



December 21, 2015

Kent E. Richey
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Re: Review of Loan Agreement and related documents between the Warm Springs Indian Head Casino and Wells Fargo Bank, National Association, and response to request for declination letter

Dear Mr. Richey:

This letter responds to your September 8, 2015 request, on behalf of the Confederated Tribes of the Warm Springs Reservation of Oregon and Wells Fargo Bank, National Association ("Wells Fargo"), to the National Indian Gaming Commission for review of a draft Loan Agreement, a Security Agreement, a Non-Impairment Agreement and related documents between the Warm Springs Indian Head Casino ("Warm Springs Casino"), the Warm Springs Casino and Resort Enterprises ("WSCRE") and Wells Fargo Bank, National Association. Specifically, you asked for an opinion from the NIGC's Office of General Counsel as to whether the draft documents are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion as to whether the documents violate IGRA's requirement that a tribe have the sole proprietary interest in, and responsibility for, its gaming operation.

More recently, on December 1, 2015, you submitted updated drafts of the above-referenced Loan Agreement, Security Agreement, Non-Impairment Agreement and related documents for our review and an opinion as to whether the documents are management contracts under IGRA and/or violate IGRA's sole proprietary interest mandate.

In response to your request, I reviewed and considered the following submissions (collectively, the draft "Loan Agreement documents"), which were represented to be in substantially final form:

- (1) Loan Agreement (#US.55725937.17, received 12-1-15), with the following exhibits:
- Ex. A Form of Compliance Certificate (#US.55957531.05);
 - Ex. B Form of Revolving Note (#US.55957531.05);
 - Ex. C Form of Request for Loan (#US.55957531.05);

- Ex. D Form of Notice of Conversion/Continuation (#US.55957531.05);
 - Ex. E Form of Total Project Cost Statement (#US.55957531.05);
 - Ex. F Form of Project Completion Certificate (#US.55957531.05);
 - Ex. G Form of Assignment of Contract (#US.55957531.05); and
 - Ex. H Form of Draw Request (#US.55957531.05);
- (2) Security Agreement (#US.55663074.05, received 12-1-15), with the following exhibit:
- Ex. A Dispute Resolution Provisions (#US.55663074.06); and
- (3) Non-Impairment Agreement (#US.55656981.13, received 12-1-15), with the following exhibit:
- Ex. A Limited Waiver of Sovereign Immunity; Dispute Resolutions Provisions.

The Loan Agreement documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed in the past.¹ Applying the same analysis here, it is my opinion that the Loan Agreement documents are not management contracts and, therefore, do not require the approval of the NIGC's Chairman. It is also my opinion that they do not violate IGRA's sole proprietary interest mandate. However, I note that the Loan Agreement documents have been submitted to us as unexecuted, unsigned drafts in substantially final form. To the extent that the documents change in any material way prior to the signing of the documents by the parties, this opinion shall not apply. Additionally, this opinion applies only to the existing Loan Agreement documents, not to any missing documents or future documents incorporating extensions, modifications, supplements or other changes to the Loan Agreement documents.

I anticipate that this letter will be posted to the NIGC's website. Prior to the letter's posting, the NIGC Freedom of Information Act ("FOIA") Officer will notify you to give you an opportunity to identify and request that any information, which may be exempted under FOIA, be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. § 552(b).

If you have any questions, please contact Attorney Katherine Zebell at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Howard G. Arnett, Esq.

¹ See the NIGC website for previously issued advisory opinion letters issued by NIGC General Counsel as to whether specific agreements between tribes and 3rd parties constitute management contracts under IGRA and/or violate IGRA's sole proprietary interest mandate.