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Description of document: National Indian Gaming Commission (NIGC) Briefing for the Incoming Biden Administration 2020

Requested date: 15-January-2021

Release date: 22-January-2021

Posted date: 22-July-2024

Source of document: Agency FOIA Officer  
National Indian Gaming Commission  
1849 C Street NW  
Mailstop #1621  
Washington, DC 20240  
Email: [foia@nigc.gov](mailto:foia@nigc.gov)  
Fax: (202) 632-7066

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January 22, 2021

**Re: NIGC-FOIA-0137**

This responds to your Freedom of Information Act (FOIA) 5 U.S.C. § 552, request to the National Indian Gaming Commission (NIGC) received in the FOIA office on January 15, 2021. In your request, you stated that you are seeking:

a digital/electronic copy of the transition briefing document(s) (late 2020) prepared by NIGC for the incoming Biden Administration.

#### Search Results

The NIGC FOIA Office has completed a search of its relevant recordkeeping systems and located 1 document (totaling 4 pages) that is responsive to your request. This document is being released to you in full and attached to the email transmitting this letter.

#### Fees

For fee assessment purposes you were designated as an “all others” requester and, therefore, required to pay the full reasonable direct costs incurred for searching for and reproducing records if that total costs exceeds \$15.00, except that the first 100 pages and the first two hours of manual search time shall not be charged.

Because the processing costs did not exceed \$15.00, there are no fees being assessed for this request.

## Closure of Request

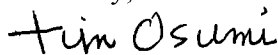
As this completes the processing of your request, the NIGC now considers your request closed. Pursuant to 25 C.F.R. § 517.8, you may challenge the NIGC FOIA Office's determination by submitting a written appeal to the National Indian Gaming Commission, 1849 C Street N.W., Mail Stop #1621, Washington, D.C., 20240 no later than ninety (90) days after the date of this letter. *See* 5 U.S.C. § 552 (a)(6)(A)(i)(III)(aa). Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." The written submission should include copies of the original request, the denial, and a brief statement of the reasons you believe the denial to have been in error.

Please be advised that you have the right to seek dispute resolution services from the NIGC's FOIA Public Liaison or the Office of Government Information Services (OGIS). If you wish to contact the NIGC's FOIA Public Liaison, please contact Jo-Ann Shyloski at (202) 632-7003 or by way of e-mail at Jo-Ann\_Shyloski@nigc.gov. If you would prefer to contact OGIS, you may do so in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: (202) 741-5770  
Fax: (202) 741-5769  
Toll-free: 1 (877) 684-6448

If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (202) 264-0676.

