

National Indian Gaming Commission

Settlement Agreement

SA – 17-02

This Settlement Agreement (“Agreement”) is entered into by and between the Hon. Robert Kelly, as Chairman of the Nooksack Indian Tribal Council (“Respondent”), the Nooksack Indian Tribe being a federally recognized Indian Tribe, and Jonodev O. Chaudhuri, Chairman of the National Indian Gaming Commission (“Chairman”), relating to the matters contained in Notice of Violation No. NOV-17-02 and Temporary Closure Order No. TCO-17-02.

RECITALS

1. WHEREAS, under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (“IGRA”), and the implementing regulations of the National Indian Gaming Commission (“NIGC”), the Chairman of the NIGC may issue a Notice of Violation (“NOV”) to any person for violation of any provision of the IGRA, NIGC regulations, or any tribal ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3(a).
2. WHEREAS, under the IGRA, the Chairman may issue a Temporary Closure Order (“TCO”) for all or part of a tribal gaming facility for violation of any provision of the IGRA, NIGC regulations, or any tribal ordinance or resolution approved by the Chairman, if one or more of the substantial violations set forth in 25 C.F.R. § 573.4(a) are present. 25 U.S.C. § 2713(b)(1); 25 C.F.R. § 573.4.
3. WHEREAS, on June 15, 2017, the Chairman issued NOV-17-02 and TCO-17-02, for violations of the IGRA, the NIGC’s implementing regulations, and the Tribe’s gaming ordinance by: (i) failing to maintain the Tribe’s sole proprietary interest and responsibility for the conduct of gaming activity at the Nooksack Northwood Casino; (ii) failing to conduct background investigations, including federal criminal history checks, on primary management officials and failing to issue licenses to primary management officials; (iii) failing to submit an attestation certifying that, by issuing a facility license for the Nooksack Northwood Casino, the Tribe has determined that the construction and maintenance of the facility, and the operation of gaming at the facility, is conducted in a manner which adequately protects the environment and the public health and safety; and (iv) failing to maintain and operate the Nooksack Northwood Casino in a manner that adequately protects the environment, and the public health and safety.

4. WHEREAS, as a consequence of the aforementioned violations, the Chairman ordered the Tribe to immediately cease and desist from all gaming activity at the Nooksack Northwood Casino.
5. WHEREAS, upon receipt of NOV-17-02 and TCO-17-02, the Tribe immediately ceased all gaming activity at the Nooksack Northwood Casino.
6. WHEREAS, the Chairman's determination that the Tribe failed to maintain sole proprietary interest in, and responsibility for, the conduct of gaming at the Nooksack Northwood Casino was based on the October 17, 2016, determination of the Principal Deputy Assistant Secretary — Indian Affairs that the Tribe lacked a quorum to conduct Tribal business as required by the Nooksack Constitution and Bylaws (the "First Violation").
7. WHEREAS, the Chairman's determination that the Tribe failed to conduct background investigations of primary management officials, and issue licenses to these officials, was based on his conclusion that members of the Nooksack Business Corporation II ("NBC II") — the Tribal entity that serves as the governing body of the Nooksack Northwood Casino — are primary management officials for whom background investigations must be conducted, and licenses issued, and that the Tribe failed to submit notices of the results of investigations and licensing decisions for NBC II members to the NIGC (the "Second Violation").
8. WHEREAS, the Chairman's determination that the Tribe failed to submit the requisite attestation that the construction and maintenance of the Nooksack Northwood Casino, and the operation of gaming at that facility, is being conducted in a manner which adequately protects the environment and public health and safety is based on his determination that, as of the date of NOV-17-02 and TCO-17-02, the NIGC had not received such attestation (the "Third Violation").
9. WHEREAS, the Chairman's determination that the Tribe failed to maintain and operate the Nooksack Northwood Casino in a manner that adequately protects the environment, and the public health and safety, is based on the issuance of Unilateral Administrative Orders issued by the United States Environmental Protection Agency ("EPA") for alleged violations of the Safe Drinking Water Act ("SDWA"), which remain in effect until the Tribe demonstrates compliance with the SDWA and its implementing regulations (the "Fourth Violation").
10. WHEREAS, at the time the Chairman issued NOV-17-02 and TCO-17-02, the Respondent was actively engaged in discussions with the Department of the Interior regarding the Principal Deputy Assistant Secretary — Indian Affairs' October 17, 2017 determination, and these discussions have now resulted in the Memorandum of Agreement executed on August 25, 2017.

