

Summary of HBCR Wager Increase - 2008

- In March 2008, the RGA submitted a number of petitions to the Commission for consideration, including a proposed amendment to WAC 230-15-140- wagering limits. They specifically requested to raise wagering limits from \$200 to \$500. Petition attached.
- The petition was heard at the May, July, August, and September 2008 Commission Meetings. The transcripts of these discussions are attached.
- The only rule/law discussed at these meetings was RCW 9.46.010- Legislative Declaration.
- At the September Meeting, the Commissioners approved amended language to adopt \$300 limits instead of \$500 with an effective date of 1/1/2009.



**Proposed Amendment to
WAC 230-15-140 Wagering limits for house-banked card games.**

Filed - May 2008

No Commission Meeting – June 2008

Discussion – July and August 2008

Final Action – September 2008

ITEM 7 (a) on the September 12, 2008, Commission Meeting Agenda. Statutory Authority 9.46.070

Who proposed the rule change?

Dolores Chiechi, representing the Recreational Gaming Association.

Proposed Change

The Recreational Gaming Association (RGA) is requesting to increase the maximum amount of a:

1. Single wager or bonus wager for an odds-based pay out from \$200 to \$500; and
2. Bonus wager for progressive jackpots from \$1 to \$500 or to limits imposed by a manufacturer's game rules.

The RGA states that Tribal casinos are authorized to offer \$500 betting limits while house-banked card room licensees have been held to a lower level of \$200 limits. The RGA states that the strict regulations and controls required in security, surveillance and licensing of employees in these establishments are more than adequate to protect the public.

Attachments:

Spreadsheet dated July 18, 2008, outlining increases in card game activity. This document was included in the agenda packet after the August 2008 Commission meeting.

Letter dated March 14, 2008, from Dolores Chiechi to the Commission.

Petition for rule change dated March 14, 2008.

Proposed amendment to WAC 230-15-140.

RCW 9.46.010

Letter from Andy Kimmerlee dated June 25, 2008, stating he supports the wager increases.

E-mail from Brian Tervo dated May 1, 2008, stating he supports the wager increases.

Commission meeting minutes for wager increases:

- 1) August, September, October, and November 2003, and February 2004
- 2) September, October and November 2005, and January 2006.

History of Rule

This rule has been amended twice in the past four years.

- In August 2003, the Commission filed a petition submitted by the RGA requesting the wagering limits for house-banked games (single and bonus wager for odds based pay outs) be increased from \$100 to \$300. At their February 2004 meeting, the Commission approved an amendment made by a Commissioner to allow wagering limits to be increased to \$200 on a limited basis. Effective July 1, 2004, house-banked card game licensees licensed for:
 - Five or fewer tables were allowed to have a \$200 wagering limit for one table.
 - Six to ten tables were allowed to have \$200 wagering limits for two tables.
 - Eleven to fifteen tables were allowed to have \$200 wagering limits for three tables.
- In September 2005, the Commission filed a petition submitted by the RGA requesting that wagering limits for house-banked games be increased from \$100 to \$200 for all tables regardless of how many

tables an establishment was licensed for. At their January 2006 meeting, the Commission approved this amendment to become effective February 17, 2006.

Progressive Jackpots

House-banked card game licensees may operate progressive jackpot prizes with certain approved house-banked card games. To participate in a progressive jackpot, a player places a separate wager (up to \$1), part of which accrues to the progressively increasing prize. Manufacturer's game rules determine the winning patterns or combinations of cards. The \$1 bonus wager limit for progressive jackpots has been in place since approximately 1997.

Tribal Limits

- Tribal casinos offer \$500 maximum wagering limit (single and bonus wager for odds based pay outs).
- Progressive wager limits are not regulated in Tribal – State Gaming Compacts and are determined by manufacturers in their house rules; typically it is \$1.
- Tribal casinos are required to have Tribal Gaming Agents on site during all times games are operated.

Impact of the Proposed Change

Impact on House-Banked Card Game Licensees

Some house-banked card game licensees may see an increase in gross receipts due to an increase in wagering limits. Some may not want to offer the higher limits due to the potential of having to pay out higher jackpots.

The minimum cash on hand requirements could increase if licensees offer higher wagering limits (WAC 230-15-050).

Impact on Agency

The higher wagering limits may make the games more attractive to professional cheaters. However, we would continue to regulate house-banked card games the same way as we currently do if the new limits were approved. We don't anticipate that all licensees will offer the higher wager limits and most players will not wager at the higher limits.

A Small Business Economic Impact Statement was not prepared because the rule change would not impose additional costs on businesses.

Regulatory Concerns

Minimal.

Resource Impacts

Minimal.

Policy Consideration

The proposed rule change is a policy decision. The Commission may wish to consider whether or not the proposal is consistent with the legislative intent expressed in RCW 9.46.010 (attached).

Statements Supporting the Proposed Rule Change

At the August 2008 Commission meeting:

- **Dawn Mangano, Casino Caribbean of Yakima, testified that higher wagering limits would allow her to pursue a different demographic (for example, the local orthodontist or farmer) that have more disposable income. These customers give her the opportunity to stimulate food and beverage business, as they would patronize the restaurant and purchase high end food and drink.**
- **Gary Murray, Great American Casino, testified in support of the increase.**

Letter dated June 25, 2008, from Andy Kimmerle supporting the increases.

E-mail dated May 1, 2008, from Brian Tervo supporting the increases.

At the May 2008, Commission meeting, Chris Kealy, Iron Horse Casino, and Gary Murray, Great

American Casino, testified in support of the increase.
Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
House-banked card room licensees.
Staff Recommendation
Final Action.
Proposed Effective Date for Rule Change
The petitioner requests an effective date of January 1, 2009.

May 2008 Transcript Excerpt on Item 13, Petition for Rule Change to Increase HBCR wager limits, Pasco, WA

13. **Petition for Rule Change** – Wager increase from \$200 to \$500 for house-banked card games and remove \$1 limit on bonus wagers for progressive jackpots

a) **Amendatory Section WAC 230-15-140**

Wagering limits for house-banked card games

Chair Niemi: And now we're on 13.

Commissioner Parker: You're going to work us to death.

Chair Niemi: Not if I keep walking these people through.

Assistant Director Mark Harris: Commissioners, Chair Niemi, item number 13 is a petition for rule change by the Recreational Gaming Association. And prior to getting into the content of this I just wanted to point out there was two loose handouts that should be included in there that covers all of the RGA petitions. One is a cover letter from the RGA specifically stating all the reasons why they are proposing these packages all together. So you might want to take a second to look through that and look at the highlights.

Chair Niemi: Do you have any clue as to where it is?

Ms. Hunter: You found it.

Chair Niemi: Oh, in the back? Oh no, I have that.

Ms. Hunter: Yep, there you go.

Chair Niemi: Yes, okay, thank you.

Ms. Hunter: You're welcome.

Chair Niemi: All right, go ahead.

Assistant Director Harris: And the second item was an email that was submitted by a member of the public commenting on all of the 15 rule proposals for the RGA. And that should also be a loose handout.

Chair Niemi: Yes.

Assistant Director Harris: Again item 13 is a petition for rule change by the Recreational Gaming Association. And the item is up for discussion and possible filing today. The petitioner is requesting to increase the maximum amount of a single wager or bonus wager in an odd-based game from \$200 to \$500, and the bonus wager for a progressive jackpot from \$100 to \$500 for house-banked card games.

