

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, OCTOBER 11, 2012
APPROVED MINUTES**

Chair John Ellis called the Gambling Commission public meeting to order at 1:00 p.m. at the Yakima Clarion Hotel and Conference Center and introduced the members present.

MEMBERS PRESENT: **Chair John Ellis**, Seattle
 Vice-Chair Mike Amos, Selah
 Commissioner Kelsey Gray, Spokane/Seattle
 Commissioner Margarita Prentice, Seattle
 Senator Jerome Delvin, Pasco

STAFF: **Rick Day**, Director
 David Trujillo, Deputy Director
 Mark Harris, Assistant Director – Field Operations
 Amy Hunter, Administrator – Communications & Legal
 Callie Castillo, Assistant Attorney General
 Gail Grate, Executive Assistant

Agenda Review/Director’s Report

Director Rick Day pointed out some last minute documents, briefly reviewed the agenda, and noted there were no staff requested changes to the agenda. He estimated the need for approximately a two-hour executive session to discuss matters of investigation, tribal negotiation, and litigation. He noted the next Commission meeting was currently scheduled for Thursday and Friday, November 15 and 16. Staff anticipates the meeting will be reduced to one day, Thursday, November 15, with a start time of 1:00 p.m.

Chair Ellis welcomed Chairman Iyall of the Cowlitz Tribe, who was in the audience.

Director Day reported on the House-Banked Card Room Summary of Activity, explaining the house-banked card rooms have to submit financial statements within 120 days following the end of their business year. A memorandum from Program Manager Keith Schuster was included in the agenda packets. The reporting period ended December 31, 2011. There were 34 licensees that reported net income between approximately \$18,000 and \$2.8 million, 25 licensees that reported a net loss between \$3,500 and \$2.2 million, and of the 59 licensees that reported, 13 had “going concern” issues, which was up 7 percent from last year. In 2010 there were 11 case reports written by the Financial Investigations Unit, but only 4 in 2011.

Director Day explained there was no congressional federal report under the monthly update reports because there was nothing to report. Although there has been activity relative to a

proposal about internet gambling, staff has yet to see any kind of draft bill, but there is a lot of discussion that there may be something in the lame duck session of Congress. He pointed out a number of news articles. One was “Full Tilt Poker’s Nelson Burtneck Pleads Guilty to Black Friday Charges,” which the Gambling Commission was involved with the FBI in the federal indictments for that investigation. Another article was “Criminal Sentence for Role in Casino Theft,” which was the Tran case. From the Gambling Commission perspective, that had been investigated and referred for prosecution around 2005 or 2006. The primary defendant in that matter has finally been sentenced.

Chair Ellis asked if there were any questions; there were none.

Approval of Minutes – September 13, 2012 Regular Commission Meeting

Chair Ellis asked if there were any comments or corrections to the minutes; there were none.

Commissioner Gray made a motion seconded by **Commissioner Prentice** to approve the minutes from the September 13, 2012, Commission meeting as submitted. *Vote taken; the motion passed with four aye votes.*

- ADMINISTRATIVE PROCEDURE ACT PROCEEDINGS -

New Licenses and Class III Certifications

Deputy Director David Trujillo reported there were no unusual items associated with these investigations. He pointed out a pre-licensing informational report of a manufacturer who is included on the list. Staff recommends approval of all the new licenses and class III certifications listed on pages 1 through 17.

Commissioner Gray made a motion seconded by **Commissioner Amos** to approve the new licenses and Class III certifications listed on pages 1 through 17. *Vote taken; the motion passed with four aye votes.*

Defaults:

Ms. Amy Hunter reported that staff was requesting four defaults, all for individuals. None of the employees are currently working in a capacity that would require a license or certification.

