

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV - 22 - 02

To: Phillip Del Rosa, Chairman
Alturas Indian Rancheria
P.O. Box 340
Alturas, CA 96101

I. Notification of Violation

The National Indian Gaming Commission Chairman hereby gives notice that the Alturas Indian Rancheria, which operates the Desert Rose Casino (DRC) in Alturas, California, violated the Indian Gaming Regulatory Act, NIGC regulations, and the Tribe's amended Gaming Ordinance approved by the NIGC Chair on June 10, 2013 (Gaming Ordinance), by failing to timely submit Audited Financial Statements (AFS), failing to timely submit Agreed Upon Procedures reports (AUP), and failing to pay annual fees to the NIGC.

II. Authority

Pursuant to IGRA and NIGC regulations, the NIGC Chairman may issue a Notice of Violation (NOV) to any person for violation of any provisions of the IGRA, NIGC regulations, or of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3.

III. Applicable Federal and Tribal Laws

- A. 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. 25 U.S.C. § 2710(b)(2)(C).
- B. NIGC regulations define "gaming operation" as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses. 25 C.F.R. § 502.10.
- C. NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year. 25 C.F.R. § 571.12(b).
- D. The NIGC regulations further require a tribe to submit a copy of the AFS, with any management letter(s) and other documents/reports setting forth the results of

the annual audit to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. § 571.13.

- E. The Tribe's Gaming Ordinance requires that "an independent certified public accountant (CPA) shall be engaged annually to perform "Agreed-Upon Procedures" in the manner provided for in 25 CFR 542.3(f)." Gaming Ordinance § 8.2.2.
- F. The NIGC regulations incorporated by the Tribe's Gaming Ordinance requires the Tribe to submit 2 copies of the AUP report to the NIGC within 120 days after the end of the gaming operation's fiscal year. 25 C.F.R. § 542.3(f)(5)(i).
- G. The Tribe's Gaming Ordinance provides that "failure ... to perform Agreed-Upon Procedures pursuant to subsection 8.2.2 ... is a violation of this Ordinance. The Chairman of the National Indian Gaming Commission shall have the authority to remedy violations of this Ordinance...." Gaming Ordinance § 8.2.4.
- H. IGRA requires each gaming operation that conducts Class II or Class III gaming activities to pay fees to the NIGC. 25 U.S.C. § 2717.
- I. NIGC regulations require each gaming operation to file with the Commission quarterly fee payments and statements within three, six, nine, and twelve months of the end of the gaming operation's fiscal year. 25 C.F.R. § 514.5(b).
- J. NIGC regulations provide that statements or fee payments over 90 calendar days late constitute a failure to pay the annual fee. 25 C.F.R. § 514.10.

IV. Role of Audited Financial Statements, Agreed Upon Procedures, and Annual Fees

- A. Submission of the annual AFS and AUP reports are critical to the NIGC's mission to protect the integrity of Indian gaming. A CPA's ability to conduct an audit in accordance with Generally Accepted Auditing Standards and provide an opinion on the financial statements prepared in conformity with Generally Accepted Accounting Principles 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.
- B. The AUP report reviews the internal controls, which are the primary procedures that protect the integrity of casino funds and games, and are a vitally important part of properly regulated gaming. Inherent in gaming operations are concerns related to customer and employee access to cash, questions of fairness of games, and the threat of collusion to circumvent controls. Submission of the AUP report

promotes IGRA's purposes by ensuring that a tribe is the primary beneficiary of the gaming operation and protecting gaming as a means of tribal revenue.

- C. The annual fees collected by the NIGC are necessary to fund the agency's oversight and regulation of Indian gaming.

