

# NATIONAL INDIAN GAMING COMMISSION

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## TEMPORARY CLOSURE ORDER

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TCO-14-01

TO: Chairman (Agent for Service)  
Picayune Rancheria of the Chukchansi Indians  
46575-B Road 417  
Coarsegold, CA 93614

Picayune Rancheria of the Chukchansi Indians Tribal Gaming Commission  
Khammy Chhom, Executive Director  
46575-B Road 417  
Coarsegold, CA 93614

Giffen Tan, General Manager  
Chukchansi Gold Resort & Casino  
777 Lucky Lane  
Coarsegold, CA 93614

1. The Chairman of the National Indian Gaming Commission (NIGC) gives notice that the Picayune Rancheria of the Chukchansi Indians (Chukchansi Tribe), located in Coarsegold, California, and operating the Chukchansi Gold Resort and Casino (Casino) located at 711 Lucky Lane, in Coarsegold, California, off State Route 41, are in substantial violation of the Indian Gaming Regulatory Act (IGRA), the NIGC regulations, and the Chukchansi Tribe's gaming ordinance.
2. The Chukchansi Tribe is a federally recognized Indian nation with tribal headquarters in Coarsegold, California.
3. The circumstances of the violation are:
  - A. The Chukchansi Tribe conducted Class II and III gaming in its gaming facility, the Chukchansi Gold Resort and Casino, from June 2003 to the present. In prior financial statements and audits submitted to the NIGC, the fiscal year for the Casino ran from January 1 to December 31. In

particular, for the Casino's 2012 fiscal year, the Chukchansi Tribe maintained that same 12-month period as its fiscal year, beginning January 1, 2012, and ending December 31, 2012. And for the Casino's 2013 fiscal year, the Chukchansi Tribe's year fiscal year remained the same, beginning January 1, 2013, and ending December 31, 2013.

- B. IGRA requires tribes to submit annual audits of each gaming facility. 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. 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. Further, the Chukchansi Tribe's ordinance requires the Tribal gaming enterprise provide an annual independent audit to the National Indian Gaming Commission.
- C. IGRA provides that the NIGC shall monitor Class II gaming conducted on Indian lands on a continuing basis and may demand access to and inspect all papers, books, and records necessary to carry out its duties. 25 U.S.C. § 2706(b)(1) and (4). NIGC regulations require that a tribe engage a certified public accountant to perform an assessment to verify whether the gaming operation is in compliance with the MICS and/or the TICS for each fiscal year and submit the agreed-upon procedures (AUP) report to the NIGC within 120 days of the end of each gaming operation's fiscal year, in conjunction with the submission of the annual financial audit report. Additionally, the Chukchansi Tribe's gaming ordinance requires an independent certified public accountant to annually perform an AUP assessment in the manner outlined in the NIGC regulations.
- D. The Chukchansi Tribe's 2012 fiscal year financial statement and audit were due to the NIGC on April 30, 2013.
- E. The Chukchansi Tribe's 2013 fiscal year financial statement and audit were due to the NIGC on April 30, 2014.
- F. The Chukchansi Tribe's 2012 fiscal year AUP report was due to the NIGC on April 30, 2013.
- G. The Chukchansi Tribe's 2013 fiscal year AUP report was due to the NIGC on April 30, 2014.
- H. The Chukchansi Tribe did not submit the 2012 fiscal year financial statement and audit to the NIGC on April 30, 2013, and have yet to submit the documents.

