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NATIONAL INDIAN GAMING COMMISSION
CONSULTATION
TAKEN ON APRIL 30, 2015, BEGINNING AT 2:00 P.M.
IN SHAWNEE, OKLAHOMA

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NIGC STAFF

- Chairman - Jonodev Chaudhuri
- General Counsel - Eric Shepard
- Associate General Counsel - John Hay
- Acting Chief of Staff - Christina Thomas
- Director of Compliance - Doug Hatfield
- Office of General Counsel - Armando Acosta
- OKC Region Director - Tom Cunningham
- Compliance Officer - Tony Wheeler
- Tulsa Region - Christie Jamison
- Tulsa Region director - Tim Harper

Reported by: Cheryl D. Glenn, CSR, RPR

PROCEEDINGS

1
2 MR. JONODEV CHAUDHURI: I see that it's
3 about that time, so we'll go ahead and get started.
4 I first wanted to start off with a general welcome to
5 everyone who has taken time out of their schedules to
6 be here today to engage in this dialog. We look
7 forward to productive open dialog in the spirit of
8 strong communication.

9 Before we begin, though, in keeping with our
10 own practice of NIGC, in terms of how we run our
11 consultations, we'd like to open with a blessing.
12 And it is my understanding that a representative of
13 the Seminole Nation is here to provide us with a --
14 share a blessing with us today, Mr. Willis
15 Deatherage. We're very honored that he's agreed to
16 -- to provide that.

17 So, with that...

18 MR. WILLIS DEATHERAGE: Our Heavenly
19 Father, we thank you God for this day. We thank you,
20 Father, for the things that you do for us. And I'd
21 just pray, God, that you would be with us. I'd ask
22 you, Father, to -- to give a spirit of wisdom, of
23 patience, of understanding. I thank you, Father, for
24 the NIGC. I thank you, Father, for every tribal
25 nation that is represented here today. And I just --

1 I just ask you, God, to continue to -- to bless each
2 nation. All these things I ask in your name. Amen.

3 (As a group, "Amen".)

4 MR. JONODEV CHAUDHURI: So, I'm very
5 honored to be here today. My name is Jonodev
6 Chaudhuri and I'm Chairman of -- of the NIGC. It
7 does feel good to say that as many of you know I was
8 recently confirmed after a long, long confirmation
9 period. And that confirmation I credit to the
10 support from Indian country and much of that support
11 coming from Oklahoma tribes. So, many thank yous,
12 many -- many -- many mados (phonetic) for -- for that
13 support.

14 My fellow commissioner, Commissioner Dan
15 Little, is un -- unable to be here today. He sends
16 his regards. And only scheduling conflicts and other
17 considerations prevented him from being here today.
18 But he's been an active team member each step of the
19 way. He will actively be part of the discussion
20 process that will flow from this and all the other
21 consultations.

22 So, we're here today to -- to engage in a
23 formal consultation between the NIGC and Indian
24 country, tribes and tribal regulators. We'll talk
25 about the format in a moment, but in keeping with our

1 practice in consultations, we'll start off with some
2 introductions. We -- we have a full house here today
3 and we're scheduled to go from 2:00 to 4:00. The
4 purpose of these consultations is really meaningful
5 dialog, so we want to do our best to get comments
6 from everybody, comments, questions, discussion from
7 everybody who wishes to share their perspective
8 today. And so, we would ask, in -- in respect for
9 everyone's time, to the extent possible, if we could
10 limit our comments given the number of folks here
11 today to -- to two minutes or less. However, that,
12 by no means, is a hard-and-fast rule. Nobody is
13 going to be sitting around with a stopwatch. The
14 important part is to make sure everybody has an
15 opportunity to share -- share their perspective.
16 Beyond today and beyond today's opportunity to -- to
17 get verbal comments on the record, there is a written
18 comment period -- there is an opportunity to provide
19 written comments as well as provide comments at other
20 consultations, and so, I would encourage anybody who
21 wishes to submit written comments to do so. We have
22 an internal timeframe for receipt of those comments
23 that I believe our regional director will discuss in
24 more detail.

25 But let's move forward with some

1 introductions just for the purpose of -- of clarity.
2 I think we'll begin with our NIGC team here today,
3 and there are quite a few of us. I want to give
4 thanks to -- to our team here for putting this
5 consultation together, and it's an excellent format.
6 But we'll start with headquarters staff introducing
7 themselves and then move to -- to our representatives
8 from the regions.

9 So, with that...

10 MS. CHRISTINA THOMAS: Good afternoon. My
11 name is Christina Thomas. I'm the acting chief of
12 staff with the NIGC. I'm also a tribal member with
13 the Mille Lacs Band of Ojibwe out of Minnesota.

14 MR. DOUG HATFIELD: Doug Hatfield, director
15 -- Doug Hatfield, director of compliance, Cherokee
16 citizen, OCO.

17 MR. JONODEV CHAUDHURI: He's got a deep
18 thundering voice.

19 MR. ARMANDO ACOSTA: My name is Armando
20 Acosta. I am a senior attorney with the Office of
21 General Counsel in D.C.

22 MR. TOM CUNNINGHAM: My name is Tom
23 Cunningham. I'm a member of the Seminole Nation.
24 I'm the regional director for the Oklahoma City
25 Office of the NIGC. And then also with me from my

1 office is Tony Wheeler, compliance officer. And we
2 have Christie Jamison outside with the Tulsa region
3 office.

4 MR. ERIC SHEPARD: Hi. I'm Eric Shepard.
5 I'm the General Counsel for the NIGC.

6 MR. JOHN HAY: I'm John Hay, I'm THE
7 Associate General Counsel for the NIGC.

8 MR. TIM HARPER: I don't have a microphone,
9 but I'm Tim Harper with the -- I'm the region
10 director for the Tulsa office.

11 MR. JONODEV CHAUDHURI: Thank you.

12 If we could move forward with introductions
13 from -- from all of you, that -- that would be
14 appreciated. We'll just go very quickly and just
15 state our names and our affiliations. But, before we
16 jump into to, I do want to give thanks to Citizen
17 Potawatomi for allowing -- allowing us into their
18 territory to hold today's con -- consultation. So,
19 if we can just pass the mic -- microphone around,
20 we'll just go in a circle and please state name and
21 affiliation and we'll move forward from there.

22 MR. WILLIS DEATHERAGE: My name is Willis
23 Deatherage with the Seminole Nation of Oklahoma.

24 MS. SARAH ANDERSON: Sarah Anderson with
25 the Seminole Nation Gaming of Oklahoma.

1 MR. ORIAN HOLDER: Orian Holder, Delaware
2 Nation committee member.

3 MR. TERRY WILLIAMS: Terry Williams,
4 Delaware Nation committee member.

5 MS. ANN BROWER: Ann Brower, Delaware
6 Nation.

7 MS. KAY BUSBY: I'm Kay Busby. I'm the
8 executive director of the gaming commission for
9 Delaware Nation.

10 MR. ROCKY BARRETT: I'm Rocky Barrett. I'm
11 tribal chairman of the Citizen Potawatomi Nation. I
12 want to welcome all of you here, and if there's
13 anything I can do to make your stay more comfortable
14 or profitable, I will be glad to do that.

15 MS. LESLIE TANYAN: Leslie Tanyan with
16 Absentee Shawnee Gaming Commission, executive
17 director.

18 MS. EDWINA WOLFE: Edwina Wolfe, governor
19 of the Absentee Shawnee Tribe.

20 MS. ELAINE DALEY (phonetic) HUCH: Elaine
21 Daley Huch, Kaw Nation chair.

22 MR. JAMIE HUMMINGBIRD: Jamie Hummingbird,
23 director of the gaming commission for Cherokee
24 Nation.

25 MS. BARBARA COLLIER: Barbara Collier,

1 director of the Quapaw Tribal Gaming Agency for the
2 Quapaw tribe.

3 UNIDENTIFIED SPEAKER: Hi. I'm Conner
4 Elizabeth (inaudible). I'm a member of the Osage
5 Nation of Oklahoma and an attorney in private
6 practice.

7 MS. KELLI MOSTELLER: Kelli Mosteller. I
8 am a -- commissioner of the Citizen Potawatomi Gaming
9 Commission.

10 MR. DANIEL LECLAIRE: Daniel LeClaire,
11 executive director, Citizen Potawatomi.

12 MS. BONNIE STEPHENSON: Bonnie Stephenson
13 with the Delaware Gaming Commission.

14 MS. TERRI PARTON: Terri Parton, president
15 for the Wichita & Affiliated Tribes.

16 MR. WILLIAM NORMAN: William Norman, an
17 attorney with Hobbs, Straus, Dean & Walker.

18 UNIDENTIFIED SPEAKER: Kirk (phonetic).
19 I'm with Hobbs Straus also.

20 MR. KEN BLANCHARD: Ken Blanchard, trial
21 representative for the Absentee Shawnee Tribe.

22 MS. COURTNEY JORDAN: Courtney Jordan,
23 attorney -- or attorney with Crowe & Dunlevy here in
24 Oklahoma City.

25 MS. BARBARA CANARD-WELBOURN: Barbara

1 Canard-Welbourn, Thlopthlocco Tribal Town business
2 committee member.

3 MR. MATTHEW MORGAN: Matthew Morgan,
4 director of gaming affairs, Chickasaw Nation.

5 UNIDENTIFIED SPEAKER: Tracy (phonetic),
6 tribal town advisor.

7 MS. SANDRA WILSON: Sandra Wilson,
8 chairperson, Wichita Gaming Commission.

9 MS. LISA DAWSEY: Lisa Dawsey, executive
10 director of Comanche Nation Gaming Commission.

11 MS. SHANNON WILMETH: Shannon Wilmeth,
12 director of compliance, Comanche Nation Gaming
13 Commission.

14 MS. PAULA PENZ: Paula Penz, Choctaw Nation
15 Gaming Commissioner.

16 MR. KYLE NORMAN: Kyle Norman, Choctaw
17 Gaming Commission.

18 MS. JODY NELSON: Jody Nelson, internal
19 audit manager of the gaming commission for Choctaw
20 Nation.

21 MR. JARED EASTERLING: Jared Easterling.
22 I'm an attorney with the Green Law firm.

23 MS. NANCY GREEN: Nancy Green, Green Law
24 Firm.

25 MS. RAMONA DAVIS: Ramona Davis, Comanche

1 Nation Enterprise.

2 MR. DOUG SPORES: Doug Spores, Fort Sill
3 Gaming Apache Gaming Commission.

4 MR. GARY TOMAHSAH: Gary Tomahsah, Fort
5 Sill Apache Gaming Commission.

6 MR. JIM JOHNSON: Jim Johnson, director
7 Fort Sill Apache Gaming Commission.

8 MS. MURIEL WHEELER: Muriel Wheeler,
9 director, Sac & Fox Nation Gaming Commission.

10 MR. DOUG SMITH: Doug Smith, Sac & Fox
11 Nation Gaming Commission.

12 MS. KIM PEARSE: Kim Pearse, internal
13 auditor, Sac & Fox Nation Gaming Commission.

14 MR. RODNEY CASTEEL: Rodney Casteel,
15 manager, Sac & Fox Nation Gaming Commission.

16 MR. KYLE CODY: Kyle Cody. I'm Sac & Fox
17 Nation Compliance.

18 MS. LORENA WOOD: Lorena Wood, Sac & Fox
19 gaming commission.

20 MR. BILLY BEMO: Billy Bemo, compliance
21 officer, Sac & Fox gaming commission.

22 MR. ED MAGDALENO: Ed Magdaleno, Sycuan
23 Gaming Commission.

24 MS. KELLY MYERS: Kelly Myers, Cherokee
25 Nation Gaming Commission.

1 MS. LARAYNE SCHULTZ: Larayne Schultz, Sac
2 & Fox Nation Gaming Commission.

3 MR. BUDDY YORK: Buddy York, Muskogee Creek
4 Gaming Commissioner.

5 MR. JEFF HITCHCOCK: Jeff Hitchcock,
6 Wyandotte Nation Gaming Commission.

7 MS. GENEVA FLETCHER: Geneva Fletcher,
8 Seneca-Cayuga Nation Gaming Commissioner.

9 MS. SARAH CHANNING: Sarah Channing,
10 secretary-treasurer, Seneca-Cayuga Nation.

11 MR. CALVIN CASSADY: Calvin Cassady, tribal
12 counsel for Seneca-Cayuga Nation.

13 MR. JONODEV CHAUDHURI: I think we got
14 everyone. Thank you for that exercise. It's always
15 good to, you know, know ourselves when -- when we --
16 when we talk.