Soname Tshering, Card Room Employee, Revocation

Ms. Hunter reported that charges were issued to Mr. Soname Tshering based on an Attempted Theft 2 guilty plea that stemmed from taking money when he worked for a house-banked card room between November 2009 and 2010. At the time, staff did not pursue administrative charges because the investigation was ongoing and his license expired. Then Mr. Tshering reapplied for and was issued a card room license. After being licensed, he pled guilty to the Attempted Theft 2 charge, but failed to disclose that charge and conviction to the staff. The Director issued an Order of Summary Suspension that stated that Mr. Tshering needed to stop working immediately. The Order was personally served to Mr. Tshering, but he did not respond

to the charges. By failing to respond, he waived his right to a hearing, and staff is requesting the Commission enter a final order in default to revoke his license.

Chair Ellis asked if there were any questions; there were none. He asked if Soname Tshering was present or someone representing him; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Gray** that the Commission revoke the Card Room Employee license for Soname Tshering. *The vote was taken; the motion passed with four aye votes.*

Vernon A. Mitchell, Card Room Employee, Revocation

Ms. Hunter reported that Mr. Mitchell was licensed in 2010 and since then has been the subject of six new court cases resulting in five cases being sent to collections due to non-payment. Mr. Mitchell has two active warrants and eight active failures to appear or failures to remit on his record. The lack of payment on his court ordered fines has resulted in over \$3,000 being sent to collections. Deputy Director Trujillo issued charges to Mr. Mitchell by certified and regular mail to the last address on file at the Gambling Commission. The charges that were sent by certified mail were returned as unclaimed; however, the charges that were sent by regular mail were not returned, so staff presumed that Mr. Mitchell received them. Staff left Mr. Mitchell a message reminding him of the deadline to request a hearing but did not hear from him, so he has waived his right to a hearing. Ms. Hunter pointed out an error on the first page of the Order under paragraph one. On the final Order, assuming the Commission approves this, staff will change the date from July 16, 2011, to July 16, 2012. Staff recommends that Mr. Mitchell's license be revoked.

Chair Ellis asked about the reference in paragraph one of the Findings that indicated the license expired, in past tense, on July 18, 2013. **Ms. Hunter** thanked Chair Ellis for catching that and said she would double check the date. It either will expire in July of 2013, or it expired in 2012. Ms. Hunter thought it expired in 2012, but would double-check.

Chair Ellis asked if there were any questions; there were none. He asked if Vernon A. Mitchell was present or someone representing him; no one stepped forward.

Commissioner Gray made a motion seconded by **Commissioner Amos** that the Commission revoke Vernon A. Mitchell's Card Room Employee license. *The vote was taken; the motion passed with four aye votes.*

John T. Cavitt, Class III Employee, Revocation

Ms. Hunter reported that John Cavitt holds a Class III certification. The charges were based on Mr. Cavitt's tribal license being revoked when he worked for the Tulalip Tribe. He did not report that history to the Swinomish Tribe when he went to work for them. When the Swinomish Tribe discovered that Mr. Cavitt had not reported that the Tulalip Tribe revoked his license, the Swinomish Tribe pursued charges to revoke Mr. Cavitt's license. These charges would be to mirror the Tribe's action by revoking Mr. Cavitt's certification. The Director issued the charges to him by certified and regular mail. The certified mail was returned unclaimed, but the one sent

by regular mail was not returned. Staff tried to call to Mr. Cavitt, but were unable to reach him. He did not respond to the charges, so he has waived his right to a hearing. Ms. Hunter reported there was a small error on this Order at the top of page two. In the last sentence in paragraph 2), the last word should be license instead of certification. It should say "... which prompted the STGA's revocation of Mr. Cavitt's 2012 license." The Tribe revoked his license and staff is recommending the Commission revoke his Class III Employee certification.