In the petition the RGA states that tribal casinos are authorized up to \$500 betting limit while house-banked card rooms have been held to a lower level of a \$200 limit. In the State of Washington, tribal casinos may offer a \$500 wagering limit for a single and a bonus wager. And the progressive limits are based on the Tribal State Compact. And it's determined by the manufacture and is included in their house game rules. And it's typically \$1, but it can go higher. And tribal casinos are required to have a tribal gaming agent on-site during all hours that gaming is offered.

Higher wagering limits may make the games more attractive for professional cheaters. And we don't anticipate that all licensees will offer the higher wager limits. And most players will not wager at the higher level. The proposed rule change is a policy decision. The Commission may wish to consider whether or not the proposal is consistent with the legislative intent expressed in RCW 9.46.010.

The Commission has three options with petitions; file, deny and state reasons, or file an alternative. Staff recommends filing the petition for discussion only if the petitioner can justify why the increase is necessary and consistent with RCW 9.46.010. And the petitioner has requested that if it is passed, that the effective date be January 1, 2009. And the petitioner is present.

Chair Niemi: Does anyone have any questions for Mr. Harris? Okay, 14.

(A number of other petitions were reviewed and discussed. This is where the discussion picks up on on the petition, item #13.)

Mr. Faulkner: Thank you, Madam Chairman, Commissioners, staff, and ex-officios. For the record, my name is Max Faulkner, President of the Recreational Gaming Association. And Dolores Chiechi and myself would like to talk about all nine of these proposals in the form of a background, philosophy, kind of where we're coming from on these petitions for rule changes. I'd like to address the –

Chair Niemi: All four?

Mr. Faulkner: Nine of them.

Chair Niemi: All nine.

Mr. Faulkner: Yes.

Chair Niemi: The remaining ones.

Mr. Faulkner: Yes, as a way of explaining why we are submitting nine at this time and our thought content behind this.

Chair Niemi: All right.

Mr. Faulkner: One of the things we're looking for is a unification of card game rules. We're not tribal casinos. We know we're not tribal casinos and we probably won't ever be. They have craps, we don't. They have roulette, we don't. They have the video lottery terminals and we don't. They can extend credit, I think, on the X2 Compact, we can't. If our patrons go to a tribal casino, they can

smoke cigarettes on their facilities and ours can't. We're a lot closer to neighborhood bars, and social rooms, than we are big casinos.

And this whole footprint of gambling in the State, though we are allowed card games, a small part of the footprint. And what we're looking for is some unification in the rules for card games, the little part of the gambling footprint that we're allowed.

In looking at the RCWs pertaining to gambling, the declaration, the Commission's powers, social card game rules, I don't see anything in there as far as the Commission distinguishing between a tribal facility and a house-banked card room facility. They're all treated the same in the language. There's no differentiation.

So what we're asking for is that you file all nine of these petitions for further discussion, but under the philosophy and the idea of unification of card game rules.

Commissioner Parker: I'm confused. You said under the WAC there's no difference, is that correct?

Mr. Faulkner: No, I was looking at the RCWs, Commissioner Parker, the legislative declaration, powers of the Commission, as far as setting betting limits and choosing games like the baccarat and things like that. And it doesn't make any distinction between tribal facilities and house-banked card rooms that I could see in RCW 010, I think.

Commissioner Parker: So can you comment on that? Help us understand the point?

Director Day: I think the staff included a summary as you started through the RGA petitions because we were attempting to make sure that there was clarification that essentially would agree that 9.46 doesn't – Max is not going to find anything regarding tribal gambling in there. And the only thing it's going to be is that in the end, the Commission has authority to negotiate Compacts and regulate under Compacts. But the controlling information, or the controlling Statute is the Compacts, and IGRA. And IGRA does have a substantial policy difference, and we covered that yesterday in the Compacting process; that in fact under IGRA economic development and funds to government and those kind of

things are part of the federal policy that governs the operation and negotiation of those Compacts, as opposed to the RCW which governs the operation of the laws and licensed gambling in the State of Washington. So there is a policy difference there. It comes from two different sides of the equation.

Mr. Faulkner: I guess my point is where they intersect is our little area of house-banked card games.

Commissioner Parker: Okay.

Mr. Faulkner: Yes. Thank you.

Ms. Chiechi: Maybe I can clarify. Max's point is the legislative declaration that was included in your packet in 9.46.010, it relays what the policy of gambling is in the State of Washington. And nowhere in that RCW does it state this is the policy for non-tribal gambling and tribal gambling is held to a different policy level of what has limited the nature and scope of gambling, essentially.

So what our position is is the Commission has reaffirmed its belief that the levels of gambling that are market driven out in the market of Washington State have been set. And the tribal venues are sort of the – and that's the limit that the Commission has agreed to; that the betting limits should be \$500, that the number of spots, the number of tables, and what not at tribal casinos. So what we're arguing is that for the games that we're allowed with cards, we should be allowed at the same levels. There's nothing in the legislative intent that says hold the non-tribal card rooms to a lower limit, limit that nature and scope of gambling, but the bigger tribal casinos can have a larger expansion, a larger venue.

By way of the Compacts, the craps and the roulette all fall in line with what was allowed for Reno Nights, and that's how the tribal casinos came to be. Card rooms are allowed blackjack and poker. And what we're saying is those games that we're allowed to be played with cards, we should be allowed to be playing them at the same levels.

The argument that staff presents regarding tribal gaming agents on premise, I'd like to touch on that basically to say that our members as well have controllers on site that are part of their casino, part of their management, part of their employees that watch and monitor. Some of them even do modules,

ID checking, and walking through and making sure the security and the surveillance is all in check. So we would argue that many of our members do have that tribal gaming agent, or their own gaming agent on site 24 hours, or whenever their card rooms are open. For those that don't, perhaps we could discuss a negotiated rule that would state that they should, or even an independent entity could come in and say that you have an additional oversight. It's not in our members best interest to cheat the customer or do things that are not going to bring that customer back. So essentially it's in the licensees best interest to make sure that the game is protected, that the players are protected, and they are going to come back and have fun at their facility.

It's unique that we've been asked to justify why the rules should be filed. Prior to these petitions it has been filed for further discussion. The justification of passing the rule, we agree, will come back at a future time and make arguments as to why the Commission should pass the rule. We feel that the Commission has been accepting of filing rules to have the discussion. And we hope that you will do that as well with these rules we presented.

We intend to ask that the rules relating to items number 19 – oh, for the record, my name is Dolores Chiechi, Executive Director of the Recreational Gaming Association. Item number 19 relating to tournaments, removing the limits; we see that staff has suggested that you deny the petition. But if we were to come back with an alternative, they would suggest that we file the petition. We'd ask that you file the petition and let us work with staff on what those changes would be and bring that back at the July meeting so that we could continue the discussion rather than starting from ground zero and re-coming up with our petition. We ask for that consideration on items 19, 20, 21 and 23.

So essentially we would ask that you file the petitions that we have presented and give us the opportunity to argue the points. Thank you.

Commissioner Parker: Can I ask an additional question?

Chair Niemi: Go ahead, yes.

Commissioner Parker: I'm sorry, Madam Chair. So I hear you saying that you're considering including some provision, some language in here that would in effect require a gaming agent on the premises, comparable to what tribal gaming has with a tribal gaming agent.

Ms. Chiechi: I believe that would be a negotiation that we would be willing to have, if that's what Commissioners would like to see for these rules to go forward. And I would argue as well that essentially some licensees do that, just for their own protection. They already have that position in place.

Chair Niemi: Maybe you want to answer this question, or let someone else answer it. But I think staff mentioned when they were going over these suggested rule changes, especially when it comes to increasing the wager, that we really didn't know how much, how often that would happen, how many casinos would be involved in doing that. And if you or anyone else can expand on that, I think it would make a difference in how we feel about the petitions.

