



The New NIGC: Improving Consultation with Tribes and Renewing Relationships

by Tracie Stevens

In June 2010, for the first time in two and a half years, the National Indian Gaming Commission (NIGC) is functioning with a fully appointed Commission. As the new Commission, Vice-Chairwoman Steffani Cochran, Associate Commissioner Dan Little and I are embarking on a journey that will not only challenge us and the Agency, but tribal leaders as well. President Obama has been clear that the methods by which all agencies interact with tribes is critical and that this Administration is committed to regular and meaningful consultation. The new Commission is taking this directive seriously. As I have repeatedly committed to tribal leaders and their representatives, we will always seek to improve how we consult, communicate, and interact with tribes, no matter the challenges. As an agency that deals solely with tribal issues and is funded by tribal dollars, we are dedicated to improving every aspect of the agency so that we can better serve tribes by fulfilling our statutory and regulatory obligations.

This new Commission is no stranger to the complexity surrounding tribal issues. Each member of the Commission and Senior Staff spent substantial time working for or representing tribal governments and tribal gaming operations prior to joining the Commission. Vice Chairwoman Steffani Cochran served as General Counsel for the Pueblo of Pojoaque tribal government primarily working on behalf of the Pueblo's social service programs. Prior to that, she served as Special Counsel for Indian Affairs for New Mexico Attorney General, Patricia Madrid. Associate Commissioner Dan Little served for 10 years in Governmental Affairs to the Mashantucket Pequot Tribe and as a staff person in the Connecticut State General Assembly. My personal path to the Commission began by working for my own tribe, the Tulalip Tribes of Washington, in both casino operations and in governmental affairs over an extended period of time. In 2009, I moved to Washington, D.C. to serve as Senior Advisor to the Assistant Secretary, Indian Affairs at the Department of the Interior.

We recognize that a strong relationship between the federal government and tribal governments is critical. The Commission is tasked with regulating a tribal gaming industry spanning 29 states and over 200 tribes. In order to fully perform our responsibilities in each region, we are

dedicating significant resources to working with tribes to ensure the integrity of the industry. In addition to working with tribes, we will work with other regulatory bodies to promote the integrity of Indian gaming. One regulatory agency alone cannot do this. It must be a collective effort.

We are committed to respecting tribes as primary regulators as envisioned by the Indian Gaming Regulatory Act (IGRA). As the regulators on the ground 24 hours a day, seven days a week, tribal regulators are the most familiar with their own operations and the most concerned about ensuring proceeds realized from the gaming operation are utilized to provide much needed services for the health and welfare of tribal communities.

The Commission is committed to performing our statutory responsibilities through ACE: Assistance, Compliance and Enforcement, in that order. This means providing meaningful technical assistance and training. This means communicating with tribes early in the process if there is a potential compliance issue. This means working with tribes to resolve compliance issues voluntarily so that enforcement action is taken only when necessary. This Commission believes that respectful communication combined with technical assistance and training is the best way to ensure compliance with the law and to ensure the integrity of the tribal gaming operation.

Less than six months ago, the new commissioners identified and launched four major initiatives that we will focus our time, energy and resources on over the next two and a half years. We recognize that our commitment is daunting, especially given that we only have a three-year term. As the opening segment of a series of four articles, this article will address our first initiative, consultation and relationship building. The other three initiatives will be discussed in subsequent articles.

It is no mistake that consultation and relationship building is our first priority. This Commission strongly supports President Obama's commitment to Indian Country: nation building, honoring tribal sovereignty and self-determination, and engaging in meaningful consultation with tribes. Consequently, we are fashioning new approaches regarding how the NIGC consults with tribes, which honor the spirit and intent of President Obama's policy. Each member of the



Commission and the senior staff experienced working on the tribal side of consultation in some form or another with the federal government. We've experienced processes that work and know that some consultation processes don't accomplish their purpose. Having worked for tribal governments, we're familiar with how many tribal governments function and how tribes perceive federal interaction. Tribes have been clear that NIGC's consultation process needs improvement and the Commission acknowledges this critique. Through our commitment to meaningful consultation, we seek to renew strong collaborative relationships with tribes so that we can work together to safeguard the Indian gaming industry and foster economic self-sufficiency and strong tribal governments.

We agree with tribes that the "process" of consultation is just as important as the "substance" of consultation. NIGC's government-to-government consultation will be inclusive, it will be collaborative and meaningful, and it will be an ongoing dialogue and exchange. It will *not* be a box to check off when developing policy. We are changing the process by which we consult substantively with tribes on broad policies and on individual matters specific to each tribe. In terms of broad, over-arching policies such as regulatory changes, we will consult in various regions of Indian Country utilizing a group discussion format. Tribes are familiar with this format and it allows for an open exchange of ideas, thoughts, concerns and solutions for all to hear. This format is important given that tribes, their compacts with states, and gaming operations differ from region to region. For issues concerning the needs of specific tribes and their operations, we will continue to meet with tribes at their request. For these meetings, we will consult in the most efficient manner. For example, NIGC field and regional staff may consult regarding technical assistance or how to address issues before they arise. Additionally, the commissioners may consult with those tribal leadership or tribal regulators, as appropriate.