Chair Ellis asked if there were any questions; there were none. He asked if John T. Cavitt was present or someone representing him; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Gray** that the Commission revoke the Class III Employee certification for John T. Cavitt. *The vote was taken; the motion passed with four aye votes.*

Erin A. Combs, Card Room Employee, Revocation

Ms. Hunter reported that during staff's post-licensing investigation, it was determined that Ms. Combs had failed to disclose her out-of-state criminal history. While in California, she had pled no contest to two misdemeanor counts of Unlawful Sexual Intercourse with a Minor that had occurred when she was about 33 years of age. The charges were sent to her by certified and regular mail. The certified mail came back unclaimed but the regular mail did not. Staff tried to make a reminder call but were unable to reach her. Ms. Combs has waived her right to a hearing, and staff would recommend that Ms. Combs' license be revoked.

Chair Ellis asked if there were any questions; there were none. He asked if Erin A Combs was present or someone representing her; no one stepped forward.

Commissioner Gray made a motion seconded by **Commissioner Prentice** that the Commission revoked Erin A. Combs' Card Room Employee license. *The vote was taken; the motion passed with four aye votes.*

Rules Up For Final Action

Petition from the Public: Recreational Gaming Association – Permanently Increasing Texas Hold'em Wager Limits from \$40 to \$100.

- a) Amendatory Section: **WAC 230-15-135** Wagering limits for nonhouse-banked card games.
- b) Repealed Section: **WAC 230-15-189** Pilot program on wagering limits for Texas Hold'em poker.

Assistant Director Mark Harris reported the petitioner, Dolores Chiechi representing the Recreational Gaming Association, is requesting the Texas Hold'em wager limits be increased from \$40 to \$100. It also repeals WAC 230-15-189 because the pilot program expires the end of December. This proposal comes after an 18-month pilot program that ran from October 2010 to May 2012 and increased the wager limits from \$40 to \$100 for Texas Hold'em poker. The pilot program was used to test the regulatory and economic impacts of higher wager limits and help determine whether there was a demand for higher wager limits for Texas Hold'em poker. Staff

presented a final report at the May 2012 Commission meeting and noted in the report that if the Commission were to receive a petition to make the increased wager limits permanent, staff would recommend filing that petition for discussion. The full version of the report is included in the agenda packets. AD Harris touched on some of the key points in the report. Staff has received two pieces of correspondence from the public supporting the rule change. The petitioner is present if the Commission has any questions.

Chair Ellis asked if there were any questions; there were none. He asked if Ms. Chiechi would like to speak.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association (RGA), explained this has been a long process and the RGA has looked at it very carefully. She said George Teeny was present to answer any technical questions on how it might impact. The RGA would appreciate a positive vote in moving this pilot program into a permanent rule and see how it goes for the future. Ms. Chiechi anticipated other card room operators may engage in this activity now that there is not all the tracking of all of the things that were required through the pilot program, but that is yet to be seen. She said the RGA would appreciate a positive vote on this petition.

Chair Ellis asked if there were any questions; there were none. He asked if there was any public comment; there was none.

Commissioner Amos made a motion seconded by **Commissioner Gray** that the Commission approve WAC 230-15-135 and repeal WAC 230-15-189. *The vote was taken; the motion passed with four aye votes.*

Rules Up For Discussion

Petition from the Public: Rockland Ridge Corp and Galaxy Gaming – Allowing “envy” and “share the wealth” “bonus features” to be connected to multiple tables of various card games in a house-banked card room.

- a) Amendatory Section: **WAC 230-15-040** Requirements for authorized card game.
- b) Amendatory Section: **WAC 230-15-685** Restrictions on progressive jackpots.

Assistant Director Harris reported that Rockland Ridge is a licensed service supplier and Galaxy Gaming is a licensed manufacturer. The petitioners are requesting to connect “envy” and “share the wealth” bonus features between different card games at different tables. After the July 2012 Commission meeting, the petitioners submitted their equipment and two small mock tables for review. The petition has been on hold pending review of their equipment. The review has been completed and the equipment appears to meet the requirements in the petitioners’ rule change request – specifically, the requirement of electronic features to be used on the table to detect and record a player’s bonus wager, provide a visual alert notification system of a winning triggering event, and include a system for displaying all winning bonus hands. In addition, the petitioners have also subsequently proposed three additional changes to their rule petition, which staff has concurred with. Those changes are included in the agenda packets and are highlighted in yellow:

- Subsection 7(a) removes the language “and at equal odds” because they felt that was confusing.
- Subsection 8(b) adds language to require that the visual alert notification system be visible by the dealer, the players at the table, and surveillance.
- Subsection 9(d) adds language to require the card room’s internal controls to include how the winner would be paid.

