



National Indian Gaming Commission

Settlement Agreement

1. This settlement agreement (the Agreement) is entered into by and between the Cheyenne River Sioux Tribe (the Tribe), a federally recognized Indian tribe, and the Chairman of the National Indian Gaming Commission (the Chairman) related to the non-submission of financial statements and audit reports in violation of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, and National Indian Gaming Commission (NIGC) regulations, 25 C.F.R. § 501 *et seq.*

Circumstances of Violation

2. The Cheyenne River Sioux Tribe is a federally recognized Indian tribe with tribal headquarters in Eagle Butte, South Dakota.
3. The Tribe's operated its gaming operation, Cheyenne River Sioux Tribe Bingo Operations, during all or part of 2011 to the present.
4. Based on the most recent financial statements and audit submitted to the NIGC, for fiscal year 2010, the fiscal year for the Tribe's Bingo Operations runs from October 1 to September 30.
5. IGRA requires that tribes submit annual audits of each gaming operation. 25 U.S.C. § 2710(b)(2)(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). The NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. §§ 571.13.
6. Therefore, the financial statement and audit for the Tribe's gaming operations for fiscal year 2010-11 were due to the NIGC on or before January 30, 2012 (the next business day following January 28, 2012). The financial statement and audit for the Tribe's gaming operations for the fiscal year 2011-12 were due to the NIGC

on or before January 28, 2013. The financial statement and audit for the Tribe's gaming operations for fiscal year 2012-13 were due to the NIGC on or before January 28, 2014. The financial statement and audit for the Tribe's gaming operations for fiscal year 2013-14 were due to the NIGC on or before January 28, 2015. Lastly, the financial statement and audit for the Tribe's gaming operations for fiscal year 2014-15 were due to the NIGC on or before January 28, 2016.

7. The Tribe did not submit the 2010-11 fiscal year financial statement and audit to the NIGC by January 30, 2012, and has yet to submit the documents.
8. Tribe did not submit the 2011-12 fiscal year financial statement and audit to the NIGC by January 28, 2013, and has yet to submit the documents.
9. Tribe did not submit the 2012-13 fiscal year financial statement and audit to the NIGC by January 28, 2014, and has yet to submit the documents.
10. Tribe did not submit the 2013-14 fiscal year financial statement and audit to the NIGC by January 28, 2015, and has yet to submit the documents.
11. Tribe did not submit the 2014-15 fiscal year financial statement and audit to the NIGC by January 28, 2016, and has yet to submit the documents.
12. NIGC regulations allow operations with less than \$2 million gross gaming revenue during the prior fiscal year to satisfy the annual audit requirement by having an independent certified public accountant complete a review of the gaming operation's financial statements and services, so long as the Tribe has complied with audit submission requirements for the past three years. 25 C.F.R. § 571.12(c).
13. On April 2, 2013, the Tribe requested that the Commission waive the requirement of audit submission compliance for the previous three years and allow it to submit reviewed financials in lieu of audited financials for fiscal year 2011 and 2012.
14. On July 30, 2013, the Commission issued a letter granting the Tribe's request to submit reviewed financial statements for fiscal year ended 2012.
15. The Tribe has not submitted either an audit or reviewed financial statements for the 2012-13 fiscal year.
16. On October 23, 2014, NIGC issued a Letter of Concern with a required response date of November 21, 2014, to then Tribal Chairman Kevin Keckler for failure to submit the required financial statements and audits for fiscal years 2011, 2012, and 2013.
17. The Tribe did not respond to the October 23, 2014 Letter of Concern or submit the required financial statements and audits.

18. On February 11, 2015, NIGC issued another Letter of Concern with a required response date of March 11, 2015, to the new Tribal Chairman, Harold Frazier, for failure to submit financial statements and audits for fiscal years 2011, 2012, 2013, and 2014.
19. By letter received April 13, 2015, Chairman Frazier requested a waiver to submit reviewed financials for fiscal years 2011, 2012, and 2013 with a full audit to be performed in the spring of 2015 and completed no later than the summer of 2015 for fiscal year 2014.
20. By letter dated April 15, 2016, Chairman Frazier informed NIGC that the audits for their Class II operation would be completed and sent to NIGC within the week.
21. On April 25, 2016, NIGC Region Director, Linda Durbin sent an email to Chairman Frazier notifying him that the audited financial statements had not yet been received and reminding him of the Tribe's responsibility to submit full audited financial statements for FY 2011, 2012, 2013, 2014, and 2015.
22. To date, no audited or reviewed financial statement has been received from the Tribe since February 16, 2011.

Recitals

23. The Chairman has authority to levy and collect appropriate civil fines, not to exceed \$25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in 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. "If noncompliance continues for more than one day, the Chairman may treat each daily act or omission as a separate violation." 25 C.F.R. § 575.4(a)(2).
24. The Tribe wishes to enter a settlement agreement with the Chairman to avoid the issuance of a notice of violation.

