

National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-19-02

To: Lewis Taylor, Chairman
St. Croix Chippewa Indians of Wisconsin
24663 Angeline Ave
P.O. Box 45287
Webster, WI 54893

Jeff Taylor, Chairman
St. Croix Gaming Commission
24663 Angeline Ave
P.O. Box 45287
Webster, WI 54893

Regulatory Processing and Licensing Office
St. Croix Chippewa Indians of Wisconsin
24663 Angeline Ave
P.O. Box 45287
Webster, WI 54893

1. Under the Indian Gaming Regulatory Act (IGRA) and NIGC regulations, the NIGC Chairman may issue a Notice of Violation (NOV) to any person for violations of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713(a)(1) & (a)(3), 25 C.F.R. § 573.3(a).
2. On April 11, 2019, the NIGC Chairman issued NOV-19-02 to the St. Croix Chippewa Indians of Wisconsin for 527 counts of misuse of net gaming revenues and failure to audit contracts for gaming related goods and services exceeding \$25,000 in a fiscal year.
3. NIGC regulations permit a party to appeal an NOV within thirty days of issuance. 25 C.F.R. §§ 584.3 and 585.3. The Tribe has not yet appealed the Notice of Violation.

4. IGRA authorizes the Chairman to issue civil fines for violations of IGRA, NIGC regulations, or tribal regulations, ordinances, or resolutions approved by the Chairman. 25 U.S.C. 2713(a)(1).
5. NIGC regulations require the Chairman to issue a proposed civil fine within 30 days of issuance of the notice of violation when practicable.
6. The Chairman has authority to levy and collect appropriate civil fines, not to exceed \$52,596 per violation, against a tribe, management contractor, or individual operating Indian gaming for any violation of any provision of IGRA and NIGC regulations. 25 U.S.C. § 2713(a)(1); 25 C.F.R § 575.4.
7. NIGC regulations provide that within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation to the Chairman. 25 C.F.R. § 575.5.
8. The Tribe has submitted information for the Chairman to consider when determining the amount of the civil fine.
9. In arriving at the proposed civil fine, I have considered the factors set forth in 25 C.F.R. § 575.4 as follows:

- a. Economic benefit of noncompliance. NIGC regulations require the Chairman to consider the economic benefit of non-compliance to the “respondent.” If I view the “respondent” in this matter as being only the St. Croix Chippewa Indians of Wisconsin, there was no economic benefit to the respondent. In fact, the misuse of gaming revenue resulted in a considerable economic loss to the Tribe. Money that could and should have been used to fund governmental and tribal programs was diverted away from the Tribe to fill the pockets of a few individuals.

When I take a broader view of “respondents”—as the individuals named in the NOV who diverted or accepted payments of net gaming revenues—the economic benefit of non-compliance is sizeable. The Tribal Council members, Gaming Commissioners, Consultants, and other individuals named in the NOV diverted at least \$1.5 million away from tribal resources to line their own pockets. This becomes even more egregious when we consider this economic benefit in light of the Tribe’s recent submission in which it claims that “it is impossible to overstate the precariousness of the Tribe’s current financial situation.” I will take the Tribe at its word that its current financial situation is indeed precarious. But I also recognize that this may not be the case but for the misappropriations of net gaming revenue committed by the Council members and Gaming Commissioners

elected and appointed to serve as stewards and protectors of the Tribe's financial resources.

As part of this element, the Chair is also required to consider "the likelihood of escaping detection." In this case, many of the misuses of net gaming revenue either flowed to or were directed by the very people charged with protecting those resources – Tribal Council and Gaming Commissioners. Given the fact that some of the individuals named in this NOV are the same individuals responsible for rooting out misappropriations of this nature, I find it very likely that if NIGC staff had not pursued this case with the amount of diligence it did, the misappropriations would have gone undetected.

To date, the NIGC has documented over \$1.5 million in tribal revenues that have flowed into private hands for personal benefit. And, as will be discussed below, I see no serious efforts to deal with the root problem that caused these violations. Without a significant deterrent, losses will continue to mount, the economic benefit to individuals will grow, and others may be inspired to commit similar malfeasance.

- b. Seriousness of the violation. The seriousness of these violations and their effect on the St. Croix Indians of Wisconsin, as well as the reputation of tribal gaming across the nation, cannot be overstated. It is the declared policy of the IGRA to shield Indian gaming from organized crime and other corrupting influences and to ensure that the Indian tribe is the primary beneficiary of the gaming operation. 25 U.S.C. § 2702.

Over \$1.5 million dollars were diverted from Tribal programs. This is money that could and should have been used to fund the Tribal government and other programs that are now facing a "dire financial crisis." These violations undermine the fundamental purpose of IGRA – to ensure the entire tribe, rather than a few individuals in positions of power, are the primary beneficiaries of gaming.

