National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-05-10

To: General Counsel (Agent for Service of Process)
Post Office Box 128
Towaoc, CO 81134

Selwin White Skunk, Chairperson
Ute Mountain Ute Tribe
P.O. Box 248
Towaoc, CO 81334
FAX: (970) 565-0941

Sonya Ketchum, Executive Director
Ute Mountain Ute Gaming Commission
P.O. Box BB
Towaoc, CO 81334
FAX: (970) 565-0941

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Ute Mountain Ute Tribe (Respondent or Tribe), located in Towaoc, Colorado, is in violation of the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and the Tribe's Gaming Ordinance for failure to submit a timely 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 the Indian Gaming Regulatory Act (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. 25 U.S.C. § 2710(b)(2)(C) – 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.

B. 25 C.F.R. §§ 571.12 and 571.13 – 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.

C. Section 204(a)(14) of the Ute Mountain Ute Reservation Gaming Ordinance, as amended– the Tribe's approved gaming ordinance – requires Respondent, through its agent, the Ute Mountain Ute Gaming Commission, to obtain outside annual audits for all of its gaming operations and to submit the results of those audits 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 Towaoc, Colorado.

B. Respondent operated its gaming facility, Ute Mountain Casino, during all or part of the following year: 2003 & 2004.

C. The NIGC received an untimely audit report for the fiscal year ending September 30, 2004. The audit report was due to the NIGC on January 28, 2005, 120 days after the end of the Tribe's fiscal year. The audit was received by the NIGC on April 28, 2005.

D. 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 section 204(a)(14) of the Tribe's Gaming Ordinance, for failure to submit a timely annual independent audit report.

6. Measures Required to Correct these Violations

There is no way to rectify the late submission of the 2004 audit. The regulations require that audits be received within 120 days of the end of the fiscal year.

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 30 of June, 2005.

PHILIP N. HOGEN
Chairman
National Indian Gaming Commission

ANDREA LORD
Staff Attorney

Certificate of Service

I certify that this **Notice of Violation** was sent by facsimile and mailed on this 3rd day of June 2005 to:

General Counsel (Agent for Service of Process)
Post Office Box 128
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