17 I do also want to recognize, beyond
18 introduction -- that initial introduction,
19 distinguished NIGC alumnus, Liz Homer, served as --
20 as vice -- right? As vice chair for quite some time
21 on the NIGC. And so, it's always good to see a
22 fellow NIGC face.

23 So, let me talk a little bit about the
24 purpose of today's consultation before moving forward
25 with -- with the topic -- well, with the four topics,

1 actually.

2 Our consultation policy flows from executive
3 order 13175 which was an executive order issued by
4 the Obama -- Obama administration focusing on
5 targeted meaningful consultation with -- with Indian
6 tribes.

7 We are of the mindset, from top to bottom, at
8 the agency that not only is it important to honor
9 that executive order and the larger policy push
10 toward consultation, it's also good policy to do so,
11 meaning it's just more efficient, more practical to
12 engage in cooperative dialog before putting pen to
13 paper on anything. And that's what we're doing here
14 today.

15 So, we see the consultation process, the
16 communication process, the dialog process as an
17 integral part of our operations as an agency. So,
18 with -- in that light, I -- I want to express my
19 deepest thanks for you taking time to -- to be here
20 today.

21 We will move forward with some housekeeping
22 matters at this time, but I'll -- I'll provide some
23 additional followup before moving forward with --
24 with additional statements. So...

25 MR. TOM CUNNINGHAM: Thank you, Chairman.

1 Again, the consultation is scheduled to go
2 from 2:00 to 4:00 p.m.; however, we may end early if
3 all the topics are covered and there are no
4 additional comments from the tribes.

5 The meeting will be transcribed, so when
6 speaking, please speak clearly and also state your
7 name before you make any statements and give us the
8 opportunity to get the microphone to you by raising
9 your hand if you have a comment.

10 Also, this -- as the Chairman noted, this is
11 an official government consultation between the
12 United States government and the designees from each
13 tribal government. It is not open to the public and
14 is not open to media, so, if there are any non-tribal
15 representatives or media, we would ask you to leave
16 at this time.

17 Also, coming up May 20th, at Prior Lake
18 Minnesota, we will have our third consultation. And
19 the comment period ends for written comments
20 June 22nd, 2015.

21 Thank you.

22 MR. JONODEV CHAUDHURI: Thank you, Tom.

23 So, we'll move forward now with introducing
24 the topics, but we also recognize that especially at
25 the end of a long training, and I'm very excited

1 about the training we just put on -- put on here,
2 many of you may have travel arrangements you need to
3 attend to. We want to be sensitive to that. If
4 anybody has prepared a statement that they absolutely
5 need to present at this time in order to catch a
6 flight or -- or make another event, please raise your
7 hand and let us know; otherwise, we'll move forward
8 with some background on the four topics we're here to
9 discuss today.

10 Is there anybody that absolutely needs to get
11 on the record at this time?

12 With that, various members of our team will
13 provide some background on the topics that we're here
14 to discuss today. In addition to these -- these
15 presentations, there are some written materials that
16 I believe are available. That's correct, that's been
17 passed out.

18 So, in addition to the consultation notice
19 that's already been sent out, we have written
20 material as well as this background, but please feel
21 free to ask questions at any stage of this
22 consultation.

23 So, leading us off is Mr. John Hay here to
24 talk to us about our privacy act regulations.

25 MR. JOHN HAY: The first one and probably

1 the one that is also considered the boring one. I
2 say "boring" because the privacy act revisions that
3 we are contemplating really don't affect how tribes
4 do anything. They don't affect how you collect,
5 store or process information from applicants. They
6 do, however, affect how NIGC handles this information
7 and how we handle requests coming in, how we process
8 them internally and how we respond to these requests.

9 The reason that we're updating them now is
10 because the last time they were updated was 1992,
11 also the year that they were originally promulgated.
12 So, it's been quite some time and a lot has changed
13 in terms of the privacy act since then and we want to
14 make sure that our processes are up to date and --
15 and streamlined and a little less burdensomeness.
16 And to eliminate some of the burden, we are going to
17 consolidate a lot of the procedures for requesting
18 them. If you -- if you've looked at our -- our
19 regulations on privacy act, and I'm guessing most
20 people haven't because they -- we get very few
21 requests under the privacy act. I think in the last
22 five years I think we might have gotten two requests
23 under the privacy act, so that's how few requests we
24 get for them. So, we're -- we're going to
25 consolidate some of the -- the processes for how we

1 handle these internally. We are going to revise some
2 of the processes of how we work with other federal
3 agencies when these requests come in and we're also
4 going to make revisions to match up these processes
5 with how we handle FOYA requests. That's important
6 to us because internally within our agency the person
7 who handles our FOYA requests is the same person who
8 handles the privacy act requests, and we want them to
9 have a kind of consistent set of deadlines internally
10 for how they need to respond. It just makes their
11 job a little easier and there's more consistency
12 going between the -- the privacy act and FOYA.

13 We also have a couple of new provisions that
14 we are contemplating including, and that is how we
15 account for disclosures. We think it's important,
16 even though we -- we don't do these things
17 frequently, that we have an accurate accounting of
18 when they come in and when they go out.

19 We also want to have a process for notifying
20 individuals when privacy act requests come in either
21 in emergency circumstances or pursuant to a Court
22 order.

23 And so, that's the long and short of it. We
24 anticipate there will be little to no impact on
25 tribes because it's not tribes who are requesting

1 this information. These are individuals who were
2 licensed by tribes and -- and oftentimes they want to
3 submit a request to us to find out what information
4 we have on them.

5 And so, that's the long and the -- the short
6 of it in terms of the privacy act.

7 MR. JONODEV CHAUDHURI: Thank you, John.
8 Thank you, John. There wasn't anything boring about
9 that.

10 Moving forward, the next topic of discussion
11 is a proposed set of amendments to our policies and
12 procedures relating to a potential categorical
13 exclusion for approval of management agreements under
14 -- under NEPA. So, with that, Mr. Eric Shepard.

15 MR. ERIC SHEPARD: Thanks. The agency is
16 proposing adopting a NEPA policies or National
17 Environmental Policy Act policies and procedures
18 manual that will include a categorical exclusion for
19 the approval of management contracts. Previously the
20 NIGC had determined that approving management
21 contracts under IGRA constituted a major federal
22 action and required NEPA review. That review took
23 the form of environmental assessment typically and
24 sometimes an environmental impact statement, both of
25 which are extremely costly and -- and time consuming.

1 By adopting a categorical exclusion for -- or
2 CATEX for the approval of management contracts,
3 tribes would not be required to prepare an
4 environmental assessment or an environmental impact
5 statement except in the case of extraordinary
6 circumstances.

7 The policies and procedures manual the NIGC
8 is proposing is limited in scope. In addition to
9 setting forth the procedures for applying for a
10 categorical exclusion, they'll define the
11 extraordinary circumstances under which a categorical
12 exclusion would not be appropriate and the policies
13 and procedures to be followed in order to conduct a
14 NEPA review.

15 By adopting the manual, the commission hopes
16 to end the uncertainties surrounding the NEPA review
17 requirements and save tribes both time and money.

18 MR. JONODEV CHAUDHURI: Thank you, Eric.

19 So, next we'll move forward with a proposed
20 approach to developing some non-mandatory guidance
21 regarding class 3 MICS. And for that we have
22 Ms. Christina Thomas.

23 MS. CHRISTINA THOMAS: Thank you,
24 Mr. Chairman.

25 The NIGC's class 3 member internal control

1 standards, or the MICS, were promulgated in 1999 and
2 then revised in July of 2002. A lot has changed in
3 the gaming industry since 2002 and the MICS have not
4 kept up with those changes. Due to the Colorado
5 River Indian Tribe or the CRIT decision, the NIGC
6 does not have the authority to promulgate or update
7 the class 3 MICS of the regulations; however, we feel
8 there is still a need to have them. Many tribes
9 still rely on the MICS and in some cases the MICS are
10 part of the tribal state compacts or the tribe's
11 gaming ordinances.

12 During our last regulatory review process we
13 asked for comment on how we should proceed with
14 regards to the class 3 MICS. We received a lot of
15 great responses. Some wanted us to implement new
16 regulations while some wanted us to withdraw the
17 regulations and do nothing.

18 We have reviewed all the comments and the
19 commission decided that it's time to propose issuing
20 the class 3 MICS as guidance. These will be advisory
21 only and unenforceable by the NIGC but will allow us
22 to make sure the MICS keep up with the advances --
23 sorry -- within the gaming industry and provide
24 guidance to tribes that do rely on the MICS.

25 The plan is to, 1, develop updated class 3

1 MICS guidance; 2, publish them for comment; 3,
2 consider all the comments and revise as necessary;
3 and, finally, publish the guidance and, at the same
4 time, withdraw the regulation. Because it will be
5 guidance instead of regulations, we will be able to
6 be much quicker to adapting change -- to the changes
7 in the industry.

8 MR. JONODEV CHAUDHURI: So, our fourth and
9 final topic involves our Buy Indian Goods and
10 Services proposed reg -- regulation, and we call it
11 BIGS for short.

12 And for that piece we have Mr. Armando
13 Acosta.

14 MR. ARMANDO ACOSTA: Hello. The purpose of
15 the BIGS regulations is to provide a preference to
16 qualified Indian-owned businesses when the commission
17 purchases goods and services at a fair market price.
18 This is in keeping with the commission's mission and
19 it's being done as a means of promoting tribal
20 economic development, tribal self-sufficiency through
21 increased employment opportunities and strong tribal
22 government.

23 This proposed regulation is an attempt by the
24 commission to codify what it has already been doing
25 in practice for many years, which is to give

1 preference, as much as practicable, to qualified
2 Indian-owned businesses when purchasing goods and
3 services at a fair market value.

4 We want to make clear that the BIGS
5 regulations are for the commission's own purposes
6 only. We will not require the tribes themselves to
7 buy only from other Indian-owned businesses.

8 Lastly, we want to point out that these
9 proposed regulations are almost identical to what the
10 Bureau of Indian Affairs Buy Indian Act regulation on
11 which previously held consultations. One key
12 difference, however, is that the authority under
13 BIA's regulations is to rise from the binding act
14 itself while the BIGS -- that's already under the
15 BIGS, our regulations, is derived from the Indian
16 Gaming and Regulatory Act.

17 In the future it might be -- become necessary
18 for the commission to seek delegated authority from
19 the secretary of interior to use the authority under
20 the Buy Indian Act because that act provides for a
21 higher level of Indian preference, but right now the
22 commission is proceeding solely under the authority
23 given to it by the Indian Gaming Regulatory Act.