- I. The Chukchansi Tribe did not submit the 2013 fiscal year financial statement and audit to the NIGC on April 30, 2014, and have yet to submit the documents.
  - J. The Chukchansi Tribe did not submit the 2012 fiscal year AUP report to the NIGC on April 30, 2013, and have yet to submit the document.
  - K. The Chukchansi Tribe did not submit the 2013 fiscal year AUP report to the NIGC on April 30, 2014, and have yet to submit the document.
  - L. On July 8, 2013, the NIGC Sacramento Region Director sent a letter to the Chukchansi Tribe informing it of the missed compliance date for the submission of the annual independent audit report and financial statements and requested the Chukchansi Tribe identify steps to address the matter. Then again, on April 1, 2014, the NIGC Sacramento Region Director sent a second letter to the Chukchansi Tribe about the missing and overdue audit and financial statements for the 2012 fiscal year.
  - M. On July 16, 2013, the attorney for the Chukchansi Tribe's gaming commission sent a letter to the NIGC Sacramento Region Director acknowledging the overdue audit and financial statements for the 2012 fiscal year. Then again, on the May 6, 2014, the attorney for the Chukchansi Tribe's gaming commission sent a letter to the NIGC Sacramento Region Director acknowledging the overdue audit and financial statements for the 2012 fiscal year and the 2013 fiscal year.
  - N. On September 9, 2014, the NIGC Chairman issued two Notices of Violation, NOV-14-01 and NOV-14-02 for failing to submit to the NIGC annual independent audits, financial statements, and AUP reports for the 2012 fiscal year and the 2013 fiscal year.
  - O. The NIGC Chairman gave the Chukchansi Tribe ten calendar days from service of the NOVs to correct the continuing violation by submitting the 2012 and 2013 fiscal year audits, financial statement, and AUP reports.
  - P. As of today, the Chukchansi Tribe has not provided the annual independent audits, financial statements, and AUP reports for fiscal years 2012 and 2013.
  - Q. The failure to submit the audit report or the AUP report deprives the Chairman of his ability to exercise the regulatory role provided in IGRA.
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4. Under 25 U.S.C. § 2713(b) and 25 C.F.R. § 573.4(a), the NIGC Chairman may issue an order of temporary closure if one of the enumerated, substantial

violations is present. The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order says otherwise. 25 C.F.R. § 573.4(b). The Chukchansi Tribe has committed the following substantial violation:

- A. The Chukchansi Tribe failed to correct violations within the time permitted in the notices of violations, NOV-14-01 and NOV-14-02. Chukchansi Tribe. 25 C.F.R. § 573.4(a)(1)(i).
5. In addition to a temporary closure order, the Chairman may also assess a civil fine under 25 U.S.C. § 2713(a) and 25 C.F.R. § 575.4, not to exceed \$25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a notice of violation issued under 25 C.F.R. § 573.3. 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). In this matter, the Chairman may treat each day, from April 30, 2013, the Chukchansi Tribe has failed to submit to the NIGC the 2012 fiscal year annual audit, financial statement, and AUP report as two separate violations. Likewise, the Chairman may treat each day, from April 30, 2014, the Chukchansi Tribe has failed to submit to the NIGC the 2013 fiscal year annual audit, financial statement, and AUP report as two separate violations.
6. As a result of the substantial violations, the Chukchansi Tribe shall comply with the following closure order:

#### **Closure Order**

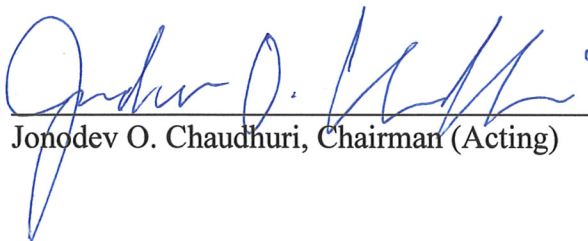
**Under the authority of 25 U.S.C. § 2713(b) and 25 C.F.R. §§ 573.4 (a) and (b), the NIGC Chairman gives notice that by 8 a.m. on October 27, 2014, the Chukchansi Tribe is to cease and desist all gaming activity in the Chukchansi Tribal gaming facility known as the Chukchansi Gold Resort and Casino. The NIGC Chairman may rescind the Closure Order for good cause shown.**

7. Expedited Review. Under 25 C.F.R. § 573.4(c), within seven days after service of this Order, any party served with this Order may request, orally or in writing, informal expedited review by the Chairman. The Chairman must complete such review within two days after his receipt of a timely request. Within two days after the expedited review provided by 25 C.F.R. § 573.4(c), the Chairman must decide whether to continue the Order and must provide an explanation of the basis for the decision.

8. Appeal.

- A. Whether or not any party seeks the informal expedited review described above, within 30 days after service of this Temporary Closure Order, any party may appeal, under 25 C.F.R. part 584, by submitting a notice of appeal to the National Indian Gaming Commission, c/o Department of Interior, 1849 C Street N.W., Mailstop #1621, Washington, DC 20240. The appealing party, the appellant, has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Order and the Notices of Violation.
- B. Within ten days after filing a notice of appeal, the appellant must file with the Commission a brief that states with particularity the relief desired and the grounds in support and may include, when available, supporting evidence in the form of affidavits. If the appellant wishes for a closed hearing, it must include, with the brief, a request to do so and why. If the appellant wishes to present oral testimony or witnesses at the hearing, it 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 appellant 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, under 25 C.F.R. part 585.

Dated this 7<sup>th</sup> of October, 2014.



Jonodev O. Chaudhuri, Chairman (Acting)