The complexity of the various bonus features and connected tables may increase the risk of additional complaints from players, card room operators and employees, and potentially other manufacturers. However, this risk may be mitigated based on the frequency of the winning triggering event – the chances of the hand happening are so rare that it may only happen once every six months would be less of a concern than if it was happening every other day. Additional staff time would be needed to review and inspect the equipment installed in the card rooms prior to it being operated and to approve changes or additions to card rooms’ internal controls. Additional time would also be needed for initial reviews and for staff to be trained on the new system. More requests may be received to change card game rules to add these “envy,” “share the wealth,” and bonus type features to other games. Staff may receive complaints from players who believe they qualified for an “envy” or “share the wealth” payout but did not get paid, and an increased number of requests for approval of equipment designed to monitor and facilitate these new features. The licensees would be required to pay for such equipment reviews. Policy considerations are that: connecting tables of different types of card games is a relatively untested concept in Washington and is only being offered on a limited basis in other states; the proposal would allow more bonus features and would allow bonus features to be tied to progressive jackpots; and it would increase the number and type of “bonus features” allowed in a card game. The Commission may wish to consider whether the proposal is consistent with the legislative intent expressed in RCW 9.46.010. AD Harris said the petitioners plan to demonstrate their equipment at the November commission meeting. One of the petitioners and one representative are present.

Mr. Robert Tull, attorney on behalf of Rockland Ridge and Galaxy Gaming, explained they were not able to organize a demonstration for today’s meeting for a variety of reasons having to do with different trade shows. The question was raised in this morning’s work session about “scalability.” His clients will make sure they address that at next month’s meeting. Mr. Tull did not think it was a technical issue but, if it was, it was one they would want to resolve themselves. It has to work in play; it has to work in the casino environment with the Tribes; it has to work in the card room environment for the commercial operators. So they will address that issue specifically and will certainly make sure that any concerns staff have on that issue get addressed in the meantime and in a fashion that makes it possible for staff to report to the Commission. Mr. Tull said they appreciate the Commission’s patience and the fact that the staff review of the equipment has taken place and the results apparently are completely satisfactory. The proposed rule amendments are ones that arose out of the continuing review process and they should help clarify the rule. If there are other questions the Commission may have in the meantime, Mr. Tull said he would record them – he probably could not answer them – but they will come back next month with whatever information the Commissioners need.

Chair Ellis indicated that, as Mr. Tull has no doubt heard, the additional comment that was made by Mr. Durkan at the work session this morning that the petitioners raise the scalability issue was suggesting that perhaps a pilot program would be appropriate for a field test of the equipment to see whether it worked or not. **Chair Ellis** asked if Mr. Tull had any reaction to that suggestion. **Mr. Tull** responded that he would like to go back and review whatever technical aspects surround pilot programs, which he has not had a chance to do – and it may not be an issue. He did know from experience that if the field staff or lab staff were to see a problem happening, they would act to fix it or take the equipment out of play without further ado – they have a lot of power. Having said that though, it may well be that a pilot program, particularly if they could get a number of settings going, both tribal and non-tribal, may be a completely useful approach. **Mr. Tull** said he could not comment on that because he has not reviewed it and has not checked with his clients. He thought it was likely to be something that could be dialed in; it did not sound to him to be problematic, but that was just him speaking personally; he may have to change his mind next month, but he did not think so. **Chair Ellis** said that a pilot program would require one or more users of the equipment and the equipment does cost money. **Mr. Tull** responded that the equipment does exist; it is in use in at least one tribal casino in California. He understood there was a lot of interest in some of this equipment at the most recent trade shows in Las Vegas. **Mr. Tull** was sure that Gary Saul could quickly find licensees to look at it. He knew there had been previous expressions of interest from a number of Tribes, so he suspected with the appropriate approval, rule, or pilot program, or some combination, that it would quickly be put to work. And, again, if there are glitches, those have to be fixed. There is just no way to keep selling a product that does not work. They have specifically drilled the question of the technology regarding the regulatory issues that were associated with some aspects of this. If there are remaining questions, obviously **Mr. Tull** would want to fix those too. So some sort of a program to make sure that it is monitored carefully for awhile, maybe that is what a pilot program would do; just formalize that ongoing review process or announce it in some fashion, but make it easier to manage, in which case it probably does not hurt them.