V. Violations

A. Background

1. The Tribe is a federally recognized Indian tribe.
2. The Tribe operates the Desert Rose Casino (DRC) gaming operation in Alturas, California.
3. DRC's fiscal year ends on December 31.
 - a. DRC's AFS are due by April 30 of each year.
 - b. DRC's AUP report is due by April 30 of each year.
 - c. DRC's quarterly fee payments and statements are due by March 31, June 30, September 30, and December 31 of each year.
4. The Tribe licensed and conducted gaming activities regulated by IGRA at DRC during FY 2020, FY 2021, and FY 2022.
 - a. The Tribe submitted two-year facility licenses for DRC for June 1, 2020, to June 1, 2022, and June 1, 2022, to June 1, 2024.
 - b. The Tribe submitted quarterly fee statements and payments for DRC for payments due in FY 2020 and FY 2021.
5. Compliance Officer KeriAnne Delabra (CO Delabra) conducted site visits at DRC during FY 2020, FY 2021, and FY 2022, to determine compliance with IGRA, NIGC regulations, and the Tribe's Gaming Ordinance.
 - a. CO Delabra conducted a site visit to DRC on January 30, 2020, and provided a follow-up letter to Chairman Del Rosa dated February 10, 2020.
 - b. CO Delabra conducted a remote site visit to DRC on April 28, 2021, and provided a follow-up letter to Chairman Del Rosa dated May 13, 2021.

- c. CO Delabra conducted a remote site visit to DRC on November 30, 2021, and provided a follow-up letter to Chairman Del Rosa dated December 13, 2021.
 - d. CO Delabra conducted a remote site visit to DRC on June 28, 2022, and provided a follow-up letter to Chairman Del Rosa dated July 28, 2022.
6. Compliance Officer CO Delabra provided a Declaration dated June 24, 2022, and copies of emails exchanged with representatives of the Tribe requesting submission of AFS, AUP, and quarterly fee payments:
- a. On May 5, 2021, CO Delabra sent an email to Alturas Rancheria Gaming Commissioner Callie Rose (Commissioner Rose) to inquire about the status of the reports. Commissioner Rose responded on May 5, 2021, that they were awaiting the final audit report from the CPAs and anticipated submission of the reports by May 28, 2021. On May 27, 2021, Commissioner Rose sent an email to CO Delabra stating that the final reports would be issued approximately two weeks later than May 28, 2021.
 - b. On June 12, 2021, CO Delabra sent an email to Commissioner Rose to inquire about the status of the reports. Commissioner Rose responded on June 14, 2021, stating that she would provide an update once received. No update was provided.
 - c. On July 19, 2021, CO Delabra sent an email to Commissioner Rose to inquire about the status of the reports. No response was received.
 - d. On October 18, 2021, CO Delabra sent an email to Commissioner Rose to inquire about the status of the reports. Commissioner Rose responded on October 28, 2021, forwarding the update from the Tribe's Administrator Sarah Del Rosa (Administrator Del Rosa) that indicated that the delay was due to financial audit issues.
 - e. On January 18, 2022, CO Delabra sent an email to Commissioner Rose to inquire about the status of the reports. Administrator Del Rosa responded on January 20, 2022, stating that she thought the auditors had everything they needed and expected it to be completed as soon as possible.

- f. On February 23, 2022, CO Delabra sent an email to Chairman Del Rosa to inquire about the status of the reports. Chairman Del Rosa responded on February 23, 2022, stating that the auditors had requested a meeting and that he would follow up with the auditors to assess the status. No further response was provided.
 - g. On March 8, 2022, CO Delabra sent an email to Chairman Del Rosa to inquire about the status of the reports. Chairman Del Rosa responded on March 8, 2022, stating that he anticipated the reports being completed in the next couple of weeks.
 - h. On March 31, 2022, CO Delabra sent an email to Administrator Del Rosa to inquire about the status of the fee payments and statements. No response was provided.
 - i. On April 4, 2022, CO Delabra sent an email to Chairman Del Rosa to inquire about the status of the fee payments and statements. No response was provided.
 - j. On April 4, 2022, CO Delabra sent an email to Chairman Del Rosa to inquire about the status of the reports. On April 11, 2022, Administrator Del Rosa responded stating that the auditors had requested and been provided with updated revenue postings.
 - k. On May 3, 2022, CO Delabra sent an email to Chairman Del Rosa to inquire about the status of the reports. Administrator Del Rosa responded on May 3, 2022, stating that the remaining tasks were complete and that she would follow up with the auditors and provide an update. No update was provided.
 - l. On May 24, 2022, CO Delabra sent an email to Commissioner Rose to inquire about the status of the reports. Commissioner Rose responded on May 24, 2022, stating that the FY 2020 submissions were in final desk review.
7. Chief Compliance Officer Tom Cunningham (CCO Cunningham) issued a Letter of Concern dated January 25, 2022, to the Tribe for its failure to timely submit FY 2020 AFS for DRC.
- a. CCO Cunningham stated that untimely submission of the FY 2021 AFS could result in enforcement action by the NIGC Chairman.

