National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-08-05

To: Crow Creek Tribe
Attn: Lester Thompson, Jr.
Chairman and Agent for Service of Process
P.O. Box 50
Fort Thompson, SD 57339
FAX: (605) 245-2470

1. Under the authority of 25 U.S.C. § 2713(a), of the Indian Gaming Regulatory Act (IGRA), and the regulations of the National Indian Gaming Commission (NIGC) at 25 C.F.R. part 575, the Chairman of the NIGC hereby provides notice of his intent to assess a civil fine against the Crow Creek Tribe (Respondent), located in Fort Thompson, South Dakota (Respondent), for violations of 25 U.S.C. § 2710(b)(2)(C), 25 C.F.R. §§ 571.12-571.13, and Section 32 of the Crow Creek Tribe Gaming Ordinance, as set forth in detail in Notice of Violation No. NOV-08-05, issued on May 23, 2008. NOV-08-05 was issued for failure to submit a timely annual audit report for the Lode Star Casino & Hotel.

2. Pursuant to 25 U.S.C. § 2713 (a) and 25 C.F.R. § 575.4, the Chairman of the NIGC may assess a civil fine, not to exceed $25,000 per violation, 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. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4(a)(2).

3. The NIGC regulations at 25 C.F.R. § 575.5 provide that, within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine. Respondent did not submit information regarding the violation under 25 C.F.R. § 575.5.

4. The Chairman has considered the factors set forth in 25 C.F.R. § 575.4 and finds the following:

   i. Economic benefit of noncompliance. Respondent obtained a slight economic benefit from the untimely filing of the audit reports. The Tribe did not submit the audit report by January 28 because, as represented by a tribal employee, the Tribe

had not yet paid for it. Therefore, the Tribe was able to collect interest on money that otherwise would have gone toward paying for the audit report until it finally made payment on or about April, 2008. Exhibit 11.

ii. Seriousness of the violation. It is the declared policy of the IGRA to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield if from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. § 2702. Accordingly, the IGRA requires an outside annual audit of the gaming, 25 U.S.C. § 2710(b)(2)(C), and NIGC regulations clarify this means each tribe "shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands." 25 C.F.R. § 571.12. The financial statements are required to be prepared in accordance with generally accepted accounting principles and generally accepted accounting standards, *id.*, and the audit is required to be submitted within 120 days after the end of each fiscal year of the gaming operation. 25 C.F.R. § 571.13.

Submission of the annual independent audit report by an independent accountant is critical to the NIGC's mission to protect the integrity of Indian gaming. An accountant's ability to conduct an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principals provides assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements. Further, 25 C.F.R. § 571.12 is explicit: the annual submission must be for the business year end and the financial statements must be audited and certified by an independent certified public accountant. Only after the financial statements of a gaming operation have been audited and the results certified by a certified public accountant can the NIGC acquire confidence in the data sufficient to rely upon it. Such reliance is necessary to assure that the results of the analytical procedure performed by the NIGC will be effective in the identification of gaming operations possessing a high risk of regulatory noncompliance.

The audited financial statements are only useful if they are timely. The 120 day period after the end of the fiscal year is the time afforded the independent certified public accountant to perform such testing of the financial data necessary to express an opinion on the fairness of the financial statements. Any delay in receipt of the financial statements significantly reduces the reliability and relevancy of the data to the NIGC. The NIGC uses the audited financial statements to measure regulatory compliance, which directly relates to the detection and remediation of potential and actual integrity violations. Respondent's filing of its annual financial statements 84 days past the required

submission date, nearly seven months past the business year end, reduces the usefulness of the data and increases the probability that, if irregularities existed, successful investigation thereof would be unlikely.

iii. History of violations. This is the Tribe's first violation.

iv. Negligence or willfulness. The Tribe was aware of the audit report due date, as indicated by the January 28, 2008 phone call from Crow Creek Sioux Tribe (CCST) Gaming Commission Executive Secretary Darla Fallis, to Jim McKee, NIGC Field Investigator, 2005. Exhibits 1 and 2. Fallis stated that the audit report would be late and that no internal auditor had been hired yet.