Ms. Chiechi: Right, and I'm not the best person to answer that.

Chair Niemi: All right, fine.

Ms. Chiechi: So I would be happy to have someone else come up and speak to that issue, if there's no more questions?

Chair Niemi: Any other questions of Dolores? Okay.

Ms. Chiechi: Thank you very much.

Mr. Kealy: For the record my name's Chris Kealy, and I am the VP of the RGA, and have been involved in the process to come forward and submit these rule changes to you guys and ask your consideration on that. Did you want me to answer that question you just asked?

Chair Niemi: Go ahead.

Commissioner Parker: Sure.

Mr. Kealy: On the \$200 limit, when we went from \$100 to \$200, there was a lot of discussion whether one club, two clubs, ten clubs, would ever bother with that limit. And as it turned out, basically I would say 90% of the clubs have employed that limit because what they discovered was the point I was making back then, and I'm still making now on the \$500, is it's just a decision by a customer, not the facility. It doesn't have a great deal of impact on overall revenue, it's a demographic decision. That you have a person willing to gamble at that level, and that's what makes it interesting to them, and they're able to afford that.

Problem gamblers burn out no matter what. I mean you could have a \$5 limit and they will lose all their money. You can have a million dollar limit and they're going to lose all their money, because a problem gambler is an addicted person that's going to figure out a way to lose all their money. This is a demographic issue based on where your facility is and whether a guy that owns a winery wants to come down and stop at your place and gamble at this level. So it applies east to west, north and south that the betting limit has to do with demographics and product mix. That's the answer to that question.

To back up and try to frame this whole package concept here. I listened to the presentation by staff and I started to wonder during that presentation whether or not this package was bent on destroying the industry because when you read the minutes to this meeting next month, and when future commissioners that are not here now, and ones that are not here, who are going to make the decision on this package look at this, that presentation paints a picture of pretty desperate. And I was just like wow, am I trying to destroy the industry with this; no. What we're trying to do is perfect our product mix. We are what we are and that's all we are. We're card rooms, we're social card rooms. We've been in business for over 10 years now. Legislatures have come and gone, governors have come and gone, and we are here paying taxes.

And there is no accident that this package is here today because we trust in Chair Niemi. And I specifically would like to ask Chair Niemi to enter her comments into this record when this is over today of why she did or did not decide to file what she did or didn't do because she's been here for

seven years. You've been here and watched the process. And we have accepted who we are, but we're only asking that we can continue to be who we are and pay the taxes, and employ the people, and do what we're doing, and be regulated on a consistent and fair manner.

And I found the staff's presentation of this package to be not appropriate in my opinion. And I'm putting that in the public record for sure because I'm very disappointed that this letter put forward by Brian Trevino, or whoever, was referred to numerous times only in the negative.

Commissioner Parker: You mean the email letter?

Mr. Kealy: Yes.

Commissioner Parker: Yes.

Mr. Kealy: Not once was any of the positive paragraphs even pointed out. And if you again reflect on that record that is there, all we heard was the negative components of this package. The positive components are that we're just looking to be regulated in a consistent and fair manner. And we ask you guys to govern that process. Any questions?

Chair Niemi: Well maybe this is just a comment. And this also goes to Ms. Chiechi's comment. I think one of the things you're asking is rather than just simply deny filing, that we file many of these so that you can come in later and explain, and clear up some of the staff objections. Some of them are pretty narrow objections that can be cleared up, and the other ones are somewhat major as far as wage increases. But it's my impression that you simply want these filed so that it can be discussed by five commissioners.

Mr. Kealy: Chair Niemi, we pulled back five or six of these items.

Chair Niemi: Yes.

Mr. Kealy: Because we thought we had enough common ground on the ones we submitted that we could enjoy a process of filing them and then finishing the discussion, and hopefully working over the next couple months on a few of those to “tune them up” and get them into a more acceptable version. And that the rest of the non-submitted ones would come forward in July or August on a more changed-up format, or admittedly agree to disagree format. But I thought there was a consensus on the ones we brought forward today enough for filing. And I thought that’s where we were going with this.

Either way I’m hopeful that you would enter your comments into the record overall.

Chair Niemi: They’re in the record.

Mr. Kealy: No, but in completion of this, what you might maybe have done if you were still here in August or September. By filing them, maybe that will be an indication. By denying them, that will be an equal indication. Thank you.

Chair Niemi: Thank you. Anything else?

Mr. Gary Murrey: Members of the Commission, ex-officio, staff, my name is Gary Murrey. I’m with the Recreational Gaming Association. I’m up here specifically to answer direct questions about the content of the rule, why we changed certain parts of it, if you need to. I’ll answer any questions of each rule as you go forward. They’ve already addressed the overall concept of why this is here.

I’d just like to clarify on rule number 1 why I think we’re referencing the RCW 9.46.010 is the public safety policy; keeping gambling honest, and what is allowed the public to have access to as a level of gambling to keep it as a social past time. I think that is the important point to look at. When the Commission looked at what Compacts are and what the public has access to that gambling, is the same policy I would like you to look at as what the public has access to a card room gambling level. Not that they’re equal by any means of who has what, and what their duties are. We understand that the tribal government has a responsibility to their government and their people, and we have a responsibility to our owners and stakeholders. They differ in their policy and what you have to look at.

However when you bring it back into the public safety element, that is where we have common ground. And that is where we hope the Commission looks at if you believe that the public safety is adequate when you have \$500 limits at a tribal, then I hope that you look at that as the same activity and would regulate it and have the same levels. So that is where we come back to a common ground on RCW 9.46.010, I hope.

Commissioner Parker: And that goes to my question with Dolores about are you proposing then that there be equal playing field in terms of gaming agents or having the equivalent of a gaming agent on premises?

Mr. Murrey: If it takes that to make the Commission feel comfortable enough to say if you want this level, then you must have this level of security, then absolutely. If the Commission feels that that's what it takes to insure the public safety, then yes. I employ a full-time internal auditor who goes through and does all of that that we're talking about to double-check to make sure we're following the rules, that we have the supervision in place, that the game rules are being followed, on top of what the Commission looks at.

We understand the Commission's problem with their budget to some degree. And we understand that the manpower may not be there to put a full-time agent in there. If you came back and said yes, we'll do this only if you have this designated supervision on top of what you have, then each operator can decide whether or not they want to put those levels in. So I hope that answers your question.

Commissioner Parker: Thank you.

Mr. Murrey: The other piece on the limit. If you look at the amount of gaming activity in the non-tribal card room sector from the time it went from \$100 limit to \$200 limit, you would not see a massive change. And actually from the day, I believe there's been a decline in the net gambling revenues in the non-tribal sectors since then. What we're looking at is that 1% or ½% that like to gamble at a certain level, that they be allowed to have access to that.

So I'll answer specific questions as we go on each section, Chair, as you deem appropriate. Thank you.

Chair Niemi: Well, are we ready to vote on whether to file for discussion number 13? I would comment about one thing. I can't say that I know what Commissioner Ellis or Commissioner Bierbaum would do in this case. I have a pretty good idea, but I'm not going to say what it is. But I really feel reluctant with just three people here about not filing so that they can say what they want to say when they come back to Commission meetings. Is that clear?

Commissioner Parker: Sure, I agree with that, Chair. I think our process should require that there be a full discussion.

AAG Ackerman: Madam Chair – Madam Chair –

Chair Niemi: Yes.

