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Resources, Community, and  
Economic Development Division

B-278768

December 19, 1997

The Honorable Tadd M. Johnson  
Chairman  
National Indian Gaming Commission

Subject: Indian Gaming: Federal Controls Did Not Detect Compact Approval Violation

Dear Mr. Chairman:

As a part of an ongoing study for the Senate Committee on Indian Affairs, we are looking at the implementation of gaming regulation by the National Indian Gaming Commission (Commission), the state of Washington, and several other states.<sup>1</sup> While conducting this study, we found that the Nisqually Indian Tribe was operating class III (casino-type) gaming in Washington without the approval of the Secretary of the Interior, which is required by the Indian Gaming Regulatory Act of 1988 (IGRA).<sup>2</sup>

In summary, the tribe did not submit its compact<sup>3</sup> with the state of Washington to the Secretary for approval until very recently. As a result, the Indian Gaming Management Staff, an administrative office within the Bureau of Indian Affairs that receives and logs in the compacts submitted for the Secretary's approval and publishes a list of approved compacts, did not know that the tribe had a compact with the state. In addition, the Commission,

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<sup>1</sup>Arizona, Michigan, Nevada, and New Jersey.

<sup>2</sup>P.L. 100-497, Oct. 17, 1988; 25 U.S.C. 2701 et seq.

<sup>3</sup>A compact is an agreement that may include provisions concerning standards for the operation and maintenance of the gaming facility, the application of laws and regulations of the tribe or the state that are related to the licensing and regulation of the gaming activity, and the assessment by the state of the amounts necessary to defray the costs of regulating the gaming activity.

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which oversees and enforces compliance with class III gaming regulations, was not aware that the Nisqually Indian Tribe was operating class III gaming without the required approval of its compact. Although we do not know why this omission was not detected, we are concerned that similar instances of noncompliance may or could exist elsewhere and go unnoticed.

### BACKGROUND

The Congress passed IGRA in an attempt to ensure the integrity of Indian gaming and its conduct in a safe, fair, and crime-free environment. To ensure compliance with IGRA, the Secretary reviews and approves the compacts negotiated between tribes and states.<sup>4</sup> He also reviews the compacts to ensure that they comply with other federal laws and do not violate the trust obligation of the United States to Indians.

Under IGRA, class III gaming activities shall be lawful on Indian lands only if such activities are conducted in conformance with a compact that (1) has been entered into by the Indian tribe and the state and (2) is in effect. A compact takes effect when the Secretary of the Interior has published a notice of approval of the compact in the Federal Register.<sup>5</sup> Under the Commission's regulations, operating class III games "in the absence of a tribal-state compact that is in effect" is a "substantial violation."

Once the tribe and the state negotiate and sign their compact, the tribe is responsible for submitting the compact to the Department of the Interior for the Secretary's approval. The Indian Gaming Management Staff receives and logs in these compacts. It also maintains and publishes a list of compacts that are in effect.<sup>6</sup> The Commission is responsible for regulating and monitoring both class II gaming (such as bingo) and class III gaming. Once a class III facility is in operation, the Commission is responsible for monitoring the facility's compliance with IGRA's requirements and with the Commission's regulations. The Commission is also responsible for publishing enforcement regulations for class III gaming and for issuing a notice of violation or an

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<sup>4</sup>The Secretary of the Interior has delegated this authority to the Assistant Secretary-Indian Affairs, who is responsible for the Bureau of Indian Affairs.

<sup>5</sup>25 U.S.C. 2710(d)(3)(B).

<sup>6</sup>The Commission makes this listing, as well as other Commission documents, available to the public 24 hours a day through the National Indian Gaming Commission Information System.

order of temporary closure for substantial violations if it cannot obtain voluntary compliance. The Commission also may assess civil fines for violations of IGRA.

