

**Testimony of Chairwoman Tracie Stevens
National Indian Gaming Commission
Senate Indian Affairs Oversight Hearing
July 28, 2011**

Thank you Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee for inviting me to testify today. My name is Tracie Stevens and I am a member of the Tulalip Tribes of Washington State. It is an honor to appear before you to testify in my capacity as Chairwoman of the National Indian Gaming Commission (NIGC or Commission).

When I appeared before the Committee as Chair of the Commission in July 2010, we were a new Commission. I was confirmed by the Senate and sworn into office by Secretary of the Interior, Ken Salazar in June 2010. Vice-Chairwoman Steffani Cochran and Associate Commissioner Dan Little were appointed by Secretary Salazar earlier in the year. Shortly after that hearing, I retained Paxton Myers a member of the Eastern Band of Cherokee Indians as the Chief of Staff, Dawn Houle, a member of the Chippewa Cree from the Rocky Boy Reservation as the Deputy Chief of Staff, and Lael Echo-Hawk a member of the Pawnee Nation as a Counselor to the Chair. As a Commission, we are working with staff in our continuing assessment and evaluation of the Commission's needs, opportunities for improvement and implementation of the Commission's priorities.

During the hearing last year, I discussed four important priorities of the Commission: consultation and relationship building; technical assistance and training; a review of the Commission's regulations; and a review of Agency operations. Consultation and relationship building are necessary to promote effective communications with Tribes, States and Federal Agencies and to foster comprehensive and efficient regulation of the industry. Effective technical assistance and training enhances operational performance and integrity and reduces compliance issues. Regulatory review ensures a clear and comprehensive regulatory framework that is proactive rather than reactive to the regulatory challenges of the industry. Finally, we are focused on performing our internal operations in the most effective and efficient manner so that we are able to maximize our resources. The Commission firmly believes that accomplishment of these four priorities directly results in a better regulated industry that fulfills the purposes of Indian Gaming Regulatory Act (IGRA or Act), 25 U.S.C. §§ 2701 *et seq.*

Each of these priorities serves as a foundation for enforcing IGRA. We must work with Tribes, States and Federal agencies to ensure the integrity of the industry. Our basic principle for enforcing the Act is ACE: assistance, compliance and enforcement, in that order. We are working with Tribes and States to assist regulators and ensure effective coordination in the regulation of Indian gaming. We are working with Tribes to ensure compliance with IGRA. However, if assistance and compliance do not resolve an issue, I do not hesitate to enforce the Act.

Today, I will provide a brief overview of the status of tribal gaming and provide an update on the Commission's progress with its four priorities.

Facts Concerning Indian Gaming and Regulatory Oversight

Revenue generated by tribal facilities, even modest revenues, provide much needed services to tribal members and create jobs in communities otherwise suffering from high unemployment. Over the past five years, tribal gross gaming revenues have remained stable, varying from \$24.9 billion in 2006 to a high of \$26.7 billion in 2008. The number of gaming operations over this five-year period increased approximately 6 percent from 394 in 2006 to 422 in 2010. Currently, 240 federally recognized tribes operate a total of 422 tribal gaming operations in 28 states. Tribal gross gaming revenues for 2010 essentially mirror 2009 revenues of \$26.5 billion. Collectively, tribes located in our Portland, St. Paul, Oklahoma City and Tulsa Regions have experienced an increase in tribal gross gaming revenue while gross gaming revenue for those tribes located in our Washington, D.C., Phoenix and Sacramento Regions have experienced a slight decrease. Revenue figures for 2010 compiled during our review of independently audited financial statements indicate that approximately half of the tribal gaming operations generate annual gross gaming revenues of \$25 million or less.

IGRA establishes a framework under which Tribes, States, and the Federal Government regulate Indian gaming. Within the Federal Government, multiple agencies take part in ensuring the integrity of the industry. In 2003, the Indian Gaming Working Group was established to better coordinate the efforts of federal agencies with authority over various aspects of Indian gaming. The Indian Gaming Working Group includes NIGC, the Department of Justice, the Federal Bureau of Investigation, the Department of the Treasury Financial Crimes Enforcement Network, and the Bureau of Indian Affairs Law Enforcement Services. NIGC works in cooperation with these law enforcement agencies to share information that may potentially indicate a criminal violation of law.

NIGC is the primary federal civil enforcement agency charged with regulating class II and class III gaming on Indian lands. This includes the review and approval of tribal gaming ordinances and management contracts. The Department of the Interior also performs certain functions under IGRA, including the review and approval of tribal-state compacts for class III gaming.

