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NATIONAL INDIAN GAMING COMMISSION
CLASS II CLASSIFICATION STANDARDS
GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING
WITH THE CHEYENNE-ARAPAHO NATION
HELD IN OKLAHOMA CITY, OKLAHOMA
ON AUGUST 8, 2006

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25 REPORTED BY: TRENA K. BLOYE, CSR

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1 APPEARANCES

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3 NATIONAL INDIAN GAMING COMMISSION:

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5 Philip N. Hogen, Chairman

6 Cloyce "Chuck" V. Choney, Commissioner

7 Natalie Hemlock, Special Assistant to the

8 Commission

9 Penny Coleman, Acting General Counsel

10 Michael Gross, Senior Attorney

11 John R. Hay, Staff Attorney

12 Joseph M. Valandra, Chief of Staff

13 Tim Harper, Region Chief, Region V

14 Jeanette Ross, Field Investigator

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16

17 ON BEHALF OF THE CHEYENNE-ARAPAHO NATION:

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19 Darrell Flyingman, Governor Virgil Whiteshirt

20 Nelson Clark Gary Baker

21 Margaret Ann Cue Yvonne Wilson

22 Erica Whitecloud

23 Robert Wilson

24 Mike Martin

25 William Norman, Attorney

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1 CHAIRMAN HOGEN: For the record,

2 we will start our meeting. I would like to

3 introduce Phil Hogen. He's the chairman of

4 the National Indian Gaming Commission. My

5 name is Chuck Choney. We are the current

6 commission. We are short one. Hopefully in

7 the near future we are going to have the third

8 member of our commission identified.

9 By introduction, I am going to

10 introduce Penny Coleman, our acting general

11 counsel. Next to her will be Michael Gross, a

12 senior attorney. Joe Valandra, our chief of

13 staff. Also, from the Office the General

14 Counsel is John Hay.

15 I would like to introduce Natalie
16 Hemlock, special assistant to the Commission.
17 And Tim Harper, the region director for this
18 region and our Tulsa office. And sitting in
19 the back is Janette Ross, field investigator
20 for the Tulsa region.

21 And Governor Flyingman, if you can
22 introduce your staff.

23 GOVERNOR FLYINGMAN: Okay. We
24 have Nelson Clark, he's a legislator.
25 Margaret Ann Cue (ph.). She's our planner and

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1 also our guru of our history of our Tribe.

2 This is Erica Whitecloud. She's
3 our business manager. This is Robert Wilson,
4 our legislator. And Mike Martin on the end,
5 he's the legislator. And Mr. Norman, he's the
6 attorney for the Gaming Commission.

7 COMMISSIONER CHONEY: And the
8 people in the back?

9 GOVERNOR FLYINGMAN: And there is

10 Virgil Whiteshirt, he is legislator. Gary

11 Baker, he's our controller. And Yvonne

12 Wilson, our commissioner of gaming.

13 COMMISSIONER CHONEY: Okay. Thank

14 you very much.

15 CHAIRMAN HOGEN: Okay. Welcome on

16 the behalf of the National Indian Gaming

17 Commission. It's good to be back in Oklahoma.

18 Some of us struggled in late last night. So

19 if we look a little hazy at this time of day,

20 hopefully it will get better.

21 We published in the "Federal

22 Register" on the 25th of May proposals to

23 amend some definitions and to promulgate some

24 regulations relating to distinctions between

25 Class II uncompact gaming equipment and

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1 equipment that constitutes facsimiles of games

2 of chance, electronic facsimile games of

3 chance. And we also are committed to

4 consulting further with tribes as we decide,

5 should we adopt those regulations and, if so,

6 should the proposal be changed.

7 We have been in Oklahoma prior to
8 this a number of times talking about this
9 subject. We know how important Class II
10 gaming is, has been, will be to tribes
11 generally, and particularly to tribes in
12 Oklahoma. So, when we do what we do, if we
13 finalize anything, we want to try to get it
14 right.

15 So, in that connection we are very
16 eager to hear the points of view from the
17 tribes in Oklahoma. And we are very delighted
18 we are starting out here today with
19 Cheyenne-Arapaho. Having said that, we turn
20 it over to you and ask you to give us your
21 comments, your questions so we can discuss
22 this.

23 GOVERNOR FLYINGMAN: Okay. I like
24 your bolo tie.

25 CHAIRMAN HOGEN: Yes, it is one of

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1 the best ones around.

2 GOVERNOR FLYINGMAN: And you are
3 going to keep it, too. What happened to the
4 big one I saw you wearing that was on
5 Indian.com.

6 CHAIRMAN HOGEN: That's Oglala
7 Sioux Tribe emblem and I'm keeping that one,
8 too. It's up in my suitcase. I wore that one
9 when I was with the Secretary of the Interior
10 up in Rapid City the day before yesterday.