Chair Ellis asked if there were any other members of the audience who would like to address this petition; there were none. He asked if AD Harris had any responses to anything **Mr. Tull** said. **Assistant Director Harris** replied he did not have any additional comments. **Chair Ellis** closed the public hearing on this petition.

Rules Up For Discussion And Possible Filing

Petition from the Public: Shuffle Master – Connecting external devices to card game equipment to conduct standard maintenance.

- a) New Section: **WAC 230-03-201** Gambling equipment connecting to external tools for standard maintenance.

Deputy Director Trujillo reported that the petitioner, Bo Zarach, a Product and Compliance Analyst with Shuffle Master, is petitioning for this rule change on behalf of Shuffle Master, who is a licensed manufacturer. This particular rule allows a diagnostic tool to be connected in a limited fashion for limited purposes to card shuffling devices and no-peek devices or similar gambling equipment that has already been approved. The petitioner is asking that Shuffle Master representatives licensed by the Commission be allowed to use this product, which would

be tested and approved, to temporarily connect to the card shuffler and the no-peek device for standard maintenance. The rule defines standard maintenance in section 2(b) 1 through 7, and states what requirements must be in effect in order for the licensed representative to use the tool. Specifically:

- The external tool must be tested.
- It cannot access live gaming data.
- Wireless capabilities cannot be used during standard maintenance.
- Internet connection is not allowed.
- Connection is only allowed while the licensed representative is performing the maintenance.
- A log must be kept in the format that staff prescribes.
- The external tool can only be in the possession of a licensed representative.

Regulatory concerns are minimal. There would be some staff training costs associated with it. Staff recommends filing for further discussion. The petitioner is present, along with a representative from Shuffle Master.

Chair Ellis asked if there were any questions; there were none. He asked if the representatives of Shuffle Master would like to step forward and comment on this petition.

Ms. Bo Zarach, from Shuffle Master, introduced Leonard Faircloth who is with the Compliance Department. She explained they wanted to come before the Commission today and answer any questions the Commission might have on this petition.

Chair Ellis asked if there were any questions; there were none. He thanked Ms. Zarach for her work with staff, adding that if the petition was accepted for further discussion, the Commission would look forward to the discussions.

Chair Ellis asked if there was anyone else from the audience who would like to address this petition; no one stepped forward. He closed the public hearing.

Commissioner Gray made a motion seconded by **Commissioner Amos** that the Commission file WAC 230-03-201 for further discussion. *The vote was taken; the motion passed with four aye votes.*

Staff Proposed Rule Change: No longer require spouses of officers of charitable or nonprofit organizations or board members of publicly-traded entities to undergo background checks

- a) Amendatory Section: **WAC 230-03-065** Spouses must also be qualified.
- b) Amendatory Section: **WAC 230-03-045** Defining substantial interest holder.