AAG Ackerman: Procedurally on this, I think Mr. Murrey has made the offer to address any individual questions that Commissioners may have about however many rules we have proposed at this point, nine or 10. It seems appropriate to take him up on that offer at this point if the Commissioners have questions about any of the rules individually. And if not, to then proceed through the rules one at a time and make a decision on whether to file or not to file.

Chair Niemi: Oh, I agree, I agree. I'm not suggesting we do it –

AAG Ackerman: My comment is offered mainly because Gary's sitting here waiting to answer questions.

Chair Niemi: Well he can just stand up there. Let's start with 13. Do I have a motion?

Commissioner Parker: I would –

AAG Ackerman: Excuse me, Commissioner Parker. I guess the other comment I would have is we've heard from the proponents of the petition. I don't know if there are other public comments that folks may wish to make. I don't think we provided that opportunity to the rest of the audience.

Chair Niemi: All right. Is there anyone else that wants to say anything about number 13, which is the wager increase? All right, go ahead. Do you want to move, or not?

Commissioner Parker: Sure. I'll move that we proceed to file item number 13.

Commissioner Rojecki: I'll second that, second.

Chair Niemi: Second. All right. It's been moved and seconded that we file the petition for the Amendatory Section of WAC 230-15-140. All those in favor?

Commissioner Rojecki: Aye.

Commissioner Parker: Aye.

July 2008 Transcript Excerpt on Item 12, Petition for Rule Change to Increase HBCR wager limits, Vancouver, WA

12. Petition for Rule Change – Recreational Gaming Association

Wager increase from \$200 to \$500 for house-banked card games and remove \$1 limit on bonus wagers for progressive jackpots

a) **Amendatory Section WAC 230-15-140**

Wagering limits for house-banked card games

Chair Bierbaum: And we're going to have a pretty quick agenda this morning. We have five petitions for rule change up for discussion. The first one is submitted by Monty Harmon about gambling promotions. The second one is submitted by the Recreational Gaming Association and it involves wager increase from \$200 to \$500 for house-banked card games. There's also a petition for rule change which we discussed yesterday submitted by the Recreational Gaming Association to allow mini-baccarat and allowing nickels and dimes to be used in all commission games. We have a petition for rule change submitted by PokerTek for electronic poker tables. And we have a petition for rule change submitted by the staff incorporating activity report definitions, resident agent and reporting period for amusement game licensees. And they are behind their respective tabs.

And what I thought we would do, rather than go through each of the rules one-by-one is to ask for public comment on any of the rules at any time. And we're including the ones that we discussed yesterday, just in case there's anyone here that wasn't here yesterday that wants to make a comment. So is there anyone here that wants to make a comment on any of those rules? This is going to be even shorter than we anticipated. Mr. Rojecki, do you have any? Mr. Rojecki wants Dave to talk. What do you want him to say?

Assistant Director Trujillo: Well good morning, Commissioner Rojecki. How are you?

Vice Chair Rojecki: You're standing up there so I assume you wanted to say something.

Assistant Director Trujillo: I was up here to present item under tab number 7, if there were any questions or comments, or if a member of the public had a question or comment. And the petitioner is not here today, so I would expect to see him in August. So I am available if there are any questions.

Chair Bierbaum: That's the gambling promotions one?

Assistant Director Trujillo: Yes, Madam Chair.

Chair Bierbaum: Do you have any questions?

Commissioner Rojecki: I don't.

16. Other Business/General Discussion/Comments from the Public/Adjournment

Chair Bierbaum: Okay. So we're moving on to the next agenda item which is general comments from the public about anything. Oh, heavens. Okay. This meeting's adjourned.

August 2008 Transcript Excerpt on Item 7, Petition for Rule Change to Increase HBCR wager limits, Wenatchee, WA

7. **Petition for Rule Change – Recreational Gaming Association – Wager increase from \$200 to \$500 for house banked card games and remove \$1 limit on bonus wagers for progressive jackpots**

a) Amendatory Section WAC 230-15-140 – Wagering limits for house banked card games

Assistant Director Mark Harris: Chair Bierbaum, Commissioners. Item number 7 is a petition for rule change by the Recreational Gaming Association and is up for discussion today. The petitioner is requesting to increase the maximum amount of a single wager or bonus wager on an odd based payout from \$200 to \$500 and for a bonus wager for progressive jackpots from \$1 to \$500, or whatever limits are imposed by the manufacturer's game rules. The RGA states that tribal casinos are authorized to offer \$500 betting limits while house banked card room licensee have been held to the lower \$200 limit. Tribal casinos offer \$500 maximum wager limits for single and bonus wagers, but for the progressives that is not regulated by Tribal State Compact and are determined by the manufacturer's game rules and posted in their house rules. And it is typically \$1. Tribal casinos are also required to have tribal gaming agents on site at all times when games are operated.

Higher wagering limits may make the games more attractive to professional cheaters, but we don't anticipate all licensees will offer the higher wager limits. And most players will not wager at that higher level.

The proposed rule change is a policy decision. The Commission may wish to consider whether or not the proposal is consistent with the legislative intent expressed in RCW 9.46.010. The petitioner has requested an effective date of January 1, 2009. And the petitioner is present. Do you have any questions of myself or the petitioner?

Chair Bierbaum: Commissioners? Okay, that's what I was just going to do Jerry, thank you. Do we have any comment from the public? Thank you.

Commissioner Parker: Oh, I was hoping she would come forward.

Dawn Mangano: Be kind to me. Staff, ex-officos, I'm Dawn Mangano with Casino Caribbean Yakima. And I just felt it was important I come forward this morning and try to explain in a real way why this would make a difference for our casino in Yakima.

We open up our casino with an extensive menu with seafood, and wine, and we're not able to sustain that. And this would allow me to go off to a different demographic that has more disposable income so that I could have a \$9 martini, so I could have Yakima wines from the local wineries, and then I could have more than one steak, I could offer several. And in raising limits from \$200 to \$500 would allow me to do that to pursue the orthodontist that put my daughter's braces on, or the hog farmers that come in. And that they would make more visits, that they would bring their friends, and that I could go after a different group of customers.

I just appreciate you considering this change. And it would make a large impact on our smaller casino in a rural area. If you have any questions, I just felt it was important to come forward today.

Chair Bierbaum: Thank you.

Ms. Mangano: Thanks.

Chair Bierbaum: Does anyone have any questions?

Commissioner Ellis: I do. I think that what you say is very helpful to us. And I'm wondering if you have actually done any kind of a study, or analysis, or even a discussion on how many customers you think might be attracted by the higher limit. How many people might we be talking about in the Yakima area that would be willing to make a \$500 bet?

Ms. Mangano: I haven't done as far as the number, but I am speaking specifically to customers. It is the orthodontist, and he goes to a different venue where he's accustomed to playing \$500 limits. He has the money to spend, he likes that kind of play, and so he frequents not my place. So these are very

real examples. As far as like a number of people, it's more a personal contact. Since I live in Selah, just outside of Yakima, it's from personal contact with the customers; what can I offer you to come here and not continue down the road, what is it lacking.

And it would just be an opportunity for me to stimulate the food and beverage business. We have a great facility that's tropical themed and they like the atmosphere. But they are looking for those two components. And so that different level of gaming for them, that's what they're looking for. And then I can offer the rest of it to increase that food and beverage business. Does that answer your question? I don't know.

Commissioner Ellis: It does.

Ms. Mangano: It's not numbers, I have like specific people.

Commissioner Ellis: It must be extremely frustrating for you to know that that orthodontist is out there playing with your money and not in your casino.