11 GOVERNOR FLYINGMAN: Erica and
12 Margaret, would you like to comment on the
13 Class II?

14 MS. CUE: I'm afraid I'm at a
15 loss. I did read the classification standards
16 when they were published, but I didn't sit
17 down and formulate any kind of opinion about
18 them.

19 COMMISSIONER CHONEY: Well, once
20 you do, if you wish to submit written comments
21 prior to the deadline, we will note those.

22 MS. CUE: We have our attorney is
23 going to discuss on some of the things that we
24 had discussed on this, since he's full of wind

25 sometimes.

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1 MR. NORMAN: Would the legislators
2 like to mention anything first?

3 Okay. You mentioned the written
4 comments. That time frame has changed
5 recently. What is the exact deadline for
6 comments.

7 MR. HAY: As of Friday, we
8 published an extension, so it is September
9 30th.

10 MR. NORMAN: And do I understand
11 correctly there is going to be a public
12 hearing?

13 CHAIRMAN HOGEN: That's correct.
14 We are going to have a hearing in Washington,
15 DC on September 19th, I believe. It's still a
16 work in progress in terms of the structure of
17 that. But we do want to hear from, I guess,
18 everybody that's involved. As far as
19 gathering tribal input for a long time, we
20 will have some panels of witnesses, so to

21 speak, which will include representatives of
22 manufacturers and tribes and regulators and
23 the state that are concerned about where this
24 line is drawn as well.

25 MR. NORMAN: Any sense at this

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1 point how you will pick and choose the panel
2 of folks to testify and possibly how many from
3 Oklahoma there will be?

4 CHAIRMAN HOGEN: We don't know
5 that for sure. We are working on it. We know
6 that probably in one day we can't hear from
7 everybody that would like to have a say, but
8 we will try to be -- try to make the right
9 choice to give the full spectrum of opinions.

10 MR. NORMAN: Do you have -- you
11 probably can't tell us when you think you are
12 going to have some final rules. But when do
13 you hope to have some final rules in place?

14 CHAIRMAN HOGEN: That target seems
15 to keep moving a little bit forward. We are
16 dedicated to the proposition that this fall we

17 can bring this exercise to a close, one way or
18 another.

19 Yeah, we from time to time put
20 together some time lines. But we will end the
21 comment period at the end of September, and
22 that hearing will have occurred. And then
23 once we adopt regulations, assuming we do,
24 there will be a period of 30 to 60 days when
25 they would then become effective. Thereafter

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1 there will be a period of time for tribes to
2 come into compliance.

3 MR. NORMAN: You mentioned a
4 couple of times, assuming that you do move
5 forward, is there consideration at this time
6 of withdrawing the proposal?

7 CHAIRMAN HOGEN: Well, our minds
8 are open, you know. We, obviously, have
9 formed some opinions that we're basing our
10 approach on, but they are not cast in concrete
11 just yet. But I haven't heard anything during
12 the course of my discussion that convinces me

13 that it's not still important to have a clear
14 distinction between the Class II and Class
15 III, and I think regulations are the best way
16 to do that.

17 MR. NORMAN: We are going to
18 mention some concerns that this tribe has, and
19 you are probably going to hear over the next
20 couple of days. The one reason for that is we
21 believe the tribes share these legitimate
22 concerns that need to be considered and
23 evaluated in context considering whether you
24 are going to go forward and how you go
25 forward, if you do.

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1 And I know you have heard this
2 before, but I think the tribes are really
3 concerned with where their role is in this
4 process of classification. The gaming
5 regulatory act derives the primary regulators
6 in Class II gaming. We have been fortunate in
7 Oklahoma to even preserve that role for Class
8 III gaming. So it's very important for the

9 tribes here, and this tribe in particular.

10 We're just concerned with the fact
11 that, in the classification it seems to be a
12 situation where you are setting up an
13 independent testing lab. That testing lab has
14 interaction with the NIGC, perhaps some appeal
15 rights with the NIGC. But the tribe, who is
16 supposed to be doing the primary regulating
17 and determining what games are going to be in
18 its jurisdiction really has no role there.

19 And I am wondering, having heard
20 that before, what sort of things are you
21 thinking about to try to resolve that, if at
22 all?

23 CHAIRMAN HOGEN: Well, the Indian
24 Gaming Regulatory Act said tribes could do
25 Class II uncompact gaming and use computers

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1 and electronic and technologic aids to play
2 those Class II games. That's the good news.

3 The bad news is they said if they
4 play slot machines of any kind or facsimile

5 games of chance, those are Class III, and
6 those have to be done pursuant to a compact.
7 What they didn't say particularly clearly was
8 where you draw the line to separate those two.

9 They also, at the same time,
10 created us, the National Indian Gaming
11 Commission, and tasked us with, among other
12 things, writing some federal standards. They
13 didn't say what those standards were limited
14 to or covered. And I think it would be a
15 disservice to Indian country if we
16 micromanaged everything, if we had standards
17 for everything. Tribes absolutely are the
18 first-line regulators. They do the heavy
19 lifting. They are there every day, all day,
20 and we are not.

