



CALIFORNIA TRIBAL
BUSINESS ALLIANCE

March 1, 2006

Senator John McCain, Chairman
Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, D.C. 20510

RE: Gaming Related Contract Provisions of S. 2078

Dear Senator McCain:

I am writing on behalf of the six member tribes of the California Tribal Business Alliance to comment on the provisions of your S. 2078 in preparation for your upcoming committee hearing on this topic. We support the provision providing clear authority to the National Indian Gaming Commission to promulgate regulatory standards for Class III gaming and support generally, with some recommended changes, the provisions addressing off-reservation gaming. We have serious concerns with the gaming-related contracts provisions, which we think are paternalistic and would make it impossible for mainstream and reputable vendors and consultants to do business with Indian casinos.

The California Tribal Business Alliance members are the Pala Band of Mission Indians, the Paskenta Band of Nomlaki Indians, the Pauma Band of Luiseño Indians, the Rumsey Band of Wintun Indians, the United Auburn Indian Community, and the Viejas Band of Kumeyaay Indians. These tribes are united in their common goal of fostering business development and coalition building with California government and business leaders.

Minimum Internal Control Standards: S. 2078 explicitly grants the National Indian Gaming Commission authority to promulgate regulations addressing minimum internal control standards for Class III gaming activities (“MICS”). We support this provision because we believe that federal oversight of minimum regulatory standards is sound policy for Indian gaming and makes good business practice. For this reason, our gaming facilities continue to consent to NIGC Class III jurisdiction and to operate at standards that meet or exceed the MICS.



March 1, 2006

Page 2

Gaming On Lands Acquired After October 17, 1988: On January 31, 2006, the Alliance sent you our policy against the taking into trust of land that is not within a tribe's traditional homeland and over which the tribe did not historically exercise governmental authority. We are pleased that you are proposing language to address the problem of off-reservation gaming. We suggest, however, that it not exempt proposals being reviewed by the Central Office of the Bureau of Indian Affairs or the Secretary of the Interior prior to November 18, 2005. This exemption would apply to 10 proposals in California which include some of the most extreme examples of off-reservation gaming proposals. These include tribes with existing Indian lands eligible for gaming and tribes proposing land with no connection to their traditional homeland and over which they did not historically exercise governmental authority. We also hope you will tighten the definition of "temporal, cultural, and geographic nexus to the land" to exclude "service areas" devised in recent times by the Bureau of Indian Affairs and Indian Health Service solely for the purpose of providing federal services to Indians who moved off of reservations in the late 20th century.

Gaming-Related Contracts: As drafted, the broad scope of the gaming-related contracts sections would cause extreme hardships for tribal gaming operations and invite rather than prevent unsavory vendors and lenders to do business in Indian country. In our comments below, we elaborate on these points as well as suggest an alternative that we think accomplishes the goal you expressed in introducing your bill -- to "extend NIGC approval to all significant gaming operation related contracts so that the Indian gaming industry remains, as far as possible, free from unscrupulous and unsuitable contractors."

The terms of contracts could be changed at any time, including the terms necessary for enforcement. (See Section 12(c)(3)). This lack of finality in contracting would significantly impair the gaming industry and cause quality experienced vendors to refuse to do business with tribes. We believe that any federal approval of gaming-related contracts should be final to provide surety to both the contractor and the tribe relying upon performance.

As drafted, the language would require NIGC review and approval of hundreds of contracts every year for every tribal gaming facility in the country, bringing business to a halt in many instances. The broad definition of "gaming-related contract" in Section 11 would encompass numerous contracts for services by contractors with no ability to significantly affect gaming activities and with no management role. Most decisions of a casino manager to contract for services are for the sole purpose of maintaining, increasing or enhancing gaming activity. Section 11's requirement of approval of any contract relating to the operation or management of an Indian tribal gaming activity would, for this reason, include the casino's lease with an ice cream store like Ben & Jerry's to serve the gaming patrons and enhance the gaming experience and activity. The sheer volume of contracts requiring NIGC approval (of both business terms and contractor suitability) would be staggering and would introduce delay and uncertainty in all areas of the operations. This federal gaming regulatory agency would

be in the unworkable position of second guessing the *business* terms of thousands of contracts and speculating on the type of bond to impose to ensure performance.

