IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONFEDERATED SALISH AND KOOTENAI TRIBES, *et al.*, Plaintiffs, v. NATIONAL INDIAN GAMING COMMISSION, *et al.*, Defendants.	)	Case No. 1:05CV00495 (RWR)

NOTICE OF MOTION AND MOTION OF CALIFORNIA NATIONS INDIAN GAMING ASSOCIATION AND NATIONAL INDIAN GAMING ASSOCIATION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

The California Nations Indian Gaming Association, a non-profit organization of sixty-four federally recognized Indian tribal governments, and the National Indian Gaming Association, a non-profit organization of 184 federally recognized Indian tribal governments, respectfully move the Court for leave to file an amicus curiae brief in support of Plaintiffs' Motion for Summary Judgment. This motion will be and is made based on this Notice of Motion and Motion, the Memorandum of Points and Authorities herein, the proposed Amicus Curiae brief submitted herewith, the Exhibits in support thereof, and the pleadings and papers filed herein.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

I. Background

In this action under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA) and the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (2001), the Salish

and Kootenai Tribes and Santa Rosa Rancheria ("Tribes") seek review of a decision of the National Indian Gaming Commission (NIGC) to assemble and operate a Tribal Advisory Committee (TAC) without adhering to FACA. The NIGC organized and operated the TAC to solicit advice in drafting regulations which the NIGC intends to use as a Proposed Rule that will be published in the Federal Register. The NIGC concedes that the Tribal Advisory Committee is a federal advisory committee as defined in FACA. The Tribes contend that the NIGC was therefore required to comply with the provisions of FACA and its implementing regulations in operating the TAC. The Tribes assert that in deciding not to comply with FACA, the NIGC acted arbitrarily and capriciously, not in accordance with law, and without observation of procedure required by law, all in violation of the Administrative Procedure Act. The central question in this action is whether the NIGC's decision to establish and operate the TAC without adhering to FACA was a violation of the Administrative Procedure Act.

II. CNIGA, NIGA, and Their Interests In This Case Warrant Granting the Motion.

The California Nations Indian Gaming Association (CNIGA), established in 1988, is a non-profit organization of sixty-four federally-recognized Indian Nations. CNIGA's member Nations are located throughout the State of California and include tribes that operate class II and class III gaming enterprises that will be affected by the NIGC's actions that are the subject of this case.

CNIGA's primary mission is to protect and preserve tribes' opportunity to promote tribal economic development, self-sufficiency, and strong tribal governments by operating tribally-owned governmental gaming enterprises in Indian Country. *See* 25

U.S.C. § 2702(1). In addition, CNIGA's fundamental purposes are to protect and preserve the general welfare and interests of Indian tribes through the development of sound policies and practices with respect to the conduct of gaming activities in Indian country, to assist Indian tribes and the federal government by providing technical assistance relating to the Indian gaming industry wherever such assistance may benefit the common interests of the association members and the Indian gaming community generally, to disseminate information to the Indian gaming community, the federal and state governments, and the general public on issues related to the conduct of gaming in Indian country, and to preserve and protect the integrity of gaming conducted in Indian country. In addition, CNIGA seeks to maintain, protect and advocate Indian tribal sovereign governmental authority in Indian Country.

The National Indian Gaming Association (NIGA), established in 1985, is a non-profit organization of 184 federally recognized Indian Nations, as well as other non-voting associate members representing organizations, tribes and businesses engaged in tribal gaming enterprises from around the country. NIGA's Member Tribes are located throughout Indian country and operate class II and class III gaming enterprises that will be affected by the NIGC's actions that are the subject of this case.

NIGA's fundamental purpose is to advance the lives of Indian people economically, socially and politically. NIGA's primary mission is to protect and preserve tribes' opportunity to promote tribal economic development, self-sufficiency, and strong tribal governments by operating tribally-owned governmental gaming enterprises in Indian Country. *See* 25 U.S.C. § 2702 (1). In addition, NIGA seeks to maintain and protect tribal sovereign governmental authority in Indian Country.

In the pursuit of these goals, CNIGA and NIGA operate as information clearinghouses and educational, legislative and public policy resources for Tribes, policymakers and the public concerning Indian gaming issues and tribal community development. In this capacity, CNIGA and NIGA work with Congress and federal agencies, including the NIGC, to develop sound policies and practices and to provide technical assistance and advocacy regarding Indian gaming-related issues.