24 MR. JONODEV CHAUDHURI: Thank you,
25 Armando.

1 So, with that, we'll open up the floor to --
2 to questions, comments, suggestions, concerns. And,
3 as I mentioned before, we have a lot of ground to
4 cover. We're not going to go in any particular
5 order, so I would ask for whoever is providing
6 questions or comments to feel free to choose which --
7 which topic you want to touch on. But, when you do
8 so, please state your name as well as your
9 affiliation, once again, for the record so our
10 transcriber can follow along. And, in addition to
11 that, if we're moving back and forth between topics,
12 please be clear as to which -- which topic your
13 comment applies to, and that'll just help us organize
14 the comments when we compile them.

15 Our regional director, Mr. Cunningham, will
16 be following along and making sure that we're --
17 we're kind of tracking the questions and comments in
18 first-come/first -- first-served order.

19 So, with that, please just feel free to raise
20 your hand and we'll get -- get started.

21 MS. EDWINA BUTLER-WOLFE: Good afternoon.
22 I'm Edwina Butler-Wolfe, governor of the Absentee
23 Shawnee Tribe.

24 And one of the questions I have is about the
25 class 3 MICS. So, you had indicated that the

1 advisory -- is that how -- or that's going to be a
2 selected few or is that few -- the panel is going to
3 do that as the -- drawing up the -- those
4 regulations?

5 MR. JONODEV CHAUDHURI: Well, let -- let me
6 be upfront. There are -- I think what you're asking
7 about is an advisory committee?

8 MS. EDWINA BUTLER-WOLFE: Right. Is that
9 what you're talking as "advisory"?

10 MR. JONODEV CHAUDHURI: Not at this point.
11 We're -- we're soliciting comment and input through
12 the consultation process as we speak, and so that --
13 that's a main part of today's discussion. There was
14 a tribal advisory committee formed when we were
15 developing formal class 2 MICS which were binding
16 through our regulations. That is not the -- the
17 scope of the proposed path regarding class 3
18 non-mandatory guidance.

19 So, to my knowledge, not only would it be a
20 new direction to develop a tribal advisory committee
21 around guidance from the NIGC, but there -- there are
22 trade-offs that come along with that approach.

23 As evidenced by attendance today, we have a
24 large cross section of representatives and
25 stakeholders and people who bring their own

1 collective voices to the consultation process. By --
2 by necessity, a committee is made up of voices from
3 committee members who, powerful as they may be, are
4 -- are committee members. Now, we haven't made any
5 -- we haven't made any final determinations regarding
6 committee, but a committee also brings with it
7 various other legal requirements under federal law.

8 And so, in order to begin the process to
9 start talking about non-mandatory guidance, the first
10 order of business is consultation, and that's what
11 we're engaged in today.

12 MS. EDWINA BUTLER-WOLFE: That was my --

13 MR. JONODEV CHAUDHURI: If that helps?

14 MS. EDWINA BUTLER-WOLFE: Yeah. I was just
15 -- when she said "advisory", I didn't know if that
16 meant a group of or just --

17 MR. JONODEV CHAUDHURI: Indian country is
18 our advisory --

19 MS. EDWINA BUTLER-WOLFE: Okay. I guess...

20 MR. JONODEV CHAUDHURI: Please. I'm sorry.
21 We -- we have a limited number of microphones. I
22 don't mean to hog it. You know, we've got a whole
23 team here.

24 MS. CHRISTINA THOMAS: So, when I had said
25 "advisory", I meant that the guidance --

1 MS. EDWINA BUTLER-WOLFE: Okay.

2 MS. CHRISTINA WOLFE: -- they wouldn't be
3 mandated for tribes to adopt them. It would be an
4 advisory guidance controls that tribes could choose
5 to use it if they wanted to.

6 MS. EDWINA BUTLER-WOLFE: So, you know,
7 based on all the comments that we bring in? Okay.
8 All right.

9 MR. JONODEV CHAUDHURI: Yes. Thank you.
10 Thank you, Governor.

11 MS. EDWINA BUTLER-WOLFE: You're welcome.

12 MR. JAMIE HUMMINGBIRD: They tell me my
13 mouth is big enough I don't need this microphone,
14 but, to have two of them, I think that would be
15 overkill.

16 As you noted, Christina --

17 MR. TIM HARPER: Jamie? Jamie, would you
18 identify yourself?

19 MR. JAMIE HUMMINGBIRD: Oh, I'm sorry.
20 Jamie Hummingbird, Cherokee Nation.

21 When you were reading through your -- your
22 purpose for the proposal, you noted that there are a
23 number of tribal compacts and probably a number of
24 tribal gaming ordinances that specifically include
25 542 as a part of those documents. Has the NIGC

1 weighed the pros and cons and -- and weighed the
2 ripple effects of making such a withdrawal knowing
3 that gaming ordinances would have to be revised,
4 compacts would then be -- need to be reopened
5 possibly and/or in our case in Oklahoma state laws be
6 reopened? Because the state laws are specific as a
7 part of the model state compact, which would lend
8 itself to one of -- a couple of things. And the
9 ripple effects that I'm talking about would not just
10 be here in Oklahoma but any -- any jurisdiction in
11 which those requirements are specifically mentioned
12 as a part of our gaming regulatory structure.

13 MR. JONODEV CHAUDHURI: Thank you. Thank
14 you so much for those comments. Thank you so much
15 for those comments, Hummingbird.

16 Those are absolutely out -- absolutely
17 important considerations and they provide, again, the
18 need for an open honest dialog regarding the -- the
19 impact of taking this approach and we're open to all
20 comments.

21 Let me say this, though. There are pros and
22 cons to almost every available option and we would
23 love to hear input regarding pros and cons regarding
24 doing nothing, doing something in the form of issuing
25 non-mandatory guidance and leaving the -- the old

1 regulations up, so to speak, and pros and cons to the
2 proposed approach, which is to provide guidance
3 while, at the same time, withdrawing the -- the old
4 outdated rules. So, there are pros to cons to each
5 approach. We are here today to listen, to hear
6 comments from both directions regarding any approach.
7 There has certainly been internal dialog regarding
8 which -- which approach would do the least amount of
9 -- what would create the -- the least amount of
10 disruption in the industry, but that is an internal
11 thought process that is -- is, by no means,
12 formalized or finalized. The whole point of
13 consultation is to engage in back-and-forth dialog.

14 MR. JAMIE HUMMINGBIRD: Just --

15 MR. JONODEV CHAUDHURI: Please.

16 MR. JAMIE HUMMINGBIRD: -- just a followup
17 question.

18 MR. JONODEV CHAUDHURI: Uh-huh.

19 MR. JAMIE HUMMINGBIRD: And I think you
20 might have noted a little bit earlier, too, that
21 since the CRIT decision, I think everybody that's
22 been in the gaming industry has realized that NIGC
23 does not look to enforce or -- class 3 activities,
24 particularly the MICS. And since that decision the
25 practice of NIGC has really been to maintain those

1 documents for the reasons that we just stated, that
2 because of the reliance upon so many different
3 ordinances and compacts is to maintain those
4 documents but not enforce, because, obviously, the
5 enforcement mechanism is not there.

6 But during your internal discussions, and
7 maybe -- maybe this is a two-prong question. You
8 know, during the internal discussions that led to
9 this proposal -- and this is something I'm -- I'm not
10 quite sure what the impetus was that drove the
11 decision to propose a withdrawal. Although this is
12 something that we've been asking for since 2001, now
13 we are -- we're looking at different circumstances
14 than we were 14 years ago. I was on the advisory
15 committee to revise the MICS back in 2001, and that
16 was one of the recommendations we made then, was
17 break these out, this is class 2, this is class 3,
18 you don't have authority in class 3.

19 But 14 years later, and even after the CRIT
20 decision X number of years ago, I guess the simple
21 and short question is, "Why now?" And is there a
22 driving need other than some of the feedback that has
23 been given. Not to take away from the -- the reasons
24 why the feedback was given, but if there was a -- a
25 circumstance that has -- has lent itself to making

1 this proposal necessary at this time, it would help
2 to understand the -- the thought process on how we
3 got to this point.

4 MR. JONODEV CHAUDHURI: Let me speak to
5 that. I don't want to hog the -- the mic from our
6 team here, and so I know our General Counsel's office
7 has a perspective on this as well as our chief of
8 staff's office. So, I -- I do want to step back and
9 allow them to weigh in, but let me share my
10 perspective.

11 My perspective in terms of timing and why now
12 is this. So, consultation takes the formal form --
13 and today we're engaged in formal consultation, but
14 our dialog with Indian country is ongoing. It -- it
15 manifests itself in every interaction as -- that we,
16 as an agency, have with our regulatory partners.

17 So, we received input in a number of ways,
18 through formal consultations, yes, but also through
19 site visits, through public -- public settings and
20 also in various requests for technical assistance.
21 In a variety of formats the -- the requests or the --
22 the possibility of addressing class -- these issues
23 for tribes that, either through their compacts or
24 through other issues specific to their given states,
25 has come up so that we have been asked repeatedly in

1 other contexts whether or not we'd be able to take a
2 look at providing guidance regarding -- regarding
3 class 3 MICS, fully recognizing we don't have the
4 authority -- authority to issue binding class 3 MICS
5 or to enforce class 3 MICS but simply in recognition
6 of the role that we play to help support the
7 regulatory structure of -- of the Indian gaming
8 industry. We heard those comments and internally we
9 -- we discussed whether or not it would be even
10 helpful to send something out for discussion in
11 consultation.

12 So, that's been my perspective. The -- the
13 request for us to take a look at this has come in
14 sort of a variety of -- come to us through a variety
15 of ways including many comments at public settings.
16 And so, it's certainly not being internally driven.
17 We're trying to be responsive and sensitive to
18 questions and concerns raised in the field from
19 Indian country.

20 So, that's my perspective. I'd like to also
21 not throw anybody under the bus but turn -- turn it
22 over to our General Counsel's office to -- to have
23 them provide some -- some perspective regarding pros
24 and cons of this approach and the chief of staff's
25 side as well.

1 MR. ERIC SHEPARD: So, just to follow up on
2 -- on those thoughts for -- for a second. It is on?
3 Yeah.

4 The -- what the commission is -- what the
5 commission -- the commission is sort of stuck in a
6 difficult place at the end of the day. It has this
7 thing called minimum internal controls which implies
8 that there's some sort of minimum regulatory
9 standard, but they're horribly out of date, and I
10 think everyone in this room probably recognizes that
11 regardless of your position on whether the commission
12 should be issuing guidance or not.

13 So, the question I think that the commission
14 faces is what to do about that. It -- it can't,
15 because of the CRIT decision, go back in and reopen
16 the regulations and update them. It can't add
17 digital surveillance requirements. It can't -- it
18 can't make those kinds of changes that probably need
19 to be made. And I think Indian country, in terms of
20 regulatory capacity, is far beyond what the 542 MICS
21 are.

22 So, what does the commission do? It's out
23 there, it's being asked for guidance on class 3
24 regularly as -- as the chairman indicated. This was
25 -- this is a concept. And, again, this is very early

1 in the stage, so there's nothing for anyone to look
2 at in terms of draft language. That will come later
3 if the commission continues down this process. But I
4 think your comments are really important to hear
5 about, as the chairman said, is this a process that
6 makes sense? This idea of getting together, putting
7 together draft guidance, getting some comment back on
8 that and releasing it as guidance. And then do we
9 eventually withdraw 542 or is there some value in
10 keeping that on the books separately because some
11 compacts, some tribes refer to them? And those are
12 all things I think we would really like to get
13 comments on so that we can move forward in a way that
14 makes sense for everybody.