21 But viewing the landscape, we have
22 focused on this as an issue we think cries out
23 to have a federal standard. So we are going
24 to try and draw a bright, clear line as to,
25 okay, this is what you can't go beyond. And

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1 tribes, you can tinker with that to the extent
2 it's still consistent with that distinction.
3 And you will make the ultimate decision: Does
4 this equipment comply with those standards?
5 Did it pass the lab test and so forth, does it
6 comply with any additional or whatever
7 standards the tribe might come up with? And
8 go from there.

9 Oklahoma, of course, is an example
10 where you have tribes that are literally
11 across the street from one another competing
12 for that same market. And we have seen, in
13 years past, where some tribes went beyond what
14 I think couldn't, with a straight face, would
15 be called Class II. And there were some
16 serious consequences, closures of facilities,
17 millions of dollars of fines assessed. That's
18 not a good way to do it. It's a better way, I
19 think, to have a clear federal standard and to
20 go from there.

21 MR. NORMAN: Well, I know the
22 tribe has been concerned in the past about
23 some of the enforcement efforts, maybe the

24 manner in which the enforcements took place as
25 opposed to there was some enforcement taking

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1 place.

2 But, you know, frankly, that seems
3 to have worked, in at least a few occasions,
4 particularly with the games of skill here in
5 Oklahoma. And I just wonder why that may not
6 be viewed in the future -- in our opinion,
7 there are some standards out there. You have
8 got case law heavily litigated between the
9 tribes and the Department of Justice. You
10 have then got the NIGC itself that has come
11 out with regulations in 2002 which reflect
12 those cases.

13 And I guess one question we would
14 have is why not just continue the process you
15 have had in the past where when you see
16 somebody going over the line, you send a
17 warning and you threaten action and, if
18 necessary, when push comes to shove, you take
19 some action with that particular entity, as

20 opposed to kind of a widespread wholesale
21 change of the environment.

22 CHAIRMAN HOGEN: Well, the
23 difficulty with that scenario is that it's not
24 always easy to say where the line is. And
25 that's been kind of the missing piece. You

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1 know, we take absolutely no pleasure in
2 issuing a closure order and certainly not
3 assessing a big fine. And we think that if
4 tribes are going to invest millions of dollars
5 to put equipment on their floors, to make
6 economic development work for the tribal
7 membership, there ought to be some certainty
8 that we can do this and nobody is going to
9 come along and jerk it out from under us later
10 on.

11 The cases are getting old now.
12 The cases that focused on the bingo machines
13 addressed the Mega Mania game, which took
14 twelve players to play. You played on a big,
15 clunky terminal that had three or four bingo

16 cards on it. It took over a minute to play
17 the game. And now we have got equipment out
18 there in some places that are being played at
19 Class II that you push the button once, the
20 game is over in less than two seconds, and
21 that's a difference between night and day in
22 my view. I think that's gone beyond what
23 congress had in mind when they said you can
24 play bingo and you can use technologic aids.
25 But it's become an electronic facsimile of a

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1 game of chance when the game does it all and
2 the player does, basically, nothing.
3 MR. NORMAN: Well, I think it's
4 clear that congress did intend the use of
5 technological aids. They foresaw that there
6 would be advances. And, of course, with the
7 purpose of the Indian Gaming Regulatory Act to
8 build strong tribal government and building
9 economies of these tribes, it seems contrary
10 to the act to suggest -- particularly you
11 mentioned the investments of millions of

12 dollars, tribes have invested millions of
13 dollars in the Class II industry. And to say
14 we are going to go back in the spirit of
15 defining more particularly what Class II is,
16 we are going to ignore the millions of dollars
17 that have been spent, and we are going to go
18 back beyond the point.

19 You may disagree with this, but I
20 think the attorneys who have worked in this
21 industry for a long time have evaluated and
22 been involved in litigating these cases will
23 say the current regulations will not allow any
24 of the existing games in play, even games that
25 have been approved in the advisory opinions by

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1 the NIGC, to continue to be played. And the
2 economic impact of that alone is remarkable.

3 Have you done any studies to
4 determine what the potential economic impact
5 is?

6 CHAIRMAN HOGEN: We are doing
7 those studies as we speak, and, yes, we have

8 given serious thought to the economic impact.

9 We have been saying for two years, as loudly

10 and as clearly as we could, we're concerned

11 about this. We plan to come out with some

12 regulations. A word to the wise: Don't, you

13 know, go too far here.

14 And I think a number of tribes

15 have, you know, taken that in consideration.

16 Perhaps others doubted that we were going to

17 go there and maybe have made investments.

18 Now, again, I think this

19 demonstrates why you need to have some

20 clarity, why you need to have a distinction.