11. WHEREAS, the Respondent has provided the Chairman with an executed, true and correct copy of the Memorandum of Agreement.
12. WHEREAS, the Memorandum of Agreement acknowledges that the Assistant Secretary – Indian Affairs recognizes Chairman Robert Kelly as a person of authority within the Nooksack Tribe, through whom the Assistant Secretary will maintain government-to-government relations with the Tribe for such time as the Memorandum of Agreement is in effect, for the purpose of the Nooksack Tribe holding a special election, as well as other purposes.
13. WHEREAS, the First and Fourth Violations have not been cured and remain on-going.
14. WHEREAS, as stated in the Notice of Violation, in order to correct First Violation the Tribe must hold a valid election and achieve a quorum of the Tribal Council and the NBC II Board, and in order to correct the Fourth Violation the Tribe must comply with the EPA's Unilateral Administrative Order.
15. WHEREAS, all NBC II members have submitted to full background investigations, the Nooksack Tribal Gaming Commission has issued each member a temporary license for a period of ninety (90) days, and the Tribal Gaming Commission has committed to complete the requisite regulatory steps in the licensing process and, at the end of that process, submit notices of licensure to the Commission as required by 25 C.F.R. Parts 556 and 558.
16. WHEREAS, the Respondent submitted to the Chairman the requisite attestation certifying that gaming at the Nooksack Northwood Casino is being conducted in a manner that adequately protected the environment and the public health and safety.
17. WHEREAS, the Respondent has worked with the EPA to address the issues raised in the Unilateral Administrative Order (Order) and is on schedule to attain full compliance with the Order by October 10, 2017.
18. WHEREAS, the Respondent filed an appeal of NOV-17-02 and TCO-17-02 on July 14, 2017.
19. WHEREAS, the Respondent has taken all necessary corrective actions to fully resolve the Second and Third Violations set forth in NOV-17-02.
20. WHEREAS, the closure of the Nooksack Northwood Casino has, and will continue, to result in severe economic hardship to the Tribe, its employees and the local community.

21. WHEREAS, in light of the severe economic harm suffered by the Tribe as a result of the continued closure of the Nooksack Northwood Casino, the Chairman and the Respondent agreed to enter into settlement discussions rather than continue to pursue the appeal or initiate an action in federal court to lift TCO-17-02.
22. WHEREAS, in light of the foregoing, on August 31, 2017, the Respondent and the Chairman commenced settlement discussions that would allow for the immediate suspension of TCO-17-02, and put in place safeguards to address the Chairman's concerns regarding the operation of the Nooksack Northwood Casino while the Tribe works toward holding an election in accordance with the Memorandum of Agreement.
23. WHEREAS, the Respondent has provided the Chairman with documentation establishing that appropriate controls are in place to ensure that the Nooksack Northwood Casino, once reopened, will be operated in such a manner that protects the financial integrity of the operation and net revenues.
24. WHEREAS, the Respondent and the Chairman desire to resolve this matter without undertaking the burdens, costs, risks and uncertainties associated with formal administrative fact-finding and judicial proceedings.
25. THEREFORE, the Respondent and the Chairman have agreed to execute this Agreement and perform in accordance with the following covenants and conditions:

TERMS OF SETTLEMENT

26. This Agreement is entered into pursuant to 25 CFR § 584.10 and shall become effective upon the date that it is signed by the last party to sign this Agreement ("Effective Date").
27. The Chairman agrees to suspend TCO-17-02 at 5:00 pm EST on Friday, September 8, 2017, and to refrain from issuing any further enforcement action on the basis of the alleged violations set forth NOV-17-02 and TCO-17-02 so long as the terms of this Agreement are fully satisfied.
28. The Respondent agrees to fully comply with its obligations under the Memorandum of Agreement between it and the Department of the Interior, to inform the Chairman once an election has been conducted, finalized, and acknowledged by the Assistant Secretary — Indian Affairs, and to provide the Chairman with a copy of the Assistant Secretary – Indian Affairs' letter granting full recognition of the Nooksack Indian Tribal Council described in paragraph D of the Memorandum of Agreement immediately upon receipt by the Respondent.

29. Until the Assistant Secretary — Indian Affairs acknowledges the results of the Tribal election as outlined in the Memorandum of Agreement, the Respondent agrees to expend all net gaming revenue in a manner consistent with the IGRA and for only the following programs, as approved by the Tribal Council while it still had a quorum:
- a. Tribal member school assistance program;
 - b. Essential governmental services for Tribal members, including:
 - i. veterans program;
 - ii. water and sewer management;
 - iii. Tribal elders program;
 - iv. Tribal food bank;
 - v. cultural resources preservation program;
 - vi. grant matching program;
 - vii. child support enforcement program;
 - viii. Tribal Head Start program;
 - c. Tribal Gaming Authority wages, benefits, supplies, travel costs, and stipend;
 - d. Tribal general fund expenditures, including:
 - i. Tribal Council;
 - ii. housing program;
 - iii. maintenance of Tribal buildings;
 - iv. Tribal court;
 - v. Tribal attorneys servicing Tribal governmental programs;
 - vi. Tribal enrollment department;
 - vii. supplementation veterans and tribal elders funds; and
 - viii. supplementation of Tribal food bank.
30. Within 30 days of the execution of this Agreement, and every 30 days thereafter, until the Assistant Secretary — Indian Affairs acknowledges the results of the Tribal election, the Respondent agrees to provide the Commission's Director of Compliance with a report sufficient to demonstrate that net gaming revenues are being distributed in compliance with the Tribe's internal control standards and a declaration providing a full accounting of net gaming revenues and certifying that net gaming revenues have only been used to fund the programs identified in paragraph 4 of this Settlement Agreement.
31. The Respondent agrees to satisfy the issues raised in the EPA's Order by October 10, 2017, and provide the Chairman with a copy of the EPA's correspondence indicating all violations have been resolved.
32. The Chairman has determined that civil fines for the violations alleged in NOV-17-02 and TCO-17-02 could be assessed in at least the amount of \$ 45,000,000.

