legal support. Eight attorneys, one paralegal and one legal clerk currently staff the OGC- Further, the office is now handling or assisting in seventeen (17) federal court cases, nine (9) administrative law cases and two (2) major rule makings. Audit Division Another important substantive addition to the NIGC has been the creation of our Audit Division. We currently employ

five auditors. These auditors have already assisted in numerous investigations and have conducted independent audits of several tribal gaming facilities. In several instances we came on-site at the invitation of the tribe, to assist in ferreting out irregularities, or to simply educate the gaming commission on gaming auditing functions. For example, recently, at the request of the tribe, the NIGC sent three auditors to a South Dakota gaming facility to perform a MICS compliance audit. We believe this is a valuable service we provide to the gaming tribes. The Commission is confident that its efforts to improve communications, establish closer working relationships, and provide education and support, coupled with its enhanced operational capabilities, will result in high levels of voluntary compliance with federal Indian gaming laws and regulations throughout Indian Country. The Commission is taking advantage of its increased size, capability, and presence in Indian Country to fine-tune operations; provide more services to tribal gaming regulatory agencies; and focus on its regulatory and policy agendas. We are committed to leaving the Commission an even stronger, more productive institution than ever before. The near concurrence of our terms leaves us well situated to build upon the foundation left by earlier Commissions and we look forward to the many new challenges that lie ahead. I trust the forgoing has been responsive to your request. In addition to my testimony, we are finalizing a comprehensive report on the activities of the NIGC over the past two years that will be published later this summer. We look forward to providing you with a copy of the report in the very near future. Should you have additional questions, we stand ready to provide any information responsive to your concerns.

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