21 In my view, playing Class III games without

22 compacts is unlawful. To give everybody a

23 break that was breaking the law and say, "We

24 can't do anything that would interfere with

25 that investment," I don't think is keeping in

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1 the spirit of the Indian Gaming Regulatory

2 Act. There was a distinction between Class II

3 and Class III. So the sooner we get this

4 clarified the better the industry will be.

5 MR. NORMAN: Of course, I think

6 that's -- and we would agree with you. A

7 Class III gaming without a compact is

8 unlawful. Of course, the question we are all

9 wrestling with is what is Class II?

10 But it sort of leads me back to

11 the issue of the 2002 regulations and the

12 preamble there where the NIGC said, Look, we

13 went down a path. It's clear where the courts

14 are on this. They say there is three elements

15 to bingo and that's it. And congress allowed

16 for widespread types of Class II gaming and

17 allowed for the possibility of technological

18 aid and advances to assist with that. And so

19 we are going to now align ourselves with what

20 the courts have said and interpreted.

21 You are now changing the rules.

22 You know, obviously, you know there is going

23 to be challenge to this. Are you concerned

24 about lessening the about face that you are

25 doing?

1 CHAIRMAN HOGEN: Well, I am
2 concerned. And, you know, I think a
3 government that could never say it made a
4 mistake or did something -- didn't get
5 something exactly right would not be in the
6 best interest of those that are governed by
7 that government.

8 There have been, over this period
9 of time, six members of the National Indian
10 Gaming Commission. Four of them, I think,
11 felt very strongly that if a game is an
12 electronic facsimile of a game of chance, it
13 becomes a Class III game.

14 Two commissioners took a different
15 view, and they were successful in getting that
16 amended. We think that as we try to draw this
17 brighter line, looking at the Indian Gaming
18 Regulatory Act and its legislative history,
19 there is not support for the position that,
20 well, if it's bingo, it can be an electronic
21 facsimile game of chance.

22 We know that not everybody holds

23 that view, but we didn't arrive at that
24 position lightly.

25 MR. NORMAN: Could you explain to

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1 us and for our benefit where you have drawn
2 the line in terms of the facsimile definition
3 as compared with where it was before? At
4 least as I review and interpret the new
5 language, it allows games to be considered
6 electronic facsimiles that are not just games
7 where you play -- where the player plays with
8 the machine, but other types of games. Am I
9 mistaken in that or have you gone beyond the
10 prior definition of facsimile in something
11 else?

12 CHAIRMAN HOGEN: Well, I hope I
13 understood your question and I hope I can give
14 an intelligible response. I think it could be
15 argued that the 2002 definition -- we have got
16 them on the board back here, the original that
17 adopted the Johnson Act definition that was
18 changed in 2002 to say that more clearly said

19 what was or was not an electronic facsimile
20 game of chance. But it could be argued that
21 as long as you are playing against somebody
22 else, not just a random generator in the
23 machine, that you can get onto the Class II
24 area.

25 And we think that one of the

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1 important themes, or one of the
2 characteristics that distinguishes Class II
3 from Class III is the players involved, the
4 player participation, and where there is
5 minimal, if any, player participation. That
6 is if you just start the game and the machine
7 does all the rest of it, you cross that
8 threshold. Whether you are playing against
9 other players or not, it's become an
10 electronic facsimile of the game. The
11 presence of other players playing for the same
12 prize you are trying to win wouldn't be enough
13 to distinguish it.

14 MR. NORMAN: Well, I guess I am

15 looking at the new definition, the troubling
16 aspect for us is 502A.b1, which I think raises
17 more question than it answers, because it's
18 not clear to me that that may include many
19 bingo games that you might even allow under
20 your new regs.

21 What does the replication of a
22 game of chance mean?

23 So, again, I think -- I appreciate
24 where the direction you feel like you need to
25 go in and the reason for that, but it seems

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1 that at least that particular aspect of the
2 definition could create more litigation, more
3 problems than we have seen before.

4 I guess back to the -- just
5 briefly to the issue of the investment.
6 Obviously, you have got vendors out there that
7 have designed games. And some of them have
8 come to you and gotten advisory opinions.
9 Some of them have had their games litigated
10 and determined to be Class II games.

11 Again, it appears to us that those
12 games would not be able to be played under the
13 new regulations. Are you thinking about a way
14 to resolve that problem?

15 CHAIRMAN HOGEN: Well, we are
16 going to hear from the manufacturers and the
17 vendors. You know, where we got a lot of our
18 education to try and understand this whole
19 issue is trying to write consistent advisory
20 opinions as to what could be played. And we
21 are just continually amazed at the creativity
22 of the vendors and the new angles they have
23 come up with.

