National Indian Gaming Commission

Settlement Agreement
SA-95-03

Introduction

This Settlement Agreement ("Agreement") is entered into by and between the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria ("Tribe"), a federally-recognized Indian tribe, and the Chairman of the National Indian Gaming Commission ("NIGC"), relating to the matter contained in Notice of Violation No. NOV-95-03 and Order of Temporary Closure No. CO-95-03 issued by the NIGC Chairman ("Chairman").

Recitals

A. WHEREAS, on October 13, 1995, the Chairman issued NOV-95-03 as a result of the Tribe's: (1) conduct of gaming operations at the former Elem Casino and former Pomo Palace Casino in a manner that precluded adequate protection of the health and safety of the gaming public, in violation of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(b)(2)(E); NIGC Regulations, 25 C.F.R. § 573.6(a)(12); and Section 7(b) of the Tribe's Gaming Ordinance as it existed at that time; and (2) failure to complete background investigations and grant gaming licenses to key employees and primary management officials, and to forward results of the background investigations to the NIGC, in violation of IGRA, 25 U.S.C. § 2710(b)(2)(F), and NIGC Regulations, 25 C.F.R. § 573.6(a)(5).

B. WHEREAS, on October 13, 1995, the Chairman issued CO-95-03, ordering temporary closure of the Elem Casino and the Pomo Palace Casino, as a result of the violations described in paragraph A above.

C. WHEREAS, the Tribe ceased gaming operations at the Elem Casino and Pomo Palace Casino prior to issuance of NOV-95-03 and CO-95-03, and never resumed gaming operations at either facility.

D. WHEREAS, the Chairman finds that good cause exists to rescind the temporary closure order, CO-95-03, because the Tribe never resumed gaming at the closed facilities; has agreed to maintain their gaming facilities in a manner which adequately protects the environment, public health, and safety; and has agreed to ensure that background investigations are conducted on primary management officials and key employees and that the results of such investigations are provided to the NIGC.

E. WHEREAS, the Tribe and the Chairman desire to achieve an amicable resolution of Notice of Violation No. NOV-95-03, the rescission of Order of Temporary Closure No. CO-95-03, and the Tribe's appeal.

F. THEREFORE, the Tribe and the Chairman have agreed to execute this Agreement and perform in accordance with the following covenants and conditions.

Terms of Settlement

1. This Agreement is entered into pursuant to 25 C.F.R. §§ 573.6(c)(3) and 577.9(d) and shall be effective upon the date that it is signed by the last party to sign this Agreement ("Effective Date").

2. The Tribe agrees that, pursuant to IGRA, 25 U.S.C. § 2710(b)(2)(E); NIGC Regulations, C.F.R. § 573.6(a)(12); and Section 7(b) of the Tribe's Gaming Ordinance as it existed on October 13, 1995, it was required to construct, maintain and operate the Elem Casino and Pomo Palace Casino in a manner which adequately protected the environment, public health and safety.

3. The Tribe further agrees that, pursuant to IGRA, 25 U.S.C. § 2710(b)(2)(F); NIGC Regulations, 25 C.F.R. §§ 573.6(a)(5) and part 558, it was required to conduct background investigations, issue gaming licenses, and submit reports to the NIGC for all key employees and primary management officials of the gaming operations.

4. The Tribe acknowledges that the requirements set forth in paragraphs 2 and 3 above were not satisfied with respect to the Elem Casino and Pomo Palace Casino and, thus, that gaming operations at these facilities were conducted in violation of the IGRA, NIGC regulations, and the Tribe's Gaming Ordinance as it existed at that time.

5. The Tribe agrees that, prior to the operation of further gaming activities by the Tribe, it will ensure that a tribal gaming commission is formed and is adequately funded and staffed.

6. The Tribe further agrees that any future gaming operation will be constructed, maintained and operated in a manner which adequately protects the environment, public health, and safety.

7. The Tribe further agrees upon execution of this Agreement to waive the right to further review of matters addressed in NOV-95-03, CO-95-03, and this Agreement, including all rights to appeal to the full Commission as set forth in 25 C.F.R. Part 577, and judicial review pursuant to 25 U.S.C. § 2714. As a consequence, the Tribe agrees to dismiss its appeal of these matters, and execution of this Agreement will constitute dismissal of those appeals.

8. The Chairman agrees to rescind Order of Temporary Closure No. CO-95-03.

9. In the event that it fails to comply with this Agreement, the Tribe agrees and consents that a civil fine of fifty thousand dollars ($50,000) will become fully due and payable on the date of the breach. In such circumstance, the NIGC will issue a written notice to Respondent pursuant to NIGC debt collection regulations, 25 C.F.R. Part 513. Respondent agrees that the NIGC and/or the U.S. Treasury may proceed with debt collection of the fifty thousand dollar ($50,000) civil fine against the Tribe, and may assess interest, penalties, administrative costs from the date of the breach of this Agreement as provided in 25 C.F.R. § 513.5. In such circumstance, the Tribe agrees to waive any rights to an oral hearing under 25 C.F.R. § 513.6, but the NIGC shall provide the Tribe with a reasonable opportunity to submit written material supporting a request to reconsider the determination that the Tribe is in breach of this Agreement or to challenge the method by which the NIGC calculated the debt.

Additional Covenants

10. This Agreement constitutes the entire agreement between the Tribe and the NIGC Chairman related to the enforcement matter set forth at the beginning of this Agreement. Any modification or waiver of any item of this Agreement must be in writing signed by both parties.

11. The Tribe agrees that this Agreement shall be deemed to be the subject of a final order of the Commission under 25 C.F.R. § 575.4(c)(1) and a final agency action pursuant to 25 C.F.R. § 577.9(d).

12. The NIGC Chairman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.

13. The parties agree that after the Effective Date, this Agreement shall be a public document and may be published or disclosed by either party.

14. This Agreement may be executed on one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.

Elem Indian Colony of Pomo Indians
of the Sulphur Bank Rancheria

Geraldine Johnson

Geraldine Johnson, Chairperson

Date: 2-12-09

National Indian Gaming Commission

Philip N. Hogen, Chairman

Date: 2/24/09