

National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-18-01

To: Kami Sue Miller, Executive Director
Moapa Indian Gaming Commission
1 Lincoln Street
P.O. Box 340
Moapa, NV 89025

1. Under the Indian Gaming Regulatory Act (IGRA), and National Indian Gaming Commission (NIGC) regulations, the NIGC Chairman may issue a Notice of Violation (NOV) to any person for violations of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance, or resolution approved by the Chairman. 25 U.S.C. § 2713(a)(3), 25 C.F.R. § 573.3(a).
2. On January 18, 2018, the NIGC Chairman issued NOV-18-01 to the Moapa Band of Paiutes for failure to timely submit annual audits for the Moapa Paiute Travel Plaza and the Moapa Tribal Store.
3. NIGC regulations permit a party to appeal an NOV within 30 days of issuance. 25 C.F.R. §§ 584.3(a) and 585.3. The Moapa Band has not appealed NOV-18-01.
4. IGRA authorizes the Chairman to issue civil fines for violations of IGRA, NIGC regulations, or tribal regulations, ordinances, or resolutions approved by the Chairman. 25 U.S.C. 2713(a)(1).
5. NIGC regulations require the Chairman to issue a proposed civil fine assessment within 30 days of issuance of the notice of violation when practicable. 25 C.F.R. § 575.5(b).
6. The Chairman has authority to levy and collect appropriate civil fines, not to exceed \$51,302 per violation, against a tribe, management contractor, or individual operating Indian gaming for any violation of any provision of IGRA and NIGC regulations. 25 U.S.C. § 2713(a)(1); 25 C.F.R. § 575.4; 83 F.R. 2059 (January 16, 2018). If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4(a)(2).

7. NIGC regulations provide that within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the Moapa Band may submit written information about the violation to the Chairman. 25 C.F.R. § 575.5(a).
8. On February 2, 2018, the Moapa Band submitted the following information for the Chairman to consider in determining the amount of the civil fine:
 - a. The Moapa Band asserts that it has not received any economic benefit from late submission of the 2016 audit report because the auditors determined that the casino's financial statements presented the casino's financial position fairly, and a 78-day delay in completing and submitting the audit did not change anything in the financial statements to the Tribe's economic benefit.
 - b. It asserts that because the auditors determined that the audit report for 2016 fairly portrays the 2016 financial statements, the late submission did not threaten the integrity of the gaming at either gaming operation.
 - c. The Moapa Band asserts that no Notices of Violation have been issued to the Respondent within the past five years that may be considered by the Chairman in assessing a civil fine.
 - d. It asserts that the Moapa Gaming Commission did not willfully violate the requirement to submit a copy of the results of the annual audit of each gaming operation to the NIGC. Instead, the Moapa Band asserts that the independent certified public accounting firm that it engaged, Hafen, Buckner, Everett, & Graff quit working on the Tribe's audit without notice to the Tribe in 2015. The Moapa Band further asserts that even though it secured the services of another certified public accounting firm, Piercy, Bowler, Taylor and Kern, the new firm could not proceed with the 2016 audit until it received auditing work for prior years. Therefore, the Moapa Band asserts that a large degree of fault in causing the violation was due to the inaction of the external audit firm.

The Moapa Band further asserts that it heavily relies upon their finance staff to assist in the preparation of financial statements. After the Tribe's Chief Financial Officer resigned and departed in 2015, the Moapa Band discovered deficiencies in the internal controls managed by the Chief Financial Officer. To address the internal control deficiencies, the Moapa Band contracted with an external CPA firm to ensure that financial controls exist and procedures are properly followed, thus taking action to correct the violation to the best of its abilities. Finally, the Moapa Band asserts as soon as it was aware of the expected delay in submitting annual audit reports to the NIGC, the Tribe took affirmative action to keep NIGC informed of the delay and sought an extension.