24 I am cautiously optimistic that
25 much of this equipment that is currently being

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1 played pursuant to an advisory opinion may, in
2 some respects, not be consistent with what we
3 have put on the drawing board can be modified
4 without huge reinvestment or replacement. And
5 we will learn more about that when we hear
6 more from the investors.

7 I know that one of the things we
8 say in these regulations is half the screen
9 has to be, or half the display space has to
10 depict the link. That may be problematic. We
11 will learn more about that.

12 But, as you know the evolution of
13 all of this, we were headed down the road to
14 publish some regulations a year ago this past
15 spring when the Justice Department expressed
16 some concerns about its consistency with the
17 Johnson Act. So we negotiated long and hard
18 with the Justice Department. And I think we
19 moved them a great deal from where they were.
20 They eventually came out with a proposal to
21 amend the Johnson Act.

22 We know they are still there. We
23 know they still may come out and do criminal
24 enforcement. We don't want to see criminal
25 enforcement actions taken against tribes for

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1 doing Indian gaming. We want to be able to
2 regulate it in a fashion that that won't have

3 to happen.

4 But we learn some things about
5 their approach, if not necessarily about the
6 games themselves. And some of those things
7 are, obviously, reflected in the change we
8 made from our April of 2005 approach to what's
9 said right now.

10 But, again, this is not a done
11 deal yet and we are gathering input, and
12 hopefully we will come to the right place when
13 we get done.

14 MR. NORMAN: Can you tell us how
15 the meetings and the involvement of the
16 Advisory Committee, how that work product was
17 used, if at all, in the drafting of these
18 particular regulations?

19 CHAIRMAN HOGEN: Yeah. I don't
20 know that I could point to every single line
21 in the proposal and say this was a product of
22 Advisory Committee advice and this wasn't.
23 But those were extremely useful sessions.

24 There were times when we were
25 headed in a direction when Norma Rosea (ph.)

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1 or the other members of the committee would
2 say, "Wait a minute. If we do that, we are
3 going to be on the floor as regulators a dozen
4 times a night trying to straighten this out.
5 That will never work." We took that advice.
6 They brought some really good practical
7 considerations to us. They also argued
8 maximum flexibility, bring more dollars to the
9 bottom line.

10 Our response was we want to try to
11 make it fast, fun, and profitable, but we have
12 got to have a difference. You know, this is
13 what we finally came up with.

14 MR. NORMAN: Along those lines,
15 what is the time frame for technical standards
16 regulations? And are those going to be
17 considered separate and distinct from this
18 process throughout the remainder of this
19 process, or do you see those converging?

20 CHAIRMAN HOGEN: They will
21 converge. We will publish those in the

22 "Federal Register" on --

23 MR. GROSS: Friday.

24 CHAIRMAN HOGEN: -- on Friday.

25 Their comment period will be the same as the

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1 comment period for this package, the 30th of
2 September. And they will look very much like
3 the proposed standards that we had on our
4 website a year ago with some improvement.
5 And, you know, the ink isn't even dry on
6 those, and we have heard some folks say,
7 "Well, there are some additional technological
8 developments that we ought to change them
9 again."

10 Either set of regulations,
11 classification and technical, if and when they
12 are adopted, will have to be modified on a
13 regular basis to accommodate changes in
14 technology, perhaps classification standards
15 less so. But we know the technology is
16 rapidly moving and this is a technical
17 business.

18 MR. NORMAN: Well, I guess, for
19 the most part, the concern of this tribe and
20 has been shared by many of the other tribes is
21 a sense of lack of involvement in the process.

22 I don't believe they feel like the
23 makeup of that work group was chosen and
24 functioned the way that they would have liked
25 it to. I think there is a valid sense that

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1 these regulations are a reversal of the 2002
2 regulations that are really referred to as
3 sour grapes in terms of the wins the tribes
4 have had over the years in trying to determine
5 what Class II is.

6 You know, it doesn't have to be
7 quantified here what Class II has done for the
8 tribes in Oklahoma. And, frankly, but for
9 that, we would not have the opportunity to
10 have Class III compacts and Class III gaming,
11 even though it's the tribe's position here for
12 a number of years that there are Class III
13 games that we should be able to compact for.

14 I think it behooves us on this
15 side to look down the road and say, "Okay,
16 when the race tracks come back to the State of
17 Oklahoma or when the time runs on that
18 compact, what leverage will we have to ensure
19 continued fairness in our ability to stay in
20 business?"

21 And if the Class II environment is
22 such that nobody is willing to play and that
23 the charities are able to offer better and
24 more exciting games, we are going to be dead
25 in the water with the State of Oklahoma.

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1 And so, you know, it's from that
2 perspective that the tribes are concerned
3 about this process and we recommend that these
4 regs be withdrawn and that you focus your
5 attention on the technical standards for the
6 tribes, and particularly the gaming
7 commissions, to ensure the fair play of games
8 and understand what they have got on the floor
9 and how they are functioning.