15 MR. JOHN BARRETT: John Barrett. John
16 Barrett, test, test, test. John Barrett, Citizen
17 Potawatomi Nation Tribal Chairman.

18 Given that in Oklahoma we have an intensely
19 adversarial relationship with the state government
20 and the current governor is seeking in a number of
21 ways to -- to affect Indian country, particularly
22 gaming, I think that, if you could consider the --
23 the minimum internal control standards in much the
24 same way that tribes consider a full-faith credit
25 agreement with the Supreme Court of the state, you

1 put those regulations up there and they are
2 referenced -- as Hummingbird pointed out, they are
3 part of our compact. And if you withdraw them, that
4 means a renegotiation of the compact and we're going
5 to end up with a gun to our head in Oklahoma where
6 they'll come after you, your liquor license, your tax
7 number, your -- virtually your access through the
8 Oklahoma Department of Transportation, the roads into
9 the casino. I mean, we are under some form of
10 regulatory pressure on every front they can create.
11 This would give them the camel's nose under the edge
12 of the tent.

13 If you'll put it up there, a minimum internal
14 control standard -- and the way I understand the
15 court case is that, if we choose to follow that
16 standard as a means of regulating class 3 gaming
17 within our individual reservations, that doesn't
18 diminish the fact that you published a minimum
19 internal control standard and you can update that
20 under your authorities in the National Indian Gaming
21 Act of the -- if you can reach as far as an
22 environmental study on the Buy Indian Act, you should
23 be able to amend the minimum internal control
24 standards to -- to be in current compliance. It's
25 simply the lack of full faith credit agreement the

1 chuck tribe chooses to use that set of standards for
2 its -- to conduct its gaming operations. That would
3 keep us in compliance with the compact. That would
4 keep a minimum internal control standard as part of
5 the statutory base that the National Indian Gaming
6 Commission has and we stay out of a fight before it's
7 time to renew our compacts.

8 But you're going to -- you're going to have a
9 real -- more than a ripple effect; it's the tsunami
10 effect, is what you're going to have out of
11 withdrawing the minimum internal control standards
12 because of the court case. Because ultimately that's
13 what the court case said, was that you couldn't have
14 a standard. It said that you didn't have the right
15 to enforce them without tribal consent. So, make it
16 a tribal consent issue, lack of full faith and credit
17 agreement or the adoption of the standard as part of
18 the tribal standard. I -- I don't think that the
19 tribe adopting the NIGC's MICS has any effect on your
20 authority to publish a MICS. I believe that the
21 court case would authorize that. Enforcement still
22 lies within the authority of the tribe, not within
23 NIGC.

24 MR. JONODEV CHAUDHURI: Thank you. Thank
25 you, Chairman. Excellent, excellent comment.

1 So, we recognize the danger of un --
2 unintended consequences. And whenever you're trying
3 to fix something, you don't want to create more
4 problems than -- than you set out to fix. So, we
5 recognize the -- the unique considerations that
6 tribes in Oklahoma have as -- as being different than
7 unique considerations from tribes in other states.
8 And so, with that in mind, we'll take that comment
9 back and take a very close look at it.

10 I have an additional request to other folks
11 in the room to kind of duck tail or piggyback off
12 your comment, and I'll, again, pass -- pass it on to
13 our team after this.

14 But my request is this. We have a lot of
15 really experienced regulators and really good lawyers
16 in the room, and on top of that you work with a
17 number of really great regulators and really great
18 lawyers. If there are -- if there are specific
19 provisions such as a full faith and credit clause
20 that would -- would be recommended to accompany
21 guidance or --

22 MR. JOHN BARRETT: That was analogy.

23 MR. JONODEV CHAUDHURI: Well, I mean, if --
24 if there's any -- I apologize for all the technical
25 difficulties we're -- we're having here today. I

1 don't -- you know, there's about a four -- four-foot
2 square patch of really, really good -- okay. I'm not
3 going to sit -- anyway, I apologize for the technical
4 difficulties that we're having today.

5 But, you know, we'll definitely take that
6 approach back and think on it quite a bit and -- and
7 see -- and see what additional comments come out
8 today and tomorrow. But, please, feel free to follow
9 up with today's consultation with written comments.
10 If there are specific proposals regarding --
11 regarding written language, we're more than happy to
12 take a look at that -- at that as well.

13 But thank you so much for that helpful
14 comment.

15 Is there something you want to add to that?

16 Thank you, chairman.

17 MS. BARBARA COLLIER: Good afternoon. I
18 have a -- my written comment.

19 MR. TIM HARPER: Barbara, identify
20 yourself.

21 MS. BARBARA COLLIER: Barbara Collier with
22 the Quapaw Tribal Gaming Agency.

23 Well, it says it's on. I had the green
24 light.

25 Barbara Collier with the Quapaw Tribal Gaming

1 Agency, executive director. I have my written
2 comments and I have given a copy of those to your
3 transcriber so she will have those available for you.

4 I did want to briefly read some of the
5 captions that I have here and there's one on each one
6 of your issues. We do appreciate you bringing these
7 to the table for us and our utilization.

8 The proposed NEPA, we are -- are encouraged
9 and we encourage you to shift policy according to
10 what you need to -- to -- what is required in that,
11 and then that will bring us up to not having to do
12 some of those issues. Being from the environmental
13 field, when I worked for the Wyandotte Nation, I know
14 how difficult some of those are and I think that that
15 policy that you're setting out there is a good one.

16 The comments on the -- and observations on
17 the Buy Indian Goods and rules and the proposed
18 privacy act are all positive, in our opinion, and we
19 have stated that within our document.

20 Again, as I did when I spoke briefly -- and I
21 concur with my coworker here, Mr. Hummingbird, I
22 would like to read you our comments on the guidance
23 for class 3 MICS. To begin, we -- we commend you for
24 outreach efforts during the early planning stages to
25 withdraw 25 CFR part 542 and issue the class 3 MICS

1 as non-mandatory guidance; however, there would be a
2 lot of problems with that. And you have heard those.
3 We have expressed that. These gentlemen have
4 expressed that.

5 Early tribal involvement is not only
6 consistent with the consultation responsibilities
7 under executive order 13175 but also a key step
8 towards developing federal policies that will
9 at least be minimally acceptable to tribal
10 governments.

11 It also endures sufficient time for tribal
12 governments to explore the underlying concepts behind
13 the proposed changes and consider alternatives,
14 including the alternative of no further action.

15 We appreciate and welcome the opportunity to
16 engage in this type of dialog with you. While we
17 generally approve the concept of issuing internal
18 control standards as non-mandatory guidance, we know
19 that there are tribal state compacts and, in some
20 instances, tribal gaming ordinances that rely on 25
21 CFR part 542 for the establishment of class 3 gaming
22 standards. For instance, the model tribal state
23 compact with the State of Oklahoma provides that
24 tribal gaming operations must comply with tribal
25 internal control standards that equal or exceed the

1 NIGC class 3 MICS. By withdrawing the class 3 MICS
2 regulation, there is a potential of disturbing the
3 regulatory balance struck in these compacts. In lieu
4 of this, we would not necessarily object to leaving
5 the regulation in place for those tribes whose
6 compacts incorporate the federal standards in 25 CFR
7 5 -- 542.

8 We look forward to continuing dialog on this
9 important question in the period leading up to the
10 publication of any notice of proposed rulemaking
11 pertaining to 542.

12 As you've spoken about some of the
13 conversation here, I would address this to Eric
14 Shepard.

15 MR. ERIC SHEPARD: Yeah.

16 MS. BARBARA COLLIER: Can you explain to us
17 -- you mentioned the tech -- the technical portion,
18 and we're aware of that, that it's very outdated.
19 But can you explain that -- any of the other possible
20 issues that you feel -- or that have been brought to
21 you that are issues from the document other than the
22 technical portions?

23 MR. ERIC SHEPARD: That's primarily it. I
24 mean, I don't know if Christina has more, but on --
25 on my end that would be -- that's the primary concern

1 that we've been hearing, is the -- the data nature,
2 they haven't kept up with technology, they don't keep
3 pace with where we are today in -- in gaming.

4 If I could ask a question in return? Just --
5 just to followup -- and maybe this will be helpful as
6 you prepare written comments, if other people are --
7 have similar comments along of the lines of keep 542
8 in pace but it might be okay to issue some sort of
9 updated guidance.

10 As we -- when we issued the new class 2 MICS,
11 there was an awful lot of confusion about 543, 542,
12 what applies to what. I guess I'd like to hear how
13 we would prevent there from being -- or what we could
14 to prevent there from being additional confusion out
15 there if we were to have 542 on the books still and
16 then have a guidance document out there as well.

17 And -- and, again, not saying that that is a
18 problem that's insurmountable, but we did face that
19 problem and we are still facing that problem with 542
20 and 543, and so, we'd really appreciate any ideas
21 folks would have so that we don't continue to have
22 that problem. If we were to have a -- a model or a
23 guidance document out there that -- that has one
24 standard and then 542 still on the books that has
25 different standards.

1 And you don't have to answer that today.
2 Just, you know, we'd appreciate any thoughts from
3 anybody on -- on that.

4 MS. BARBARA COLLIER: Well, yeah. I won't
5 answer it officially today, but my -- you know, we
6 did have a lot of concerns with 542 and 543 in
7 combining those.

8 MR. ERIC SHEPARD: Uh-huh.

9 MS. BARBARA COLLIER: But the tribes did
10 make comments prior to you issuing those that might
11 have worked a little better than what was actually
12 presented. But we have dealt with that and we have
13 combined those together to make a working document
14 that, when auditor-conducted, that they're now going
15 off of the combined rule that's 543. I think the
16 tribes have done a good job doing that, the ones that
17 I know of around me anyway, because we do work
18 together and we do try and work things out especially
19 when we meet a -- a big job such as that was.

20 So, I think that maybe you're cutting the
21 tribes a little short; however, I do appreciate the
22 fact that you're concerned that there would be
23 confusion. If you just -- that's why I asked about,
24 if it was just the technical portion. If it's just
25 the technical portion and you line that out in your

1 guidance document --

2 MR. ERIC SHEPARD: Uh-huh.

3 MR. BARBARA COLLIER: -- and then allow the
4 tribes to refer to the 542 or whatever their compact
5 agreement, their ordinance agreements are with the
6 other things that aren't necessarily so outdated as
7 the technology part -- portion, I don't think that
8 there would be a problem with them being smart enough
9 to understand that or to deal with it. I personally
10 think that, you know, the guidance for the technical
11 part would probably be excellent because we do need
12 to move forward. We all are very aware of that.
13 Every day we face new technical issues about, you
14 know, how we operate our casino but -- or how we
15 regulate them. But I think that there could be a
16 good -- a positive norm made if you didn't completely
17 pull the 542.

18 As you heard on the comments when -- at the
19 consultation out in San Diego, California would be in
20 a worse -- probably a worse condition than we are in
21 Oklahoma because theirs is also incorporated in their
22 ordinance as well as their compacts, and they're
23 always on the -- you know, always trying to come in
24 and re-regulate them.

25 In Oklahoma we are at -- just like the -- the

1 gentleman said, we are at a turning point right now.
2 Why now? And we appreciate the fact that you are
3 doing something, but we do not want to give the State
4 of Oklahoma an inch to get their foot in the door
5 because that's what they're just waiting to do.
6 That's what they're trying to do currently.

