



August 9, 2018

Via First Class Mail

James R. Floyd, Principal Chief
Muscogee (Creek) Nation
1008 East Eufaula Street
Okmulgee, Oklahoma 74447

Re: Review of loan documents for the Muscogee (Creek) Nation

Dear Principal Chief Floyd:

This letter responds to your June 22, 2018, request for the National Indian Gaming Commission's Office of General Counsel to review loan agreements between the Muscogee (Creek) Nation and BOKF, NA dba Bank of Oklahoma. Specifically, you have asked for my opinion on whether the documents are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the loan documents violate IGRA's requirement that the Nation have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions, unexecuted but in substantially final form, (collectively, "the Loan Documents").

1. Loan Agreement Between the Borrower and BOKF, NA dba Bank of Oklahoma, dated July 7, 2018.
2. Security Agreement Between the Borrower and BOKF, NA dba the Bank of Oklahoma, dated June 15, 2018.

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

It is my understanding that the drafts are represented to be in substantially final form, and if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above. This opinion does not include or extend to any other agreements 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.¹ 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),² 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*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ 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.⁵ 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 <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Tana Fitzpatrick at (202) 632-7003 or by email at tana_fitzpatrick@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: Robert A. Rosette (rosette@rosettela.com), Counsel for the Nation
Jonathon Sanchez (jsanchez@rosettela.com), Counsel for the Nation
Jason Coutant (JCoutant@cwlaw.com), Counsel for Bank of Oklahoma

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 975 F.2d 871 (D.C. Cir. 1992).

⁴ 25 C.F.R. § 517(c).

⁵ *Id.*