

NATIONAL INDIAN GAMING COMMISSION

SETTLEMENT AGREEMENT

SA-15-01

This settlement agreement is entered into by and between the Picayune Rancheria of Chukchansi Indians (Tribe) through its duly authorized representatives and the Chairman of the National Indian Gaming Commission (NIGC) to resolve the issues related to the notices of violation (NOV-14-01, NOV-14-02, NOV-14-03) and temporary closure orders (TCO-14-01 and TCO-14-02) issued to the Tribe.

RECITALS

1. Whereas, the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2705(a)(2) and 2713(a)(1), and NIGC regulations, 25 C.F.R. § 575.4, authorize the Chairman to issue civil fines not to exceed \$25,000 per violation against a tribe, management contractor, or individual operating Indian gaming for violations of IGRA, NIGC regulations, or tribal regulations, ordinances, or resolutions approved by the Chairman.
2. Whereas, pursuant to 25 C.F.R. § 575.4(a)(2), if the violation continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.
3. Whereas, IGRA authorizes the Chairman to issue an order of temporary closure of an Indian gaming operation for substantial violation of IGRA, NIGC regulations, or an approved tribal ordinance under 25 U.S.C. §§ 2705(a)(1) and 2713(b)(1).
4. Whereas, under NIGC regulations, at 25 C.F.R. § 573.3(a), the Chairman may issue a notice of violation to any person for violations of any provision of IGRA, NIGC regulations, or an approved tribal gaming ordinance or resolution.
5. Whereas, by letter dated July 8, 2013, the NIGC Sacramento Region Director informed the Tribe of the missed compliance date for the submission of the annual audit report and financial statements for fiscal year 2012.
6. Whereas, by letter dated April 1, 2014, the NIGC Sacramento Region Director informed the Tribe of the missed compliance date for the submission of the annual report and financial statements for fiscal year 2013.
7. Whereas, on September 9, 2014, the Chairman issued to the Tribe two Notices of Violation, NOV-14-01 and NOV-14-02, for failing to submit to the NIGC annual

independent audits, financial statements, and agreed-upon procedure reports for the 2012 fiscal year and the 2013 fiscal year.

8. Whereas, on October 7, 2014, the Chairman issued to the Tribe an order of temporary closure, TCO-14-01, of all gaming activity in the Chukchansi gaming facility, the Chukchansi Gold Resort and Casino (Gaming Facility), to be effective October 27, 2014, for failure to submit to the NIGC annual independent audits, financial statements, and agreed-upon procedure reports for the 2012 fiscal year and the 2013 fiscal year.
9. Whereas, on October 10, 2014, the Chairman issued to the Tribe a notice of violation, NOV-14-03, and an immediate order of temporary closure, TCO-14-02, of all gaming activity at the Gaming Facility for operating in a manner that threatened public health and safety.
10. Whereas, the Chairman and the Tribe desire to resolve issues related to the notices of violation (NOV-14-01, NOV-14-02 and NOV-14-03) and the temporary closure orders (TCO-14-01 and TCO-14-02).
11. Therefore, the Chairman and the Tribe have agreed to execute this Agreement and perform in accordance with the following terms:

TERMS OF SETTLEMENT

STIPULATIONS

12. The Tribe admits that it was required to submit to the NIGC the annual independent audit reports, financial statements, and agreed-upon procedure reports of the Gaming Facility within 120 days of the end of fiscal years 2012, 2013, and 2014 as required by IGRA and NIGC regulations.
13. The Tribe admits that the documents it provided to the NIGC on October 27, 2014, entitled "Financial Statements and Additional Information, Years Ended December 31, 2013 and 2012, With Report of Independent Auditors," as well as the "Report of Independent Accountants on Applying Agreed-Upon Procedures Required by the Code of Federal Regulations, Title 25, Part 542.3(f) Reliance on Internal Auditors" were submitted after the applicable statutory deadlines and did not adequately constitute the annual independent audit reports, financial statements, and agreed-upon procedure reports of its gaming operation for the 2012 and 2013 fiscal years required by IGRA and NIGC regulations.
14. The Tribe admits that it is unable to adequately submit the annual independent audit reports, financial statements, and agreed-upon procedures reports of the gaming operation for the 2012 and 2013 fiscal years.
15. The Tribe admits that it did not provide to the NIGC the annual independent audit reports, financial statements, and agreed-upon procedure reports of the Gaming

Facility within 120 days of the end of fiscal year 2014 as required by IGRA and NIGC regulations.

