NATIONAL INDIAN GAMING COMISSION

NOTICE OF VIOLATION

NOV-08-19

TO: Torres Martinez Band of Desert Cahuilla Indians
Attn: Raymond Torres, Chairman
P.O. Box 1160
Thermal, California 92274
FAX: (760) 397-0300

Torres Martinez Gaming Commission
Attn: Trinidad Krystall, Chairperson
3089 Norm Niver Road
Thermal, CA 92274
FAX: (760) 397-8146

Torres Martinez Gaming Commission
Attn: Alex Sanchez
(Agent for Service of Process)
3089 Norm Niver Road
Thermal, CA 92274
FAX: (760) 395-0415

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Torres Martinez Band of Desert Cahuilla Indians (Respondent or Tribe), located in Thermal, California has violated NIGC regulations and the Tribe's gaming ordinance by failing to submit a timely annual audit.

2. Authority

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

B. 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. 25 C.F.R. §§ 571.12 and 571.13.

C. NIGC regulations define "gaming operation" as "each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses." A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity. 25 C.F.R. § 502.10.

D. The Torres Martinez Desert Cahuilla Indian Tribe Tribal Gaming Ordinance requires that an annual audit be conducted as follows:

VII. 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 within one hundred twenty (120) days of the fiscal year end of the gaming operation.

B. All gaming related contracts that result in the purchase of supplies, service, 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.

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. Respondent is a federally recognized Indian Tribe with tribal headquarters in Salton Sea, California.

   B. The Tribe operated its gaming facility, Torres Martinez Gaming Corporation d/b/a Red Earth Casino, during all or part of 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 gaming operation's fiscal year. 25 C.F.R. §§ 571.12, 571.13.

   D. The Torres Martinez Band of Cahuilla Indians Tribal Gaming Ordinance requires that an annual audit be conducted annually and that the resulting audit reports be submitted to NIGC within one hundred twenty (120) days of the fiscal year end of the gaming operations. Torres Martinez Desert Cahuilla Indian Tribe, Tribal Code Class II and Class III Gaming Ordinance, Resolution #TM-04-08-005 (Amended April 12, 2008).

   E. The fiscal year for the gaming operation named in this violation ended December 31, 2007.

   F. The audit report for the facility named in this violation was due to NIGC on or before April 29, 2008.

   G. NIGC received the audit report for this facility on May 30, 2008, 31 days late.

   H. The Tribe is in violation of NIGC regulations and its gaming ordinance for failure to submit a timely annual independent audit report.

6. Measures Required to Correct the Violation

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

7. Appeal

Within thirty (30) days after service of this Notice of Violation, Respondent 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. Respondent 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, Respondent 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 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, whether a closed hearing is requested and why. Respondent may waives 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 Respondent in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondent 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 21st of August, 2008

PHILIP N. HOGEN
Chairman

HEATHER L. MCMILLAN
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 21st day of August, 2008 to:

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