7 MR. JONODEV CHAUDHURI: Thank you,
8 Ms. Collier.

9 I do want to just add kind of one bit of
10 context just -- I -- I don't think any confusion out
11 there in the industry is any way tied to whether or
12 not -- okay. We'll just -- we'll get the preacher
13 voice going on.

14 I don't think any confusion out there in the
15 industry is, in any way, tied to any potential
16 considerations regarding intelligence or smart enough
17 or anything. I think what -- what we've heard or
18 at least what I've heard, speaking from -- from my
19 perspective, is that there's simply a disconnect
20 between 542 and 543. And of those tribes that -- and
21 some of which may -- may be in other states. Of
22 those tribes whose compacts or specific sets of laws
23 reference -- reference five -- you know, 542, how
24 that can be interpreted given the -- the disconnect.
25 I think that's the only confusion anybody is talking

1 about. And I don't think it's -- I certainly haven't
2 heard anybody saying it has anything to do with the
3 ability to understand. And so, we -- we definitely
4 -- and -- and I think I can say this because I'm a
5 recovering lawyer and definitely have the utmost
6 respect for regulators and especially tribal
7 regulators and their ability to understand how -- how
8 to -- how to navigate those differences in
9 regulations, so...

10 MS. BARBARA COLLIER: That wasn't my
11 intent, that their -- that they couldn't do it.

12 MR. JONODEV CHAUDHURI: Yeah.

13 MS. BARBARA COLLIER: We just got through
14 doing a very difficult culmination with the -- you
15 know, combining 542 and 543. And that was my intent,
16 was that -- you know, if we did that, then we could
17 do this.

18 MR. JONODEV CHAUDHURI: Okay. Absolutely.

19 MS. BARBARA COLLIER: Not that anyone was
20 not capable of doing it.

21 MR. JONODEV CHAUDHURI: All right.

22 MS. BARBARA COLLIER: Sorry. Maybe Jamie.

23 MR. JONODEV CHAUDHURI: Did you get that
24 transcriber?

25 MR. JOHN BARRETT: If I may, Mr. Chairman,

1 follow up on that.

2 The unintended consequences. You know, there
3 is a tremendous difference between the NIGC of 2001,
4 2002, and the NIGC of today and I think the NIGC of
5 today, particularly in -- in preparation for the
6 number of tribes that are approaching renewal of
7 their compacts. And the consequences of these
8 renewals of what's going to happen when the clear
9 intent of congress in the language of the national
10 Indian Gaming Regulatory Act was that states would
11 not participate in Indian gaming revenues. These
12 schemes -- and they are schemes -- of exclusivity and
13 all of the other guises that states use to encroach
14 on Indian gaming revenue, if it was clearly expressed
15 by the NIGC that the NIGC has the authority under the
16 act on the newly negotiated compacts, that if the
17 states over-reach or that -- that one of the
18 considerations NIGC would have on a new compact --
19 and I think BIA is going to give this some
20 consideration as well -- is that tribal -- I mean,
21 state participation in gaming revenues under whatever
22 language they want to disguise it as may be withdrawn
23 if the states start to use regulatory pressure
24 outside of gaming to force tribes into agreeing to
25 unrealistic compacts. That's really what happened in

1 California. And Oklahoma, we'd love to have the NIGC
2 behind us when we have to sit down with the governor
3 because we -- we certainly -- when the initial
4 compacts were done, the model compacts in Oklahoma,
5 NIGC -- I mean, the national Indian gaming regulatory
6 wasn't followed because the act says that the state
7 negotiates with each tribe and the state simply
8 issued model compacts and said take it or leave it.
9 And I think that that reflected the NIGC's, at that
10 time, regulatory uncertainty over whether it could --
11 could or couldn't enforce the intent of congress in
12 the act.

13 So, I'm asking for some help come re --
14 re-negotiation time of how we keep the state from --
15 you know, from encroaching further on gaming
16 revenues. I mean, you -- it's -- it's a completely
17 different set of authorities I think that -- that
18 we're seeing now than were there back in when the
19 first compacts were done.

20 On the issue of the 542, what I was looking
21 for in the language was the enforcement language that
22 NIGC relied upon in 542. That's really the only part
23 that was struck by the court case, wasn't it?

24 MR. JONODEV CHAUDHURI: Well, thank you,
25 chairman. It's my understanding also our ability or

1 authority to promulgate or issue the -- the
2 regulations in the first instance was also addressed.
3 It's my understanding. And so, there is a -- both in
4 terms of enforceability versus our ability to issue
5 and promulgate, I think it's clear that the CRIT
6 decision does recognize we don't have that authority.

7 MR. JOHN BARRETT: You have the authority
8 to promulgate but not to enforce?

9 MR. ERIC SHEPARD: Not to promulgate either
10 as regulations.

11 MR. JONODEV CHAUDHURI: As regulations.

12 MR. JOHN BARRETT: It depends on who the
13 regulations regulate.

14 MR. ERIC SHEPARD: We do not have the
15 authority to promulgate class 3 MICS as regulations.

16 MS. ELIZABETH HOMER: As mandatory
17 regulations.

18 MR. ERIC SHEPARD: All regulations.

19 MS. ELIZABETH HOMER: Well, you can
20 promulgate -- oh, Elizabeth Homer.

21 You know, what's nice about having been
22 around and participated in these discussions for
23 many, many years now and being kind of quasi
24 responsible for the revised 2002 MICS is, you know, a
25 lot of years to think about these things and listen

1 to a lot of ideas. But, you know, there -- there's
2 two things that -- that everyone kind of circles back
3 to eventually in this discussion, and one is that the
4 CRIT decisions for the proposition that you didn't
5 have the authority to issue mandatory enforceable
6 regulations, but it did -- you know, and -- and
7 there's still an angle here that you can issue either
8 permissive -- a permissive regulation or a guidance
9 document. And, you know, for years and years
10 everyone always wanted this as a guidance document.
11 You know, I think I was howling along with the crowd
12 about that, you know, for a number of years. And I
13 do think that the NIGC has never really taken full
14 opportunity to really use guidance documents in an
15 effective way. You know, I think that there's been
16 some -- over the years, there's -- you know, some
17 administrations have been very resistant -- resistant
18 to guidance documents. But if you look at what the
19 IRS does by guidance document, you know, I mean, it
20 becomes the standard. It becomes what everyone has
21 to comply with. So, guidance documents are not
22 necessarily, you know, useless. You know, there --
23 and the ideas that came about of -- listening to the
24 ideas that have come out over the years for how to
25 deal with this is some kind of consensual agreement,

1 so some kind of a compacting process with tribes,
2 because it was the lack of consent, you know, to be
3 bound by those regulations, so that was one idea.
4 And I'm not suggesting any of these ideas. I don't
5 have a position on any of these ideas. I'm just kind
6 of, you know, throwing them out on the table that
7 this is what people have been talking about for a
8 number of years.

9 Again, the guidance document. The -- the --
10 one is to leave the MICS alone and update them
11 through guidance documents, so you don't have to
12 actually withdraw them but you've already said you're
13 not going to enforce them and then you do all of the
14 updates to the part 542 through the guidance document
15 process, so that was another idea. And then, again,
16 the one I talked about was a -- a permissive rule as
17 opposed to a mandatory rule.

18 And, Eric, you may have, you know, done more
19 research more recently on that, but I do think that,
20 you know, you can issue permissive rules. I think
21 that you might be able to get away with that, okay,
22 but I haven't looked it up lately.

23 But administrative law provides you all kinds
24 of options. I mean, that's what we did with the
25 public health and safety regulations in the first

1 instance, is they -- they are an interpretive rule.
2 And that would be another thing that you guys could
3 do, is an interpretive rule. How do you ensure the
4 integrity of tribal gaming and you do an interpretive
5 rule by following these, and you could make that part
6 542. You could have an interpretive rule, like this
7 is how you achieve integrity. Because you do have
8 the authority to enforce integrity in gaming and
9 assure that there's an effective mechanism to
10 preserve the integrity and prevent corruption and
11 those kinds of things.

12 So, you know, I just kind of throw that out
13 there as ideas that have been talked about. I don't
14 have a personal preference. It's a policy issue but
15 I just thought it might be helpful to put them out
16 there.

17 MR. JONODEV CHAUDHURI: And thank -- thank
18 you, Liz -- or Ms. Homer. Both the chairman's
19 comments and your comments are very helpful in terms
20 of -- I mean, we -- we have been looking at various
21 approaches, one -- some sort of combination between
22 the current regulations and guidance, supplemental
23 guidance is something that we've discussed. Nothing
24 has been discarded as -- as an option. That's --
25 that's why -- and we can go through the various

1 options and maybe that would be helpful in terms of
2 trade-offs for -- trade-offs and potential downsides
3 with the available option -- I mean, with the -- with
4 the options that we have discussed. The idea is
5 hopefully through these discussions we -- we get a
6 clearer picture regarding the consequences of any
7 given -- given approach and, you know, we've got a
8 lot of excellent folks at NIGC, but I think every one
9 of us is -- is rightfully humble enough to know that
10 we don't have all the answers by any means. And so,
11 we're hoping, even in terms of proposed language,
12 that this will really be a two-way dialog.

13 The one we picked -- and maybe we can talk a
14 little bit more on how we came down on that
15 internally. But the one we picked in terms of
16 proposing a path forward is a helpful starting point
17 to generate discussion and dialog, but final
18 decisions haven't been made by any means. One of the
19 benefits of -- of the proposed approach is you're --
20 you're at least clearly not violating federal law or
21 federal court -- court decisions by going this
22 approach. And so, it's -- it's cleaner in some
23 respects, but in an effort toward being cleaner, you
24 also don't want other things to get caught in the
25 process.

1 So, the chairman's comments are very -- are
2 greatly appreciated, your comments, Ms. Homer, and
3 Ms. Collier's are as well, even Mr. Hummingbird's and
4 the governor's as well. We're tongue in cheek with
5 Mr. Hummingbird. We respect him greatly.

6 MR. WILLIS DEATHERAGE: I was actually
7 hoping that Elizabeth would have to get up and bring
8 me that microphone, but that's all right.

9 MS. BARBARA COLLIER: I would have done it,
10 Willis.

11 MR. WILLIS DEATHERAGE: I've got to
12 remember who I am here.

13 My name is Willis Deatherage. I'm the -- on
14 the Seminole Nation Gaming Commission, chairman. And
15 I'd like to just -- I can't speak on behalf of the
16 Seminole Nation, but I can speak on behalf of the
17 Seminole Nation Gaming Agency, and I just want to say
18 that we concur with Mr. Hummingbird, Ms. Collier,
19 Mr. Barnett -- Barrett rather, you know, that now or
20 in the near future is not the time for us to withdraw
21 542 because of all the comments and information
22 that's been shared today.

23 MR. JONODEV CHAUDHURI: Thank you, sir.

24 MR. JOHN BARRETT: The language in -- John
25 Barrett, Citizen Potawatomi.

1 The language in 25 USC 2702.2 that gives the
2 commission the authority to promulgate such
3 regulations and guidelines as it deems appropriate to
4 implement the provisions of this chapter, and then
5 there's that Morning versus Family Public Service
6 business. I believe that you have the authority to
7 issue something that our compacts say meet or --
8 correct me if I'm wrong, Ms. Homer, but our standards
9 are to meet or exceed.