Ms. Mangano: That was just one example.

Commissioner Ellis: Thank you.

Ms. Mangano: All right, thanks.

Commissioner Parker: You did a good job.

Ms. Mangano: Thank you.

Mr. Gary Murrey: Madam Chair, members of the Commission, my name is Gary Murrey. I'm with Great American Gaming Corporation. And I'm not quite as nervous as Dawn, I've been up here a few times obviously. But I'd like to talk to the petition on the policy side that was mentioned; that we have to remain within the policy considerations.

And specifically the \$500 limit has become sociably an acceptable level in the State. \$500 limits have been around for quite awhile in the State. I see no public concern over it – has been brought up. We don't see a large uproar from anybody coming up here. We've seen e-mails in support of this limit that there be players that are interested in that. So from a policy standpoint, myself, I look at any disagreements between it, what has become a sociably acceptable level in the State over the years. And from that standpoint, I think that it would be a good thing to raise that level across the State to all the people participating and offering those games of chance.

Chair Bierbaum: Thank you.

Mr. Murrey: Thank you.

Chair Bierbaum: Are there any other members of the public that would like to comment on this proposed rule change? Hearing none other, do any of the Commissioners want to weigh in on this proposed rule change?

Commissioner Parker: No.

Chair Bierbaum: Okay, so I guess it's up –

Commissioner Parker: I support it.

Chair Bierbaum: Pardon me?

Commissioner Parker: I'm in favor.

Chair Bierbaum: For the record, I am too. It's up for final action next month in Gig Harbor. Okay, mini-baccarat.

September 2008 Transcript Excerpt on Item 7,
Petition for Rule Change to Increase HBCR wager limits,
Gig Harbor, WA

7. **Petition for Rule Change – Recreational Gaming Association – Wager increase from \$200 to \$500 for house-banked card games and remove \$1 limit on bonus wagers for progressive jackpots**

a) Amendatory Section WAC 230-15-140 – Wagering limits for house-banked card games

Assistant Director Mark Harris: Chair Bierbaum, Commissioners, ex-officios. Item number 7 is a petition for rule change by the Recreational Gaming Association. The item is up for final action today. The petitioner is requesting to increase the maximum amount of a single wager or bonus wager for an odds based payout game from \$200 to \$500 and a bonus wager from a progressive jackpot from \$1 to \$500. Tribal casinos offer \$500 wagering limits on single and bonus wagers, but progressive wager limits are not regulated by Tribal State Compact and are usually \$1 or what is limited by the manufacture in their internal controls.

Higher wagering limits may make the games more attractive to professional cheaters. We don't anticipate all licensees will offer the higher limits, and most players will not wager at the higher limits.

The proposed rule change is a policy decision. And the Commission may wish to consider whether or not the proposal is consistent with the legislative intent of 9.46.010. The petitioner has requested an effective date of January 1, 2009, and they are present today. Do you have any questions of myself?

Chair Bierbaum: Does anyone have any questions?

Commissioner Parker: Can you hold one second here?

Commissioner Ellis: If I may in the meantime, Madam Chair. I assume that when the staff indicates there may be an issue under RCW 9.46.010, is that the question of whether or not wagering at the higher limits would be within or outside the concept of a social pastime?

Assistant Director Harris: I believe that is part of it, and then I also believe part of it is the expansion issue that comes up, quite frankly.

Commissioner Ellis: Expansion of gambling?

Assistant Director Harris: Correct.

Commissioner Ellis: Okay.

Director Day: Commissioners, excuse me.

Commissioner Parker: Go ahead.

Director Day: I was just going to make sure, because there are some items on your table in front of you, some letters that have come in that aren't in your packet. You should have a letter from Representative Brendan Williams, and also from Hawks Prairie Casino, Robert Dayton is there. I believe both those are in support. You should also have, and I think it's in the lavender, would that be the appropriate color – there's a letter from Representative Steve Kirby, and then also one from Skyway Park Bowl and an e-mail essentially from a Christopher Handy. Those items should have been separately included for you. I believe all those are in support.

Commissioner Ellis: Well let me follow-up on my last question to Mark and ask Mark or perhaps Rick or Jerry, is there anything more than can be said – well, Mark has referred to both the social pastime issue and the expansion of gambling issue. And I think we all have a sense of how elusive the definition of expansion of gambling may be, except in a very specific context which may not help here. We haven't heard as much about the legislature's expressed intent in the legislative declaration to restrict gambling to social gambling. Is there any authority or positions that the Commission has

taken in the past that are not reflected in the minutes of past meetings that we've been given that bear on whether or not a poker game with a maximum bet of \$500 would be inside or outside the concept of a social pastime? I can certainly see an argument, and we see this reflected in comments by some groups that opposed increases in betting limits in the past that that kind of a dollar amount takes the game from a social game into more of a profit making game, but that's just an argument. I'm wondering if there's anything more there that we could rely on as Commissioners?

AAG Ackerman: Commissioner Ellis, if the question is addressed to me, I'm not aware of anything other than the plain language of 9.46.010 to the extent that it discusses the legislative preference for social past times and the opposition to for-profit gambling. To the extent this has been discussed previously, I think it is contained – I hope I'm remembering correctly the various minutes that have been provided to the Commission as part of the packet behind this tab. Obviously over the years there have been a succession of requests for the Commission to increase the wagering limits. The Commission, as far as I know, has normally provided some kind of increase. The magnitude historically has appeared to be less than what is being requested this time, but maybe that's just because it logically will stair step up as the petitioners are successful in gaining incremental increases. But as far as I know, this is the information that's available to the Commission as a historical reference to aid in your determination.

Commissioner Ellis: Thank you. And to my mind, both of these concepts, social pastime as well as expansion of gambling are right in there with the concept of pornography, as Justice Potter Stewart once referred to it as being something that he couldn't define, but he knew it when he saw it. And it seems to be the best that we can do with these two concepts, outside the context of specific legislative rulings, for example, on what constitutes an expansion of gambling.

Director Day: Commissioner Ellis, I think in kind of our research when we were looking at the policy statement in 9.46, I think we found a most recent edition in 1994 was an addition of keeping the criminal element out of gambling. And then the sentence promote social welfare by limiting the nature and scope of gambling activities and by strict regulation and control. So at least as far as I understand, that's the most recent change to the policy statement itself.

Commissioner Ellis: Thank you.

Chair Bierbaum: Do any of the Commissioners have more comment?

Commissioner Parker: I'm trying to think of how to formulate this question. So if we agree to this proposed rule change at this meeting – it's an up or down issue at this meeting, is that correct?

Assistant Director Harris: Correct, it's up for final action today.

Commissioner Parker: Okay. Is there anything projected where we would revisit this down the road to assess the impacts?

AAG Ackerman: If I might address that. I'm not completely sure that I understood the thrust of the question. But if the question was do you have to accept these dollar amounts or reject it in toto, I don't believe you are so limited. I mean you could chose to enact a rule and set the dollar limit at whatever number you chose. You're not limited to the number that's been proposed by the petitioners. And that would take the form of a motion to authorize the increase, but to authorize the increase at the number that the Commission chose. You're not obligated to accept the number that's before you.

Commissioner Parker: Okay.

Director Day: Chair Bierbaum –

Chair Bierbaum: Yes.

Director Day: And we have a clarification because there's two petitions on the bet limit that is still under consideration. This one is with house-banked games. The poker bet limit increase is still active and will likely be on the Commission's agenda in October. So there's two separate petitions.