The NIGC Consultation Policy of 2004 is currently under review to ensure that our policy is relevant, timely, workable and respectful. Special attention is being paid to address the concerns relayed during last summer's consultation about the sections of the policy that work and the sections that need improvement. Additionally, as a method



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to help inform our own consultation policy review process we're participating in the Department of Interior's consultation team discussions regarding President Obama's November 5th, 2009 consultation directive. We intend to build better relationships with our sister agencies so that tribes are not faced with redundancies and the likelihood of conflicts between federal agencies is reduced.

In keeping with the spirit and intent of Executive Order 13175, the changes in our consultation process will mean that we will strive to discuss with tribes the need for policy or regulatory changes *prior* to drafting such changes. Our intent is that this process will be inclusive and interactive. We are also looking at the most effective ways to consult with tribes to streamline this process. This means timely notice, candid discussions, and making the most of both tribal resources and ours (which rely on tribal gaming fees) so that we can create effective policies that ensure the integrity of the industry.

As part of this renewed effort of consultation and improved relationships, the Commission recently published a Notice of Inquiry (NOI) in the Federal Register on November 18, 2010. The NOI is a mechanism used by many agencies to solicit input from constituent groups prior to drafting new regulations or

other policies. The NOI asks for input regarding which current regulations need revisions, in what priority those revisions ought to be addressed and the mechanism by which the revisions should take place. Further, the NOI requests input on what new regulations the agency should consider promulgating to better protect the industry.

We will demonstrate our renewed commitment to consultation and stronger relationships with tribes over the next few months as we develop our regulatory review agenda. Beginning in January, we will embark on a series of eight regional consultations to listen to what Indian Country has to say about our regulatory framework and how we can improve it. After consulting with tribes, the Commission will review all the comments received and finalize a regulatory review agenda that will detail which regulations will be promulgated or revised and in what order. Once the agenda has been finalized, the agency will begin working on those regulations collaboratively with tribal governments.

Moving forward, we firmly believe that strengthening government-to-government relations by engaging in meaningful consultation with tribes is critical to fulfilling our vision and the intent of IGRA. Each commissioner shares a common vision for the NIGC – to adhere to principles of good government including transparency to promote agency accountability and fiscal responsibility, to operate consistently to ensure fairness and clarity in the administration of the IGRA, and to respect the responsibilities of each sovereign in order to fully promote tribal economic development, self-sufficiency and strong tribal governments.

While each member of our team hails from different geographical areas and cultures throughout the country, we are all products of Indian gaming in some way or another. Our senior staff includes Larry Roberts of the Oneida Nation of Wisconsin who joined our team as General Counsel. Larry previously worked on federal Indian law issues at the Department of Justice, the Environmental Protection Agency, and in private practice representing tribes. Paxton Myers, our Chief of Staff, is a member of the Eastern Band of Cherokee Indians of North Carolina and brings with him a much welcomed, diverse background to the NIGC. He began his career in the band's gaming operations management team, then as Chief of Staff and Governmental Affairs Advisor to the band's Principal Chief, and most recently, as Policy Advisor to Congressman Dale Kildee of Michigan and Director for the Congressional Native American Caucus, which Congressman Kildee co-chairs.

Serving with Paxton as Deputy Chief of Staff, Dawn Houle, Chippewa Cree from the Rocky Boy Reservation joined the team after a career serving tribes in forestry management, self-governance and non-profit management as well as federal experience with the Department of Interior and Indian Health Services. Rounding out the

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Senior Staff is Lael Echo-Hawk, Pawnee of Oklahoma, who is serving as Counselor to the Chairwoman. Lael joined the Commission after working for several years as in-house counsel to the Tulalip Tribes, providing legal counsel to the tribe's elected officials on a wide variety of tribal matters, such as gaming ordinances, Indian child welfare, civil and criminal court procedures, contract and employment law. She then served as Legislative Director for the Native American Contractor's Association working for the diversification of tribal economies.

As a result of serving Indian communities, the commissioners and senior staff have very similar beliefs, philosophies and backgrounds that will guide us as we work to serve the administration and Indian Country in fulfilling our statutory responsibilities. I recognize that any accomplishments we are fortunate enough to achieve over the next three years will be a product of how well we (NIGC and tribal governments) communicate with each other. As governments, we must work together. Teamwork and collaboration will be the foundation for all that we do and will propel us forward in promoting tribal economic development, self-sufficiency and strong tribal governments.

Our next article will discuss another initiative, the regulatory review process, in more detail. We look forward to working with tribes during our tenure and creating open channels of communication. ♣

Tracie Stevens is Chairwoman of the National Indian Gaming Commission (NIGC) and a member of the Tulalip Tribes of Washington. She can be reached by calling (202) 632-7003. For more information about the NIGC, visit www.nigc.gov.



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