Deputy Director Trujillo reported the current rules require the spouses of applicants, owners, and substantial interest holders of gambling establishments to meet the same qualifications as applicants and licensees that hold a gambling license. Qualifications include a fingerprint criminal history record check. The current rule also requires the spouse of an officer of a charitable or nonprofit organization to meet the same qualifications. Staff is proposing to amend

these rules to make it clear that spouses of charitable and nonprofit organizations and board members of publicly-traded entities would not be considered substantial interest holders for licensing purposes. The rule change would help make it clear that staff will treat them similar to spouses of licensed gambling operation employees. Currently, past actions of the spouse of a card game applicant or licensee is not included in the licensing determination of that person. Staff is asking for Commission permission to extend the concept of the spouses of card room employees to the spouse of an officer of a charitable or non-profit organization, which would also be extended to the board members of publicly-traded entities.

This proposed change could be significant for applicants and licensees owned by publicly-traded entities. There would be a reduction in the amount of time processing and coordinating fingerprint checks for spouses of board members who may view the process as intrusive or as government gone wild. The reduction in time would mean that license determinations would not be delayed because staff are administering a process on spouses that poses little to no regulatory risk as they are significantly separated from the gambling activity. The same could be said for charitable and nonprofit organizations in the delays in obtaining fingerprints from spouses who have no actual or potential influence in the decision-making of the charitable or nonprofit organization.

Staff is proposing these rule amendments in accordance with Executive Orders 10-6 and 11-3, non-critical rule development and adoption. Staff believes these amendments fit the exemption for a staff proposed rule change that is beneficial to a regulated entity. Staff is hopeful the Commission will consider filing this rule package for further discussion.

Chair Ellis asked if there were any questions; there were none. He asked if there was anyone in the audience who would like to address these proposed rule changes; no one stepped forward. He closed the public hearing.

Commissioner Amos made a motion seconded by **Commissioner Gray** that the Commission file WACs 230-03-065 and 230-03-045 for further discussion. *The vote was taken; the motion passed with four aye votes.*

- PUBLIC MEETING -

Other Business/General Discussion/Comments from the Public

Chair Ellis opened the public meeting to other business, general discussion, and comments from the public.

Chairman William Iyall, Cowlitz Indian Tribe, reported the Tribe has 3,700 members in southwest Washington. He attended this meeting to ask the Commission to reconsider a decision and allow Director Day to conduct Compact negotiations with the Cowlitz Tribe. He distributed a letter to the Commission that said it was not clear to him why negotiations could not proceed at this time. As the Commission knows, the Cowlitz Tribe is the only federally recognized Tribe in Washington State that does not have a Compact. Without a Compact, they are unable to share in the economic benefits of machine leasing available to other landless tribes or non-gaming tribes.

Machine leasing would allow the Tribe to provide dearly needed services to its 3,700 tribal members. He recognized that the Cowlitz Tribe is a landless tribe, but that should be no excuse for not negotiating with the Tribe. The state of Washington has entered into Compacts with other landless tribes in the past, and the Secretary of Interior has approved Compacts with other landless tribes. The Cowlitz Tribe is currently in litigation regarding the Secretary of Interior's decision to take the Tribe's land into trust in Clark County. But again, that is no reason to hold off negotiations. Even with a Compact, gaming could never occur on the Clark County property until it was taken into trust and the suit was concluded.

The federal government did initially refuse to approve a Compact for the Warm Springs Tribe in Oregon, covering land not yet in trust, but they reconsidered that decision and approved the Warm Springs Compact. It has done that in at least a dozen other similar Compacts. The Cowlitz Tribe has been seeking a Compact with the State for a long time, and they are asking for nothing more than what other tribes receive and have agreed to; they only ask to be treated equally. Chairman Iyall asked the Commission to consider his letter, to reconsider their decision, and to direct Director Day to negotiate with them.

Chair Ellis said the Commission had not had an opportunity to consider and analyze the letter and asked Director Day if he had a recommendation regarding the procedure the Commission takes in response to this; how the Commission should proceed under the circumstances.

Director Day replied that Assistant Attorney General Castillo would have to help him answer that question. He noticed that, at the end of the letter, it says, "In any case, I ask that you provide us with the reasons for your decision and allow us to meet to discuss your concerns." So, if the Commission felt it might be appropriate to address any personal concerns they may have relative to this process to Chairman Iyall, they could certainly do that at this point. He asked if AAG Castillo had anything to add. **Assistant Attorney General Callie Castillo** responded that she did not have anything further than that.