Senator Margarita Prentice: I was having to reach back to the '94 statement. And that was the year after we'd had the 1993 task force where there had been a group that went all over the State; we went

into Canada and went down to Oregon. And at that time, it was all five table card rooms. And the decision when we came back was that then they would go up to 15 tables. But the whole notion when we were talking about criminal element – I remember the discussion now because we said big time crime is not going to be coming in when you've got these kinds of limits. They can't be big casinos, so we felt safe in doing that.

But we also were just seeing the first of the tribal casinos. I think the Lummi's were grandfathered in, and the Tulalip's were already starting when we went around, Nooksack had been open like six months. I mean it was all new to us and we were in very unchartered territories. So that was how the world looked then. But the idea was if this is their world, we wanted to give them some relief beyond the five tables because that was extremely limiting. But that was what that statement reflected.

Commissioner Parker: Okay. I don't have any more.

Chair Bierbaum: Does either the proponent of the petition or any other members of the public want to make any comment?

Ms. Dawn Mangano: Commissioners, Chairman, staff, ex-officios, I'm Dawn Mangano. I'm representing Yakima Casino Caribbean. I live there and operate that casino. I came before you last month and talked about asking for you to consider a limit increase so that I might have an opportunity to go after a different demographic of customers that would allow me to increase and stimulate my food and beverage business by revamping my bar, by changing up my menu, adding more steaks, better steaks, seafood. It's something we opened with. We weren't able to sustain some of that, and some things we haven't had a chance to try like a pomegranate martini, a \$9 drink. And I guess I'm asking for your approval today on those limits to give me an opportunity to try that at our casino. And this would give me an opportunity. There are certain individuals that enjoy that level of gaming, have an opportunity to go other places for it, and have the disposable income to support that kind of play. And I just want to be able to have an atmosphere and give them the things that they want so that they'll want to come to my establishment. So I'm asking for your approval today. Thank you for your consideration.

Commissioner Parker: So you're representing Hawks Prairie?

Ms. Mangano: No, Casino Caribbean in Yakima.

Commissioner Parker: Oh, okay.

Ms. Mangano: Do you have any questions for me?

Commissioner Parker: What would you think about increasing the wage limit to \$300 instead of \$500?

Ms. Mangano: I'm asking for the \$500 today because that's the level that the specific customers I'm thinking of are able to play not very far away. And so to be able to be in direct competition with that, and that's the level they play at. So the change to just \$300 I don't think would really make the impact that I'd be able to make those changes.

Commissioner Ellis: I'm guessing that you have more specific customers in mind beyond your orthodontist?

Ms. Mangano: Yes, I do. I'm not a great larger group public speaker, but this is something I feel very motivated about, and that's why I've come before you today. Yes, there's the bed and breakfast gentleman that likes three card. He's a chef and the owner. And the Ray's Meat – I probably shouldn't say any names specifically – but the owner of our local distributor, and then there's a lady who owns several shops, and she enjoys that as her form of entertainment. So these are just people that are out, have the extra money, and this is what they enjoy doing.

Commissioner Ellie: Thank you.

Chair Bierbaum: Do we have any other comments, feedback?

Commissioner Ellis: Let me –

Chair Bierbaum: Chris can't help himself, there you go.

Mr. Chris Kealy: My name's Chris Kealy with Iron Horse Casino in Auburn and Everett. And I'm not sure if I can't help myself, or I'm going to wreck something, or help something, or whatever, but I'll give it a go. The \$500 request, we're going around this expansion of gambling issue and we're right on the edge of it again. And yet when I look at the situation in the State, I think that we have confidence that the socially acceptable gaming limit in the State is at \$500. And we feel like in our product mix that makes sense for us to offer that with what we have.

I definitely have the same antidotal stories that Dawn has. Just since we've gone to 24 hour gaming we have a fellow that was over at the racetrack. He spends his weekends at the racetrack. He parks his '09 Bentley under the (unintelligible) at my place. He has definitely enough money to do what he wants to do. And he wants to gamble at that level. He wants a range, really. He doesn't really want to play \$500 every hand, he wants a chance to start out at \$50 or \$100 a hand and as he's playing along for a few hours, if he gets stuck it's pretty typical for a gambler that just wants to win out, and they do. You'll see the win percentage on a higher limit gaming goes down because players tend to play out. And it just happens to be the way he likes to participate in the gaming activities.

Commissioner Parker: What do you mean "play out"?

Mr. Kealy: So let's say he cashed in \$2000 to start with and just gets going and is playing along and pretty soon he's down to \$500. It's not uncommon at all to see him pull out another \$3000 and then just spread across the table and take his chances on coming back. And he does. And some nights we're like, oh.... It's gaming, it goes both ways. And there are winners. And when they're winning, we're losing. But it's just a product mix and a demographic that we're really interested in trying to tap because I have fine dining restaurants in Auburn, I have all the tools to be able to do that, but it's not utilized as often. And it just adds energy to the room.

When people see that kind of action, they just kind of like to watch it. It's fun. In Las Vegas when I walk by a table and I see it at \$2500 to \$3000, when I see a guy playing \$3000 a hand, I stop and

watch for awhile because it's interesting to me. It's just a demographic of what we have going on in the State.

Commissioner Ellis: Chris, I don't have an answer to this question, but it just occurred to me as you're describing this situation and having listened to Dawn. From our point of view and looking at the policies reflected in RCW 9.46.010, should we be considering whether we should be gearing the maximum betting limit that is proposed here to a gambler like the one you're describing with his Bentley and his wealth, or if we gear the limit to that kind of a bettor, what are we doing to bettors that don't have that kind of money? Even if they may not be psychopathic gamblers, or sociopathic gamblers, nevertheless is there a category of gamblers that can't afford those kinds of stakes but would unfortunately fall into playing games at that level and do themselves and their families real damage?

Mr. Kealy: The classic statement related to addictive behavior – and addiction being different than habit. Habit is something that you're doing just because you chose to do it and it doesn't impact your mortgage or your kids school tuition or otherwise. The addictive behavior component, you're never going to get away from that in the classic saying that one bet's too many and a million is not enough. But at \$5, \$10 a hand, any level at all, the addictive personality is going to get themselves into trouble. And the \$500 limit is not even remotely going to appeal to that person because they want more activity anyway. And they recognize that if they put \$500 down three times in a row, two out of three times they're likely to lose it. So they're just not going to do it.

But what they will do is they'll blow their money at \$10 at a time. You can't stop that. And 5% of the population is stuck in that mode, where with alcohol it's more like 30%. So it's a pretty detailed situation to watch a person who is doing that. And you'll see the signs through check bouncing and credit card machines allegedly not working, over beating on it, and whatever. Then it's time to talk to those people. We deal with that now. And everybody that's responsible in gaming does deal with that now. And we work our best to make sure those people are not impacting their families. We have self-barring statements, we have the tools in place to help these people stay away from gaming.

Commissioner Ellis: Thank you.

Commissioner Parker: So let me ask because it seems like the discussion has really gone from the nature of the proposal, that is to raise a betting limit from the point of view of its impact on social behavior of the public or patrons of the establishment, and we kind of skirted around the question of competitive edge. And you refer to the fact that you have customers come in that perhaps you would get more of those customers on a more regular basis if you're offering the same betting scheme as the competition over at the tribal casino in effect. So I'm wondering, how do you assess the policy question?

I mean when we discuss that issue of competitive edge when we deliberate over Tribal Compact amendments that impact the type of gaming that they're offering, or the type of enterprises that they're doing, our discussions have revolved around a question of most favored nation principle. But the term itself refers to the fact that we're talking about people who are governmental entities engaged in this enterprise. And when they're debating issues of competition, that's in the context then of the issue of the rules in relation to how it should apply to these governmental entities. And now I'm kind of uncertain as to how to treat that question when we talk about it in relation to the card room enterprises in competition with the tribal card room enterprises. Would you share a view on that?