Sincerely,



Tim Osumi  
Chief FOIA Officer



## **National Indian Gaming Commission**

### **I. NIGC Contact**

- Michael C. Hoenig, General Counsel, Michael\_Hoenig@nigc.gov, 202-420-9241

### **II. Summary of the National Indian Gaming Commission**

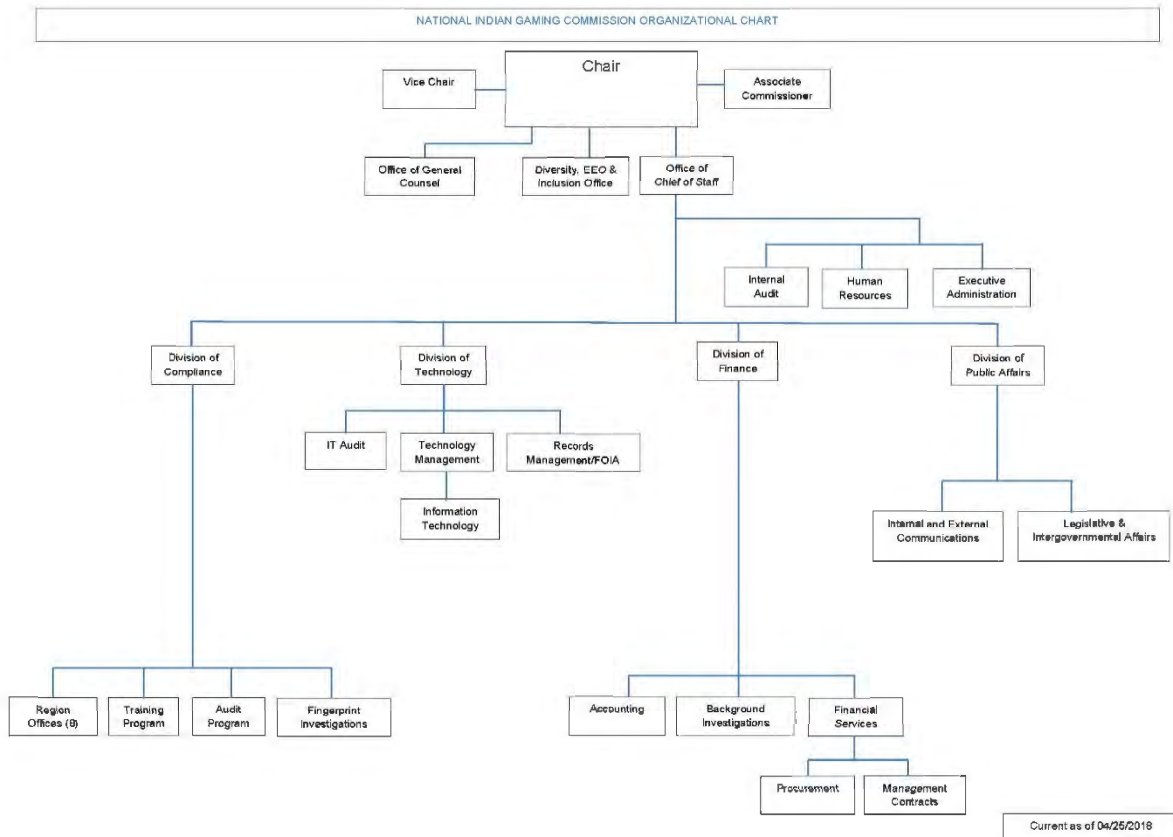
- Overview of NIGC's mission

The National Indian Gaming Commission (NIGC) is an “independent Federal regulatory authority” within the Department of the Interior. By the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. § 2701, *et. seq.*, Congress established the NIGC in order to provide federal regulatory oversight of Indian gaming on Indian lands. The NIGC is composed of three members—a Chair and two associate commissioners. The Chair is appointed by the President and must be confirmed by the Senate. The associate commissioners are appointed by the Secretary of the Interior. The three commissioners vote to elect a Vice Chair. Under IGRA, at least two of the three commissioners must be enrolled members of federally recognized Indian tribes, and no more than two may be of the same political party. Each commissioner serves a three-year term, but a commissioner may serve after the expiration of their term until a successor has been appointed. Two members of the NIGC constitute a quorum.

Under IGRA, the NIGC has several specific responsibilities. First, the NIGC Chair must approve tribal gaming ordinances before Indian tribes operate gaming on their Indian lands. Also, if a tribe wishes to use an outside contractor to manage its gaming operation, the Chair must first approve the management contract. In conjunction with such review, the principals of each management company must pass a detailed background investigation conducted by NIGC investigators. IGRA also provides authority for the NIGC to inspect gaming operations and monitor the tribes' use of gaming revenue. The Chair has authority to bring enforcement actions and assess civil fines against Indian tribes or outside managers for any violation of IGRA, the NIGC's regulations, or an approved tribal gaming ordinance. Appeals from the Chair's decisions regarding tribal gaming ordinances, management contracts, and enforcement actions are heard by the full Commission. Regulations and subpoenas are also issued by the full Commission.

The NIGC regulates and ensures the integrity of the more than 520 Indian gaming facilities, associated with nearly 247 tribes across 29 states. The agency is funded entirely by fees paid from the Indian gaming operations and potential management contractors.

- NIGC Organizational Chart



- Workforce

The NIGC has 115 employees. Fifty-four employees work at the headquarters office, located at 90 K Street, Northeast, in Washington, D.C. The agency also has eight regional offices in: Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; Tulsa and Oklahoma City, Oklahoma; Rapid City, South Dakota; and at the agency’s headquarters in Washington, D.C. The NIGC’s region offices house NIGC staff in the Compliance Division, including Compliance officers and financial and information technology auditors, making it possible to have regular contact with tribes at their gaming locations.

### III. NIGC’s Leadership Team

- Chair (PAS Official)

E. Sequoyah Simermeyer is the NIGC Chair and a registered Republican. He is an enrolled member of the state-recognized Coharie Tribe of North Carolina. The U.S. Senate unanimously confirmed his nomination as Chair in November 2019 after which he was appointed by President Donald J. Trump to a three-year term. Before serving as Chair, Simermeyer was appointed by the Secretary of the Interior in November 2015 to serve as the NIGC's Associate Commissioner.

- Vice Chair (Inferior Officer)

Kathryn Isom-Clause is the Vice Chair of the NIGC and a registered Democrat. She is an enrolled member of Taos Pueblo. The Secretary of Interior appointed the Vice Chair on March 14, 2016 for a three-year term.