- e. The Moapa Band asserts that it acted in good faith by attempting to submit the audit report by the April 30, 2017 deadline. However, once it became aware that the audit report would not be completed in time to meet the submission deadline, the Tribe informed the NIGC and continued to push the auditors to finish the report.
 - f. The Moapa Band asserts that because the Moapa gaming operations consist solely of Class III gaming, the NIGC lacks regulatory authority over the “adequacy of the [gaming operation’s] books and records [and] functioning of [its] internal financial controls.” The Moapa Band further asserts that the Tribe’s minimum internal control standards for audited financial statements are regulated by the Tribe and the Nevada Gaming Control Board – not NIGC. Thus, the Tribe asserts that it is questionable whether the 120-day audit submission requirement even applies to audited financial statements pertaining solely to Class III gaming operations, given that the deadline does not appear in IGRA, the Tribe’s gaming ordinance, or the Tribal-State gaming compact and the NIGC lacks authority to police the Tribe’s internal controls.
9. In arriving at the proposed civil fine, the Chairman considered the Moapa Band’s submission, and the factors set forth in 25 C.F.R. § 575.4 as follows:
- a. Economic benefit of noncompliance. The Band’s claim that the 78 day delay did not change anything in the financial statement itself to the Tribe’s economic benefit may be accurate, but is not germane to this analysis. The question that must be addressed is whether the Tribe’s failure to submit the annual audit provided economic benefit to the Tribe. For example, did the Tribe use the money it would have put toward a financial audit to some other beneficial use? We acknowledge that the Tribe did eventually obtain an accounting firm to conduct the audit and as a result, any economic benefit gained by the delay was likely small.
 - b. Seriousness of the violation. Although any economic benefit derived from the violation may be small, the seriousness of this violation is not. One of the policy purposes of IGRA is to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. § 2702(2). Accordingly, the IGRA requires an annual audit of the gaming, 25 U.S.C. § 2710(b)(2)(C), and NIGC regulations clarify that each tribe “shall engage an independent certified public accountant to

provide an annual audit of the financial statements of each ... gaming operation on ... Indian lands for each fiscal year.” 25 C.F.R. § 571.12(b).

The financial statements are required to be prepared in accordance with generally accepted accounting principles and the audit must conform to generally accepted accounting standards and be submitted within 120 days after the end of each fiscal year of the gaming operation. 25 C.F.R. § 571.12(b) and 571.13(a).

Submission of the annual audit report by an independent accountant is critical to the NIGC’s mission to protect the integrity of Indian gaming. An accounting 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 principles provides assurance as to the security of tribal gaming revenues. The audited financial statements are evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, and internal financial control functions. Only after the financial statements of a gaming operation have been audited by a certified public accountant can the NIGC confidently rely on the data. Failure to conduct the required audits and submit reports leaves the gaming operations vulnerable to financial improprieties.

- c. History of violations. NOV-18-01 is the only notice of violation issued against the Tribe in the past five years.
- d. Negligence or willfulness. The Moapa Band was aware that the audit report was due on April 30, 2017. On April 17, 2017, the Phoenix Region Office received a letter from the Moapa Band of Paiutes Tribal Chair, Darren Dadoba, requesting that the NIGC extend the deadline to submit the fiscal year 2016 annual financial audit report from April 30, 2017 to August 1, 2017. The Tribe indicated that the delay in submitting the audit report was because its prior accounting firm did not complete the fiscal year 2014 government-wide financial audit report, which was necessary to complete the fiscal years 2015 and 2016 audits.

On April 19, 2017, NIGC Region Director, Lance Vallo, called the Tribe’s CFO, Cameron Manning, to discuss the Tribe’s potential delay in submitting the financial statements. Mr. Manning said the Tribe had engaged a new accounting firm to complete the fiscal year 2014 Tribal government-wide financial audit and perform the fiscal year 2015 and fiscal year 2016 audit.

