CGC

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-06-09

To: Herminia Frias, Chairwoman
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85746
(520) 883-5014

Stephen Hall, Executive Director
Pascua Yaqui Tribal Gaming Office
5655 S. Valencia Road
Tucson, AZ 85757
FAX: (520)838-6695

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Pascua Yaqui Tribe (Respondent or Tribe), located in Tucson, Arizona, is in violation of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations for failure to submit an annual audit.

2. Authority

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

3. Applicable Federal and Tribal Laws

A. 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. 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 fiscal year. 25 C.F.R. §§ 571.12 and 571.13.

C. Part I Chapter 1.000 of the Pascua Yaqui Tribe of Arizona's Gaming Ordinance (Ordinance), as amended - the Tribe's approved gaming ordinance – was enacted to comply with the requirements of the NIGC.

D. Part I Chapter 5.000 of the Ordinance requires that the Tribe shall cause to be conducted annually an independent audit which shall be submitted to the NIGC.

E. Part I Chapter 8.020 (2) of the Ordinance requires that the independent certified accountants conduct an audit and an appropriate report at the conclusion of the audit and submit a copy to the NIGC.

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 principals 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 Tucson, Arizona.

B. Respondent operated its gaming facility, Casino of the Sun, during all or part of 2004 and 2005.

C. Respondent operated its gaming facility, Casino del Sol, during all or part of 2004 and 2005.

D. The NIGC has not received an audit report for the fiscal year ending September 30, 2005. The audit report was due to the NIGC on January 30, 2006, 120 days after the end of the Tribe's fiscal year.

E. 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 any 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. The Tribe is therefore in violation of these statutes and regulations, as well as Part I Chapter 1.000, Part I Chapter 5.000 and Part I Chapter 8.020 (2) of the Ordinance, for failure to comply with IGRA.

F. On February 24, 2006, NIGC issued a Preliminary Notice of Violation (PNOV) V06-009 to the Tribe.

G. The Tribe failed to provide a written response to the PNOV within ten (10) days of its receipt.

6. Measures Required to Correct these Violations

There is no way to rectify the late submission of an annual audit. NIGC regulations require that audits be received within 120 days of the end of the fiscal year. 25 C.F.R. § 571.13.

7. Appeal

Within 30 (thirty) 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 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 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 15 days after service of this notice of violation (or such longer period as the Chairman of the Commission 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 29th day of March, 2006.

PHILIP N. HOGEN
Chairman
National Indian Gaming Commission

WENDY L. HELGEMO
Staff Attorney

DECLARATION OF CHRISTOPHER WHITE

I, Christopher White, declare under penalty of perjury, that the following is true and correct:

1. I am employed as a financial analyst at the National Indian Gaming Commission (NIGC) and have held this position since May of 2005.

2. In the course of my duties with the NIGC, I receive annual audit reports and related documents submitted by tribes pursuant to the Indian Gaming Regulatory Act, applicable provisions of the tribes' gaming ordinances and NIGC regulations governing audit reports. I track the receipt of these audit reports and maintain a record of the date upon which all audit reports are received by the Division of Contracts at the NIGC.

3. I am aware that NIGC regulation 25 C.F.R. § 571.13 requires tribes to submit annual audits for each gaming operation to the NIGC within 120 days of the end of the each gaming operation's fiscal year.

4. The Pascua Yaqui Tribe's fiscal year ends September 30 of each calendar year.

5. According to the records that I reviewed that I maintain, the Pascua Yaqui Tribe has not submitted an audit report for Casino of the Sun or the Casino Del Sol for the fiscal year which ended September 30, 2005. The 2005 fiscal year audit was due Monday, January 30, 2006.

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 20 day of March 2006.

Christopher White

DECLARATION OF RONALD RAY

I, Ronald Ray, declare under penalty of perjury, that the following is true and correct:

1. I am a Field Investigator for the Phoenix, Arizona, Office of Enforcement of the National Indian Gaming Commission (NIGC). In this capacity, it is my responsibility to develop enforcement actions against individuals, Indian tribes, and gaming operations that violate NIGC regulations or the provisions of the Indian Gaming Regulatory Act (IGRA).

2. I am aware of gaming operations conducted by the Pascua Yaqui Tribe (Tribe) at the following facilities:

   Casino del Sol
   Casino of the Sun

3. To the best of my knowledge, gaming operations were conducted by the Pascua Yaqui Tribe during all or part of the time period between January 1, 2004, to September 30, 2005.

4. On February 24, 2006, NIGC issued a Preliminary Notice of Violation (PNOV) V06-009 to the Tribe.

5. The Tribe failed to provide a written response to the PNOV within ten (10) days of receipt. The Tribe did respond within thirty (30) days, but did not provide any time frame for the correction of the problem. The Tribe has been out of compliance with NIGC regulations, 25 C.F.R. §§ 571.12 and 571.13, as of January 30, 2006.

6. I declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated this ___27th___ day of March, 2006.

Ronald Ray

Ronald Ray, Field Investigator
Region III
Office of Enforcement
National Indian Gaming Commission

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