10 MS. ELIZABETH HOMER: 542.

11 MR. JOHN HOMER: 542. 542 then can be very
12 minimal in order to stay under the threshold of what
13 the -- the Court has said in this court case. I
14 believe there is a way to work out the language that
15 makes the -- the meet or exceed.

16 I think the Court, though, said that -- that
17 there is some statutory authority for the National
18 Indian Gaming Commission to force compliance in
19 conducting an honest game, those kinds of things.
20 So, I -- I believe you have something short of -- of
21 the existing MICS that the tribes can meet or exceed
22 and not break their compacts. I think there's a
23 compromise in that language that would get you past
24 what the judge said, which was that you can't conduct
25 an audit based on an invalid -- invalid MICS, then

1 come up with a MICS that meets the Court's standard
2 and will exceed it, but don't withdraw it. In other
3 words, leave it -- leave it in force to the extent
4 that it complies with the court order.

5 And minimum -- minimum internal control
6 standards, you know, the -- I think if the commission
7 were to basically see what their MICS applies to, the
8 MICS applies to what you believe internally are an
9 appropriate control standard for a tribe, but you
10 don't say that the tribes, by force of law, have to
11 adopt the standard.

12 MR. JONODEV CHAUDHURI: Thank you,
13 Chairman.

14 MS. KAY BUSBY: My name is Kay Busby. I'm
15 the executive director of the Delaware Nation Gaming
16 Commission.

17 And on behalf of the gaming commission and
18 our Nation, we -- we would like to support the
19 findings of the -- the statements of Ms. Collier and
20 the gentleman from the Seminoles. I have received a
21 bulletin from the state already and they have advised
22 me that they're going to start issuing bulletins to
23 the effect of minimum internal controls. The
24 bulletin I received says it was the first one that
25 they're issuing that we have to meet or exceed the

1 standards that NIGC has recently passed. So, we
2 would like to also support that thought, that you be
3 very careful about how you promulgate these
4 regulations because it's going to be a nightmare for
5 -- for our organization. We are a small tribe, a
6 very small tribe. We don't have the funds of some of
7 the larger tribes, so, our bread and butter comes
8 from our class 2 gaming and our -- we have class 3
9 and class 2. I feel that we are very capable of
10 regulating both our class 2 and class 3 and I would
11 like to be proud to say that we do our job very well.
12 We network very well, we discuss our issues with
13 other regulators very well and we all agree to the
14 standards that we meet. But I'd like to second that
15 thought. Be very careful, because we've already been
16 put on notice that they are going to be hard to deal
17 with.

18 So, I'd like that to be on record for the
19 Delaware Nation, please.

20 MR. JONODEV CHAUDHURI: And thank you for
21 that comment. In the bulletin, in terms of what
22 we've recently passed --

23 MS. KAY BUSBY: Yes.

24 MR. JONODEV CHAUDHURI: -- were they
25 referring to our 5 -- 543?

1 MS. KAY BUSBY: The bulletin stated that,
2 in lieu of the -- the new regs that have changed,
3 that we are to follow them more stringent, either the
4 ones that you've put out or our tribal internal
5 controls.

6 MR. JONODEV CHAUDHURI: Referring to our
7 class -- class 2 MICS?

8 MS. KAY BUSBY: Uh-huh.

9 MR. JONODEV CHAUDHURI: Thank you.

10 MR. GRANTHUM STEVENS: Granthum Stevens,
11 Colorado River Indian Tribes. As you know, the CRIT
12 and NIGC decision didn't hinder NIGC's ability to
13 regulate class 2's overall function in any way. We
14 have to remember when it comes to class 3, class 3 is
15 negotiated in our compact as stated in IGRA. Our
16 technical standards is negotiated within our
17 compacts.

18 Coming from the state of Arizona, we know
19 very have an appendix A that -- or appendix H which
20 is our class 3 minimum internal controls. We also
21 have a technical aspect and it's an appendix
22 underneath that.

23 Getting ready for California, we're getting
24 ready to look at three options for minimum internal
25 controls only concerning class 3 gaming.

1 As I stated before, one, why do it
2 non-mandatory? It's just not there because our
3 things are negotiated by the tribes as sovereign
4 nation with the state itself. We have that power
5 when we go out to the table. Now you're throwing in
6 your two cents and say, "Hey, we want this in here".
7 You're hindering both sides. You're basically
8 playing the middleman and the referee. You guys
9 receive our compacts when we negotiate. I mean, you
10 guys concur with them or go back and say, "Good faith
11 was not followed. Somebody wasn't doing their job in
12 that aspect".

13 So, when it comes down to class 3, as I
14 stated before, if you have no jurisdiction in there,
15 then why are you going to waste the fees that we pay
16 to regulate class 2 to do something for class 3 that
17 has nothing to do with you guys as stated within the
18 decision of CRIT. These are two things that are
19 promulgated by our compacts and we sit down as tribal
20 leaders, we come to the conclusions of what class 3
21 is.

22 As stated before, when it comes down to 543,
23 as you're hearing right now, the impact that it's
24 going to have if we repeal 542. Arizona's compact,
25 at that time, when negotiated, because it's stated

1 Indian gaming, the only Indian gaming standard out
2 there was NIGC's 542 MICS. So, of course, everybody
3 is going to associate that with the class 3.

4 In San Diego I stated that, "What are we
5 going for then? The best industry practices?" Well,
6 in that case, you see that in 543 as it is right now.
7 Like I said, 80 percent of that document is Nevada
8 gaming control boards regulation. So, the only thing
9 that separates us from NIGC from a class 3 venue is
10 NIGC's technical standards. Because, as we know,
11 bingo gaming machines is not a stand-alone class 3.

12 So, I think the MICS itself already addresses
13 quite a bit, but we do have that loophole -- as
14 Barbara stated, we do have that loophole that we've
15 got to figure out what the common ground is. You
16 already hear the state sending a bulletin out now
17 saying you have to go up to more stringent. This was
18 already negotiated in our compacts. It said we shall
19 follow 542. Now, if you add this document in there,
20 the state is going to have another leverage on there
21 to sit there and say, "Well, look, there's more --
22 something more stringent in this".

23 So, when we go back and look at this, you
24 have all our compacts, you reviewed all our compacts,
25 what's the economic impact it's going to have, not

1 only here but in all the states?

2 Thank you.

3 MR. JONODEV CHAUDHURI: Thank you for that
4 comment. And so, we're definitely mindful of impacts
5 on the larger landscape. And we're certainly mindful
6 of impacts in potential future negotiations, but, as
7 we know, the compacting process isn't part of our
8 lane; it's part of interior's lane. Our eyes, as
9 regulators, is on existing agreements as well as the
10 larger landscape. And so, when comments have been
11 brought to us regarding concerns in existing
12 ordinances or compacts, we -- we're trying to -- to
13 think of all potential solutions that may address
14 existing ordinances in compacts. So, you know, that
15 was a convoluted way of saying, for better or for
16 worse, through that negotiation process that you
17 mentioned, there are compacts that refer to our class
18 -- class 3 MICS. We didn't draft those compacts. We
19 -- you know, they are what they are and -- and there
20 are other ordinances that -- that reference them.

21 The question is, if we have a responsibility
22 in terms of supporting the larger regulatory
23 structure, how best to do our job given our
24 limitations as well as our -- our sincere interest
25 not to create more problems than we solve. So --

1 and, again, in terms of timing, we're definitely
2 mindful of potential negotiations on the horizon, but
3 I -- I do want to point out that there are existing
4 agreements and compacts that already reference our
5 class 3 MICS.

6 So, if that helps.

7 MR. JAMIE HUMMINGBIRD: Jamie Hummingbird,
8 gaming commissioner, Cherokee Nation.

9 And I thank Kay for bringing that bulletin
10 up. And if -- if you might indulge me just for one
11 second, I would like to read part of it. It's a
12 relatively brief document, but, rather than go
13 through it all, I'll just read parts of this. And it
14 is coming from the state compliance -- state gaming
15 compliance unit to tribal gaming regulators dated
16 March 23rd, 2015, regarding minimum internal control
17 standards.

18 Two questions, what impact does the
19 modification of any part of the 25 CFR 542 have on
20 the minimum internal control standards required by
21 part 5B of model tribal state compact.

22 That question is then answered by stating
23 simply that part 5 requires all gaming enterprises
24 facilities to be operated in conformance with or in a
25 manner that equals or exceeds the NIGC MICS

1 containing 542. The MICS in 542 are applicable to
2 facilities operating pursuant to the compact and part
3 542 is subject to modification and may change from
4 time to time. If any changes to 542 occur, the
5 tribe's MICS may need modification to ensure
6 compliance. Nothing shall prevent tribes from
7 adopting more stringent controls.

8 Second question, how should tribes reconcile
9 MICS from -- in 25 CFR part 542 and part 543? As
10 discussed above, tribes should have MICS that meet or
11 exceed those in 542. There may be instances,
12 however, that part 542 and 543 are inconsistent or in
13 conflict. Although the SCA cannot require the tribe
14 to promulgate rules or regulations, the SCA may
15 propose rules for tribes to consider.

16 Accordingly, it is the recommendation of the
17 SCA that where part 542 and 543 are inconsistent or
18 in conflict, the tribe consider adopting the standard
19 it believes is the more stringent of the two.

20 It is, therefore, the opinion of the SCA that
21 for compliance with part 5B of the compact, all
22 enterprises and facilities operated pursuant to the
23 compact should maintain a level of control that
24 equals or exceeds those in the current version of 25
25 CFR part 542.

1 So, it is -- it is very evident that the
2 state is keen on those particular sets of standards.
3 And to upset that balance I think would be something
4 that is not in the best interest of tribes at this
5 time.

6 MR. JONODEV CHAUDHURI: That's actually --
7 that's very helpful and thank you so much for
8 pointing out the bulletin. And, I mean, that -- in
9 terms of specific reference to 542 -- well, I'm not
10 going to weigh in on -- on the state's position at
11 this time, but I -- I have some thoughts about that.

12 But let me ask a question, and it doesn't
13 have to be answered today, but, you know, potential
14 comments as well. So, if that is the position that's
15 laid out in the bulletin, how would that -- would
16 that necessarily be affected by anything that happens
17 to 543? In other words, if 543 stays on there as-is
18 or it's removed, if the state has already said
19 they're looking -- they're requiring a meet or exceed
20 the 542, I mean, isn't that a slightly separate -- I
21 mean, by all means, it's a concern or I see how it is
22 a concern, but isn't that concern that, I mean, is
23 serious either way?

24 MR. JOHN BARRETT: If -- John Barrett --

25 MR. JONODEV CHAUDHURI: I mean, I see how

1 that's a concern from your perspective.

2 MR. JOHN BARRETT: Yeah. I see what you're
3 saying.

4 MR. JONODEV CHAUDHURI: I've got to wear my
5 hat, I mean...

6 MR. JOHN BARRETT: 42 and 43 are linked in
7 -- in a couple of -- of -- of circumstances, but
8 understand that bulletin that he -- that
9 Mr. Hummingbird just read, there was no such thing as
10 the state gaming authority or agency or whatever it
11 was. They created that just after the bulletin,
12 after the -- this court decision. And after the
13 bulletin came about that they were -- that the
14 minimum internal control standards were changed,
15 Mr. Mullins, who is the -- the head gunzel (phonetic)
16 for the governor's office, he created this regulatory
17 state gaming thing and basically took the staff at
18 the governor's office and made them gaming
19 regulators, gave them another title. So, this was
20 initiated because of the announcement that 542 was
21 invalid. And so, certainly the state sees a
22 regulatory vacuum that they can step into and say,
23 "Well, we have the authority to tell you that you
24 have to meet this, this or this", which they do not
25 have the authority to do.

