



FORT SILL - CHIRICAHUA - WARM SPRINGS - APACHE TRIBE

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August 5, 2009

Mr. Phil Hogen, Chairman
National Indian Gaming Commission
1441 L Street NW, 9th Floor
Washington, D.C. 20004

Re: Fort Sill Apache Tribe of Oklahoma
Notice of Violation 09-35
Request for stay of Imposition of Civil Fines

Dear Chairman Hogen:

Pursuant to 25 C.F.R. § 575.5 (a), the Fort Sill Apache Tribe ("Tribe") hereby requests a stay of any fines relating to Notice of Violation 09-35 (NOV), in light of the following information, which the Chairman is required to consider in determining the facts surrounding an alleged violation and amount of any fine.

The Tribe has grave concerns about the NOV and the legal opinions referenced therein, including but not limited to the application the standards set out in 25 C.F.R. Part 292 to the facts and circumstances surrounding the Tribe's land in New Mexico. The Tribe believes this reliance on Part 292 is improper, which the regulations themselves serve to establish.

The language in 25 C.F.R. Section 292.26 (b) is clear and unambiguous: "[T]hese regulations (25 C.F.R. Part 292) **shall not** apply to applicable agency actions when, **before the effective date** of these regulations, (May 20, 2008) the Department or the National Indian Gaming Commission (NIGC) **issued a written opinion** regarding the applicability of 25 U.S.C. 2719 for land used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinion. (*Emphases Added*)

The NIGC's original opinion was issued on May 19, 2008, prior to the effective date of the Part 292 regulations. The NIGC in Comanche Nation v. United States, CIV-05-328-F (W.D.Ok.) chose to withdraw the May 19, 2008 Opinion in October 2008, after the Court made clear that the treatment of the "restored tribe" issue was fundamentally inconsistent with the Agreement of Compromise and Settlement ("Settlement Agreement"). See Government's Notice of Material Change in Status (October 1, 2008) at 2. Thus the Tribe submits that Part 292 has no relevance here.

MOUNTAIN SPIRIT DANCER

Mountain Spirit Dancer represents the Mountain Spirit Ceremony which is used by the Chiricahua and Warm Springs Apache. It was given to the Apaches by the Mountain Spirits for blessing, protection, curing and warding off diseases. The Ceremony is still used today.

The Tribe also notes that on July 29, 2009 it filed a Second Motion to Enforce the Settlement Agreement in the Comanche Nation litigation, requesting a finding that the NOV and underlying "Addendum" are in violation of the Settlement Agreement as it relates to status of the Chiricahua and Warm Springs Tribes and its successor in interest the Fort Sill Apache Tribe of Oklahoma. Settlement Agreement, ¶ 7.

The Tribe moved for expedited hearing on August 3, 2009. The Court granted the request immediately, shortened the briefing schedule and set the matter down for hearing August 21, 2009. As such Tribe believes any appeal from the NOV should be stayed until such time as the court has a chance to rule on the substantive issues that go to the core of the dispute. The Tribe also submits that in the circumstances the NIGC should stay the imposition of any fines pending the outcome of the motion for enforcement before the U.S. District Court.

The NIGC waited three months before proceeding with an NOV. It cannot seriously contend that any harm would result from delaying further action until such time as the Court has indicated whether the NOV and underlying Addendum are fundamentally inconsistent with the Settlement Agreement. Indeed, in the Tribe's view nothing could better demonstrate that the NIGC is proceeding with due deliberation and in good faith.

The Tribe's facility at Akela is a small facility with about 4,500 feet of public space. To date the Tribe has not made a profit from the development and the operation of its casino. The facility only offers paper bingo and pull-tabs. Bingo is offered only three days a week with an average of fifty participants. The Tribe has provided employment of a number of people in a very depressed economic area with high unemployment.

In summary the Tribe asks that the NIGC stay both the closure provision of the NOV, and any civil fines until the Court in the Western District of Oklahoma has had time to rule on the Tribe's Motion. In the meantime the Tribe is willing to discuss a reasonable settlement that will allow the status quo to be maintained without seeking further judicial action in this matter. If you have any questions or concerns, please let us know at your earliest convenience.

Sincerely,



Jeff Houser
Tribal Chairman