



August 8, 2018

Randolph A. DelFranco  
Holland & Knight  
31 West 52<sup>nd</sup> Street  
New York, NY 10019

**Re: Review of Indenture for the Dry Creek Rancheria Band of Pomo Indians**

Dear Mr. DelFranco:

This letter responds to your July 5, 2018 request on behalf of the River Rock Entertainment Authority, an instrumentality of the Dry Creek Rancheria Band of Pomo Indians, and the Band, for the National Indian Gaming Commission's Office of General Counsel to review Financing Documents among the Authority, BSP Special Situations RR Ltd, Landmark Wall RR Ltd, and The Bank of the West. Specifically, you have asked for my opinion whether the financing documents constitute a management contract or collateral agreement to a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act, and whether they violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission:

- Loan Agreement among RREA, BSP and Landmark Wall RR Ltd., marked in lower left hand corner as SMRH:226394708.18;
- Security Agreement between RREA and BSP, marked in lower left hand corner as SMRH:227532845.12;
- Form of Promissory Note, marked in lower left hand corner as SMRH:227735852.3;
- Tribal Non-Impairment Agreement by the Tribe in favor of BSP, marked in lower left hand corner as SMRH:226394718.12;
- Limited Guarantee, by the Tribe in favor of BSP, marked in lower left hand corner as SMRH:227541268.11;
- Form of Assignment and Assumption Agreement, marked in lower left hand corner as SMRH:227538849.5;
- Deposit Account Control Agreement (Contingent Blocked Agreement among RREA, The Bank of the West, and Agent, marked in the lower left hand corner as #58880963\_v1;

- Deposit Account Control Agreement (Blocked Agreement) among RREA, The Bank of the West, and the Agent, marked in the upper right hand corner as NIGC DRAFT 7/16/18 (together, the Financing Documents); and
- Exhibits A, B, C, and E-1 to E-4 to the Loan Agreement, marked in lower left hand corner as SMRH:227538849.5.

The Financing Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed that are available on the NIGC website. Applying the same analysis here, it is my opinion that the Financing Documents are not management contracts or collateral agreements to a management contract, and do not require the approval of the Chair. It is also my opinion that the Financing Documents do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Financing Documents are represented to be in substantially final form with respect to terms affecting this opinion. If they change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Financing Documents listed above and does not include or extend to any other agreements or documents not submitted for review.

Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, that any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter.** After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <http://www.justice.gov/oip.doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Senior Attorney Maria Getoff at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel