DECISION UPON EXPEDITED REVIEW

Re: CO-04-01

To: Priscilla Hunter, Chairman
Coyote Valley Band of Pomo Indians
P.O. Box 39
7751 North State Street
Redwood Valley, CA 95470

Donald Trimble
General Manager Shodakai Casino
7751 North State Street
Redwood Valley, CA 95470
Respondents

DECISION

On June 8, 2004, the Coyote Valley Band of Pomo Indians (Respondents) requested informal expedited review pursuant to 25 C.F.R. § 573.6(c) of the June 7, 2004, Temporary Closure Order (TCO or closure order) issued against the above named Respondents. In the June 8, 2004, request, Respondents asked that the National Indian Gaming Commission (NIGC) Chairman rescind the closure order pending the Secretary of the Interior's (Secretary) approval of the 1999 compact between the Respondent and the State of California, or alternatively, pending conclusion of negotiations for a new compact.

Respondents also asked that the closure order be rescinded to allow the Tribe to engage in Class II gaming activities.

Background

On February 23, 2004, the Supreme Court denied Respondents petition for writ of certiorari in *In Re: Indian Gaming Related Cases v. California,* 331 F.3d 1094 (9th Cir. 2003). Respondents unsuccessfully argued that the State negotiated in bad faith over a Tribal-State gaming compact. On March 25, 2004, I informed the Tribe that it was operating Class III gaming devices and table games in violation of IGRA and requested that it cease such activity by April 30, 2004. During a visit on May 3 and 4, 2004, to Respondents gaming operation, representatives of the NIGC observed the operation of Class III gaming devices and Class III table games.

Under IGRA, Class III gaming activities shall be lawful on Indian lands only if such activities are conducted in conformance with a Tribal-State compact. Under NIGC regulations, operation

of Class III games in absence of a tribal- state compact is a substantial violation. At this time, Respondents do not have an approved Tribal-State compact.

NOV-04-01 directed the Respondents to cease gaming activities by noon on Monday June 7, 2004. At noon on Monday June 7, 2004, a representative of the NIGC observed that gaming activities were still being conducted. Therefore, I issued CO-04-01 directing the Respondents to cease gaming immediately. On June 8, 2004, I was informed that Respondents had ceased gaming activities in response to the closure order.

Analysis

Respondents argue that equity supports a lifting of the closure order. Respondents request that the closure order be rescinded pending the Secretary's approval of the 1999 compact between the Respondent and the State of California. On June 10, 2004, the Secretary issued a decision disapproving the compact. Therefore, this argument is moot.

In the alternative, Respondents request that the closure order be rescinded pending the conclusion of negotiations of a new compact. The request cites the decision in *United States v. Spokane Tribe of Indians*, 139 F.3d 1297 (9th Cir. 1998), for the proposition that the NIGC cannot take enforcement action against the Tribe while it is negotiating a compact. In *Spokane*, that Tribe claimed that it attempted to negotiate with the state in good faith, but that those negotiations failed due to the state's bad faith. *Id*. at 1301. The *Spokane* decision was specific to the circumstances of that case. The situation with the Coyote Band is considerably different because the 9th Circuit has already decided that the State of California negotiated in good faith, and the Tribe has exhausted all of its Federal court remedies. Simply put, the NIGC cannot allow Tribes to engage in Class III gaming without an approved compact. The NIGC has delayed action for many years now to allow the Tribe to pursue its bad faith action against the State of California. Now that the litigation has been taken to its final step the Tribe must now comply with IGRA and cease gaming. Furthermore, we understand that compact negotiations are not presently scheduled with the State.

Additionally, Respondents argue that the closure order unnecessarily and unlawfully prohibits the Tribe from engaging in Class II gaming while it pursues its administrative and/or judicial remedies related to Class III gaming activities. Under 25 C.F.R. § 573.6(a)-(b), a temporary closure order may extend to "all or part of an Indian gaming operation" and is "effective upon service." 25 C.F.R. § 573.6(a)-(b); United States v. Seminole of Oklahoma, *321 F.3d 939* (10th Cir. 2002). Respondents cite our decision in *In the Matter of Santee Sioux Tribe of Nebraska*, CO-96-01 (Order of June 4, 2001), but, what Respondents fail to recognize is that the Commission issued that order only after the Santee Sioux tribe had exhausted all of its administrative remedies, appealed the decision to the 8th Circuit Court of Appeals, and finally agreed to remove all Class III gaming. The present situation with the Tribe is not sufficiently similar to the *Santee* case to warrant a rescinding of the closure order at this time.

Finally, the majority of games at the Shodakai casino are clearly Class III. There were some electronic games that we did not take a position on because the NIGC is currently reviewing

these games to determine if they qualify as Class II. The fact that these games were not listed as Class III in NOV-04-01 does not mean that they qualify as Class II.

Conclusion

I therefore reaffirm that closure of the gaming operation is the appropriate remedy in this case and decline to rescind the closure order.

Dated: June 10, 2004.

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Philip N. Hogen
Chairman
National Indian Gaming Commission

CERTIFICATE OF SERVICE

I certify that the foregoing Decision Upon Expedited Review, In the Matter Of: Coyote Band of Pomo Indians: Order of Temporary Closure, CO-04-01, has been sent by facsimile this 10th day of June, 2004, to:

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__//s//_____
John R. Hay
Staff Attorney
National Indian Gaming Commission