Chair Ellis asked if any members of the Commission would like to express their views to Chairman Iyall.

Commissioner Gray said she had a concern with bringing the State into the existing lawsuit that is ongoing with the Cowlitz Tribe. **Chairman Iyall** replied that should not be a concern for the Commission from the standpoint that the Compact is outside of the land decision, so the Compact would have no bearing on the land decision.

Commissioner Prentice thought the Commission had done this before – with the Samish Tribe. **Chairman Iyall** added that it was also done with the Snoqualmie Tribe. **Commissioner Prentice** agreed. They did not have the land, but the Commission negotiated so that they could start getting revenue. **Director Day** affirmed that was correct; there are existing Compacts with the Snoqualmie Tribe and the Samish Tribe, neither of which had trust land, and he thought the Samish Tribe still does not have trust land.

Commissioner Amos stated that was his concern also; the situation where the Tribe does not have any land; it is in litigation back in DC with the Department of Interior. After getting a

chance to read the letter, which he said he would like to look into a little bit more, that was one of the reasons why he went that way also.

Chairman Iyall repeated that this Compact would be a separate process, a stand-alone process, which is not tied to the land necessarily. Once the land goes into trust, it could be taken as a site-specific Compact then. But the Tribe was just looking for a generic Compact, so it should not be brought into the picture as far as whether the land goes into trust or not. If it did not go into trust, then it would just be in a perpetual tailspin. Chairman Iyall wanted the Commission to look at it on a separate plane and move forward with this. The court process will go forward on its own time scale. In the end, when and if that is successful, the Tribe would then be looking at a site-specific Compact.

Senator Delvin asked if there were two separate issues in litigation or just one. **Chairman Iyall** thought there were many issues in litigation. **Senator Delvin** clarified he meant whether there were two different lawsuits or if it was all in one. **Chairman Iyall** replied it was all combined into one lawsuit now.

Commissioner Prentice asked if Chairman Iyall was lumping in the Citizens Against Reservation Shopping or if they were off by themselves. **Chairman Iyall** replied it was all one single court case now. There are two different filings, but it is all combined into one lawsuit.

Mr. Edward Fleisher, attorney with the Tribe, explained it was technically still two suits; one by the Grand Ronde Tribe against the Department of Interior, and the second by Clark County and a number of private plaintiffs in Clark County. While they are technically two separate suits, the lawsuit has been handled in conjunction. All the briefing schedules are being handled by the same judge, on the same schedule, so while technically they are two separate suits, they are being handled in the court together.

Senator Delvin asked Mr. Fleisher to explain the two separate lawsuits. He asked if Clark County's was over the land in trust. **Mr. Fleisher** replied it was two different sets of plaintiffs. The arguments are quite similar, as the Chairman said. There are a number of issues on both the historical connection to Clark County and whether they properly followed the NEPA Rules. There are at least four major issues, but they are just separate. It is two different plaintiffs; they did not all combine.

Chair Ellis explained he was very sympathetic with the situation of the Tribe and the members of the Tribe. He was aware that in the case of both the Snoqualmie Tribe and the Samish Tribe, the State had entered into Compacts prior to the Tribes acquiring land that could be used for gaming. In his mind, this is a different situation, with significant litigation that is pending. Chair Ellis thought that inevitably if the Commission were to negotiate a Compact with the Cowlitz Tribe, the Commission would be viewed as coming out on the Tribe's side with regard to the litigation, even though technically that would not be true. The State would probably be drawn into litigation that it should not be in and would incur considerable expense.

Chairman Iyall said he appreciated that concern, but thought it should be looked at as a separate position; a separate process not related to the federal case whatsoever. Essentially, it should not

be looked at as taking sides. On the other side of the coin, the Commission could be looked at as taking sides by not acting on this Compact. He thought that could be another view. Chairman Iyall thought it would be best to take a neutral view and proceed on the basis of negotiations that could go forward on its own time frame.