FEDERAL CONTROLS DID NOT DETECT COMPACT APPROVAL VIOLATION

Federal controls did not detect that the Nisqually Indian Tribe was operating a class III gaming facility without a compact in effect. The tribe and the state of Washington negotiated a compact, which both signed on May 25, 1995. On May 1, 1997, the tribe began class III gaming at its Red Wind Casino in Yelm, Washington. However, because the tribe did not submit the compact to the Secretary for approval, the tribe's compact was never in effect. Thus, IGRA's requirements for the operation of class III gaming—approval of the compact by the Secretary of the Interior and publication of the notice of approval in the Federal Register—were not completed, and the tribe's class III operation is not in compliance with the act's requirements.<sup>7</sup>

In October, when we brought this information to the attention of the Department of the Interior and the Commission, neither was aware that the tribe's casino was operating without a compact in effect. A Commission official told us in November that the tribe had been contacted and was planning to submit its compact for approval. According to this official, the tribe conceded that it had not submitted the compact to the Secretary. On December 10, 1997, the Indian Gaming Management Staff received the compact for the Secretary's approval.

Under its enforcement regulations, the Commission can issue a notice of violation for any violation of IGRA's provisions. With or after issuing a notice of violation, the Commission may issue an order of temporary closure for all or part of an Indian gaming operation if a "substantial violation" is present. The Commission did not initiate either a notice of violation or a temporary closure order for this violation. According to the Commission's Director of Enforcement, the Commission considers the tribe's failure to submit the compact for Secretarial approval a technical oversight by the tribe. He also told us that the Commission is working to bring the Nisqually gaming facility into compliance.

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<sup>7</sup>It is also unlawful to possess or use any gambling device on an Indian reservation unless a compact is in effect. 15 U.S.C. 1175 and 25 U.S.C. 2710(d)(6).

## CONCLUSIONS

The Nisqually Indian Tribe's class III facility is operating without a compact in effect. Until very recently, the tribe did not submit its compact for approval to the Secretary of the Interior as required. No matter what the primary cause of this particular violation may have been, the federal government's controls were inadequate. They did not identify the omission and may not be adequate to identify other violations.

## RECOMMENDATIONS

We recommend that you take the steps necessary to bring the tribe's gaming operation into compliance with IGRA's requirements and with the Commission's regulations.

We also recommend that you determine if similar violations are occurring elsewhere. In addition, to avoid similar violations in the future, you should review and evaluate the Commission's current controls, including reporting requirements, processes, and procedures for overseeing class III gaming, and take appropriate steps to strengthen the controls to ensure compliance with IGRA's requirements and with the Commission's regulations.

## SCOPE AND METHODOLOGY

As part of our work on another assignment, we obtained a copy of the Nisqually Indian Tribe's compact from the state of Washington. Since the compact was not shown on the list of compacts in effect, we discussed this matter with officials of the Indian Gaming Management Staff. When they confirmed that their office had not received a compact for approval, we notified the National Indian Gaming Commission.

While the Commission was not aware that the Nisqually compact had not been submitted for the Secretary's approval, the Commission's Director of Enforcement told us that the Nisqually gaming facility had received oversight from the Commission's field staff since its opening in May. In addition, the Director told us that, as a part of their oversight responsibilities, the Commission's field staff will be required to verify that gaming operations have a compact in effect.

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We did not assess the Commission's internal controls to identify why this violation was not detected. We performed our review from October through December 1997 in accordance with generally accepted government auditing standards.

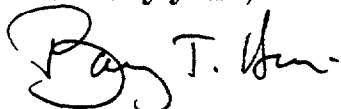
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This report contains recommendations to you. As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement of the actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Reform and Oversight not later than 60 days after the date of this letter and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of this letter.

