
SANTA YSABEL TRIBAL GAMING COMMISSION

April 30, 2015

Open Letter to the NIGC

Honorable Jonodev O. Chaudhuri, Chairman
National Indian Gaming Commission
90 K Street NE, Suite 200
Washington, DC 20002

Dear Chairman Chaudhuri,

It is unfortunately with no small measure of frustration that I send you this open letter regarding our continued frustration with the NIGC and your agency's lack of progress in responding to numerous requests for guidance and assistance.

In his remarks at the Tribal Nations Conference in Washington D.C., on December 3, 2014, President Barak Obama spoke of using the power of the federal government to empower tribes to develop economic self-sufficiency and self-determination, and to provide opportunities for their communities. President Obama indicated his intent to change the relationships between the federal government and tribal nations. As the President stated, "...to elevate your voices in Washington and give your tribes greater say over the decisions that affect the lives of your people every day. And I wanted to turn the page on a history that is riddled with too many broken promises, write a new chapter with a spirit of respect and trust."

I remind you of this commitment by the President of the United States because the actions of the NIGC in ignoring the numerous requests by the Iipay Nation of Santa Ysabel, a shining example of the social and governmental inequities which have persisted in this country for generations, is antithetic to the pledge by the Nation's Chief Executive. Instead of coming to the Tribe's defense, the NIGC has chosen to stand idly by while the State of California and the federal courts deny the Tribe its ability to provide for the economic well-being of the Iipay community by offering legal, regulated Class II interactive gaming from the Tribe's sovereign lands through its tribal-owned enterprise, DesertRoseBingo.com.

On February 8, 2015, in response to a legal attack by the State of California in federal court, to enjoin the Tribe from offering its Class II interactive bingo from the Tribe's reservation, I sent you a letter (copy attached) seeking concurrence by the NIGC of the Santa Ysabel Tribal Gaming Commission's (SYGC) authority to make the final classification determination of the Tribe's interactive bingo platform as Class II gaming pursuant to IGRA. I supplied you with numerous attachments, including the SYGC's Classification Determination related to Desert Rose Bingo.

On February 13, 2015, I received a response from NIGC's Acting General Counsel, Eric Shepard, in sum indicating NIGC's decision not to assist the Tribe with its request (attached).

P.O BOX 558
Santa Ysabel, CA 92070

PHONE: (760) 765-0553
FAX: (760) 765-3772

SANTA YSABEL TRIBAL GAMING COMMISSION

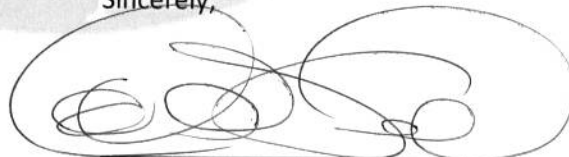
On February 15, 2015, I sent you another letter (attached) to clarify our initial request based on an assumption that the NIGC Acting General Counsel misunderstood the nature of our initial request. I also took Mr. Shepard up on his offer to speak with him directly regarding our request and our desire to seek NIGC's guidance, but in spite of numerous attempts, he has refused to speak with me.

Prior to the launch of the Tribe's Class II interactive bingo enterprise, the SYGC notified the NIGC of the Tribe's intent to move forward with this gaming initiative. In response, the NIGC indicated its intent to conduct an investigation of the Tribe's interactive enterprise pursuant to 25 Code of Federal Regulations (CFR) Sections 571.6 (a)(b)(c). The SYGC voluntarily agreed to cooperate with the NIGC investigation and supplied the agency with all of the requested written information and facilitated several inspections of the Tribe's gaming facility and gaming servers by NIGC regulatory personnel, to assist the agency in its investigation. The NIGC's review of Desert Rose Bingo was both detailed and comprehensive. What I find particularly incredulous is that in spite of the Tribe's full cooperation with NIGC's review of this enterprise and the numerous legal opinions and analysis we've provided to the NIGC to support the Tribe's position, up until the past month, NIGC's verbal response to inquiries as to the agency's position has repeatedly been, "The matter is still under review." During this past month, personnel at the NIGC have refused to return emails or telephone calls. Incredulous as it may sound, the primary federal agency dedicated to protecting and assisting tribes with their gaming enterprises and efforts towards economic self-sufficiency now refuses to communicate at all with this small California Tribe.