Mr. Kealy: Sure. The policy considerations involved in your guy's position to determine whether or not we should compete – at what level we should compete with the most favored nation status of tribal Americans. My most favorite nation is the United States of America, and that's what I'm part of. And I like being a citizen in the State of Washington, I like paying my taxes, I like doing my job, and being a business person. And I like to be able to compete in a socially acceptable level that we've defined. And Dawn's presentation is accurate in that we are not going to be able to appeal to a higher clientele if we don't have the tools to do so with the product mix that we have.

So am I going to be able to make any dent in the Muckleshoot's bottom line with \$500 limit on my blackjack? No. They have 2000, 2500 machines in one building and another thousand or so in another, and hundreds of tables and all kinds of things going on. It's just a small Cheers like mentality for what we are in our social card room setting that we can have a demographic that is broader.

And another example of that is I had some business people in town last week from Florida that I'm doing a mini-storage business with. And we go down to my mini-casino, or card room. They want to see it, they want to – you know, how's this thing, they're interested in it. And none of them want to gamble at the level that we had to offer. They wanted to go to the Muckleshoot and play there, and we did. So it's interesting that I can't even appeal to my own business partners and friends from Florida.

Senator Prentice: You went to the Muckleshoot?

Commissioner Ellis: You're concerned about doing business with people like that?

Mr. Kealy: No, they're not concerned with doing it with me. Anyway, I thank you guys for your time and consideration on this matter. You guys look at \$500 like it's the top end of the world. And honestly when you go to Vegas and otherwise, it's not. \$500 is still a very conservative limit, and I hope that you guys can understand it that way.

Commissioner Ellis: Chris, knowing your usual practice of doing an excellent job of maintaining facts and figures regarding the implications on the bottom line of your business at various proposals, \$500 in the context of looking at it as kind of a price increase for a member of the industry, do you have any data on what the implications of that kind of a price increase would be? What would that do to your bottom line? Dawn has talked a little bit on what it would allow her to do on kind of an antidotal basis in offering better steaks or better wines. But how do you see that in dollars and cents, if you have that kind of data available?

Mr. Kealy: Well, I guess I will lean on a little bit of my previous success in this area. When we went from \$100 to \$200, some people were trying to do the math that we were going to go from \$4 hundred million a year in gaming through the card rooms to \$8 hundred million. And that just wasn't going to happen. And what I was testifying to then was we would see a smaller erosion of our market share. And we have seen erosion, even going from \$100 to \$200. We've gone backwards to I think \$385 million in gross receipts for the card rooms. And we're still drifting south by most conversations I've had.

So this isn't really going to do anything to boost it. It's going to keep the erosion factor at a slower pace. But that's all we're going to continue to experience in the card room industry is an eroding fact. And that's okay, because we're businesses that are selling food and beverage and we're doing other things. And we're creative business people and we're trying to do what we can do. This won't have an increase at all. It will still be less of an erosion.

Commissioner Ellis: I understand your idea of the erosion on an industry wide basis, but let's go to the micro analysis on a card room-by-card room basis. As I recall the numbers that I've seen, and I haven't seen them for a while, the average card room that is still in business in this State is doing very well. And I assume that if we looked at the data over time, particularly if we extended our analysis back into the late '90's before the 15 table rule went into effect etcetera, we did see a huge increase in the per card room net and gross revenue. So on a card room-by-card room basis, what do you think this proposal would do?

Mr. Kealy: Well again, on a card room-by-card room basis, over half the card rooms today do not make money, do not show a black bottom line. The ones that do, and mine do, on a case-by-case basis, this stands the best chance of keeping that erosion factor at bay. As we all know, inflation is running. And with the minimum wage tied to inflation, the index is going to jump on us January 1st, my estimate is between 50 and 75 cents an hour. It's going to be the biggest jump we've seen. And that times the 7000 hours it effects, becomes the payroll demand increase. And then you multiply that times the tax overburden, which is about a 1.19 factor, blah, blah, blah. I'm looking at something in the neighborhood of \$10,000 to \$15,000 every two weeks as an increase to the wages alone.

So on a card room-by-card room basis, this is still not going to do an amazing amount, it will just give us a different demographic to concentrate on and maybe have some successes in those areas.

Commissioner Ellis: Thank you.

Mr. Kealy: Thank you.

Mr. Monty Harmon: Good morning Commissioners and staff of the Commission. Monty Harmon, Harmon Consulting, Incorporated. I just wanted to add a little of the insights that I see as I go out amongst the industry. I am working with a couple of failing card rooms trying to help them with their tax burdens. They're not all well, and I think Chris Kealy mentioned that.

But after I work during the day, maybe I'll go out and have a beer and relax amongst the crowds. I have seen and heard customers say I'm going some place else where I can bet at higher limits. That I have personally experienced. And therein lies a situation where a customer would stay, would enjoy food and drink, and stimulate that business. I have also been in locations in this State that do not want to go to higher limits. Even though they have a \$200 ceiling, they stay at the \$100 limit because they feel that's where they are safe and where their customer base is best held.

So increasing this limit does not mean that statewide everyone is going to use the higher limits. And I just wanted to bring that to your attention. Thank you for your time. If you have any questions –

Chair Bierbaum: Thank you. Mr. Ackerman.

AAG Ackerman: Madam Chair, I guess I'd just like to offer a note to the Commissioners, having heard the discussion today. This is far more discussion and consideration than I recall being given at the earlier meetings. I think that may be due to people's schedules and inability for all of you to be at various meetings. But with that I'm sensing some continued thought being given by the Commissioners to this topic. I would just point out that you do have the ability to set this over for a month, if you wish to obtain additional information, or just to give it further thought. My reading of the record would indicate that you're within the time limit to consider this next month, if you would rather do it then, or even to delay it as much as to November. So that's an option for you if you feel that you're not prepared to vote at this time.

Commissioner Ellis: May I ask a question?

Chair Bierbaum: Of course.

Commissioner Ellis: Jerry, since you have the floor for the moment, and I think that's a good proposal. The definition of Class II gaming includes card games that are played in conformity with the laws of the State regarding hours or periods of operation and limitations on wagers or pot sizes. Do we necessarily, or potentially, if we were to approve the petition to increase the limit to \$500, bring current tribal card games into the realm of Class II gaming rather than Class III gaming? Is that an issue that we should be concerned about?

AAG Ackerman: No. Commissioner Ellis, no, I don't think that is an issue. The Class II gaming essentially for tribal purposes is poker. And the other types of card games are – I'm trying to think if I'm missing anything or if there are any exceptions. But generally Class II for tribal purposes is poker, and the other types of card games that we offer in house-banked card rooms are Class III.

Commissioner Ellis: Well I'm looking at a page of the Manual on Indian Gaming Law that I was given, and it doesn't distinguish between poker and other card games. That doesn't mean for a second that there isn't a definition somewhere else other than on this page that I have. But it simply indicates that the term Class II gaming means, and then (2) is card games which are played in conformity with State laws as I read a minute ago. So I don't see that distinction here. Is there a distinction elsewhere in the rules that indicates that within the definition of Class II the only card game that is covered is poker?

AAG Ackerman: I'm not sure what you're referencing. My understanding under IGRA is that Class II covers poker. And in fact all of our current Compacts with tribes address the other types of card games, and specifically list them out as Class III gaming in the Compacts. So I'll take a look at this, but I'm not quite sure what it's referring.