Mr. Fleisher added that outsiders could look at it being for one side or the other, but as far as being drawn into the federal lawsuit, he saw no way it would actually draw the State into the federal lawsuit. In fact, with the State Attorney General, at one point there was a request that the State join the lawsuit and the Attorney General's office decided not to join the lawsuit. Mr. Fleisher did not think that would change if there were Compact negotiations going on in this arena.

Commissioner Prentice said that the part that has bothered her ever since, and it has been ten years ago when the recognition took place, was that it seemed as if every enemy the Tribe ever had came out and has just held things off. She has repeatedly asked why the Commission cannot do as the Tribe is asking; just do a Compact and let them resolve the land part. Grand Ronde is based in Oregon – she said old history is seen with every new Compact; old history out there that comes up, but it just seems to her that the law is simple. The Tribe is entitled to it and she did not know why the delay. As far as she was concerned, the Tribe ought to at least start getting some revenue because they could be waiting here ten years from now and still have this same opposition with everybody who sees themselves in competition with the Tribe.

Chairman Iyall thanked Senator Prentice; adding that he thought that was the situation. It has been ten years for the Tribe since recognition when they were eligible for a Compact. In those ten years, the Tribe has focused on its land and the trust effort, but at this point in time they can see a protracted process going out, so it is important for the tribal members. The Tribe's funding is extremely constrained and they live on very little dollars for the benefits of the tribal members. The other tribes have gaming revenues; even the tribes in distant reservations that do not have casinos get the benefit of a Compact. The Cowlitz Tribe is the fifth largest tribe in the state of Washington. The federal government gives them \$365 per tribal member a year for health services; that is what the Tribe receives for what is called contract health service. The Tribe takes that money and tries to leverage it and receive grants, so they live off of grants. With a grant though, the money is earmarked; it does not go beyond that. When the Tribe needs matching dollars to match a grant it makes it very difficult because those dollars are dwindling.

The Tribe received a settlement for 3,000 square miles of southwest Washington from the Indian Claims Commission in 1971. It received 62 cents an acre for that land as a settlement. That money went into a pot and gained interest over the life of that trust fund while the federal government decided how to distribute that to the Cowlitz people. In 2004, Congressman Baird was able to pass a law so the Tribe could actually receive some of the benefits from that settlement. The Tribe received the interest only off of that, which was sold in the form of bonds and put into trust management by the federal government. Those bonds sold at that time at 6 percent and are coming due now; they are maturing. The Tribe has had bonds mature and come back at 1 percent, which is the money the Tribe operates on, so they are losing revenue very rapidly.

This leasing Compact would augment the Tribe's services and essentially replace the money the federal government was providing them. Chairman Iyall did not know what was going to happen to the economy, but he knew it was not going to turn around and go back to a 6 percent economy for a long time. So that is what the Tribe is facing. Chairman Iyall said he looked forward to the Commission's reconsideration of his letter and working with the Commission on a Compact that could return some much needed benefits to the Cowlitz people. Again, it has been ten years since federal acknowledgement and they remain the only tribe without a Compact.

Chair Ellis thanked Chairman Iyall. He then asked if there was anyone else in the audience who would care to address the Commission on any business today; no one stepped forward. He called for a brief ten minute recess at 2:05 p.m. Chair Ellis announced that at the end of the recess, the Commission would go into an executive session for approximately two hours. At the end of the executive session, the public meeting would be resumed solely for the purposes of adjourning the meeting. He reminded everyone that the November meeting scheduled for November 15 and 16 at the Tumwater Comfort Inn and Conference Center may be reduced to one day, November 15.

Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation

At 2:20 p.m. the Commission went into an Executive Session to discuss pending investigations, tribal negotiations, and litigation.

Adjourn

Chair Ellis adjourned the meeting at 3:25 p.m.

Minutes prepared by:

Gail Grate, Executive Assistant