The issue with which the Iipay Nation of Santa Ysabel seeks NIGC's assistance and guidance has profound significance across Indian Country, and state attempts to regulate and control tribal Class II gaming threatens the very foundation of IGRA. Santa Ysabel has received the support and encouragement of tribes across the country in pursuing its sovereign right to conduct, regulate, and benefit from Class II interactive gaming. The attached Letter of Support the Tribe received from the Middletown Rancheria of Pomo Indians of California is indicative of the support we have received from many of our fellow tribes.

On behalf of the Santa Ysabel Gaming Commission, and at the urging of Tribal Chairman Virgil Perez on behalf of the Iipay Nation of Santa Ysabel, I urge the NIGC not to remain silent on this issue and to take a leadership role in fulfilling the spirit of the President's commitment to provide the means for tribes to define and control their own destiny and assist Tribes in attaining their goal of self-determination. I eagerly await your response to this request.

Sincerely,



David Vialpando, Chairman
Santa Ysabel Tribal Gaming Commission

Attachments

cc: Virgil Perez, Chairman of the Iipay Nation of Santa Ysabel

P.O BOX 558
Santa Ysabel, CA 92070

PHONE: (760) 765-0553
FAX: (760) 765-3772

SANTA YSABEL TRIBAL GAMING COMMISSION

February 8, 2015

Honorable Jonodev O. Chaudhuri, Chairman (Acting)
National Indian Gaming Commission
90 K Street NE, Suite 200
Washington, DC 20002

Dear Acting Chairman Chaudhuri,

As you know, Santa Ysabel Interactive, Inc. ("SYI"), a tribal corporation chartered and indirectly owned by the Iipay Nation of Santa Ysabel ("Tribe"), commenced operations of Desert Rose Bingo in early November 2014. When operational, Desert Rose Bingo offers its "VPN Aided Class II Gaming," which is server-based bingo games played on the Tribe's sovereign Indian Lands using a class II gaming system known as the "Virtual Private Network Assisted Play System" ("VPNAPS"), for real money play, but limited only to adult residents of the State of California while they are located within the State.

All bingo game play using the VPNAPS has been specifically authorized by Tribal laws and Tribal regulatory measures, and by actions of the Santa Ysabel Gaming Commission ("SYGC") adopted under the Tribe's gaming ordinance approved by the National Indian Gaming Commission ("NIGC") pursuant to IGRA. In this respect, SYI commenced operations of Desert Rose Bingo only after requesting and receiving a classification determination from the SYGC finding that the gaming activity conducted by Desert Rose Bingo using the VPNAPS was deemed to be "class II gaming" within the meaning of 25 U.S.C. § 2703(7)(A) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq., P.L. 1--497, 102 Stat. 2467 ("IGRA") because every element of bingo game play occurs on the Tribe's Indian Lands consistent with IGRA and the VPNAPS serves as a "technologic aid" to the bingo game play.

The SYGC classification determination (which constitutes final agency action under the Tribe's NIGC approved gaming ordinance pursuant to IGRA) is comprehensive and applies all of the relevant legal standards, and was conducted under a set of final regulations and an established classification review process. For example, as part of the bingo game play using the VPNAPS, Tribal regulations (SYGC Regulations 14-I009 and 14-I011) expressly permit: (i) "proxy play" (i.e. Account Holders engage an agent located on the Tribe's Indian Lands to assist with the play of the bingo game on behalf of the Account Holders), (ii) Account Holders to engage their proxy play agent using a Class II gaming system containing a component that facilitates access through a secure virtual private network connection between Account Holders and their proxy agent located on the Tribe's Indian Lands which assists with proxy play on behalf of the Account Holder, and (iii) use of technologic aids to assist the proxy agent playing the bingo games in determining whether a held card has a pre-designated pattern matching the numbers drawn for the bingo game.