Director Day: And I think for one clarification maybe I can help out because I believe house-banked card games are specifically defined and identified. So it's kind of the reverse situation as a Class III game so that poker would end up Class II, and is a Class II game. So this particular petition wouldn't have any impact on that differentiation directly.

Commissioner Ellis: Thank you.

Director Day: But the one with poker limits, most likely would.

Commissioner Ellis: Okay, thank you.

Chair Bierbaum: Commissioner Parker –

Commissioner Parker: Well Madam Chair, I think we've heard a suggestion that we defer action on this until the next meeting. But I'd like to see what people think about an amendment to the proposal to propose that the limit be amended from \$500 to \$300. Because it seems to me that speaks to the question about what card games are trying to offer, but it doesn't jump to the \$500 limit, which I think is causing me at least a little hesitation to jump into it.

Commissioner Rojecki: Madam Chair, I would also agree with Commissioner Parker and would second that.

Chair Bierbaum: Well I agree with the notion that it might be a good idea to defer final action on this. And reserving the right to change my mind, I'll just share my thinking on it right now since maybe we're not going to vote today.

The arguments that we've heard from the proponents have to do primarily with two arguments. One has to do with the health of the industry, and the other has to do with tribal parity. Neither one of those arguments in my mind are compelling. It's not our job to ensure the health of the industry, and isn't something that I would ordinarily consider in deciding whether or not to enact a rule change.

Similarly I agree with Commissioner Parker that the notion of tribal parity is not on the table for all the reasons that he articulated. However having said that, I think that the Commission has an obligation to ensure that its rule making has a rational basis, and it can't be arbitrary and capricious. The goal of the Commission is to ensure that gambling is legal and honest. And our staff has told us that the regulatory concerns are minimal, that the resource impacts are minimal.

I listened to Commissioner Parker talk about does this take this out of the social pastime. Clearly it doesn't, and I'd cite the tribes, not because there's any notion of tribal parity but the tribes have had \$500 limits for a very long time now. And experience has shown that that has not changed the game from a social pastime to something else. So I think that to just pick a number out of the hat, whether it's \$200, or \$300, or \$400, or whatever, in my mind that's arbitrary and capricious. There has to be some rational basis for our decision. And the tribes have had \$500 tables. And again, this argument is not about tribal parity. It has to do with is the Commission able to perform its function, which is to ensure that gambling is legal and honest at the \$500 limit. And the answer is clearly yes.

And so to not approve the petition would have to have some rational basis, and I haven't heard one yet. So that's my thinking today. Reserving the right to change my mind.

Commissioner Ellis: Well let me say, since I haven't expressed an opinion yet, that I tend to agree with Commissioner Parker and Commissioner Rojecki. I do think that I have some reservations about the \$500 limit, and I don't agree that the situation is really clear cut that moving from a \$200 limit to a \$500 limit would not potentially take the game out of the clear context of being a social game and something more of a profit making game for those people that would care to bet that much.

And I am concerned about the health of the industry. Certainly our primary responsibility is to regulate the industry to ensure that gambling is fair and honest. But once we have done that, many of the things that we can do can affect the industry, and the industry involves investment by Washington citizens, and it involves the employment of many Washington citizens. And so I don't think that we can ignore the implications of what we do with regard to the health of the industry. But I do think that moving from a \$200 to a \$300 level would be a nice "price increase" for members of the industry. So it seems to me that that is a reasonable step to take. And if there were a motion to that effect, I would vote in favor of it.

Commissioner Parker: Well I will so move to amend the proposed rule to provide for an increase from \$200 to \$300.

Commissioner Rojecki: I'll second that.

Chair Bierbaum: Any discussion? So are we moving forward with this?

Director Day: (Inaudible) I'm going to get in trouble now because I didn't have that there. There's two limits, so Commissioner Parker, would your motion apply to both?

Commissioner Parker: Yes.

Commissioner Ellis: And as I recall, isn't that the structure of the petition essentially; that the number that we're changing is in one portion of the section, and then the progressive jackpot limit cross references that same section. So if we change the number from \$200 to \$300 for the purposes of the general limit, then the progressive jackpot limit is automatically thereby changed.

Director Day: We have legal nodding heads to that effect, so you're correct, sir.

Commissioner Ellis: Good.

Chair Bierbaum: So we have a motion on the table. Any discussion? So for the record I'll say I'll vote in favor of it only because it's better than no increase at all. But again, I think that we completely open ourselves up to the argument that that's completely arbitrary and capricious. It sounds like, Commissioner Ellis, you just picked a number out of a hat that you say "represents a nice price increase". And I'm not sure that that's a rational basis upon which to enact a rule change. So having said that, all in favor?

Commissioner Parker: Aye.

Commissioner Rojecki: Aye.

AAG Ackerman: Madam Chair --

Commissioner Ellis: Aye.

Chair Bierbaum: Aye. Whoops, whoa, sorry about that.

AAG Ackerman: I guess I would need to point out, given the issue of the progressive jackpots, that there is a problem with the way the amendment is currently listed if you pass the motion that you currently have before you. And the problem is if you take a look at the amendatory section that's in your packet, it's WAC 230-15-140 --

Chair Bierbaum: Is it behind the same --

AAG Ackerman: It's about four pages behind your rule summary.

Chair Bierbaum: Okay.

AAG Ackerman: (3) says bonus wagers for progressive jackpots must not exceed manufacturer's rules or limits in number (1) above. I interpret what the motion would do would be to change (1) from its current language of "must not exceed \$200" to "must not exceed \$300". I think the problem with (3) is it appears to say that a manufacturer could set a limit higher than \$300, and that that would be permissible. Currently it says manufacturer's rules or limits listed in (1) above.

Chair Bierbaum: Right.

Commissioner Parker: Or you could just amend it by striking the "or". Would that do it?

Commissioner Ellis: Or you could do it by saying whichever is less.

AAG Ackerman: Exactly.

Commissioner Parker: Uh huh.

AAG Ackerman: I think that would be the way to address it.

Commissioner Parker: Okay, whichever is less than.

AAG Ackerman: Yes, manufacturer's rules or limits listed in (1) above, whichever is less, would probably cure that issue. So I guess if Commissioner Parker's motion would encompass that additional language, and if it was acceptable to a second, you would then have a motion that I think would achieve the intent of the offeror.

Chair Bierbaum: Are you going to amend your motion to that effect?

Commissioner Parker: Yes.

Chair Bierbaum: Okay. And what's the effective date?

Commissioner Rojecki: January 1st.

Director Day: Would be according to petition, January 1, 2009.

Chair Bierbaum: Do we have to vote again?

AAG Ackerman: I think you should, since we've amended the motion.

Chair Bierbaum: All in favor?

Commissioner Parker: Aye.

AAG Ackerman: Was there a second to the amended motion? I'm sorry.

Chair Bierbaum: I think Commissioner Parker –

Commissioner Parker: Yes.

Chair Bierbaum: No, Commissioner --

Commissioner Rojecki: Yes, second.

Commissioner Parker: Rojecki.

Chair Bierbaum: Commissioner Rojecki.

Commissioner Ellis: Right.

Chair Bierbaum: All in favor?

Commissioner Parker: Aye.

Commissioner Rojecki: Aye.

Commissioner Ellis: Aye.

Chair Bierbaum: Aye.

Commissioner Rojecki: I said aye.

Chair Bierbaum: Okay.

Assistant Director Harris: Thank you.

Chair Bierbaum: Ms. Hunter, are these yours?