



October 27, 2020

Via E-mail

Andrew Alejandro, Chairman
Paskenta Band of Nomlaki Indians
P.O. Box 709
Corning, California, 96021

Re: Review of Amendments to the Paskenta Loan Documents

Dear Chairman Alejandro:

This letter responds to the September 02, 2020, request on behalf of the Paskenta Band of Nomlaki Indians (Band) for the National Indian Gaming Commission's Office of General Counsel to review the loan documents between the Paskenta Band of Nomlaki and Wells Fargo, National Association. Specifically, you have asked for my opinion on whether the Loan Documents are a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreement violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents submitted on behalf of the Band, which were unexecuted, but were represented to be in substantially final form (Collectively "Loan Documents"):

- Loan Agreement, marked as: US.124489386.22, Faegre Drinker Draft 09/02/2020;
- Security Agreement, marked as US.124581069.07, NIGC Draft 09/02/2020;
- Securities Account Control Agreement, marked as NIGC Draft (9/02/2020); and
- Exhibits to the Loan Agreements, marked as US.124584237.06, NIGC Draft 09/02/2020

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed, opinion letters for which are available on the NIGC website. Applying the same analysis here, it is my opinion that the Loan 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 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

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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. *See* 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 any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.¹ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." *See* 25 C.F.R. § 517.7(d). 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 have any questions, please contact NIGC Staff Attorney Heather McMillan Nakai at (202) 527-5577.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, stylized "H" and "O".

Michael Hoenig
General Counsel

cc: Aaron Pratt (via email)

¹ 139 S. Ct. 2356 (2019).