P.O BOX 558
Santa Ysabel, CA 92070

PHONE: (760) 765-0553
FAX: (760) 765-3772

SANTA YSABEL TRIBAL GAMING COMMISSION

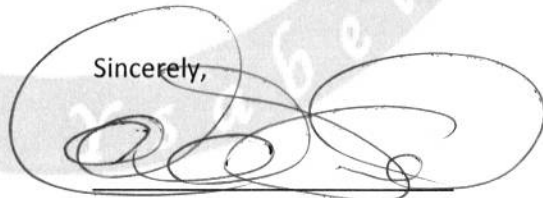
As you also know, the SYGC classification determination made under IGRA is being challenged by the State of California and the U.S. Department of Justice in lawsuits pending in U.S. District Court in San Diego. The Tribe believes that these misguided challenges have the potential to undermine the binding decisions of all tribal gaming commissions throughout Indian country whenever they conduct their primary regulator duties in connection with Class II gaming consistent with the authority provided to them by IGRA. The Tribe also believes that the SYGC classification determination, as final agency action under IGRA, is entitled to great deference from the courts as well as the NIGC, and hopes that the NIGC will stand with and support the SYGC classification determination.

With this in mind, the SYGC and the Tribe voluntarily provide for your reference a courtesy copy of the final classification determination, along with the exhibits and regulations used to reach the conclusions, and respectfully request that you state affirmatively in writing that the NIGC has no objection to the final agency actions adopted by the SYGC under the Tribe's gaming ordinance approved by the NIGC pursuant to IGRA in connection with issuing the classification determination. Given the timeframes required to defend the lawsuits challenging the SYGC's actions, and knowing that the NIGC has already had several months to consider the SYGC classification determination, we ask that the NIGC make its affirmation in writing to us by February 13, 2015. Likewise, if no written objection of the NIGC is received by us by that date, the SYGC and the Tribe will consider the lack of objection to constitute an affirmation by the NIGC of the final agency actions adopted by the SYGC under the Tribe's gaming ordinance approved by the NIGC pursuant to IGRA in connection with issuing the classification determination.

Iipay Nation Chairman Virgil Perez and I believe that the foregoing approach honors and helps ensure that the federal-tribal regulatory system established by IGRA remains intact. We also believe that it would preserve the NIGC's standing in Indian Country while strengthening the Tribe's sovereign rights and gaming rights under IGRA.

Chairman Perez and I look forward to receiving the NIGC written affirmation as mentioned above and working with the NIGC to support the tribal gaming regulatory system that has benefited hundreds of tribal communities, and ushered in the most dramatic period of economic development in modern Indian history.

Sincerely,



David Vialpando, Chairman
Santa Ysabel Tribal Gaming Commission

Attachments

cc: Virgil Perez, Chairman of the Iipay Nation of Santa Ysabel

P.O BOX 558
Santa Ysabel, CA 92070

PHONE: (760) 765-0553
FAX: (760) 765-3772



February 13, 2015

David Vialpando, Chairman
Santa Ysabel Tribal Gaming Commission
P.O. Box 558
Santa Ysabel, CA 92070

Re: Santa Ysabel Tribal Gaming Commission's Game Classification
Determination

Dear Mr. Vialpando,

The National Indian Gaming Commission received your unsigned, February 8, 2015, letter regarding the Santa Ysabel Tribal Gaming Commission's game classification determination of the "Virtual Private Network Assisted Play System," which I have attached. We also received the following:

- Santa Ysabel Tribal Gaming Commission Regulation, Establishing Procedures and Requirements for Approval of Class II Bing Gaming Systems and Equipment (SYGC 14-I009);
- Santa Ysabel Tribal Gaming Commission Regulation Declaration of Situs of VPN Aided Class II Gaming Conducted Under the Tribal Gaming Ordinance (SYGC 14-I010);
- Santa Ysabel Tribal Gaming Commission Regulation, Requirements for VPN Aided Class II Gaming Conducted within Boundaries for the Santa Ysabel Tribal Reservation (SYGC 14-I011);
- Santa Ysabel Tribal Gaming Commission Regulation, Sole Proprietary Interest Determination Under Tribal Gaming Ordinance (SYGC 14-I012);
- Santa Ysabel Tribal Gaming Commission, Classification Determination;
- Description of Proposed VPN Aided Class II Gaming Using 25 CFR Part 547 Class II Gaming System (with attachments);
- June 24, 2014 Game Classification Opinion from Tom Foley to Great Luck, LLC; and
- June 26, 2014 IGRA Opinion re VPNAPS from Tom Foley to Great Luck, LLC.

I believe you are requesting the NIGC state in writing that it has no objection to the Tribal Gaming Commission's game classification adopted under the Iipay Nation of

Letter to David Vialpando
February 13, 2015
Page 2 of 2

Santa Ysabel's Tribal laws and regulations. You further state you would like this affirmation letter by February 13, 2015, and will consider the NIGC's silence or lack of a response by that date to be its consent.

While we appreciate you providing these documents, neither the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*, (IGRA) nor the NIGC regulations have a requirement to submit or have a mechanism for the NIGC to review a tribe's game classification determination made pursuant to that tribe's laws. Furthermore, the NIGC retains the right to determine how a particular game should be classified, whether class II or class III, under IGRA.

If you wish to discuss further, please contact me at (202) 632-7003.

Sincerely,



Eric Shepard
General Counsel (Acting)

Enclosure

cc: Virgil Perez, Chairman of the Iipay Nation of Santa Ysabel (with enclosure)

SANTA YSABEL TRIBAL GAMING COMMISSION

February 15, 2015

Honorable Jonodev O. Chaudhuri, Chairman (Acting)
National Indian Gaming Commission
90 K Street NE, Suite 200
Washington, DC 20002

Dear Acting Chairman Chaudhuri,

On February 13, 2015 Chairman Perez and I received correspondence from the NIGC Acting General Counsel in response to our February 8 letter to you concerning the final agency actions taken by the Santa Ysabel Gaming Commission ("SYGC") relating to the VPN Aided Class II gaming offered by Desert Rose Bingo using the VPNAPS class II gaming system.

It is apparent to us that we must clarify what we requested in our February 8 letter because the Acting General Counsel letter mischaracterized what the SYGC and the Tribe were requesting as to action by you – i.e. the letter stated that we are "requesting the NIGC state in writing that it has no objections to the [SYGC's] game classification adopted under lipay Nation of Santa Ysabel's Tribal laws and regulations." To the contrary, and to be perfectly clear, as we stated in the February 8 letter the SYGC and the Tribe are requesting "that the Acting Chairman state affirmatively in writing that the NIGC has no objection to the final agency actions adopted by the SYGC under the Tribe's gaming ordinance approved by the NIGC pursuant to IGRA in connection with issuing the classification determination" concerning the VPNAPS class II gaming system.

The SYGC took its regulatory actions pursuant to its primary regulator duties in connection with Class II gaming consistent with the authority provided to SYGC under IGRA and the NIGC approved tribal gaming ordinance. In this respect, the contention in the Acting General Counsel's letter that neither IGRA nor NIGC regulations "have a mechanism for the NIGC to review a tribe's game classification determination made pursuant to that tribe's laws" is off the mark and irrelevant to the actual request made by SYGC and the Tribe. Indeed, under both IGRA and NIGC regulations there is an express mechanism for you to use to review the final agency actions adopted by the SYGC under the Tribe's gaming ordinance approved by the NIGC pursuant to IGRA and object if you think those actions are in any way contrary to SYGC's authority under IGRA or the Tribe's NIGC approved tribal gaming ordinance. See 25 U.S.C. §2713 and 25 CFR Part 573.3(a).

