

**BEFORE THE  
NATIONAL INDIAN GAMING COMMISSION  
PRESIDING OFFICIAL**

\_\_\_\_\_  
IN THE MATTER OF )

SENECA NATION OF )  
INDIANS OF NEW YORK )

Respondent )  
\_\_\_\_\_ )

Hon. Bruce A. Johnson

Docket No. NIGC 2008-1  
Notice of Violation NOV-08-20

MOTION FOR STAY

The Chairman of the National Indian Gaming Commission (“NIGC Chairman”) respectfully requests that the Presiding Official order a stay of proceedings in the above-referenced administrative appeal.

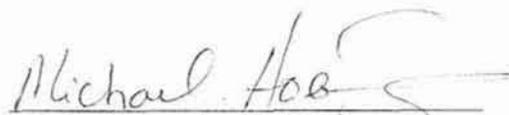
On September 13, 2008, the Chairman issued the above referenced notice of violation (NOV) against the Seneca Nation of Indians (“Nation”) for gaming without an approved ordinance and gaming on lands that do not qualify as “Indian lands” under IGRA. 25 U.S.C. § 2703(4). The notice of violation was necessary as a result of decisions issued in the case *Citizens Against Casino Gambling v. Hogen*, 2008 U.S. Dist. LEXIS 52395 (W.D.N.Y. July 8, 2008) (*CACGEC I*) and 2008 U.S. Dist. LEXIS 67743 (W.D.N.Y. August 28, 2008) (*CACGEC II*). See Administrative Record Exhibits 8 & 9. On July 8, 2008, the district court ordered “that the National Indian Gaming Commission Chairman’s July 2, 2007 administrative decision approving the Seneca Nation of Indians Class III Gaming Ordinance is vacated,” *CACGEC I*, at 210-211, and on August 28, 2008, ordered the Chairman to serve the NOV at issue in this appeal. *CACGEC II*, at 36. The NIGC is working with the United States Department of Justice in regard to the

potential appeal of these decisions to the Second Circuit Court of Appeals. A notice of such appeal must be filed on or before October 27, 2008.

As the district court decisions are the bases for NOV-08-20, a successful appeal to the Second Circuit may render the NOV and, thus, this administrative appeal, unnecessary. Therefore, the NIGC Chairman respectfully requests that the Presiding Official order a stay of this proceeding pending a decision on appeal of *Citizens Against Casino Gambling v. Hogen*. Counsel for Respondent has reviewed this motion and represented that the Nation consents to this request.

As noted above, the United States must file a notice of appeal of *Citizens Against Casino Gambling v. Hogen* on or before October 27, 2008. The parties request that they be allowed to advise the Presiding Official of the status of such appeal via a status conference after October 27, 2008. If appeal is not sought by the United States, or the district court's decision to vacate the Chairman's July 2, 2007 approval is not overturned on appeal, then the requested stay should terminate and the appeal proceed by NIGC regulations.

Respectfully submitted on this 10<sup>th</sup> day of October, 2008

  
Michael Hoenig, Staff Attorney

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## Certificate of Service

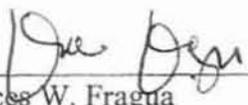
I hereby certify that on October 10, 2008, I served the foregoing Motion for Stay, via U.S. mail, on:

The Honorable Bruce A. Johnson  
U.S. Department of the Interior  
Office of Hearings and Appeals  
801 N. Quincy Street, Suite 300  
Arlington, VA 22203-1905

The Honorable Maurice A. John, Sr., President  
Seneca Nation of Indians  
P.O. Box 231  
Salamanca, New York 14779

and

Donald R. Pongrace  
Akin Gump Strauss Hauer & Feld LLP  
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\_\_\_\_\_  
Frances W. Fragua  
Legal Assistant