16. The Tribe admits that its failure to submit to the NIGC the annual independent audit reports, financial statements, and agreed-upon procedure reports of the Gaming Facility is a violation of IGRA, 25 U.S.C. § 2710(b)(2)(C), NIGC regulations, 25 C.F.R. §§ 571.12, 571.13, 542.3(f) and 543.23(d), and the Tribal Gaming Ordinance of the Picayune Rancheria.
17. The Tribe admits that the actions of the Tribe's disputing factions, specifically the attempted forcible takeover of the Gaming Facility on October 9, 2014, resulted in the operation of the Gaming Facility in a manner that threatened public health and safety, a substantial violation of IGRA, 25 U.S.C. § 2710(b)(2)(E), NIGC regulations, 25 C.F.R. § 573.4(a)(12), and the Tribal Gaming Ordinance of the Picayune Rancheria.
18. In light of the preceding admissions related to the threat to public health and safety and the failure to submit annual independent audit reports, financial statements, and agreed-upon procedure reports, the Tribe agrees to pay a fine in the amount of \$19,845,000.

PRE-OPENING CONDITIONS

19. Gaming activity at the Gaming Facility may resume on or after the receipt of written notification from the NIGC Director of Compliance to the Tribe that all Pre-Opening Conditions have been satisfied. The day that gaming activity resumes shall be referred to as the "Opening Date."
20. *Prior to the execution of this Settlement Agreement, the Tribe agrees to engage an independent audit firm who will perform an independent audit report of the gaming operation's financial statements for the 2014 fiscal year. The Tribe further agrees to provide the NIGC Director of Compliance a copy of the engagement letter with the independent audit firm who will perform agreed-upon procedures to compare the Tribal Internal Control Standards (TICS) and/or System of Internal Control Standard (SICS) documentation that was in place during fiscal 2014 to the NIGC MICS, in order to identify any instances in which the TICS and/or SICS documentation that was in place during fiscal 2014 did not meet or exceed the requirements of the NIGC MICS.*
21. The Tribe shall provide the NIGC Director of Compliance with a copy of the engagement letter with an independent audit firm to perform an audit for the time period from the end of fiscal year 2014 to the Opening Date.
22. The Tribe shall provide the NIGC Director of Compliance a copy of the engagement letter with an independent audit firm to produce an audit report and agreed-upon procedures report of the gaming operation for the time period from the Opening Date to the end of the fiscal year within which the Opening Date occurs.

23. The Tribe shall provide the NIGC Director of Compliance with copies of the Public Safety Protocols applicable to the Gaming Facility which have been adopted by the Tribe.
24. The Tribe shall provide the NIGC Director of Compliance with a copy of the memorandum of understanding entered into between Madera County and the Tribe regarding law enforcement at the Gaming Facility.
25. The Tribe shall have submitted any financing agreement to secure funds for the reopening of the Gaming Facility to the NIGC Office of General Counsel for review and a legal opinion regarding whether the agreement is a management contract and whether it violates the sole proprietary interest mandate of IGRA.
26. The Tribe shall certify that, at least 60 days prior to the Opening Date, a tribal gaming regulatory body that is consistent with the Tribe's approved Gaming Ordinance shall be in operation and shall provide the NIGC Director of Compliance with a copy of the Tribal resolution appointing that regulatory entity.
27. This Agreement is entered into by the Chairman and the Tribe, by duly authorized officers or agents, pursuant to 25 C.F.R § 575.6(b) and shall be effective upon execution of the parties (Effective Date).
28. The Tribe shall ratify this Agreement by Tribal Council Resolution on or before the Effective Date and said Resolution shall be attached to this Agreement as Addendum A.

POST-OPENING CONDITIONS

29. Of the \$19,845,000.00 fine due, the Tribe shall pay the amount of \$500,000.00 payable to the U.S. Treasury and delivered to the NIGC at C/O Department of the Interior, 1849 C Street N.W., Mail Stop #1621, Washington, D.C. 20240.
 - A. The Tribe shall make a first payment in the amount of \$250,000 no later 30 days following the Opening Date.
 - B. The Tribe will then make a second payment of \$125,000 no later than 180 days following the Opening Date.
 - C. The Tribe will then make a third payment of \$125,000 no later than 360 days following the Opening Date.
30. For each of the three full fiscal years following the fiscal year within which the Opening Date occurs, the Tribe shall provide the NIGC Director of Compliance with a copy of the engagement letter when it engages an independent audit firm to produce an audit report and agreed-upon procedures report of the gaming operation for each of those fiscal years.