In addition to NIGC, tribal governments collectively employ approximately 5,900 tribal gaming regulators. In addition to tribal regulators, States collectively employ approximately 640 people to regulate tribal gaming. Thus, NIGC, Tribal Gaming Regulatory Authorities and States combine to employ over 6,600 people to regulate Indian gaming. While the precise amount expended to regulation gaming is not known, we do know that in 2009 that 4 percent of gaming tribes reported expending a total of \$26 million for state regulation of Indian gaming and that 32 percent of tribes reported expending a total of \$130 million for tribal regulation of Indian gaming. As I have repeatedly stated, one of my priorities is to ensure a strong collaborative regulatory framework and relationship among the more than 6,600 regulators employed by all three regulatory bodies to maintain the integrity of Indian gaming.

As the Committee is aware, nearly five years ago the United States Court of Appeals for the District of Columbia held that the Commission did not have authority to promulgate regulations establishing minimum internal control standards (MICS) for class III gaming. As I explained at the hearing last year, this issue is a top priority for the Commission and we continue to evaluate not only the present-day landscape of class III MICS but also how to move forward on this complicated issue in the aftermath of the decision.

MICS protect tribal gaming revenues by ensuring that casino employees follow appropriate procedures as money moves through the gaming facility. All tribes have internal controls. Tribes and the public universally support class III MICS. The outstanding issue is how to implement the MICS. In addition to seeking comment from the public, the Commission has held a number of tribal consultations to discuss potential regulatory options to address class III MICS. We have heard a variety of suggested approaches. Some suggest that we maintain the NIGC MICS or issue guidance. Others suggest that MICS are a matter to be addressed in tribal-state compacts. Finally, some suggest that MICS be incorporated in tribal gaming ordinances. Given the diversity of how Tribes and States have addressed this issue, a path forward may be a hybrid approach in which we strive to respect the sovereign interests of all three governments. But let me be clear, the Commission will solve this issue in a manner that ensures that Tribes receive the revenues generated by tribal facilities. The Commission looks forward to working with this Committee as it moves forward on this issue.

COMMISSION PRIORITIES

Consultation and Building Relationships

Over the course of our first year, we implemented significant changes to how we consult with Tribes. As a Commission, we are committed to consulting with Tribes in a manner consistent with Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments." Toward this end, we are in the final stages of revising our consultation policy. During 2010 and 2011, we held 8 consultations on revising our policy, circulated a revised draft of the policy based on comments received, and we are now evaluating final comments on the revised draft. We hope to formally adopt the revised policy within the coming weeks.

The process of consultation is just as important as the substance of consultation. Government-to-government consultation must be inclusive, it must be collaborative and meaningful, and it must be an on-going dialogue. Our consultations on broad, overarching policies such as regulatory changes are held in a group format. This format allows for a frank, open exchange of ideas, thoughts, concerns and solutions for all to hear, providing an atmosphere in which governments can identify solutions together. If a matter is specific to a particular tribe, we consult individually with that tribe, as appropriate. We are also looking at developing more effective ways to consult with Tribes to streamline this process. This means timely notice, candid discussions, and making the most of everyone's resources to achieve the most effective policies that will ensure the integrity of the industry. It is through meaningful

government-to-government consultation that the NIGC will be able to make well informed, fully considered decisions concerning regulations and policies.

Over the past year, in addition to working closely with Tribes, we have also worked with States and Federal agencies to oversee and protect Indian gaming. We work regularly with the Department of the Interior to ensure that gaming is taking place on Indian lands and if it is not, we refer those cases to federal and state agencies for appropriate enforcement. We work closely with the Federal Bureau of Investigation, the Department of Justice and United States Attorney's when we receive information indicating a violation of criminal law. In addition to these interactions, we are also working to strengthen coordination through the Indian Gaming Working Group. This relationship building strengthens the collective ability of Tribes, States and the Federal Government to protect this successful economic development tool that has made a difference in so many lives of Indian people.

Technical Assistance and Training

As I testified last year, the Commission views training and technical assistance as an essential component of statutory responsibilities as well as our mission and our commitment to collaboration with Tribes. Successful regulation depends upon a properly trained and informed workforce. Well targeted training and technical assistance programs provide a foundation that maintains the integrity and success of Indian gaming. A good, well-targeted, technical assistance and training program can preempt the need for additional regulations or for enforcement actions, can reduce compliance issues, and can enhance operational performance and integrity. In other words, proper training can help to prevent a potential problem before it can arise. Since June of 2010, we have provided 831 instructional hours of training to over 2,800 tribal leaders, tribal regulators and casino operations personnel.