10 With that, I don't have any other
11 comments.

12 GOVERNOR FLYINGMAN: Oh, I forgot
13 to introduce Mike Martin. He's another
14 legislator. Any other questions or remarks?

15 MR. WILSON: I think I just want
16 to say one thing. As a legislator, somebody
17 that does business for the tribe, it's almost
18 like you're stepping on some of our
19 sovereignty here, you know. I really don't
20 welcome any infringement on our sovereignty.

21 We have a government. We have a
22 way and a means to regulate what's going on on
23 our property. We welcome your help, welcome
24 your oversight. But as a government, we have
25 to protect what we have. That's very little.

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1 Right now this has been our only way out of
2 poverty so to speak. We're not there yet.

3 But if we are cut off in the
4 middle of this, we are going to be back where
5 we were at. We have got 12,000 members in our

6 tribe. We have one-fourth blood requirement
7 to get enrolled in our tribe. Like I said, we
8 made some strides, but we are just on a
9 threshold of doing some good, better things.

10 I really, really have got to say
11 that our sovereignty comes before all this
12 other stuff. We're going to fight to keep
13 that. If it gets in this fight, I don't know
14 what the outcome is going to be. But any
15 chipping away at our sovereignty doesn't just
16 hurt us on the gaming issue. It hurts us on
17 every other issue that we have. And, as you
18 know, in the State of Oklahoma, you haven't
19 always been good to tribes in Oklahoma.

20 When we are able to provide them
21 some money, then they cooperate a little bit.
22 Everybody benefits from our gaming, everybody.
23 And, you know, we just have to stand up for
24 what is ours.

25 I appreciate you taking the time

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1 to come hear our thoughts and our concerns. I

2 hope that we end up in good -- you know, in a
3 good way. I appreciate it.

4 CHAIRMAN HOGEN: Well, we sure do,
5 too. Chuck and I take extremely seriously
6 tribal sovereignty. Indian gaming has been an
7 economic miracle, literally, throughout Indian
8 countries. It has worked better some places
9 than others. But Oklahoma is a unique
10 example, not only as providing dollars, but as
11 providing jobs.

12 You know, there have been highs
13 and lows, but it keeps getting bigger and
14 better, not because of what the National
15 Indian Gaming Commission is doing, but maybe
16 in spite of it. But we do have this respected
17 regulatory framework with the tribes doing
18 most of it, some federal oversight. That's
19 been accepted by the gaming public. So the
20 Indian Gaming Regulatory Act infringed on
21 tribal sovereignty, said, "You can't do Class
22 III gaming unless you go hand-in-hand with the
23 state and get a compact."

24 Creativity permitted tribes to

25 make it work with Class II and then bring the

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1 state to the table and get some Class III.

2 And we are going to try and keep that in mind

3 as we try to get to the right place.

4 GOVERNOR FLYINGMAN: Who is on

5 your advisory board from Oklahoma?

6 CHAIRMAN HOGEN: Jamie Hummingbird

7 is the representative from Oklahoma.

8 GOVERNOR FLYINGMAN: Which tribe

9 is he with?

10 COMMISSIONER CHONEY: Cherokee.

11 GOVERNOR FLYINGMAN: Cherokee? Do

12 you have a representative from one of the

13 smaller tribes in Oklahoma? Because large

14 tribes and smaller tribes, you know, there is

15 a lot of difference there.

16 COMMISSIONER CHONEY: What we did

17 when we formed this committee, we submitted

18 letters to all the gaming tribes throughout

19 the United States for them to submit persons,

20 nominations for persons to be on this

21 committee. We had quite a few to submit, but
22 not as many as we thought.

23 And once we got all of the
24 nominations in, we wanted to do it on a
25 regional basis, not all from Oklahoma, all

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1 from California. California tribes wanted two
2 to three members on that committee. Other
3 members of tribes in Oklahoma wanted it loaded
4 with people from Oklahoma. Well, we couldn't
5 do that. We wanted a representation
6 throughout the United States, the Pacific
7 Northwest, the Southeast, the Southwest.

8 We wanted good representation, not
9 only from the regions but also by sizes. We
10 wanted some large tribes, some medium size
11 tribes, and some smaller tribes, which we
12 accomplished. We knew we couldn't satisfy
13 everyone and there is no way we could. But we
14 came up with a representation of what we
15 thought would best work.

16 GOVERNOR FLYINGMAN: Okay. You

17 know, the State of Oklahoma has been battling
18 the Tax Commission over the tobacco taxes.
19 They have had several meetings and hearings
20 and different things like that. But when it
21 was over with, the Tax Commission already had
22 their mind made up what they are going to do.
23 So, is this similar to what the Oklahoma Tax
24 Commission has done on the tax --

25 COMMISSIONER CHONEY: Well, as you

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1 know, the history of the Oklahoma Tax
2 Commission and the tribes in Oklahoma, the Tax
3 Commission loses every time they go up against
4 the tribes in Oklahoma. I mean, they have
5 lost all the way up to the Supreme Court to
6 the point where the Supreme Court told them
7 not to bring any more lawsuits, because they
8 won't even hear them.