1 But, unless you leave something up there,
2 we're going to end up having to deal with the issue.
3 Or if you simply issue a regulation that says, this
4 is the standard, it's not a statute, this is a
5 standard -- kind of like a quality control standard,
6 this is a standard, it doesn't mean it's in statute,
7 it doesn't have to be enforceable, it is by name a
8 standard, not a statute, publish the standard and
9 that will get us by the compliance issues I believe.
10 And, as far as -- as enforcement goes, that's
11 consensual anyway, so...

12 MR. JONODEV CHAUDHURI: And I -- I should
13 clarify just erring on the safe side. My point is I
14 see how that's a concern for, you know, fellow
15 regulators. I've got to keep my regulatory hat on
16 here, so...

17 We're limited in our advocacy, so...

18 MR. JOHN BARRETT: In what way?

19 MR. JONODEV CHAUDHURI: Good thing none of
20 the mics are working.

21 No. Obviously, we -- we've got to focus on
22 IGRA. I may have personal feelings about the
23 severity of a -- a set of concerns. I'm just being
24 careful to state that I see how those are serious
25 concerns from -- from everyone -- or for many folks'

1 perspectives here today. You know, I've got to be
2 careful in terms of making it clear that we -- you
3 know, we've got our hats that we have to wear.

4 MR. JOHN BARRETT: Well, our only weapon in
5 the United States Supreme Court is federal
6 preemption. If -- if we --

7 MR. JONODEV CHAUDHURI: I understand.

8 MR. JOHN BARRETT: -- we don't have to make
9 a federal case --

10 MR. JONODEV CHAUDHURI: Sir, I definitely
11 understand your perspective. I hope you understand
12 mine.

13 MS. BARBARA COLLIER: Barbara Collier
14 again.

15 Regulators -- we, as regulators, are very
16 passionate about what we do for our tribes, and we
17 understand your position; however, you know, you are
18 the National Indian Gaming Commission that should be
19 supporting and purporting our needs, and I believe
20 that you have that desire; don't get me wrong.

21 But to take this a little bit further from
22 what she said, the state drew some of us to -- or
23 invited some of us to come to the table to try to
24 form a committee, give us -- propose to us -- not
25 telling us what to do but propose that we take idea

1 1, 2 or 3, 3 being negotiation and arbitration, to
2 reclassify -- basically to reclassify some of the
3 games that we play here in Oklahoma. Now, that right
4 off the -- the red flag right off the starting block
5 was divide and conquer. And regulators do -- as she
6 stated, we do meet with each other and we talk issues
7 and we give other people's opinions, other
8 regulators' opinions, and that's what keeps us
9 together, binds us together, being able to meet this
10 head-on. But if they -- if they get one little tribe
11 or one person or one law or regulation or standard or
12 whatever you want to call it that they can get their
13 foot in the door on, then they're going to bring it
14 right down the line. That's what they're trying to
15 do now with these notices. They send them to first
16 one, then another and then another. There's no --
17 there's no rules and -- and conformity with what
18 they're trying to do here. It's divide and conquer.
19 That's their -- that's their -- in my opinion, that's
20 their agenda.

21 So, I don't think we've found out yet. This
22 is just another step in the first NOV's they tried to
23 issue and the first letters they tried to get people
24 to remove, get states to remove machines. This is
25 just another step to ultimately succeed in what

1 they're trying to do to the tribes here. And so far
2 we're able to stick together, but just like he
3 said -- Chairman Barrett said, you know, we need to
4 know that we have some support when it comes to the
5 rules and regulations that we have to abide by. And
6 our frontline people are out there making money for
7 us and you and our tribes and our tribal people and
8 all of our programs that we have. This is the crux
9 of what Native Americans have to live by in this day
10 until we can diversify and get other -- other
11 businesses to make us as much money as gaming, and
12 you know that's going to be difficult. So, we need
13 support from you as well as each other to continue on
14 with this fight. And I don't think it's just in
15 Oklahoma. Just like Granthum said, Colorado, Arizona
16 or the Colorado River Indian Tribes in Arizona,
17 California tribes and tribes all over. You know, we
18 need -- Jamie is the chair -- I used to be the
19 secretary of the National Indian Gaming Commissioners
20 and Regulators, and all of those tribes joined
21 together in a force to try and prevent major changes
22 in their operations and the regulations. So, please
23 help us do that.

24 MR. JOHN BARRETT: To -- and to follow --
25 to follow up on that, if -- if I may. The Citizen

1 Potawatomi Nation operates the largest stand-alone
2 grocery store in Oklahoma, a great big place. And
3 the state is saying that we have to collect 8-1/2
4 percent sales taxes on their behalf, which we do not.
5 That issue has already been litigated back in 1991
6 but it's about to be litigated again. And the way
7 they're coming at us is to say that, if we don't
8 collect taxes for them, they're going to pull our tax
9 number, and if we don't have a tax number, we can't
10 get a liquor license, and if we don't have a liquor
11 license at our casino, we are at a competitive
12 disadvantage. And that's how they're coming at us.
13 They're saying that, if you do diversity, if you do
14 build a grocery store, if you do build a ballpark, if
15 you do build a bowling center, if you don't collect
16 the state's taxes, they're going to come at you by
17 diminishing your ability to compete on the gaming
18 side. And we need an advocate in the worst way. And
19 I would seek forgiveness for you if you exceed your
20 authority in dealing with the state.

21 MR. JONODEV CHAUDHURI: Thank you, chair.
22 Well, let me -- let me just say a couple of things,
23 because this is very helpful conversation and -- and
24 I would like to think it goes beyond any -- any one
25 agency. There are a lot of -- a lot of voices

1 supporting sovereignty in Indian country and economic
2 development.

3 But let -- let me say a couple of things in
4 response because I don't -- I don't want to get too
5 off-track from the specific consultation topics. You
6 know, I want to everybody have a chance to -- to get
7 on the record regarding the specifics. But I think
8 folks are on record on numerous occasions -- and I'll
9 make it a little personal in this regard. I'm
10 personally on record, you know, quite a bit over the
11 last several months explaining how our role as
12 regulators is supportive of Indian country and the
13 stated goals of IGRA, namely supporting tribal
14 self-sufficiency, economic development,
15 self-determination and self-governance. So,
16 everything we do -- and just to kind of provide
17 additional context about why I may be parsing my
18 words very carefully. Everything we do has to be
19 done within the context of IGRA. And so, I can say
20 those things with -- in -- in full support of the law
21 because it's in IGRA. My personal beliefs and
22 certainly my personal career as an attorney for --
23 for a number of sovereign nations and an organizer
24 and an advocate and a judge for many others,
25 certainly says what it says about where I may

1 personally come down from a personal perspective.
2 But if we parse our words very carefully, it's
3 because everything we do, any -- any support we
4 provide is done in that larger context. So, there
5 are some things that are just -- some things
6 naturally flow from us doing our jobs to support
7 self-sufficiency and self-determination and economic
8 development and those things we can do quite
9 assertively. Now, it may just turn out that our
10 performing those functions turns out to be very
11 helpful to -- to tribes and tribal regulators, and
12 that would -- on a personal level, nothing would make
13 me happier than that. But if we're going to be
14 strong regulatory partners of you and not be seen --
15 not be seen as -- well, as something we're not, we
16 have to be very careful of maintaining our -- our
17 hats.

18 So, my personal positions may be one thing,
19 but what I can say may be -- well, what -- not can; I
20 can say whatever I want. But what I should say, in
21 keeping with -- with our statutory mission, may be
22 slightly different.

23 So, we've heard you loud and clear that you
24 need a partner, and we see ourselves as a partner.
25 We've also heard you loud and clear that you need an

1 advocate. We've got to be very careful in terms of
2 our we frame our role. Our role is to implement
3 IGRA. It may turn out that we end up -- and turn out
4 to be that we end up being the strongest partner
5 you've ever had in doing that, but, once we start
6 getting into the advocacy world, we're -- we're
7 stepping into somebody else's territory that
8 diminishes the larger regulatory structure that --
9 that's important to all of us. And so, if I'm being
10 careful, that's -- that's where it's coming from.

11 Make sense?

12 MS. ELIZABETH HOMER: Yeah.

13 MR. JONODEV CHAUDHURI: Okay. And, again,
14 I don't want to get off-topic. I am -- definitely
15 every single comment is valuable. And we've heard
16 primarily comments regarding the -- the class 3 side
17 of things, the guidance side of things. But if there
18 are any other comments, those are-- regarding the
19 other topics, those are helpful as well. But we want
20 everybody to have an opportunity to -- to voice their
21 perspective on the record as much as possible. I do
22 not mean to be talking as much as -- as much as I am,
23 but it comes with the territory.

24 MS. LESLIE TANYAN: Leslie Tanyan,
25 executive director, Absentee Shawnee Gaming

1 Commission.

2 What I want to say is just that I want to
3 agree with my fellow regulators on their sentiments
4 that they've expressed today. Right now we're at a
5 critical time with the State of Oklahoma and with the
6 governor who is not Indian friendly. And we also
7 have a state compliance agency that is very --
8 they're -- they're just not knowledgeable in gaming.
9 So, that's -- those are some of the things that our
10 tribes are dealing with.

11 So, when you start talking about withdrawing
12 542, I ask that you just really consider the impact
13 that it's going to have on all tribes. Specifically
14 the Absentee Shawnee Tribe is a -- considered one of
15 the smaller tribes. And so, anytime that you're --
16 you're looking to withdraw any kind of regulation or
17 whether you're even going to implement any kind of
18 regulation, it has to be intact.

19 So, as a representative of the gaming
20 commission, I just want to say that this is a time
21 where it's very tight and we need to allow our tribal
22 leaders to be able to sit down at the table with the
23 governor if she's -- will do that so that they can
24 negotiate in good faith. So, this is a time that we
25 do need to give our tribal leaders their support and

1 not hinder them in any way.

2 That's all I have to say.

3 MR. JONODEV CHAUDHURI: Thank you for your
4 comment.

5 Yes, sir.

6 MR. WILLIS DEATHERAGE: I've got one little
7 thing. That's okay, Barbara, I'll come to you. I
8 was waiting for Liz to get up.

9 Again, my name is Willis Deatherage, chairman
10 of the Seminole Nation Gaming Commission.

11 Moving on from -- from topic number 3 to
12 topic number 4, the BIGS situation. Who is going to
13 be responsible for placing some safeguards in that --
14 in that area to protect the assets of the Nation's?
15 You know, over the past three days we've heard
16 multiple times that our job is to protect those
17 assets. So, who will be in charge of -- of putting
18 some teeth into this legislation you're talking
19 about?

20 MR. JONODEV CHAUDHURI: Thank you, sir.

21 Well, our obligation to be good stewards of
22 the resources that are submitted to the NIGC through
23 fees exists separate and apart from any of our other
24 rules. I would also suggest that the trust's
25 responsibility between the federal government and

1 tribes goes beyond any -- any one agency. I mean,
2 folks tend to think of specific agencies, such as
3 NIGC or maybe other folks at DOY as the primary
4 trustees, but the -- the trust responsibility is
5 between the federal government and the tribes, so you
6 have a responsibility that exists regardless of any
7 given law in place.

8 So, our responsibility to -- to safeguard and
9 to make appropriate use of our -- of our budget and
10 our funds will remain -- you know, will remain in
11 place. We have a -- I mean, we've got a fiduciary
12 responsibility. And I would submit that other
13 agencies do as well.