The Tribe's position is that the SYGC classification determination, as final agency action under IGRA, is entitled to the highest level of deference from the courts and the NIGC, and hopes that the NIGC will stand with and support the SYGC classification determination. If, however, you believe that the classification determination issued by the SYGC permitting the VPN Aided Class II gaming offered by Desert Rose Bingo using the VPNAPS class II gaming system violates the Tribe's NIGC approved tribal

SANTA YSABEL TRIBAL GAMING COMMISSION

gaming ordinance, then you can use the enforcement action procedures to state your objection to those SYGC regulatory actions – and indeed the NIGC has a federal trust duty and statutory obligation to do so under IGRA. In doing so, you would be required to state the standard of review and level of deference you applied in making your objection to the classification determination issued by SYGC, and specifically to the SYGC conclusions permitting (1) one touch bingo gaming systems, (2) proxy play with Class II bingo games, and (3) the SYGC finding that the gaming activity is “on Indian lands.”

Again, given the timeframes required to defend the lawsuits challenging the SYGC’s actions, and knowing that the NIGC has already had several months to consider the SYGC classification determination, we ask that the NIGC make its affirmation in writing to us by February 23, 2015. The NIGC has conducted at least two site visit inspections of Santa Ysabel’s Desert Rose Bingo operation, the last visit conducted on December 16th, 2014. These inspections were conducted by NIGC Region Director Lance Vallo and his team and involved an extensive examination of every aspect of the Desert Rose Bingo system. The SYGC provided the NIGC inspection team with extensive documentation related to Desert Rose Bingo and its associated systems and processes which they have had several months to review. We understand that Director Vallo’s report regarding Desert Rose Bingo has been completed and routed to NIGC executive staff.

Taking the above information into account, if no enforcement action is commenced against SYGC by the date indicated above in connection with the classification determination issued by SYGC, the Tribe will represent to the courts and others that the NIGC’s inaction on the matter constitutes affirmation of the final agency actions adopted by the SYGC under the Tribe’s gaming ordinance approved by the NIGC pursuant to IGRA in connection with issuing the classification determination concerning the VPNAPS Class II gaming system.

Finally, we must also note that the press release issued on February 13, 2105 by Michael Odle, NIGC Director of Public Affairs concerning the DOJ lawsuit against the Tribe relating to Desert Rose Bingo’s operations contains highly misleading statements. Contrary to the press release statement that at “no time has the [DOJ] ever indicated to NIGC that [DOJ] wanted to make a determination on classification through its action,” the NIGC OGC staff has already been provided written documentation prepared by the Tribe and DOJ demonstrating that a core issue in the DOJ action was the dispute over the classification of the gaming system. The documentation shows that the DOJ would be required as part of its action to prove that the VPNAPS gaming system constituted an “electronic facsimile” of bingo.

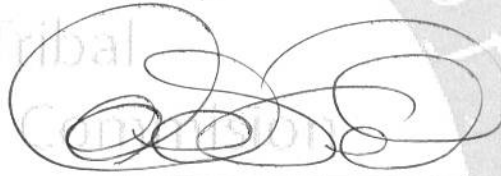
We do not think it is helpful for the NIGC to be issuing blatant misinformation to the media and public as to what the real issues are in the DOJ action. Moreover, the Tribe informed OGC staff that its principal affirmative defense in the DOJ action is that the gaming conducted by our Desert Rose Bingo game is legal IGRA bingo gaming activity. Therefore IGRA and the classification determination issued under IGRA by the SYGC would be central to the action. Under these circumstances, it is disingenuous at best for the NIGC press release to state that the action brought by DOJ “does not include a violation of [IGRA] as a cause of action” so as to (1) leave Indian Country with the impression that important issues

SANTA YSABEL TRIBAL GAMING COMMISSION

relating to one touch bingo and proxy play will not be involved in resolving the DOJ action, and (2) lead Indian Country to not understand that the lack of NIGC participation in the matter really means that the NIGC is abdicating its IGRA responsibilities back to the DOJ.

