

# National Indian Gaming Commission

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IN THE MATTER OF: )

SAC & FOX TRIBE OF THE )  
MISSISSIPPI IN IOWA )

NOV/CO-03-02

December 19, 2003

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## ORDER GRANTING PETITION TO REOPEN

On December 1, 2003, the Sac & Fox Tribe of the Mississippi in Iowa (Tribe) submitted to the National Indian Gaming Commission a Petition to Reopen Casino. The Petition requests that the Commission lift the Order issued September 10, 2003, which made permanent the Order of Temporary Closure that had been issued by NIGC's Chairman on May 13, 2003.

The history of the closure is as follows. On April 30, 2003, the NIGC Chairman issued Notice of Violation ("NOV"), NOV-03-02. In the NOV, the Chairman concluded that the Tribe was in violation of the IGRA and NIGC regulations as a result of a takeover by leadership that was not recognized by the federal government. The violations were that (1) the federally recognized tribal government was deprived of the sole proprietary interest in and responsibility for the gaming operation; (2) an authorized tribal official was denied access to enter and inspect the Casino; and (3) the occupation of the Casino presented a threat to public safety. When the federally recognized tribal government was not granted access to and control of the Tribe's gaming facility by the

appointed date, on May 13, 2003, the Chairman issued a Temporary Closure Order. The casino was not closed. Instead, on May 14, 2003, the unrecognized leadership filed a motion for a Temporary Restraining Order in the U.S. District Court for the Northern District of Iowa seeking to enjoin NIGC from closing the casino. NIGC subsequently filed, among other things, a motion to dismiss the motion for lack of jurisdiction and a complaint asking the court to enforce the Closure Order. On May 22, 2003, the federal court granted NIGC's request for enforcement of the Closure Order. The casino was closed by the U.S. Marshals Service on May 23, 2003. It has remained closed since. The U.S. Court of Appeals for the Eighth Circuit affirmed the district court's enforcement of the Temporary Closure Order on August 27, 2003. The Commission made the Temporary Closure Order permanent in its Decision and Order issued September 10, 2003.

On October 21, 2003, general and recall elections were held for tribal leadership positions. On October 24, 2003, Larry Morrin, BIA's Regional Director, acknowledged the results of that October 21 election, finding that three members of the previously unrecognized leadership had won the majority of votes and that three members of the previously recognized leadership group had been recalled. On October 28, 2003, the Tribe's Election Board filed a Notice of Appeal regarding Morrin's October 24 letter. A recall election was held November 4, 2003, in which replacements were elected for the recalled leaders. The results of that election were recognized by Morrin on November 7, 2003. On November 12, 2003, Principal Deputy Assistant Secretary of Indian Affairs Aurene Martin assumed jurisdiction over the appeal filed by the Election Board.

On December 11, 2003, subsequent to oral communications with the parties, NIGC sent a letter outlining the criteria for reopening the Tribe's gaming operation.

Those were:

1. NIGC must have confirmation of the identity of the federally recognized leadership according to the BIA and confirmation that the tribal government and the gaming operation are under the control of that leadership; and
2. The Tribe must ascertain and submit to NIGC the gaming operation's opening balance; and
3. The Tribe must be in compliance with NIGC's regulations, as certified by an official of the NIGC.

Foremost among the Commission's concerns is that gaming at the Tribe's gaming operation be conducted under federally recognized leadership. The Commission is committed to the principle that tribal gaming under the Indian Gaming Regulatory Act must be conducted by federally recognized leadership. We find that the Tribe is now in compliance with the principle.

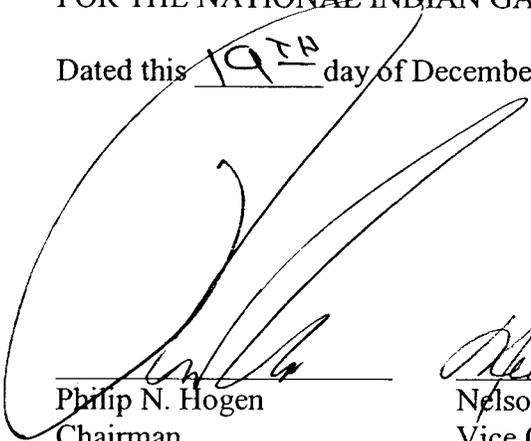
Principal Deputy Assistant Secretary –Indian Affairs Aurene Martin, having issued a final decision as to the identity of the recognized tribal leadership; the Tribe having submitted to NIGC the gaming operation's opening balance; and John Peterson, NIGC's Region Director for Region IV, having inspected the gaming operation and determined that it is in adequate regulatory compliance, the Commission finds that the requirements for reopening the Tribe's gaming operation are met.

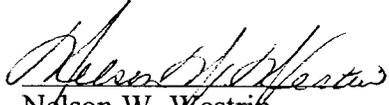
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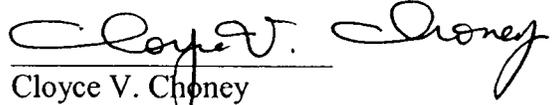
The Commission hereby lifts its Decision and Order of September 10, 2003. The Tribe's gaming operation may reopen.

FOR THE NATIONAL INDIAN GAMING COMMISSION

Dated this 19<sup>th</sup> day of December, 2003

  
Philip N. Hogen  
Chairman

  
Nelson W. Westrin  
Vice Chairman

  
Cloyce V. Choney  
Commissioner