Over the past year, we have reviewed our training catalog and sought input from Tribes on how to best align NIGC training to maintain the integrity of the industry. NIGC staff has played a key role in this effort. Earlier this year, we named Nimish Purohit as the Acting Director of Training. Mr. Purohit brings a wealth of experience in the gaming industry to this position, having previously worked for the New Jersey Division of Gaming Enforcement, the Pennsylvania Gaming Control Board and an independent testing laboratory. His in-depth experience in the areas of Class II technical standards and game mathematics has proven invaluable to the Commission. Mr. Purohit is in the process of updating our training catalog, examining means to better utilize existing technology and evaluating how to most efficiently provide training.

In addition to our on-going internal review, the Commission distributed a survey to approximately 596 tribal leaders, commissioners and casino operations personnel. The Commission received 255 survey responses representing 123 Tribes (a 50 percent overall rate of response). Overall, respondents identified common barriers to training, such as the lack of funding, the proximity to training events and the need for better communication of training opportunities. Respondents also requested more course offerings relating to compliance with

United States Code, Title 31; advanced training on MICS; training for tribal gaming agents; and advanced training relating to audits and surveillance. The respondents identified a strong interest in the following currently offered courses: regulatory gaming technology, gaming forensics, IT MICS, internal audits and slot machine compliance. How the NIGC provides training and technical assistance will be an on-going and ever evolving process which will be tailored to meet the needs of tribal regulators and the industry to ensure the integrity of Indian gaming.

Regulatory Review

As I indicated in my testimony last year, the Commission is in the process of reviewing its current regulations, examining their effectiveness, and seeking input from Tribes and the public in an effort to identify areas of improvement and any needed changes. Our activities on this priority focus on many of the same goals identified in the President's recent Executive Order concerning Regulation and Independent Regulatory Agencies, Executive Order, 13579. During our review we are asking the public for input on which of our regulations may be outmoded or insufficient and we are considering whether to modify, streamline, expand, or repeal such regulations based on this review. On November 18, 2010, the Commission issued a Notice of Inquiry (NOI) advising the public that the Commission was conducting a comprehensive review of its regulations and requesting public comment on the process for conducting the regulatory review. The NOI requested public comment on three basic questions: which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. In addition to seeking written comment, the Commission held eight regional tribal consultations on the NOI.

On April 4, 2011, NIGC published a Regulatory Review Schedule setting out a consultation schedule and process for our regulatory review. The Commission decided to proceed with its regulatory review by organizing the regulations into five groups and proceeding with a process in which the Commission would strive to circulate preliminary drafts for comment before proceeding with the rulemaking process. Our goal is to maximize input from the public.

As part of our regulatory review, and consistent with Executive Order 13175, we have held 11 consultations throughout the country, including a consultation that is being held today at the Department of the Interior. Transcripts of these consultations are posted on our website as they become available. Further, all comments received in response to the NOI and to preliminary drafts circulated by the Commission are posted on our website to facilitate input from the public. As we move forward with our regulatory review, we are continuously making improvements to this important process to ensure that we make well informed, fully considered decisions.

Agency Operations

A top priority of the Commission is to ensure that we are maximizing our resources through efficient operations. Last year I stated that because NIGC is funded entirely by tribal fees, we must strive to use these resources wisely and effectively as we carry out our responsibilities under the Act. The goal is to position the NIGC in the 21st century as a smarter, more transparent and better-equipped agency that continues to be responsive and adaptive to the needs of the tribal gaming industry.

Over the course of the past twelve months, we have been performing a top-down review of the internal workings of the Commission. We have brought in subject matter experts and are working with the Office of Personnel Management (OPM) to evaluate our operations and identify areas for improvement. Over the course of the past few months, OPM has conducted a number of employee focus groups and surveys to analyze workflows. Using this and other data, in the coming weeks, OPM will provide recommendations for the Commission's consideration.

In addition to maximizing our resources, the Commission is committed to providing greater transparencies in our general operations. As a Commission, we have resumed public meetings. Our first public meeting was held on April 7, 2011 in Phoenix, Arizona and most recently, we held another public meeting on July 18th in Norman, Oklahoma. During these public meetings, senior Commission staff provides updates on business before the NIGC. Additionally, the Commission may take up votes or other business that may be pending. These meetings provide an opportunity for tribes and the general public to learn about ongoing Commission activities.

The Commission is committed to streamlining its operations in a manner that focuses resources and maximizes cooperation and coordination with Tribes, States and Federal agencies to ensure and maintain the integrity of Indian gaming.

Conclusion

This concludes my testimony. We hope that this summary of the activities of this Commission over the past year provides the Committee with information regarding NIGC's enforcement and regulatory role in Indian gaming.

Thank you again, Chairman Akaka, Vice-Chairman Barrasso and Members of the Committee for your time and attention today. I am happy to answer any questions that you may have for me.