Chairman Perez and I look forward to receiving the NIGC written affirmation as mentioned above and working with the NIGC to support the tribal gaming regulatory system that has benefited hundreds of tribal communities, and ushered in the most dramatic period of economic development in modern Indian history.

Sincerely,



David Vialpando, Chairman
Santa Ysabel Tribal Gaming Commission

Attachments

cc: Virgil Perez, Chairman of the Iipay Nation of Santa Ysabel



January 27, 2015

Re: **Letter in Support of the Iipay Nation of Santa Ysabel**

To Whom It May Concern:

I write as the elected Chairman of the Middletown Rancheria of Pomo Indians of California (“Middletown”) to express Middletown’s strong legal opinion supporting the operation of all forms of Class II gaming without State of California (“State”) infringement on such Class II games. While Middletown is not privy to the specific facts surrounding the operation of the Iipay Nation’s internet bingo game—and therefore Middletown is not able to opine with regard to the legality of the Iipay Nation’s internet bingo game specifically—Middletown has a strong opinion that the legality of internet gaming is not conclusively foreclosed by federal law, and further, if a game is properly designated as a Class II game, it falls outside of the jurisdiction of the State.

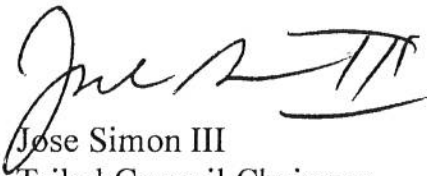
As you know, the Indian Gaming Regulatory Act (“IGRA”) generally allows Indian tribes to have exclusive jurisdiction over Class II bingo on its reservations without state or federal interference. Under IGRA, bingo qualifies as a Class II game if: (1) it is a non-banking game; (2) it utilizes technology that can be construed as electronic, computer or other technologic aids that makes the playing of the game possible, rather than as electronic or electromechanical facsimiles of any game of chance; (3) it is either authorized or not prohibited by the laws of the state in which the tribe’s reservation is located; and (4) it is offered in a manner that complies with any state or local laws or regulations regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. Simply put, and as the NIGC has noted, the game of bingo enjoys a favored status for tribes under the IGRA. Indeed, the game of bingo—even when played with the use of technological aids—is unambiguously defined as a Class II game in the plain text of the IGRA. In summary, as long as the Iipay Nation’s internet bingo game satisfies IGRA’s criteria for the categorization of bingo or bingo-like games as Class II gaming, the inquiry should end there. Moreover, case law affirms that bingo does not lose its Class II designation by virtue of the use of electronic media, including video terminals, to display virtual bingo cards. The State has absolutely no role in the regulation of Class II gaming operated by any tribe.

January 27, 2015
Letter in Support
Iipay Nation of Santa Ysabel
Page 2 of 2

With regard to the applicability of the Unlawful Internet Gaming Enforcement Act, (“UIGEA”), the plain language of UIGEA prohibits persons from engaging in internet gambling or knowingly accepting, in connection with the participation of another person, any *unlawful* internet bets or wagers. But the UIGEA itself does not make any gambling activity illegal. Instead, the term “unlawful” only targets gambling that is unlawful under applicable federal or state law. Again, if a Tribe is able to design an internet bingo game that is clearly designated as a Class II game pursuant to IGRA, then the Class II game should be able to fall under the safe-harbor provisions under UIGEA to allow for legal gambling.

We, Middletown, feel strongly that if the State is allowed this attack of Tribal Sovereignty, then the risk to all tribal Class II gaming guaranteed under IGRA is in danger of being undermined by the State. We wish the Iipay Nation of Santa Ysabel success in making such arguments in their case.

Best regards,

A handwritten signature in black ink, appearing to read 'Jose Simon III', with a stylized flourish at the end.

Jose Simon III
Tribal Council Chairman
Middletown Rancheria