On May 9, 2017, NIGC Region Director, Lance Vallo, and Compliance Officer, Delores Thomas, spoke by telephone with Moapa Band of Paiutes Vice Chairperson, Vicky Simmons, Tribal Administrator, Ewell Longhorn, Tribal

CFO, Cameron Manning, and Moapa Indian Gaming Commission, Executive Director, Kami Sue Miller to discuss the Tribe's request for an extension to submit the fiscal year 2016 audit. NIGC advised the Tribe that the IGRA and NIGC regulations do not allow for an extension to submit financial audit submission requirements and that the request for an extension could not be granted. Lance Vallo recommended that the Tribe provide the NIGC with a plan of action for submission of the annual financial audit before August 1, 2017.

On May 9, 2017, the NIGC received a second letter from the Tribe stating the Tribe would complete and submit the fiscal year 2016 financial audit report by June 30, 2017.

On June 2, 2017, Acting Director of Compliance, Dustin Thomas, sent a letter to Tribal Chairman, Darren Daboda, stating that IGRA and the NIGC regulations do not allow for an extension of time to submit audited financial statements and that the NIGC could not accommodate their request for an extension to submit the annual audited financial statements. Mr. Thomas further requested that the Tribe submit the fiscal year 2016 audit of the financial statements immediately.

On June 5, 2017, NIGC Region Director, Lance Vallo, spoke by telephone with Moapa Indian Gaming Commission, Executive Director, Kami Sue Miller, to discuss the June 2, 2017 letter from Acting Director of Compliance, Dustin Thomas. Ms. Miller was not aware of any change to the submission timeline for the fiscal year 2016 audited financial statements, but indicated that she would contact the Tribal Chairman's office and obtain the status.

On July 17, 2017 the Tribe submitted the audited financial statements for fiscal year 2016 to the NIGC; 78 days late.

The Tribe's failure to timely submit the required audit despite NIGC's best efforts to work with the Tribe suggests, at best, severe negligence on the part of the Tribe, and, at worst, a willful disregard of IGRA, NIGC regulations, and the Tribe's own gaming ordinance.

- e. Good faith. A civil fine may be reduced based upon the degree of good faith of the Tribe in attempting to achieve rapid compliance after notification of the violation. In this matter, the Tribe submitted the independent audit report for both the Moapa Paiute Travel Plaza and the Moapa Travel Store on July 17, 2017 before NOV-18-01 was issued; this factor is therefore inapplicable.
- f. The Moapa Band asserts that because its gaming operations consist solely of Class III gaming, the NIGC lacks regulatory authority over the "adequacy of the [gaming operation's] books and records [and] functioning of [its] internal

financial controls.” Respondent further asserts that the Tribe’s minimum internal control standards for audited financial statements are regulated by the Tribe and the Nevada Gaming Control Board – not NIGC. Thus, Respondent asserts that it is questionable whether the 120-day audit submission requirement even applies to audited financial statements pertaining solely to Class III gaming operations, given that the deadline does not appear in IGRA, the Tribe’s gaming ordinance, or the Tribal-State gaming compact and the NIGC lacks authority to police the Tribe’s internal controls. Arguments challenging the Chair’s authority to bring the NOV and Civil Fine Assessment are more appropriately dealt with through the appeals process found at 25 C.F.R. Parts 580, 584, and 585. That being said, independent audits are required to be conducted and submitted to the NIGC regardless of the classification of gaming conducted at the facility. 25 USC §§ 2710(b)(2)(C) & 2710(d)(1)(A)(ii) . The Chair’s authority to enforce that requirement though a Civil Fine Assessment derives from 25 USC § 2713(a)(1).

