National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-08-08

To: Wendsler Nosie, Chairman
San Carlos Apache Tribe
P.O. Box 0
San Carlos, Arizona 85550
FAX: 928-475-2567
TEL: 928-475-2361

Vicki Asermeally, Chairman
San Carlos Apache Tribal Gaming Commission
P.O. Box 1300
San Carlos, Arizona 85550
FAX: 928-475-2492
TEL: 928-475-5936

Maria Stevens, Acting Executive Director
San Carlos Apache Tribal Gaming Commission
(Agent for Service of Process)
P.O. Box 1300
San Carlos, Arizona 85550
FAX: 928-475-2492
TEL: 928-475-5936

Steve Titla, Tribal Attorney
San Carlos Apache Tribe
Titla & Parsi, PLLC
P.O. Box 1143
245 S. Hill St.
Globe, Arizona 85502
FAX: 928-425-9048
TEL: 928-425-8137

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the San Carlos Apache Tribe (Tribe), located in San Carlos, Arizona, and operating the Apache Gold Casino (Casino) located 5 miles East of Globe on Highway 70 in San Carlos, Arizona, has violated the NIGC regulations by failing to submit a timely annual audit.

2. Authority

Under the Indian Gaming Regulatory Act (IGRA) and NIGC regulations, the Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713; 25 C.F.R. § 573.3

3. Applicable Federal Laws and Tribal Ordinance Provisions

A. 25. U.S.C. § 2710(b)(2)(C). IGRA requires an annual audit of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC.

B. 25 C.F.R. §§ 571.12 and 571.13. NIGC regulations require that a tribe cause to be conducted annual independent audits of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) and any management letter(s) setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year.

C. San Carlos Apache Tribal Gaming Ordinance requires that the Tribe cause an annual audit to be conducted as follows:

Chapter II, Section 2.06 Audit

A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

B. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of $25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection A. above.

Chapter III, Section 3.20 Duties of Director

The Director shall, subject to the approval of the Gaming Office, perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes of this Code relating to the regulation

of all gaming activity. In all decisions, the Director shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activity. The Directors duties shall include but not be limited to the following:

(a) ...

(b) Correspond with the National Indian Gaming Commission and do whatever is necessary to complete compliance with the rules and regulations of that agency. Specifically, the Director shall arrange for an annual outside audit of authorized gaming and will provide a copy to the National Indian Gaming Commission.

4. Role of Independent Audit Report

Submission of the annual independent audit report by a firm of certified public accountants is critical to the NIGC's mission to protect the integrity of Indian gaming. A firm'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 principles provides a certain level of 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.

5. Circumstances of the Violation

A. The Tribe is a federally recognized Indian Nation with tribal headquarters in San Carlos, Arizona.

B. The Tribe has operated its gaming facility, the Apache Gold Casino, from 1994 to the present. In prior audits submitted to the NIGC, the fiscal year for the Casino ran from October 1 to September 30. In particular, in the Casino's most recent fiscal year, the Tribe retained the same 12 month period as its fiscal year i.e., beginning October 1, 2006 and ending September 30, 2007.

C. IGRA requires that tribes submit annual audits of each gaming facility. 25 U.S.C. § 2710(b)(2)(C). NIGC regulations require that a tribe cause to be conducted an annual independent audit of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) and management letter(s) setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each fiscal year. 25 C.F.R. §§ 571.12, 571.13.

D. Therefore, the Tribe's audit, based on the close of the Tribe's fiscal year and the requirement for submission on or before 120 days from the close of the fiscal year, was due to the NIGC on January 28, 2008.

E. In violation of NIGC regulations, the Tribe failed to submit an annual independent audit report to the NIGC until March 17, 2008, 49 days after the audit was due.

6. Measures Required to Correct the Violation

Audits must be received within 120 days of the end of a gaming operation's fiscal year. 25 C.F.R. § 571.13. While there is no remedial action that can correct the 2006-2007 audit, improved controls to assure timely compliance of the next audit should be put in place.

7. Appeal

Within thirty (30) days after service of this Notice of Violation, The Tribe may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal, and, if desired, request for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Violation.

Within ten (10) days after filing a notice of appeal, the Tribe must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe 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, whether a closed hearing is requested and why. The Tribe 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.

///

8. Fine-Submission of Information

The violation cited above may result in the assessment of a civil fine against Tribe in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), the Tribe may submit written information about the violation to the Chairman within fifteen (15) days after service of this notice of violation (or such longer period as the Chairman may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 30 of May, 2008.

PHILIP N. HOGEN
Chairman

ANTONIA COWAN
Staff Attorney

Certificate of Service

I certify that this **Notice of Violation** was sent by facsimile transmission and certified U.S. mail, return receipt requested, on this 30 day of May, 2008 to:

Wendsler Nosie, Chairman
San Carlos Apache Tribe
P.O. Box 0
San Carlos, Arizona 85550
FAX: 928-475-2567
TEL: 928-475-2361

Vicki Asermeally, Chairman
San Carlos Apache Tribal Gaming Commission
P.O. Box 1300
San Carlos, Arizona 85550
FAX: 928-475-2492
TEL: 928-475-5936

Maria Stevens, Acting Executive Director
San Carlos Apache Tribal Gaming Commission
Agent for Service of Process
P.O. Box 1300
San Carlos, Arizona 85550
FAX: 928-475-2492
TEL: 928-475-5936

Steve Titla, Tribal Attorney
San Carlos Apache Tribe
Titla & Parsi, PLLC
P.O. Box 1143
245 S. Hill St.
Globe, Arizona 85502
FAX: 928-425-9048
TEL: 928-425-8137

Shakira Ferguson

Shakira Ferguson