National Indian Gaming Commission

In re PUEBLO OF SANTA CLARA **NOV-03-01**

STIPULATED FINAL ORDER

The Pueblo of Santa Clara ("Pueblo") and the Chairman of the National Indian Gaming Commission ("Chairman") hereby stipulate and agree as follows:

1. The Indian Gaming Regulatory Act ("IGRA") requires a gaming tribe to conduct background investigations on primary management officials and key employees and to notify NIGC of the results of such background checks before the issuance of permanent tribal gaming licenses. 25 U.S.C. § 2710(b)(2)(F).

2. NIGC regulations require a tribe to forward to the NIGC employment applications, an investigative report on each background investigation conducted and a copy of the eligibility determination within 60 days after an employee begins work. 25 C.F.R. §§ 556.5 and 558.3.

3. NIGC has 30 days from receipt of the materials to notify the tribe of any objection it has to the licensing of any individual. If the NIGC has any objection, the tribe must take the objection into account when deciding whether to license an individual. 25 C.F.R. § 558.4(a), (b).

4. The Pueblo's Gaming Code, at § 65.7(B)(3) requires the Pueblo to submit the complete application, investigative report and eligibility determination to the NIGC.

5. The Pueblo has conducted gaming activities at the Big Rock Casino in Española, New Mexico since June 15, 2001.

6. During a training session conducted in May, 2001, prior to the opening of the Pueblo's gaming operation, NIGC Region Chief Ken Billingsley instructed the Pueblo's Gaming Commission ("Commission") as to the requirements for background investigations and submission of investigative materials to the NIGC.

7. On October 24, 2001, the NIGC Phoenix office issued a potential notice of violation ("PNOV") to the Pueblo, advising the Pueblo of its failure to comply with NIGC regulations regarding the timely submission of employee applications, investigative reports and eligibility determinations. The PNOV was issued based on a visit on the same date by NIGC field investigator Lance Vallo, who found, during a review of the Commission's records, that 24 licensing files were incomplete.

8. A site visit by NIGC field investigator Ronald Ray to the Commission on November 13, 2002, revealed a list of 34 key employees and primary management officials, each of whom had been employed by the Pueblo's gaming enterprise for more than 60 days, whose investigative materials had not been submitted to the NIGC.

9. On December 10, 2002, Region Chief Ken Billingsley and Ronald Ray met with the Pueblo's Tribal Council and the Commission to discuss their concerns regarding the Commission's failure to submit some eligibility determinations within the time allowed by NIGC regulations. They told the Tribal Council that they were requiring submission to the NIGC Phoenix Office, by January 6, 2003, of all employee applications, investigative reports and eligibility determinations for gaming employees who had been employed for 60 days or more.

10. On January 6, 2003, Christine J. Gonzales, licensing agent for the Commission, flew to Phoenix and hand-delivered to Mr. Ray at the NIGC Phoenix Office a package containing applications, background investigations and eligibility determinations for 40 applicants for Pueblo gaming licenses.

11. By letter dated January 8, 2003, the NIGC Phoenix office returned to the Commission the documentation for three of the persons whose documents had been submitted on January 6th, along with two others that had been submitted earlier, because

they failed to include Criminal History Results Information ("CHRI") from the FBI as required. The Commission had previously submitted CHRI requests for those five persons, but had not received the reports from the FBI.

12. On January 22, 2003, the Commission submitted the required documentation for nine more license applicants, including one of those whose documents had been returned by the letter of January 8th. By letter dated February 28, 2003, the Commission submitted documentation for another 11 license applicants, and on March 11, 2003, it submitted documentation for an additional six applicants.

13. On March 5, 2003, the Chairman issued a Notice of Violation ("NOV") to the Pueblo, contending that the NIGC had identified 24 key employees and primary management officials for whom no suitability determinations had been submitted to the NIGC within the time period required by NIGC regulations.

14. By letter dated March 14, 2003, the Pueblo filed a Notice of Appeal and responded to the NOV, supplying mitigating information demonstrating that to some extent, at least, the facts relied on in the NOV were inaccurate.

15. By agreement between the Pueblo and NIGC, the Pueblo's Appeal of the NOV has been stayed, pending discussions aimed at settlement of the dispute.

16. Since the filing of the Pueblo's response and the Notice of Appeal, all but one of the remaining four license applicants have had their required documentation submitted to NIGC. The remaining individual has an unusual skin condition that has prevented the obtaining of a readable set of fingerprints, as needed for the CHRI, and the FBI has agreed to do a name search for this individual.

17. At least since February 18, 2003, the Commission has submitted the required documentation for license applicants in a timely manner, for all new employees who require licenses, and the Pueblo, through the Commission, has made a good faith and successful effort to bring its licensing procedures current and into compliance with all applicable federal and tribal laws.

18. The parties agree that the Pueblo, through its Commission, did commit certain violations of NIGC regulations and the Pueblo's Gaming Code by failing

to submit required documentation for some license applicants within the time required by the regulations, but that the violations were negligent, and that the Pueblo obtained no economic or other benefit whatever as a result of the violations, and that in light of these circumstances, a civil fine in the amount of $5,000 is appropriate.

19. The parties agree that at the present time, apart from the situation concerning the individual described in paragraph 16, above, the Pueblo is in compliance with NIGC regulations concerning submission of employment applications, background investigations and eligibility determinations for license applicants.

20. The parties agree that the Notice of Violation shall be deemed a final order of the National Indian Gaming Commission and a final agency action pursuant to 25 C.F.R. 577.9(d).

21. The Pueblo is aware of its rights to:

a. Have the Chairman apply to the facts of this case the four factors for assessment of a civil fine, set forth in 25 C.F.R. 575.4;

b. Appeal a Notice of Violation and Civil Fine Assessment to the National Indian Gaming Commission under 25 C.F.R. 577; and

c. Appeal any final determination by the National Indian Gaming Commission to a federal district court.

22. The Pueblo nevertheless waives the rights specified above and any other right to seek judicial review of the Chairman's actions under this Stipulated Order.

23. FINAL ASSESSMENT ORDER:

A. The Pueblo of Santa Clara is hereby found to have committed a violation of NIGC regulations at 25 C.F.R. § 558.3(b), and the Santa Clara Gaming Code, § 65.7(B)(3).

B. The Chairman ORDERS the Pueblo to pay a civil fine in the total amount of $5000.00, payable to the United States Treasury, and received by the National Indian

Gaming Commission no later than 15 days from the date this Stipulated Order is fully executed.

Philip N. Hogen, Chairman
National Indian Gaming Commission

Approved:

For the Pueblo of Santa Clara