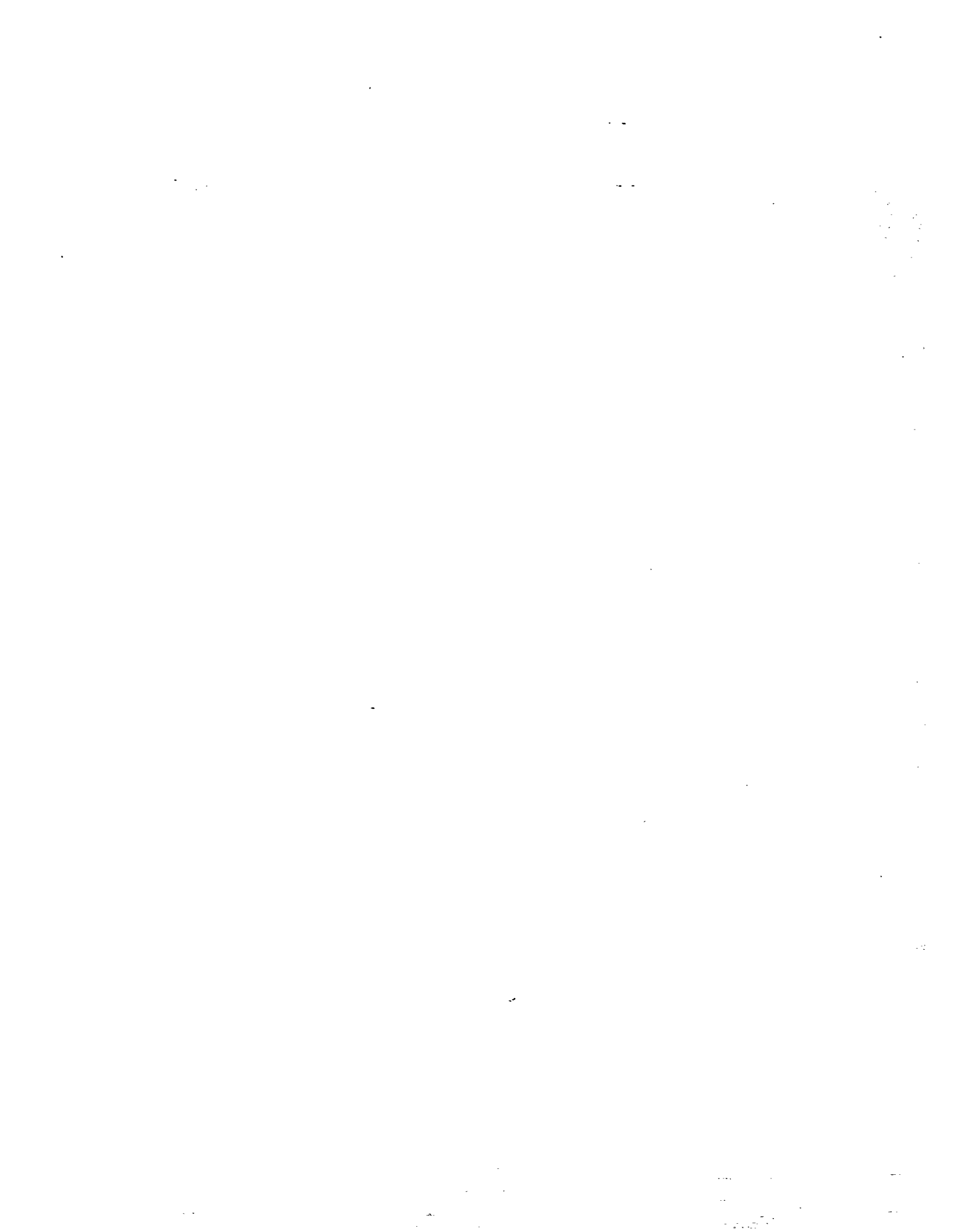
We are providing copies of this report to the Senate Committee on Indian Affairs and to other appropriate congressional committees, as well as to the Secretary of the Interior; the Assistant Secretary for Indian Affairs; and the Director, Indian Gaming Management Staff. We will also provide copies to others on request.

If you or your staff have any questions about this report, please call me at (202) 512-3841.

Sincerely yours,



Barry T. Hill  
Associate Director, Energy,  
Resources, and Science Issues



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