Terms of Settlement Agreement

25. The Tribe admits the facts set forth in the "Circumstances of Violation" section of this agreement; agrees that the NIGC possesses jurisdiction over this matter; and agrees to comply with the terms of this agreement.
26. The Tribe agrees to participate in an NIGC sponsored training within 18 months of the execution of this Agreement. Compliance with this Paragraph can be demonstrated by at least one member of the Cheyenne River Sioux Tribal Gaming Commission or Business Committee attending any training presented by the NIGC.

27. The Tribe agrees to submit by July 31, 2016, the gaming operation's financial statements and documentation of a formal review by an independent auditor for fiscal years ended 2011, 2012, and 2013. *On July 28, the Tribe submitted financial reports for 2011, 2012 and 2013.*
28. The Tribe agrees to submit by September 30, 2016, the gaming operation's financial statements and documentation of a formal review by an independent auditor for fiscal year ended 2014.
29. The Tribe agrees to submit by November 30, 2016, the gaming operation's financial statements and audit by and independent auditor for fiscal year ended 2015.
30. In exchange for the terms, conditions, and understandings set forth in this agreement, the Tribe waives its right to any administrative review of this settlement (25 C.F.R. §§ 584, 585), submit information prior to the issuance of a civil fine assessment (25 C.F.R. § 575.5), seek the reduction or waiver of a civil fine (25 C.F.R. § 575.6), and the right to seek judicial review (25 U.S.C. § 2714).
31. In exchange for the terms, conditions, and understandings set forth herein, the Tribe hereby waives its rights as specified in paragraph 30 of this Agreement as well as any other right to seek judicial review or otherwise challenge or contest the Chairman's actions under this Agreement, including the right to have the Chairman provide his written analysis of the factors to be considered in assessing a civil fine set forth under 25 C.F.R. § 575.4.
32. The Chairman agrees upon execution of this agreement that the NIGC shall not institute further proceedings or actions or assess any additional sanctions against the Tribe, the Cheyenne River Sioux Tribal Gaming Commission or any other entity of the Tribe, or any of the officers and/or directors of such tribal entities, for any actions arising out of the circumstances of this agreement unless the Tribe fails to comply with this Agreement.
33. The Tribe shall pay a civil fine of \$60,000. This fine shall be suspended as long as the Tribe complies with the terms of this Agreement. The Chairman agrees that if the Tribe fully complies with the terms of this Agreement, the suspended fine will be waived.
34. If the Tribe breaches any of the provisions of this Agreement, Tribe agrees and consents that a civil fine of \$60,000 will become fully due and payable on the date of the breach. In such circumstance, the NIGC shall issue a written notice (also known as a demand letter) to Tribe pursuant to NIGC debt collection regulations, 25 C.F.R. § 513. The Tribe agrees that the NIGC and/or U.S. Department of Treasury may proceed with debt collection of the \$60,000 civil fine (less amounts already paid) against the Tribe, and may assess interest, penalties and administrative costs from the date of breach of this Settlement Agreement, as provided in 25 C.F.R. § 513.5. In such circumstance, the Tribe waives any rights to an oral hearing under 25 C.F.R. § 513.6, but the NIGC shall provide Tribe with

JA
9/8

a reasonable opportunity to submit written material supporting a request to reconsider the determination that Tribe is in breach of this Agreement or to challenge the method by which the NIGC calculated the debt.

35. This agreement shall not become public unless and until it is accepted and signed by the Chairman of the NIGC. However, upon its acceptance by the Chairman of the NIGC, and his signature, the parties agree that this agreement will become public.

Additional Covenants

36. The parties stipulate that this Agreement shall be deemed a final order of the Commission and a final agency action pursuant to 25 C.F.R. § 580.10.
37. This Agreement constitutes the entire agreement between the Chairman and the Tribe and supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter hereof. No warranties, representations, covenants, or agreements shall be binding upon any party except as set forth herein. Any modification or waiver of any term of this Agreement, including the modification or waiver of term, must be in writing and signed by the parties.
38. The Chairman and Tribe expressly agree and acknowledge that time is of the essence in the Agreement. The recitals herein and above shall be binding upon the parties, their agents, heirs, personal representatives, successors, and assigns.
39. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purposes of the Agreement.

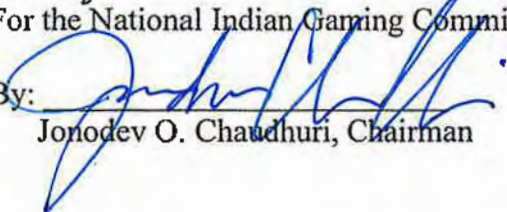
For the Cheyenne River Sioux Tribe

By: 

Date:

8/02/16

For the National Indian Gaming Commission

By: 
Jonodev O. Chaudhuri, Chairman

Date:

9/6/16