9 We don't have our mind made up.
10 We have been to Minnesota. We have been to
11 Tacoma. We have been to Ontario, California.
12 Now we are here. We are going to have the

13 hearings in Washington. These proceedings are
14 all recorded. We are going to look at all of
15 these questions and the answers we have
16 provided and the answers that the tribes
17 provided to us and the written statements. We
18 are going to come up with what we feel is a
19 representation of comments from everyone to
20 see where -- if we are doing the right thing.

21 These are also public comments,
22 and so we have got ourselves opened up. We
23 are putting this on our website also, all of
24 the consultations on the Class II. So if you
25 look at that, you see some of those comments,

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1 you are also going to see a lot of comments
2 are all the same. Some of the questions you
3 have brought up already, we have already
4 heard. And we're going to hear it the rest of
5 the day and all day tomorrow, almost the same
6 comments. And we're going to take those to
7 heart.

8 So if you see those same comments

9 that you see we have obviously ignored them,
10 then we want to hear from you as to how come
11 we ignored all those comments. But still we
12 are going to have to take those comments to
13 heart to see if these regulations are what we
14 are hoping for.

15 GOVERNOR FLYINGMAN: I have a
16 couple of minutes left. A couple of years ago
17 at one of the consultations you stated that
18 you guys were investigating the Chickasaw
19 tribes, because of all their Casinos that were
20 just popping up every six months or so. So,
21 is that investigation still going on?

22 CHAIRMAN HOGEN: Well, I don't
23 remember if we said it exactly that way.
24 There were, there are concerns about are all
25 tribal gaming facilities appropriately located

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1 on Indian lands. Of course, we aren't the
2 only players in that process. The Department
3 of the Interior takes lands into trust and
4 tells us, you know, where former reserves are,

5 things of that nature.

6 We have been trying to get our
7 arms around a process to identify once and
8 first of all, and early, are gaming operations
9 on Indian lands. Part of that process
10 includes consideration of a regulation that
11 would say when tribes license their gaming
12 facilities, they have to document that they
13 are on Indian lands.

14 We have those proposed regulations
15 under consideration right now. We are trying
16 to put together a database with the assistance
17 of the Department of Interior identifying all
18 of those lands.

19 So, to the extent that we trying
20 to clarify that all the tribal gaming
21 operations are Indian lands, that's still
22 ongoing. That hasn't come to an end. And we
23 hope relatively soon we will be making more
24 progress to that.

25 Penny, do you have any comments

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1 about that?

2 MS. COLEMAN: We are waiting for
3 regulations. Your tribe may have already
4 received a letter from me. What we are doing
5 is we look at Oklahoma, just because there are
6 so many Oklahoma facilities and so many
7 questions have been raised.

8 What we do is we write to each
9 tribe and we say, "Please identify the name of
10 every one of your casinos, give us the
11 address, and then please provide us the
12 documentation that establishes it's on Indian
13 land. Give us the trust deed and other kind
14 of information that might be necessary."

15 And then -- and we have been doing
16 that for every tribe in Oklahoma, and I don't
17 believe we are done yet, because there are a
18 few tribes that have a lot of facilities. So
19 they have a tendency to take time to get a
20 list of twelve back, and then you have to go
21 through it to make sure that you have
22 absolutely every piece of information you
23 need.

24 Then if it's land that is acquired
25 after 1988, what we do is we go back to -- and

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1 the tribe says that the reason why they can
2 game on these lands, even though they were
3 acquired after October 1988, then what we do
4 is we write to George Scibine, who is the
5 director of the Office of Indian Gaming
6 Management, and we say, "This tribe in
7 Oklahoma has this land, has acquired a trust
8 after 1988 and it says it's within it's former
9 reserve. We want to know if that's true so
10 they can game on it."

11 And so he gets that. He goes back
12 to the BIA regional office, regional solicitor
13 to double check on that to make sure that land
14 is in the reserve. They come back to us with
15 that answer.

16 GOVERNOR FLYINGMAN: Okay.

17 MS. WILSON: (Inaudible) -- the
18 lands of trust, I think, three years ago, and
19 we haven't had no correspondence back.

20 MS. COLEMAN: Well, that was
21 probably because it was not an issue. Unless
22 we identify a problem, we're just putting it
23 into the database so we will have the
24 information available to us.

25 GOVERNOR FLYINGMAN: Is there a
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1 regulation about regulations of 75 miles apart
2 from tribe to tribe or casino to casino? Like
3 if the Chickasaws want to build one within our
4 radius, are they to consult the
5 Cheyenne-Arapaho tribes to work something out.