10. WHEREFORE, pursuant to IGRA, 25 U.S.C. § 2713(a)(1), and NIGC regulations, 25 C.F.R. §§ 575.3 and 575.4, fines for continuing violations may be assessed in an amount up to \$51,302 per day per violation.
11. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4(a)(2).
12. On the date NOV 18-01 was issued the Tribe was 78 days late in submitting the financial statements and audits for the Moapa Paiute Travel Plaza and the Moapa Tribal Store. Each day of non-submission for each report was a separate violation, resulting in 156 separate violations.
13. The maximum fine amount for failure to submit the financial statements and audits for the Moapa Paiute Travel Plaza and the Moapa Tribal Store is \$4,001,556 for each facility, or \$8,003,112 for both.
14. The Chairman, having carefully reviewed the above factors, assesses a fine in the amount of \$51,302 on the Tribe for late submission of financial statements and audits for both the Moapa Paiute Travel Plaza and the Moapa Tribal Store.
15. Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date. 31 U.S.C. § 3717.
16. After balancing the factors found at 25 C.F.R. § 575.4, as well as considering other circumstances such as the size and revenue of the two facilities, the Chairman believes a \$51,302 fine is appropriate. Although the Tribe has presented evidence of extenuating circumstances pursuant to 25 C.F.R. § 575.5, the financial statements and audits are due at the same time every year, and the statute allows the Tribe 120-days after the close of

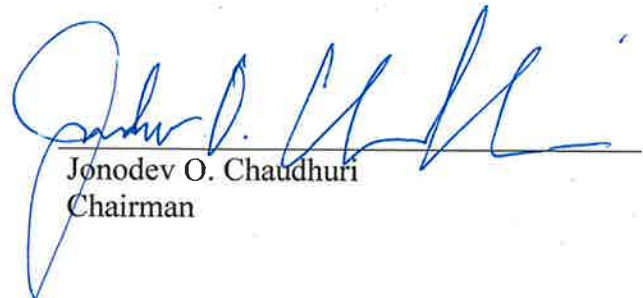
the fiscal year for preparation of the audit. And notwithstanding multiple phone calls and letters conveying the seriousness of the violation, and finally, a Notice of Violation, the Tribe still took 78 days to correct the violation. Given the late submission, the NIGC was not able to analyze the operations' regulatory compliance or technical assistance needs in a timely manner. In light of the Moapa Band's history of compliance as well as other extenuating circumstances, the Chairman finds a fine equivalent to the maximum fine for one day of non-compliance – \$51,302 – is appropriate to balance the excessive and repeated delinquency in meeting such a critical statutory requirement.

17. Pursuant to 25 C.F.R. § 584.3, within 30 days after service of this Notice of Proposed Civil Fine Assessment, the Tribe may appeal the proposed fine to the full Commission by submitting a notice of appeal to the following:

NIGC Attn: Office of General Counsel
1849 C Street NW
Mail Stop #1621
Washington, DC 20240

22. The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within 10 days after filing a notice of appeal, the Tribe must file with the Commission a supplemental statement that sets forth with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe 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, and whether a closed hearing is requested and why. The Tribe 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.

Dated this 15th day of February, 2018.



Jonodev O. Chaudhuri
Chairman

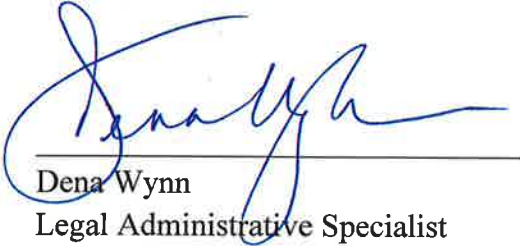
Certificate of Service

I, Dena Wynn, certify that on February 15, 2018, **NOTICE OF PROPOSED CIVIL FINE ASSESSMENT** was sent by Email and Certified Mail with return receipt requested to:

Kami Sue Miller, Executive Director
Moapa Indian Gaming Commission
1 Lincoln Street
P.O. Box 340
Moapa, NV 89025

Courtesy copy to:

Darren Daboda, Chairman
Moapa Band of Paiute Indians of the
Moapa River Indian Reservation
1 Lincoln Street
P.O. Box 340
Moapa, NV 89025



Dena Wynn
Legal Administrative Specialist
National Indian Gaming Commission