National Indian Gaming Commission

SETTLEMENT AGREEMENT

INTRODUCTION

1. This agreement is entered into by and between the Coyote Valley Band of Pomo Indians (Tribe) and the Chairman of the National Indian Gaming Commission (NIGC) to resolve the Chairman's concerns regarding the Tribe's use of gaming revenues.

2. An investigation by the Tribal Council and the NIGC revealed that some of the Tribe's gaming revenues were incorrectly used. The Tribe and the NIGC have determined that the deficiencies in the Casino's accounting systems, internal controls and policies and procedures have contributed to the impermissible use of gaming revenues. The Tribe and the NIGC agree that resolving these matters by settlement agreement is in the parties' best interest.

RECITALS

3. Under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., the NIGC is responsible for regulating Class II gaming and certain aspects of Class III gaming on Indian lands.

4. On November 7, 1994, the Band adopted an ordinance authorizing and regulating gaming on the Coyote Valley Indian Reservation. The tribal ordinance was adopted for the purpose of establishing gaming within the Reservation "in conformity with the federal Indian Gaming Regulatory Act . . . and regulations promulgated thereunder."

5. A revenue distribution plan, which governs the expenditures of the Band's gaming revenues, was adopted by the Band on November 7, 1994, and approved by the United States Department of the Interior on September 19, 1995. That plan provides that "[n]o Tribal Programs Account funds shall be used to make payments to or on behalf of individual Tribal members, unless a specific program authorizing such payment has been approved by the Tribal Council." Further, the expenditures under the plan must be incurred under a budget approved by the Tribal Council and General Council.

6. The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees. 25 U.S.C § 2703(9), 25 C.F.R. § 502.16.

7. Under IGRA and the Commission's regulations, 25 U.S.C. § 2701(b)(2)(B) and 25 C.F.R. § 522.4(b)(2), tribes are authorized to use net gaming revenues for the following purposes only:

   a. to fund tribal government operations or programs;

   b. to provide for the general welfare of the tribe and its members;

   c. to promote tribal economic development;

   d. to donate to charitable organizations; or

   e. to help fund operations of local government agencies.

8. Tribal gaming operations must keep records "sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements. " 25 C.F.R. § 571.7.

9. In 1997, the Coyote Valley Casino (Casino) issued American Express Corporate Credit Cards to each member of the Tribal Council and to the General Manager.

10. The Tribal Council engaged in the following improper action with regard to casino assets:

    a. From 1997 until February of 2000, members of the Tribal Council used the Casino-issued American Express Corporate Cards for personal expenditures such as vacations and personal items such as gifts, clothing, toys, and automobile tires.

    b. From 1997 until February of 2000, members of the Tribal Council used the Casino-issued American Express Corporate Cards for expenditures that had already been provided by the Casino through other means. For example, Tribal Council members received cash advances to cover travel expenses, yet charged the same expenses on the casino-issued charge card, effectively causing the Casino to pay twice for the same expenses.

    c. From 1997 until February of 2000, members of the Tribal Council used the Casino-issued American Express Corporate Cards for tribal governmental business. For example, members of the Tribal Council traveled and charged expenses to the Casino-issued credit card when, in fact, such travel was not for casino business. If such travel was for tribal governmental purposes, the Tribal Council members should have asked the tribal government to pay such expenses. Allowing governmental expenses to be charged to the casino prevents the tribal

government from having control and accountability over governmental expenses. Such expenses may be paid by the tribal government through net revenues for the tribal casino if such expenses meet the requirements set for in 25 U.S.C. § 2701 (b)(2)(B) and 25 C.F.R § 522.4 (b)(2).

11. From 1997 until February 2000, Tribal Council members incurred a minimum of $150,000 for personal and/or improper credit card charges that were paid by the Casino. As of March 30, 2001, the remaining balance still owed by the Tribal Council members exceeded $95,000. Moreover, members of the Tribal Council incurred a minimum of $10,272.95 in charges for tribal government business that was paid by the Casino.

12. The Casino accounting department and the Tribe lacked an effective system of internal controls necessary to track gaming revenues. This allowed Casino assets to be diverted before the assets were distributed according to the revenue distribution plan, in violation of 25 U.S.C § 2703(9), 25 C.F.R. § 502.16.

13. Desiring to preserve their longstanding relationship, representatives of the parties to this Agreement have explored amicable methods of resolving the above referenced concerns.