31. The Tribe shall submit in a timely manner the audit reports, financial statements, and agreed-upon procedures reports produced by the audit firms for which engagement letters have been submitted to the NIGC Director of Compliance pursuant to this Agreement. The Chairman agrees that if the fiscal year 2014 annual independent audit report includes a disclaimer of opinion, the Tribe will still be considered to have satisfied this submission requirement for fiscal year 2014.
32. The Tribe shall fully cooperate with an internal control assessment to be completed by the NIGC audit department within 9 months of the Opening Date.
33. The Tribe shall operate the Gaming Facility in a manner that maintains and preserves public health and safety consistent with IGRA, 25 U.S.C. §2710(b)(2), NIGC regulations, 25 C.F.R. §573.4(a)(12), and the Tribe's approved Gaming Ordinance, No. 2010-22, §§ 5.14.1, and 9.2.2.
34. The Tribe shall sufficiently fund its gaming regulatory body to ensure the Tribe's gaming operation is adequately regulated.
35. All Tribal Council members and members of the Board of Commissioners of the Picayune Tribal Gaming Commission shall attend the following NIGC training classes or their equivalents: Tribal Gaming Commission Duties and Responsibilities; Value of Internal Control Systems; Agreed Upon Procedures – An Overview; Internal Audit – an Overview; Accounting Standards; and Internal Audits. The NIGC and the Tribe shall schedule mutually agreeable dates for the training within six months of the Effective Date. This training will be conducted by the NIGC at a facility on the Tribe's lands or nearby.
36. The Tribe shall ensure that either the Tribe, the tribal gaming regulatory body, and/or management officials of the Gaming Facility shall immediately contact local law enforcement and immediately report any incident that substantially threatens the public health and safety at the Gaming Facility, and if necessary, request assistance from the State Gaming agency in accordance with Section 7.3 of the Tribal-State Compact.
37. The Tribe shall submit all outstanding fee payments due under 25 U.S.C. § 2717 and 25 C.F.R. §§ 514.1, 514.5, and 514.6, no later than 90 days following the Opening Date. The Tribe shall submit the statements and fee payments for fiscal year 2014 no later than 90 days following the Opening Date. The Tribe shall submit subsequent statements and fees in a timely manner.
38. The Tribe shall fully cooperate with the NIGC's ongoing investigation of the management of the Gaming Facility without an approved contract issue involving the lawsuit filed against the Tribe by the trustee to its May 30, 2012 indenture in the Supreme Court of the State of New York, New York County: *Wells Fargo Bank, N.A. v. Chukchansi Economic Development Authority, et al.*, Index No. 652140/13.

SUSPENSION OF FINE AND TEMPORARY CLOSURE ORDERS

39. The Chairman agrees upon execution of this Agreement to suspend \$19,345,000.00 of the total fine due pending compliance with all Post-Opening Conditions through the end of the third full fiscal year following the fiscal year within which the Opening Date occurs. The Tribe agrees if any term of this Agreement is not met, the suspended amount will become due, and the payment must be made within 10 days of the Tribe receiving a written notice of the levy of the fine by the Chairman.
40. The Chairman agrees upon execution of this Agreement to suspend the temporary closure orders, TCO-14-01 and TCO-14-02, through the end of the third full fiscal year following the fiscal year within which the Opening Date occurs. The Tribe agrees if any deadline or term of this Agreement is not met—including the requirement to adequately protect the safety of the public, patrons and employees at the Gaming Facility—the Tribe is to cease and desist all gaming activity in the Gaming Facility immediately upon receiving a written notice of reinstatement of either of the temporary closure orders by the Chairman.

ADDITIONAL COVENANTS

41. The Chairman agrees that if, through the end of the third full fiscal year following the fiscal year within which the Opening Date occurs, the Tribe has maintained full compliance with the terms of this Agreement, the temporary closure orders will be permanently lifted and the suspended fine will be waived.
42. The Chairman agrees upon execution of this Agreement to waive the right to impose any further civil fine against the Tribe for the notices of violation, NOV-14-01, NOV-14-02 and NOV-14-03.
43. The Tribe agrees that the Withdrawal of Notice of Appeal of the Notice of Violation and Temporary Closure Order, NOV-14-03/TCO-14-02, filed on March 26, 2015, before the full Commission, fully resolves the appeal of the Notice of Violation and Temporary Closure Order, NOV-14-03/TCO-14-02 filed by the former Reid Council on November 10, 2014.
44. The Tribe waives all rights to further pursue an appeal of NOV-14-03/TCO-14-02 before the Commission, waives all rights to pursue an appeal to a presiding official, and waives all rights to judicial review of such proceedings.
45. 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, 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.

46. This Agreement constitutes the entire agreement between the Chairman and the Tribe relating to NOV-14-01, NOV-14-02, NOV-14-03, TCO-14-01 and TCO-14-02, and supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter. 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.
47. The Tribe agrees that this Agreement shall be deemed a final order of the Commission and a final agency action, under 25 C.F.R. § 580.10.
48. The Chairman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein and set above shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.
49. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.

For the Picayune Rancheria of Chukchansi Indians:

By: Claudia G
Claudia Gonzales, Chairwoman

12-21-15
Date

By: H. Nokomis Hernandez
Nokomis Hernandez, Vice Chair

12-21-15
Date

By: Dixie Jackson
Dixie Jackson, Treasurer

12-21-15
Date

By: Thomas Walker
Thomas Walker, Secretary

12-21-15
Date

By: Morris Reid
Morris Reid, Member at Large

12/21/2015
Date

By: Dora Jones
Dora Jones, Member at Large

12/21/2015
Date

By: Harold M. Hammond, Sr.
Harold M. Hammond, Sr., Member at Large

12-21-2015
Date

For the National Indian Gaming Commission:

By: 

Jonodev Chaudhuri, Chairman

12/21/2015
Date