The question presented here is of considerable interest to CNIGA's sixty-four member tribes and NIGA's 184 member tribes. In enacting the Indian Gaming Regulatory Act, Congress carefully balanced the competing regulatory interests of federal, state, and tribal governments given the overriding "principal goal of Federal Indian policy . . . to promote tribal economic development, tribal self-sufficiency, and strong tribal government . . . ." 25 U.S.C. § 2701(4). *See also* 25 U.S.C. § 2701(5) ("Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity"); S. Rep. No. 100-446 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3071 ("In developing the legislation, the issue has been how best to preserve the right of tribes to self-government while, at the same time, to protect both the tribes and the gaming public from unscrupulous persons").

A central question presented in this case, namely whether the tribal representatives on the TAC were "elected officers of ... tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities," 2 U.S.C. § 1534 (b)(1), bears directly on the tribal sovereignty of all of

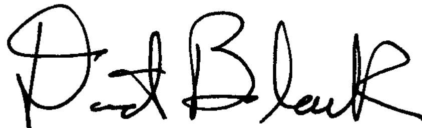
CNIGA's and NIGA's member Tribes by implicating their governmental structure, governmental procedures and law, and by potentially subjecting their gaming activity to improperly enacted NIGC regulations. Thus, CNIGA, NIGA, and their member Nations have a substantial interest in the outcome of this case.

CNIGA's and NIGA's specialized knowledge in this area of the law, their more than 15 years of experience in addressing these issues, and their vast tribal government membership all will contribute to their ability to assist the Court in adjudicating this action. Should they be granted leave to file an amicus brief, CNIGA and NIGA will use their best efforts to avoid duplicating the parties' briefs.

Federal district courts have "broad inherent authority to permit or deny an appearance as amicus curiae in a given case. *United States v. Ahmed,* 788 F. Supp. 196, 198 at n.1 (S.D.N.Y. 1992), *aff'd*, 980 F.2d 161 (2d Cir. 1992). The amicus privilege 'rests in the discretion of the court which may grant or refuse leave according as it deems the proffered information timely, useful, or otherwise.'" *Long Island Soundkeeper Fund, Inc. v. New York Athletic Club of the City of New York*, 1995 WL 358777 (S.D. N.Y. 1995), (*citing Leigh v. Engle,* 535 F. Supp. 418, 420 (N.D. Ill. 1982)). Thus, federal district courts may exercise "broad discretion in deciding whether to accept an *amicus* brief." *City of New York v. United States,* 971 F. Supp. 789, 791 at n. 3 (S.D. N.Y. 1997). "Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case..." *United States v. Davis*, 180 F. Supp.2d 797, 800 (E.D.La. 2001) (citations omitted).

For all of these reasons, CNIGA and NIGA respectfully request that the Court grant its motion for leave to file its proposed amicus curiae brief.

Respectfully submitted,



Martin J. Jaron, Jr. (D.C. Bar No. 358439)
David S. Black (D.C. Bar No. 459980)
HOLLAND & KNIGHT LLP
1600 Tysons Boulevard
Suite 700
McLean, Virginia 22101-4867
703-720-8600 Phone
703-720-8610 Fax

Jerome L. Levine (Cal. Bar No. 38631)
Frank R. Lawrence (Cal. Bar No. 147531)
Teresa E. Poust (D.C. Bar No. 483137)
Zehava Zevit (Cal. Bar No. 230600)
HOLLAND & KNIGHT LLP
633 West Fifth Street
21st Floor
Los Angeles, CA 90071
213-896-2400 Phone
213-896-2450 Fax

Counsel for California Nations Indian Gaming Association and National Indian Gaming Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 28th, 2005, a true and complete copy of the foregoing

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was served via first-class mail, postage prepaid, on the following persons:

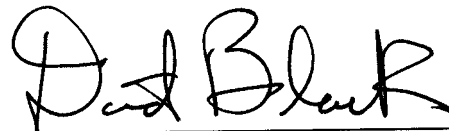
Allen V. Farber
Rebecca A. Hirselj
GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, DC 20005-3317

Daniel F. Decker
DECKER & DESJARLAIS, PLLC
P.O. Box 310
St. Ignatius, MT 59865

COUNSEL FOR PLAINTIFFS

David M. Glass
U.S. Department of Justice
20 Mass. Ave., N.W., Room 7140
Washington, D.C. 20530

COUNSEL FOR DEFENDANTS



David S. Black