6 MS. COLEMAN: There is no
7 requirement for land that is already acquired
8 into trust. There is no requirement that they
9 contact another tribe and get permission to --

10 GOVERNOR FLYINGMAN: Well, before
11 it comes into trust.

12 MS. COLEMAN: Before it gets into
13 trust, that's a question you have to direct to
14 the Bureau of Indian Affairs. We don't deal
15 with the trust acquisitions. The Bureau of

16 Indian Affairs decides whether or not to
17 acquire land into trust. I do know there is
18 some consultation and consent requirements in
19 their regulations, but they are really not
20 ours.

21 MR. VALANDRA: There are new
22 regulations that were consulted on earlier in
23 the spring that are yet to be revised and
24 reissued. But there was some radius
25 requirements in those consultative regulations

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1 that haven't actually been published yet, I
2 don't think.

3 MS. COLEMAN: I think it was 45 to
4 60 miles in the proposed regulations.

5 MR. VALANDRA: But those are
6 currently from the BIA.

7 COMMISSIONER CHONEY: The
8 Comanches currently have a lawsuit pending. I
9 don't know where it stands, but they have a
10 lawsuit going against another tribe coming on
11 their former reserve opening a casino. It is

12 right up the street from one of their casinos.

13 So they brought a lawsuit. I don't know where

14 that stands so far.

15 GOVERNOR FLYINGMAN: One last

16 question. You know the Indian gaming industry

17 brought in \$22.6 million last year. Am I

18 correct?

19 MS. CUE: A billion.

20 GOVERNOR FLYINGMAN: A billion. I

21 meant to say that. A billion. You know, in

22 comparing the \$22.6 billion to a corporation,

23 the same amount of money they have brought in,

24 you know, it makes me wonder why the gaming --

25 Indian gaming is so regulated and also so, you

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1 know, so taxed. You know, we provide more

2 services to our people than this other

3 corporation that has a \$22.6 billion. These

4 guys are given more tax breaks. They are

5 given anything they want, and yet they don't

6 have to justify where their profit goes and

7 things like that. But we have to justify

8 where all our profits go and we can only spend
9 in certain categories.

10 It seems the more money we make
11 the more the state wants and the federal
12 government wants to regulate. You know, so to
13 me that's not very fair, you know, of us
14 trying to take care of our people. And yet,
15 on the other side, the corporations, you know,
16 can do whatever they want.

17 But, anyway, this is just my
18 remark. Okay?

19 COMMISSIONER CHONEY: Well, I
20 would like to respond in part to that. Most
21 of these private companies, they do have to
22 answer, you know, for their profits, number
23 one, to their stockholders and also to the IRS
24 and other banking regulations.

25 We keep track of the tribes.

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1 There is \$22.6 billion. That's a lot of
2 money. That's a cash intensive industry.
3 There's a lot of people that want that money

4 other than legitimate players and the tribes
5 themselves. I am talking about crooks, scam
6 artists, organized crime figures. We have
7 already stopped incursions from organized
8 crime once here in the State of Oklahoma.

9 But if we didn't ensure that the
10 tribal regulators do their jobs like they
11 should, you would be ripped off left and
12 right. I mean, people would be dipping into
13 the till, I mean, stealing you blind. It's
14 happened before, as your tribe should know.

15 GOVERNOR FLYINGMAN: Yeah.

16 COMMISSIONER CHONEY: But yours is
17 not unique. There is other tribes all over
18 the United States that are being victimized
19 because their regulators aren't doing their
20 job.

21 GOVERNOR FLYINGMAN: Well, that
22 brings up another question. This working
23 group. Why is it taking so long to get
24 something done? They have had the evidence
25 for over two years now.

1 MS. COLEMAN: Hold on. Should we
2 go off the record for this?

3 GOVERNOR FLYINGMAN: Absolutely.

4 CHAIRMAN HOGEN: Okay. We will
5 bring the consultation session now between the
6 NIGC and Cheyenne-Arapaho tribes to a
7 conclusion. Thank you, tribes, for their
8 participation.

9 (Proceedings concluded.)

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1 C E R T I F I C A T E

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4 STATE OF OKLAHOMA)

) SS:

5 COUNTY OF OKLAHOMA)

6 I, Trena K. Bloye, Certified Shorthand

7 Reporter for the State of Oklahoma, certify that the

8 foregoing transcript of proceedings taken by me in

9 stenotype and thereafter transcribed is a true and

10 correct transcript of the proceedings; that they

11 were taken on August 8, 2006, at the Cox Convention

12 Center, Oklahoma City, State of Oklahoma; that I am

13 not an attorney for nor a relative of any said

14 parties, or otherwise interested in the event of

15 said action.

16 IN WITNESS WHEREOF, I have hereunto set my

17 hand and seal of office on this the 11th day of

18 August, 2006.

19

20

21

Trena K. Bloye
Certified Shorthand Reporter
for the State of Oklahoma

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