Because there is no threshold amount that triggers review by the NIGC and because Section 11 encompasses any contract related to the operation or management of gaming activity, even a contract for \$500 worth of chairs by a local wood carver purchased for a poker table would require a background investigation at the vendor's expense and submission to the NIGC. Established small vendors in rural areas, where many tribal gaming facilities are located, providing services such as electrical work and catering, would be unable to afford the cost of doing business with tribes and unable to compete. Companies willing to do business with tribes will be in a position to corner the market by having previously approved form contracts for services and completed background investigations.

As drafted, the language would include approval of contracts with vendors whose prompt and immediate services are crucial in unforeseen or catastrophic events. For instance, the sprinkler system at one of our member tribe's casino malfunctioned and damaged equipment necessary to run a large percentage of its slot machines. In these situations, the operation must respond immediately by quickly securing replacement parts and services which may only be available from new vendors. Likewise, during a power outage at a casino located in a remote area, a back-up generator failed. The tribe's ability to keep its casino doors open depended upon the immediate purchase and delivery of another generator. The value of this service could not be easily judged by a regulatory agent in Washington D.C. reviewing that contract.

The scope of contracts related to the construction of gaming and ancillary facilities would capture such vendors as wastewater consultants, architects, and environmental engineers, who are critical components for keeping a casino functioning in an environmentally sound manner, but who have absolutely no control over any gaming activity. The cream of the crop who can choose their projects will have little incentive to undergo extensive background investigations unrelated to any requirement in their profession. The diminutive threshold of \$250,000 would encompass most construction and development contracts at large gaming operations. Delays for projects dependent upon starting before the rainy or winter season likewise will hinder improvements to roads, sewer systems, and facilities.

All of these contractors and tribes would be subject not only to contract enforcement through judicial or arbitration systems (as typically contractually provided) but also an administrative action by the Commission for violation of "any provision of this Act (including any regulation of the Commission and any Indian tribal regulation, ordinance or resolution approved under Section 11 or 13) in carrying out a gaming-related contract."

As drafted, the language would require officers and stockholders of 5% or more shares in a company extending financing to undergo background investigations and suitability determinations. Most state and federally-regulated institutional lenders, including major

March 1, 2006

Page 4

banks, are publicly traded companies with numerous stockholders for whom it would be impracticable and infeasible to undergo background investigations as well as to enter into agreements without final terms. Public bond issuances would similarly be infeasible. The five-year term limit (with seven only upon special consideration) will negatively impact interest rates and financing terms. The overall result will be that institutional lenders will choose not to finance tribal gaming operations, and tribes will be forced to go to unsavory lenders and accept less than competitive rates.

Finally, the language does not provide any standards which would ensure approval. The contracting parties would have no ability to predict the outcome, and the NIGC Chairman would have extremely broad discretion to disapprove contracts upon submission or following approval.

For all these reasons, we believe that any federal approval of gaming-related contracts should be limited to contracts between tribes and: (i) companies that have entered into a management or development agreement for a gaming facility with a fee based on net revenue (including other contracts that same company or its affiliates may have with the tribe); and (ii) contractors exercising significant material control over the gaming activity. The major institutional lenders, such as federally regulated banks, lending institutions, and term loan lenders, and other types of regulated financing should be exempted.

For those circumstances in which the NIGC has reasonable suspicion of malfeasance, the NIGC could be provided discretion to examine the gaming contracts related thereto. Such discretion could be triggered under existing law, for instance, by NIGC review of the annual audited financial statements and MICS compliance reports submitted by every gaming facility (and conducted by outside independent auditors) and by audits and inspections conducted by NIGC agents.

For those gaming contracts subject to approval, standards should be established, which if met, would render the contract effective upon execution pending NIGC review. If the NIGC determined that the contract failed to meet those standards and/or the contractors were unsuitable, then the contractor or tribe would have the right to pursue an administrative appeal. Review should not include basic business terms or bond requirements. Approval of a contract should be final to provide surety for both parties.

The California Tribal Business Alliance appreciates this opportunity to comment on your S. 2078.

Sincerely,

A handwritten signature in black ink, appearing to read 'PL', with a long, sweeping horizontal line extending to the right.

Paula Lorenzo, Chair
California Tribal Business Alliance
Board of Director