AGREEMENT

ACCORDINGLY, the parties agree as follow:

14. The Tribe and the Chairman have determined that deficiencies in the Tribe's accounting systems, internal controls and policies and procedures have contributed to the improper uses of gaming revenues. Accordingly, the parties agree to the following terms to remedy these deficiencies:

15. Independent Tribal Gaming Commission. Within thirty days of the date of this document, the Tribe shall submit an amended gaming ordinance to the Chairman of the NIGC for his approval in order to strengthen the Casino's Gaming Commission. Such amended gaming ordinance (Ordinance) will reaffirm that the Commission is an independent tribal Gaming Commission. The Tribe's current ordinance will include the following concepts:

    a. The Tribal Gaming Commission's duty is to regulate tribal gaming operations.

    b. The Tribal Gaming Commission serves as a regulatory, rather than managerial, purpose. The Tribal Gaming Commission is empowered to conduct oversight to ensure compliance with Federal, Tribal, and, if applicable, state gaming laws and regulations. The Tribal Gaming Commission serves as the licensing authority for individuals employed in the gaming operation and administers an effective program for background investigations as part of the licensing process. The Tribal Gaming Commission monitors compliance with the internal control

standards for the gaming operation and the policies and procedures governing expenditure of gaming revenues. To carry out its regulatory duties, the Tribal Gaming Commission has unrestricted access to all areas of the gaming operation and to all records. The Tribal Gaming Commission has clear authority to take enforcement actions, including the authority to suspend or revoke an individual gaming license and may order the suspension or revocation of credit card or purchase authority.

c. The Tribe recognizes the importance of the independence of the Tribal Gaming Commission in maintaining a well-regulated gaming operation. Therefore, the Tribal Gaming Commission has been empowered to act independently and autonomously from the Tribal Council in all matters within its purview. No prior or subsequent review by the Tribal Council of any actions of the Tribal Gaming Commission is required or permitted except as otherwise explicitly provided in the Tribal Gaming Ordinance.

d. The Tribe understands that the independence of the Tribal Gaming Commission is essential to a well-regulated gaming operation. The Tribal Gaming Commissioners are appointed for staggered terms of three years and may be removed from office by the Tribal Council prior to the expiration of their respective terms only for neglect of duty, misconduct, malfeasance, or other acts that would render a commissioner unqualified for his/her position. Any allegations of neglect of duty, misconduct, malfeasance, or other acts that would render him or her unqualified for his/her position must be substantiated by a preponderance of the evidence. A Commissioner shall be given a reasonable opportunity to provide evidence rebutting the grounds for his or her removal before the removal is final. A wrongful removal shall entitle the affected Commissioner to compensation for expenses incurred in an appeal and any pay withheld.

16. Ordinance Requirements. The amendment to the ordinance shall include the following:

a. All members of the Tribal Gaming Commission shall attend 40 hours of regulatory, gaming-related training each year.

b. For any non-budgeted expenditure by the Casino Board of Directors, Tribal Council or Casino greater than $500, the Tribal Gaming Commission shall certify that the expenditure constitutes a gaming operating expense.

c. To avoid potential conflicts of interest between the operation and regulation of the Casino, the Tribe shall require that:

    i. No member of the Tribal Council may serve on the Tribal Gaming Commission.

ii. Members of the Tribal Gaming Commission and the Board are prohibited from gambling in the Casino.

iii. Members of the Tribal Gaming Commission, Board, and Tribal Council are prohibited from accepting complimentary items from the Casino.

iv. Employees of the Casino or any gaming enterprise on the reservation are prohibited from serving on the Tribal Gaming Commission.

v. Persons who are not eligible to serve as key employees or primary management officials are prohibited from serving on the Tribal Gaming Commission or Board.

vi. Tribal Gaming Commissioners shall be subjected to a background investigation and deemed suitable by the Tribal Council before appointment to the Tribal Gaming Commission.

vii. Tribal Gaming Commission employees shall be subjected to a background investigation and deemed suitable by the Tribal Gaming Commission before employment with the Tribal Gaming Commission.

17. Protection of Tribal Gaming Revenues. The Tribe recognizes the importance of ensuring that the tribal government, rather than individual members or casino employees, determine the appropriate and lawful use of tribal gaming revenues. Accordingly, the Tribe has adopted polices that ensure the following:

a. No personal loans or advances shall be made to members of the Tribal Council, the Board or the Tribal Gaming Commission from Casino assets.

b. Neither goods, nor services, nor equipment shall be provided to non-casino employees out of Casino assets.

c. Casino expenditures that do not benefit the gaming operation are prohibited. Casino expenditures are authorized only if they are considered gaming operating expenses in accordance with GAAP. Casino expenditures must be made in accordance with good business practices. Casino expenditures made for the benefit of individuals or the Tribe are prohibited.

d. No charitable gifts or other gifts shall be made by the Casino. This will not prohibit, however, the marketing department from sponsoring promotions or other budgeted marketing activities. If the Tribe wishes to make charitable gifts, it may do so as a government in conformance with the approved uses of net gaming revenues, after such revenues have moved from the gaming operation to the Tribe.