- b. Chairman Del Rosa responded on January 26, 2022, stating that the submissions were delayed due to changes in Casino management, COVID closure, and a change in auditors.

B. Violation 1, Failure to timely submit FY 2020 AUP

1. The FY 2020 AUP report for DRC was due April 30, 2021.
2. The Tribe submitted the FY 2020 AUP report for DRC on April 27, 2022, 362 days past the regulatory deadline.

C. Violation 2, Failure to timely submit FY 2020 AFS

1. The FY 2020 AFS for DRC was due April 30, 2021.
2. The Tribe submitted the FY 2020 AFS for DRC on June 17, 2022, 413 days past the regulatory deadline.

D. Violation 3, Failure to submit FY 2021 AFS

1. The FY 2021 AFS for DRC was due Saturday, April 30, 2022. The NIGC would have accepted FY 2021 AFS as timely if submitted on the next business day, May 3, 2022.
2. As of October 3, 2022, the NIGC has not received the FY 2021 AFS for DRC.

E. Violation 4, Failure to pay the annual fee for quarterly fee payments due on December 31, 2021

1. The quarterly fee payment for DRC that was due on December 31, 2021, is over 90 calendar days late.
2. As of October 3, 2022, the NIGC has not received the fee payment or statement.

F. Violation 5, Failure to pay the annual fee for quarterly fee payments due on March 31, 2022

1. The quarterly fee payment for DRC that was due on March 31, 2022, is over 90 calendar days late.
2. As of October 3, 2022, the NIGC has not received the fee payment or statement.

G. Violation 6, Failure to pay the annual fee for quarterly fee payments due on June 30, 2022

1. The quarterly fee payment for DRC that was due on June 30, 2022, is over 90 calendar days late.
2. As of October 3, 2022, the NIGC has not received the fee payment or statement.

VI. Measures Required to Correct the Violations

- A. No remedial action will correct the violations of failing to timely submit the AFS and AUP for FY 2020, AFS for FY 2021, and to submit quarterly fee payments and statements due on December 31, 2021, March 31, 2022, and June 30, 2022. The Tribe submitted AFS and AUP for FY 2020 after the regulatory deadline. The Tribe remains obligated to make the remaining required submissions.
- B. Within 30 days of the date of this NOV the Tribe must submit the AFS for FY 2021 and submit the quarterly fee payments and statements that were due on December 31, 2021, March 31, 2022, and June 30, 2022.
- C. Failure to make these submissions within 30 days of the date of this NOV is a substantial violation under NIGC regulations and subjects the Tribe to closure orders. 25 C.F.R. § 573.4(a)(1).

VII. Appeal

The Tribe may appeal this NOV within 30 days of service. The Tribe may either: 1) request a hearing before a Presiding Official under 25 C.F.R. Part 584; or, 2) 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 pursuant to 25 C.F.R. Part 585.

An appeal must reference this NOV and be submitted to the NIGC at the following address:

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

The Tribe has a right to assistance of counsel in such an appeal.


If the Tribe elects a hearing, it must file a brief with the Commission (within ten days after filing a notice of appeal), which states with particularity the relief desired and the grounds in support including, when available, evidence in the form of affidavits.

If the Tribe prefers a closed hearing, it must include, with the brief, a request to do so and why. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the brief. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony. 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.

VIII. Fine and Submission of Information

Each of the violations cited above may result in the assessment of a civil fine against the Tribe in an amount not to exceed \$57,527 per violation per day. 87 Fed. Reg. 2549 (Jan. 18, 2022). Under 25 C.F.R. § 575.5(a), the Tribe may submit written information about the violations to the Chairman within fifteen days after service of this NOV (or such longer period as the Chairman 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 7th of October 2022.


E. Sequoyah Simermeyer
Chairman