14 MR. JOHN BARRETT: Well --

15 MR. JONODEV CHAUDHURI: Chairman, you are
16 really going to get me in trouble here.

17 MR. JOHN BARRETT: You know, I'm -- I'm
18 coming up on 40 years in office here, so...

19 Buy Indian has about as much to do with
20 buying Indian-manufactured goods as the Small
21 Business Administration had about helping small
22 business. They aren't the same. Small Business
23 Administration is about helping large business put a
24 small business face on something in order to keep
25 small business from actually competing. So, you get

1 these one-woman, one-man shops in Crystal City that
2 purport to be small business manufacturers that are
3 really nothing but brokers and fronts.

4 Buy Indian was that way. The only Buy Indian
5 that -- for 50 years was pencils. I mean, seriously.
6 You know, I did my best to sell them myself.

7 The whole Buy Indian issue, let's -- let's
8 just hope you escape unscathed. I just hope that
9 nobody doesn't come in and cost you extra money.
10 Because if the rules are enforced the way the Small
11 Business Administration's rules are about minority
12 contracting, if that's the set of rules you're going
13 to go by, or if the -- the Department of Defense's
14 minority business enterprises, all of those are
15 shalls. So, let's hope that your Buy Indian, you
16 know, doesn't end up increasing your budget so you
17 have to come get in our pocket again, so...

18 MR. JONODEV CHAUDHURI: Well, a joke about
19 recycling home-grown dollars comes to mind, but I
20 won't make -- I won't make that joke.

21 So, you mentioned a couple of things. So,
22 no, it -- it is, first of all, a real initiative that
23 we'd like to consider undertaking hand in hand with
24 -- with all of you, so it -- it certainly won't be
25 pro forma by any means.

1 But, second, this isn't going to be our SBA
2 -- I mean, this isn't being generated out of the SBA
3 rules. And, in fact, under the language of the
4 consultation that went out, we recognize that seeking
5 secretarial not -- not authority -- delegation under
6 the Buy Indian Act may be a potential route to go.
7 But the proposed rule that -- or the proposed
8 regulation that we're issuing is part of our inherent
9 authority and is actually consistent with -- it will
10 basically be our FAR. And, you know, we have our --
11 our attorneys here to -- to speak more to that. But
12 basically there's going -- there is, has been and
13 will continue to be a requirement that we seek fair
14 market value for -- for the acquisition of goods and
15 services. Our proposed regulation simply says, if
16 we're going to be doing that and a native business or
17 individual is going to provide that fair market
18 value, why wouldn't you go in that direction.

19 So, you have questions regarding -- regarding
20 fiduciary. Part of our financial responsibilities
21 are certainly something we -- we keep in mind. But
22 everything else being equal, why wouldn't you go with
23 the native? I mean, in this respect, we have a
24 slightly different perspective than other agencies.
25 First of all, I can't speak for the BIA, but the

1 BIA's implementation of its own rules under the Buy
2 Indian Act took place just a few years ago in terms
3 of the new regulations that the BIA issued. Our
4 rules are -- are very similar to those rules. I
5 can't speak to -- I mean, fortunately, I wasn't
6 around 50 years ago, but, you know, I was around
7 and -- you know, I can't speak to what happened back
8 then, although I have an idea what my parents may
9 have been up to about 44 years ago. I can't speak to
10 how things played out 50 years ago, but all I can say
11 is the BIA rules are new, what we're looking at is
12 new, and it is -- it's, by no means, pro forma.

13 I don't know if you want to talk about the
14 interplay between the FAR and the --

15 MR. ERIC SHEPARD: Maybe Armando would
16 be...

17 MR. ARMANDO ACOSTA: Well, the -- the BIA's
18 rules are simply subalimination to the federal
19 acquisition regulations. And, you know, they come in
20 and they provide -- you know, they say do take, quote
21 -- they have some -- some set-asides, they take
22 quotes from -- from Indian-owned businesses and they
23 have to -- I mentioned this before, it has to be a
24 fair market value. So, just because it's an
25 Indian-owned business, that if it's going to cost you

1 double than if you went somewhere else, we're not
2 going to do that. You know, it does have to still be
3 a fair market value. And we have contracting
4 officers who will look out for that. You know,
5 that's their responsibility. They're the ones who --
6 they're the only ones who can contract on behalf of
7 the government. They're personal -- personal --
8 personally liable if they make a purchase that --
9 that wouldn't be in the best interest of the
10 government, so...

11 MR. JONODEV CHAUDHURI: Thank you, Armando.

12 Suffice -- suffice it to say that we're very,
13 you know, mindful of -- of, you know, being good
14 stewards of -- of tribal dollars, but we also
15 understand the close rule that we have in supporting
16 -- or the statutory rule that we have in supporting
17 tribal self-sufficiency and tribal economic
18 development. So, our agency is not the SBA.

19 We have about 15 minutes left, and I
20 definitely want everybody who wishes to be on record
21 to have the opportunity to -- to get on the record.
22 There's certainly no law saying that we can't finish
23 early, but I definitely want to just remind everyone
24 the floor is open and we really do want to hear from
25 anybody and everybody that has something to say.

1 Yes, sir.

2 MR. BUDDY YORK: I'll meet you halfway.

3 I probably don't need this either. I kind of
4 have a big mouth. Buddy York, Muskogee Creek Nation.

5 My hope -- I don't want to beat what I hope
6 is a dead horse anymore, but we really can't afford
7 to give the state any leeway when it comes to
8 renegotiating these contracts. So, you know, the
9 gaming commission for the Creek Nation would -- we're
10 -- we're against doing away with 542 due to the fact
11 that we think that that would give the state some
12 type of leverage over us which they're looking for
13 very hard. That's all.

14 MR. JONODEV CHAUDHURI: Thank you, mister
15 -- let me also say this. In terms of proposals or
16 suggestions, I mean, I think every comment should be
17 on the record, so, if it's -- if it's 22 comments
18 that are recommending that the rules not be taken
19 down or if it's 222, all comments are important. But
20 in the -- but, as far as that piece goes, I -- I'm
21 confident that we've heard some great comments today
22 clearly expressing the -- the desire of many of the
23 folks in this room to not have the -- the current
24 regulations taken down.

25 That said, in recognizing the request for

1 some sort of guidance regarding class 3, maybe not
2 from folks in this room but in other capacities
3 throughout other parts of Indian country, if there
4 are specific proposals in addition to the comments
5 submitted already regarding how to provide that type
6 of guidance -- and we -- we heard some -- some
7 proposals provided today. But if there's specific
8 ideas about how to address those requests that we
9 actually -- that we have received while not creating
10 these unintended consequences that you've mentioned,
11 we're all ears. And so, we are definitely sensitive
12 to the fact that concerns have been raised regarding
13 pulling down the 542 regulations, but if there are
14 other suggestions about providing those -- guidance
15 to the folks that have requested it without running
16 afoul of what's going on here, any -- any
17 suggestions -- and, again, it doesn't have to be on
18 the record today; it can be in writing, is always
19 appreciated.

20 So, we -- we've heard what you don't want us
21 to do, in other words. Is there -- are there any
22 suggestions about what we could be doing?

23 MR. JAMIE HUMMINGBIRD: Funny you should
24 ask.

25 MR. JONODEV CHAUDHURI: What is that?

1 MR. JAMIE HUMMINGBIRD: I said funny you
2 should ask. Be careful what you ask for. Just
3 kidding. Jamie Hummingbird, Cherokee Nation Gaming.

4 Just some parting comments. First of all, I
5 -- I apologize for being remiss. I should have taken
6 the opportunity before I started this afternoon with
7 my comments by saying congratulations on your
8 appointment. It's nice to not have that --

9 (Applause)

10 MR. JAMIE HUMMINGBIRD: Now that the
11 niceties are over, I -- I do want to say, I think --
12 I can't say I speak for everybody in this room, but I
13 think most would agree that, as tribal gaming
14 regulators, as tribal leaders, we recognize and
15 appreciate the position the NIGC is in, in the sense
16 that the proverbial rock and hard place comes to mind
17 when it comes the jobs that you guys are called to
18 perform. And while you may not always be able to be
19 an advocate for tribal regulator, tribal gaming, it's
20 not necessary to have to be an adversary either. So,
21 all we do is that whatever comments are submitted by
22 tribes throughout this whole consultation process,
23 that they be carefully considered, given fair review
24 and ask that the NIGC really take its time in
25 contemplating the possible impacts that the decisions

1 that you will have on rulemaking could have on Indian
2 country.

3 And with that I would say mado (phonetic).

4 MS. ELIZABETH HOMER: Elizabeth Homer.

5 And, if I might, Mr. Chairman, I want to echo
6 what Jamie said. Congratulations for a long --
7 finishing this long period of torture by our United
8 States Congress and we're really happy that you're in
9 place. And also congratulations to Eric Shepard,
10 named officially, you know, the General Counsel, so
11 that's -- that's excellent. We're happy about that
12 news too.

13 MR. ERIC SHEPARD: Thank you.

14 MS. ELIZABETH HOMER: I just wanted to say,
15 you know, in front of everybody how much I appreciate
16 the way that you guys have approached this whole
17 thing. You haven't slapped a proposed rule down on
18 the table for us to respond to, but you've come to us
19 with some general ideas and you sought our feedback
20 in a very open and candid way. And that is the kind
21 of relationship I think we've always wanted to have
22 with the NIGC and it's very encouraging that you're
23 starting out your administration in this way.

24 So, thank you very much.

25 (Applause)

1 MR. JONODEV CHAUDHURI: Thank you,
2 Ms. Homer.

3 Well, with that --

4 MS. BARBARA COLLIER: I might say there are
5 some other regulators out here that should be
6 probably making some comments. I don't know why
7 they're being so shy.

8 MR. JONODEV CHAUDHURI: Ms. Collier, thank
9 you -- thank you so much for that. I was going to
10 say we still have six minutes, seven minutes. And on
11 top of that, if we don't end on time, I -- I probably
12 shouldn't -- for once, Chairman Burriss -- I'm getting
13 myself in trouble on this one.

14 But if we go over time, it's not the end of
15 the world too, so I don't want anybody to -- to feel
16 that they can't speak right now.

17 MR. WILLIS DEATHERAGE: With that said, I'm
18 going to pass this microphone.

19 MR. JONODEV CHAUDHURI: Okay. Well, with
20 that, going once, going twice, going three times.

21 Thank you all so much for your comments.
22 Better, for worse, you know, the answers may be hard,
23 the -- the challenges may be difficult, but I'm
24 convinced working together and talking through issues
25 we'll get there and -- hand in hand in partnership.

1 So, mado (phonetic) for even the tough comments. And
2 thank you very much. We'll continue -- continue
3 working on these issues.

4 Safe travels to all of you.

5 (Applause)

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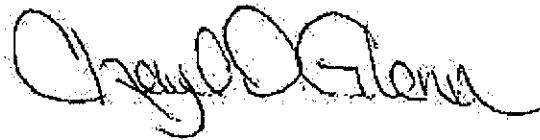
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CERTIFICATE

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I, Cheryl D. Glenn, Certified Shorthand Reporter,
Registered Professional Reporter, certify that the
foregoing proceeding was taken in shorthand and thereafter
transcribed; that it is true and correct; and that it
was taken on April 30, 2015, in Shawnee, county of
Pottawatomie, state of Oklahoma, and that I am not an
attorney for nor relative of any of said parties or
otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand
and official seal this 14th day of May, 2015.



CHERYL D. GLENN, CSR, RPR

State of Oklahoma, No. 1448

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