NATIONAL
INDIAN
GAMING
COMMISSION

2/17/99

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref. No.: NOV-99-02

To: Dean Mike, Chairman
Twenty-Nine Palms Band of Mission Indians

1. Under the authority of 25 U.S.C.A. §2713(a) and 25 C.F.R. § 575, the Chairman of the National Indian Gaming Commission (hereinafter referred to as "NIGC") hereby provides notice of his intent to assess a civil fine against the Twenty-Nine Palms Band of Mission Indians, located at Coachelle, California, (hereinafter referred to as "Respondent"), for violations of 25 C.F.R. § 502.3(c) and 25 C.F.R. § 573.6(a)(11), as set forth in detail in Notice of Violation No. NOV-99-02 issued on January 14, 1999, a copy of which is attached hereto.

2. Under 25 U.S.C.A. § 2713(a) and 25 C.F.R. § 575.4, the Chairman may assess a civil fine, not to exceed $25,000 per violation per day, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a notice of violation issued under 25 C.F.R. § 573.3.

3. In arriving at a proposed civil fine of ten thousand dollars ($10,000.00), the Chairman has considered the factors prescribed in 25 C.F.R. § 575.4, as follows:

i. Economic benefit of noncompliance. The Respondent has failed to submit to the NIGC an annual audit report and a management letter for fiscal year 1996. The Respondent has benefitted economically to the extent that it did not hire and pay an independent auditor to complete the audit of its operation.

ii. Seriousness of the violations. This is a serious violation. Annual audit reports provide both the Respondent and the NIGC with important information on the financial strength of the tribal gaming operation. Inasmuch as the Respondent did not have their fiscal year 1996 financial records audited, it was impossible for the Respondent to know exactly how they were doing financially. Also, the management letter is an effective tool for improving overall management and operational control.

iii. History of violations. No prior notice of violation has been issued to the Respondent.

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iv. Negligence or willfulness. The respondent has failed to submit an annual audit report and a management letter for fiscal year 1996, and a management letter for fiscal year 1998, and was seven (7) months late in submitting the 1998 annual audit report. The record is silent as to why this is so. NIGC staff contacted the Respondent on several occasions concerning these violations but the Respondent continues to be in violation. The NIGC therefore finds that the Respondent has acted willfully in its failure to comply.

v. Good faith. The NIGC is not aware of any steps taken by the Respondent which would show a good faith effort to achieve rapid compliance after notification of the violation.

THEREFORE, the Chairman, after a careful review of the above factors has determined that a fine in the amount of ten thousand dollars ($10,000.00) is assessed against the Twenty-Nine Palms Band of Mission Indians.

Assessment of this civil fine does not alleviate the Respondent of the responsibility to submit the 1996 audit report and management letter and the 1998 management letter to the NIGC. Failure to submit these documents may subject the Respondent to a temporary closure order pursuant to 25 C.F.R. § 573.6(a).

Under 25 C.F.R. § 577.3, within thirty (30) days after service of this Notice of Proposed Civil Fine Assessment, the Respondent may appeal the proposed fine to the full Commission by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, D.C. 20005. The Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, the respondent must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits. If the respondent wishes to present oral testimony or witnesses at the hearing, the respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The respondent may waive his or her right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Montie R. Deer
Chairman

2-17-99
Date

Mai Dinh, NIGC Attorney
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