On January 31, 2008, Karrie Donner, General Manager of the Casino, submitted the Tribe's Agreed Upon Procedures and Minimum Internal Control Standards report. Field Investigator McKee emailed the regulations relating to annual audit requirements. Exhibits 1, 3, and 4.

On February 20, 2008, Fallis stated to Field investigator McKee that she would check on the status of the audit report. Exhibits 1 and 5.

On March 12, 2008, CCST Council Member Erick Voice stated in a telephone conversation that he had received a draft copy of the annual audit. He stated that it either had been or was about to be submitted to the NIGC. Exhibits 1 and 6.

On March 25, 2008, Casino General Manager Donner attempted to email a copy of the annual audit to me, but the file could not be opened by field investigator McKee. On March 27, McKee sent an email to Donner informing her that he was unable to open the attachment. Exhibits 1 and 7.

On March 28, 2008, Field investigator McKee again notified Donner that NIGC had not received the audit report. Exhibit 8.

On March 31, 2008, Donner emailed a copy of the audit report, but it was marked "Preliminary." Exhibits 1 and 8, 9.

On April 3, 2008, Field investigator McKee sent an email to Donner explaining that NIGC needs a final audit rather than a preliminary one. Exhibits 1 and 10.

On April 3, 2008, Donner explained to Field investigator McKee by email that she had not yet received the final audit, but would send it as soon as she got it. Exhibits 1 and 10.

On April 21, 2008, Donner sent the final audit report to McKee by email, apologizing for it taking so long, but explaining she needed resolution and payment before they sent it. Exhibits 1 and 11.

As Respondent was aware of the submission deadline, and that preliminary audits, though also untimely, did not meet the submission requirements. Respondent's late submission of the annual audit reports for Lode Star Casino & Hotel for fiscal year 2006-2007, was therefore willful rather than negligent.

v. Good faith. A civil fine may be reduced based upon the degree of good faith of a respondent in attempting to achieve rapid compliance after notice of a violation. In this matter, the Tribe submitted the audit report for Lode Star Casino & Hotel before the notice of violation was issued; this factor is therefore inapplicable.

5. WHEREFORE, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of $10,000 (ten thousand dollars) is assessed on the Respondent for failure to submit timely annual audit reports for the Lode Star Casino & Hotel. The fine is due forty-five (45) days from the date of this Civil Fine Assessment.

6. Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date. 31 U.S.C. § 3717.

7. After balancing the factors, the Chairman believes a $10,000 fine is appropriate. The Tribe has presented no evidence of extenuating circumstances under 25 C.F.R. § 575.5. Therefore, the only circumstances which would explain the 84-day delinquency appear in an April 21, 2008 email from tribal employee Donner to field investigator McKee referencing the need for "resolution and payment before they sent [the audit]." Exhibits 1 and 11. The audit report is due at the same time every year, and the statute allows the Tribe 120 days after the close of the fiscal year for preparation of the audit. An additional delay of nearly 3 months significantly reduces the reliability and relevancy of the data to the NIGC. In light of the Tribe's history of compliance and the Tribe's limited economic benefit from the violation, the Chairman finds a fine of $10,000 appropriate for such willful and excessive delinquency in meeting a serious statutory requirement.

8. Pursuant to 25 C.F.R. § 577.3, within 30 (thirty) days after service of this Notice of Proposed Civil Fine Assessment, 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, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that sets forth with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to present oral testimony or witnesses at the hearing, 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. Respondent may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Dated this 27 day of June 2008.

Philip N. Hogen
Chairman

Jennifer Ward
Staff Attorney
202-418-9814

CERTIFICATE OF SERVICE

I certify that this **NOTICE OF PROPOSED CIVIL FINE ASSESSMENT** has been sent by facsimile and certified mail this 27th day of June, 2008, to:

Crow Creek Tribe
Attn: Lester Thompson, Jr.
Chairman and Agent for Service of Process
P.O. Box 50
Fort Thompson, SD 57339
FAX: (605) 245-2470

Frances Fragua