- Acting Chief of Staff (Senior Career Employee)

Dustin Thomas is the Acting Chief of Staff for the NIGC. Prior to becoming Acting Chief of Staff in June of 2020, Thomas served as the Director of Compliance. Thomas is an enrolled member of the Six Nations Mohawk Tribe and affiliated with the Oneida Indian Nation.

- General Counsel (Senior Career Employee)

Michael Hoenig is the NIGC's General Counsel. He joined the NIGC as a Staff Attorney in 2006, was made Associate General Counsel in 2014, and General Counsel in 2016.

#### IV. Critical Issues for Interior

##### *Commission Vacancy*

The position of associate commissioner is currently vacant and should be filled to seat a full Commission. Under IGRA, the Secretary of Interior appoints the two associate commissioners. Since May 2019, when Chair Jonodev Chaudhuri resigned, the NIGC has been operating with only two commissioners: Vice Chair Isom-Clause and Chair (then Commissioner) Simermeyer. Although functional, this situation leaves the agency at risk of losing its quorum should one commissioner leave, be recused from a particular matter, or otherwise be unable to discharge their duties.

As explained above, IGRA mandates that at least two of the three commissioners be enrolled members of federally recognized Indian tribes and that no more than two be of the same political party. Each commissioner's statutory term is three years, but each may serve beyond their term until their successor is appointed. Current Chair Simermeyer is an enrolled member of the state-recognized Coharie Tribe of North Carolina and a registered Republican. The U.S. Senate unanimously confirmed his nomination and President Donald J. Trump appointed him in November 2019. Chair Simermeyer's three-year term of office expires in December 2022; but, as provided in IGRA, he may serve after his term's expiration until his successor is appointed. Vice Chair Isom-Clause, an enrolled member of Taos Pueblo and a registered Democrat, was appointed by the Secretary on March 14, 2016. Her three-year term expired on March 14, 2019.

Since that time, she has continued to serve in her position, as her successor has not yet been appointed. Like other former commissioners, Vice Chair Isom-Clause also may be reappointed by the Secretary to serve a second three-year term.

Given the Commission's current configuration, the new Associate Commissioner must be an enrolled member of a federally recognized Indian tribe, since the Chair's tribe is state-recognized but not federally recognized. Also, because both a registered Republican and a registered Democrat presently sit on the Commission, the new Associate Commissioner may be of either party, a registered Independent, or of no party affiliation. Although the final decision regarding the appointment of an associate commissioner rests with the Secretary of the Interior, the NIGC encourages the Transition Team to identify a short list of candidates.

### *Commission Funding*

The NIGC's operating budget is funded by fees assessed against the tribal gaming operations it regulates. As an independent regulatory agency, the NIGC has never received funding directly from the Department of the Interior, though its funding has evolved since the agency's creation. The NIGC was fully funded by appropriations when it was created. NIGC began collecting fees in FY 1991 but did not begin using them until FY 1993. Through FY 1998, NIGC was funded through a combination of tribal fees and federal appropriations. Since FY 1998, federal funds have not been appropriated for the operation of the NIGC. Rather, the agency has been funded solely with fees assessed against tribal gaming operations.

The COVID-19 Pandemic has caused every tribal gaming operation except one to temporarily close. This suspension of gaming activity has had a tremendous impact on those tribes that rely on gaming revenue to fund essential programs and government operations. Although the majority of tribes were able to make third quarter fee payments, the NIGC has heard from numerous tribes and the National Indian Gaming Association about the long-term impact the pandemic has had on tribal gaming operations' ability to pay fees.

Even as some tribes begin reopening, though, they are doing so in a new environment and under self-imposed limitations which, while designed to protect the health and safety of its patrons, will likely result in decreased gaming revenues for the foreseeable future. This decreased gaming revenue as a result of the pandemic will likely impact the NIGC in two ways. First, as tribes determine how to fund government operations and programs during closure or with decreased income, they may be unable to pay NIGC fees or decide to prioritize vital services and programs over NIGC fees. Second, because the NIGC's fees are calculated based on the previous fiscal year, the NIGC's future fee collections are likely to be significantly reduced.

As a result, the NIGC has made a preliminary request to DOI for CARES Act funding.<sup>1</sup> The NIGC has also entered into discussions with the Office of Management and Budget for a limited, discretionary appropriation to ensure that the NIGC is able to continue performing our statutory duties.

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<sup>1</sup>See Letter from Commission to Scott Cameron, Acting Assistant Secretary for Policy, Management and Budget (September 6, 2020).