18. Casino Travel Expense Policy. The Tribe, through the Casino management, has established and implemented a Casino travel expense policy. The Casino travel expense policy and procedure provides the following:

    a. Credit cards may be issued to gaming operation employees and gaming board members only.

    b. Travelers shall be reimbursed only for expenses incurred while traveling on Casino business.

    c. Travel advances shall not be authorized for credit card holders.

    d. Travelers shall be reimbursed only for legitimate and necessary travel expenses. Legitimate and necessary travel expenses include but are not limited to lodging, meals, vehicle rentals, and incidental expenses. Incidental expenses include reimbursement for tips to wait staff, tips for transportation, pressing and cleaning of laundry.

    e. Certain expenditures, including but not limited to, clothing, physical therapy, expenses for spouses, children, significant others, and/or any other persons accompanying the traveler, shall be prohibited.

    f. All travel shall be pre-approved by a designated person in Casino management.

    g. Travelers shall justify their claimed travel expenses by providing receipts and other supporting documentation to the Casino management.

    h. Requests for travel reimbursement shall include a complete explanation of the costs, the amount of the purchase, the dates the expenses were incurred, the purpose of the expenditure, and receipts proving the expenditures.

    i. The Casino may issue credit cards for employees or board members who will be traveling on behalf of the Casino. Each cardholder shall sign a contract with the Casino acknowledging that he/she has received a copy of the Casino travel expense policy and procedure and that he/she understands that he/she is responsible for justifying all expenditures made and that all expenditures shall be incurred and repaid in accordance with the Casino travel expense policy and procedure.

    j. All travel expenses shall be reconciled at the end of each month, and no honoraria, per capita payments, or other payments shall be issued to the responsible traveler if that person has an outstanding travel balance.

k. Casino-issued credit cards shall be used for travel expenses only. Casino-issued credit cards cannot be used for general or special purchases for the Casino except by the Casino's specifically appointed purchasing agent.

l. A copy of the Casino travel expense policy shall be submitted to the NIGC and Commission within thirty days of the date of this document.

19. Auditing and Accounting Systems. The Tribe shall improve and maintain its accounting systems and procedures that, at a minimum:

a. Include an adequate system of internal accounting controls;

b. Permit the preparation of financial statements in accordance with generally accepted accounting principles; and

c. Are susceptible to audit.

20. Internal Audit Department. The Tribe shall establish an internal audit department that shall be responsible for establishing an audit plan with provisions ensuring:

a. all expenses submitted to the Casino as an expense are in accordance with the Casino travel expense and purchasing policy;

b. no individual person receives duplicate travel or purchasing expenses;

c. all travel and purchasing expenditures are for Casino business and that the Tribe is responsible for expenditures relating to tribal business;

d. all travel and purchases are documented; and

e. all net gaming revenues are transferred to a tribal government account.

21. Internal Audit Report. An internal audit report shall be issued annually. A copy of the report shall be submitted to NIGC and the Tribal Gaming Commission concurrently with the annual audit report required by IGRA.

22. Expense Audit Report. The Casino shall continue to engage an independent CPA firm to perform audits of all travel expense and good will and charitable contributions made by the Casino. Such audits shall be submitted to the Tribal Gaming Commission and NIGC.

23. Repayment of Sums Owed. The Tribe has required any outstanding expenses made by Tribal members to be repaid to the Casino in accordance with the promissory notes designated promissory notes "A" through "D" incorporated into this agreement by reference. Each month, the Comptroller shall submit proof of compliance with the agreement to the NIGC Region II Chief. That proof shall

include copies of the monthly records of payments being made to the Tribe and a certification that the monthly payment records reflect the actual payments being made pursuant to the agreement and that identify the source of the payments as being made directly from the debtor or from the withholding of honoraria, per capita payments or other sources. The Tribe has reimbursed the Casino the $10,227.95 deemed as tribal operational expenses.

24. The Tribe shall take immediate action in accordance with these terms and notify the NIGC of the measures taken in accordance with these terms within 30 days of the date of this document. The ordinance amendment shall be submitted to the Chairman, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. All other required information shall be submitted to Regional Chief, Region II, National Indian Gaming Commission, 501 I Street, Suite 12400, Sacramento, California, 95814.

25. The NIGC shall monitor compliance with this agreement. The Band shall comply fully with the NIGC's monitoring efforts and inform the general membership of this agreement.

26. The parties agree that this settlement will resolve all potential Commission enforcement action related to improper use of Tribal casino credit cards from the time period of January of 1997 until February 2000.

27. The parties agree to work in good faith to resolve any future disputes concerning the Tribe's gaming activities.

The Agreement entered this 18th day of ~~April~~ May 2001.

On behalf of the National Indian Gaming Commission:

Montie R. Deer, Chairman

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On behalf of the Coyote Valley Band of Pomo Indians

Priscilla Hunter, Chairwoman
Tribal Council