33. Of the \$ 45,000,000 in civil fines that could be assessed, the Tribe agrees to pay, and the Chairman agrees to accept, the amount of \$ 13,000,000, payable to the U.S. Treasury and delivered to the NIGC at 1849 C Street, N.W., Mail Stop #1621, Washington, D.C. 20240.
34. The Chairman agrees, upon the execution of this Agreement, to suspend the fine due pending compliance with the terms set forth in this Agreement.
35. The Chairman agrees that, should he believe any provision of this Agreement has been violated by the Respondent, he shall immediately notify the Respondent of the alleged violation. Before any further action is taken, the parties shall meet and confer and use reasonable efforts to resolve the matter to the satisfaction of both parties. If the parties are unable to resolve the matter within 10 business days of receiving the Chairman's notice, then Respondent agrees that the suspended fine will become due, and payment must be made within 10 days of the Respondent receiving the Chairman's written notice of the levy of the fine.
36. The Respondent agrees that should the Respondent fail to meet the terms of its Memorandum of Agreement with Interior, the Chairman may invoke the meet and confer procedure set forth in paragraph 35 above. Should the parties be unable to reach resolution within 10 business days, the Chairman may re-impose TCO-17-02, the Tribe agrees to immediately close the Nooksack Northwood Casino, and the stay of the administrative appeal shall be lifted pursuant to paragraph 39.
37. The Respondent agrees that failure to attain full compliance with the EPA's Unilateral Administrative Order for the water system serving the Nooksack Northwood Casino will result in a substantial violation for which the Chairman may re-impose TCO-17-02, at which time the Tribe agrees to immediately close the Nooksack Northwood Casino, and the stay of the administrative appeal shall be lifted pursuant to paragraph 39.
38. This Agreement will terminate when the parties agree that all terms have been satisfied.

ADDITIONAL COVENANTS

39. Upon the execution of this Agreement, Docket No. DIR-2017-0083 presently pending before the United States Department of the Interior, Office of Hearings and Appeals, shall be stayed until such time as the Tribe upholds its obligations to conduct a Nooksack Indian Tribal Council election in conformity with the Memorandum of Agreement, or the Chairman re-imposes TCO-17-02, whichever occurs first.
40. The Chairman agrees upon the execution of this Agreement to waive the right to impose any further civil fines, and to take any further enforcement against the Tribe

in connection with NOV-17-02 and/or TCO-17-02, unless and until TCO-17-02 is re-imposed.

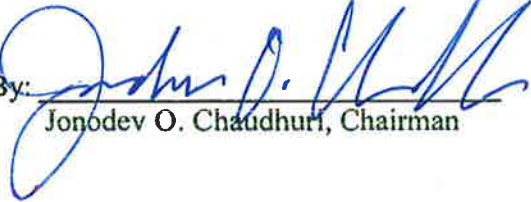
41. The Respondent waives all rights to further pursue an appeal of NOV-17-02 and TCO-17-02 before the Commission, waives all rights to pursue an appeal to a presiding official, and waives all rights to judicial review of such proceedings, unless and until TCO-17-02 is re-imposed.
42. In exchange for the terms, conditions, and understandings set forth in this Agreement, the Respondent waives its right to any administrative review of this settlement, under 25 C.F.R. §§ 584 and 585, to submit information prior to the issuance of a civil fine assessment, under 25 C.F.R. § 575.5, to seek reduction or waiver of a civil fine, under 25 C.F.R. § 575.6, and the right to seek judicial review, under 25 U.S.C. § 2714, 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, unless and until TCO-17-02 is re-imposed, or the civil fine is re-imposed pursuant to paragraph 35.
43. This Agreement constitutes the entire agreement between the Respondent and the Chairman relating to TCO-17-02 and NOV-17-02, 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 terms of this Agreement must be in writing and signed by all parties.
44. The Respondent and Chairman agree that upon full compliance with the Respondent's obligations under the Memorandum of Agreement, this Agreement shall be deemed a final order of the Commission and a final agency action, under 25 C.F.R. § 573.5(b).
45. The Respondent and the Chairman expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein and above set shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.
46. The Respondent and the Chairman agree that, after the Effective Date, this Agreement shall be a public document and may be published or disclosed by either party, subject to Tribe's right to redact confidential information pursuant to 25 C.F.R. § 584(9).
47. This Agreement may be executed on one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purposes of this Agreement.

For the Respondent:

By: 
Robert Kelly, Chairman

Date: 9/8/17

For the National Indian Gaming Commission

By: 
Jonodev O. Chaudhuri, Chairman

Date: 9/8/17