Most damaging is the complicity of those who were supposed to be regulating the gaming operation and protecting its assets. One of the reasons that Tribal Gaming has grown into a 32 billion dollar a year industry is that it has rightfully cultivated a reputation as a well-run, well-regulated industry. It instills trust in the gaming public. And, as I have repeatedly stated, it is the tribes that are in the best position to be the primary regulators. Here, though, the Chairman of the Tribal Gaming Commission and at least one of its employees accepted payments of net gaming revenues from casino accounts with full knowledge of IGRA's restrictions. Not only is this a violation of the act, but it does immeasurable damage to the Industry. It sends a message to the industry and provides detractors with

arguments that Tribal regulators cannot be trusted – that Indian gaming is not regulated. Despite billions of tribal gaming dollars being spent nationwide to fund sorely needed tribal and local programs each year, these are the incidents that detractors will point to in their efforts to erode tribal sovereignty and further limit the benefits of tribal gaming.

Aside from undermining the purposes of IGRA and damaging the reputation of the entire gaming industry, these violations have done serious damage to the Tribe itself. The Tribe now pleads that it is in dire financial straits with limited resources in reserve. The Tribe would have an additional \$1.5 million in available funds if they had not been repeatedly doled out to the Tribe’s own leaders, “consultants,” and others for personal gain.

- c. History of violations. NOV-19-02 is the only NOV issued against the Tribe in the past five years.
- d. Negligence or willfulness. According to the NIGC regulations, “the Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.” Here, multiple officials within the Tribe knew that these payments were occurring and did nothing to stop them. In fact, many of the people receiving or directing the payments were those in a position to stop the payments. Accordingly, respondent both caused, through acts of tribal officials, and failed, through omission by those same tribal officials, as well as others that were processing and making payments, to correct the violations.
- e. Good faith. A civil fine may be reduced based upon the degree of good faith shown by respondent in attempting to achieve rapid compliance after notice of a violation. The Tribe’s submission of April 29, 2019, reflects the steps the Tribe has taken to strengthen regulation and prevent misuse of community gaming resources. It is, however, a startling revelation of Tribal officials’ refusal to accept responsibility for the violations or correct the conditions that allowed them to occur.

Take, for example, the Tribe’s January 4, 2018 resolution delegating gaming oversight and management to the Tribe’s Economic Development Corporation (EDC) and the EDC’s subsequent appointment of new interim casino managers. The Tribe suggests that removing named Tribal Council members from management of the operation is a significant step toward compliance. In reality, management of the operations was not at issue in this case. The quorum of three Tribal Council members named in the Notice of Violation—Elmer “Jay” Emery, Lewis Taylor, and Crystal Peterson—did not need to manage the operations in

order to siphon their revenues. They merely needed to ensure that those with signing authority would follow their direction regarding the revenue. In the EDC's February 1, 2018 appointment of interim managers Karrie Stanford and Penne Thill, not only has the Tribal Council quorum assured that such individuals will remain in place, it has elevated them into positions of greater authority. As Emery, Taylor, and Peterson know, Penne Thill is the executive assistant who ushered through each of their requests for disbursement, and Karrie Stanford is the accounting executive who saw the distributions and said nothing. Regardless of whether the EDC was acting on its own or at the direction of a Tribal Council quorum, there is no plausible explanation for appointing complicit individuals to manage the casinos.

I had hoped to see an acceptance of responsibility within the Tribe's leadership, a commitment to repay the Tribe and its members that put their faith into elected leaders, and meaningful policy and procedure changes to encourage reporting and prevent such losses from happening in the future.

Instead, I have received evidence of a quorum of Tribal Council members compounding their avoidance of responsibility. They have installed a separate board that will give the quorum a veneer of deniability, yet over which the Tribal council has removal power and appellate authority under the Tribe's Gaming Ordinance. They have pointedly failed to address the \$1.5 million in funds missing from tribal coffers, much of which ended up in their own pockets. And, based on reports from a fellow council member, they continue to exclude their duly elected colleagues from the discussion of the NOV.

In short, the Tribe has not demonstrated good faith.

10. WHEREFORE, pursuant to IGRA, 25 U.S.C. § 2713(a), and NIGC regulations, 25 C.F.R. §§ 575.3 and 575.4, fines for violations may be assessed in an amount up to \$52,596 per violation.
11. The total maximum fine amount for the 527 counts of misuse of revenues and failure to audit contracts for gaming goods and services exceeding \$25,000 per fiscal year reports is \$27,718,092.
12. I do not relish the imposition of a fine on a Tribe purportedly facing a financial crisis, Yet, in the absence of action by Tribal leaders whose actions led to the NOV at issue here, this is the result Congress prescribed. Having carefully reviewed the above factors, I propose to assess a fine in the total amount of \$5.5 million on the St. Croix Tribe for misuse of revenues and failure to audit contracts for gaming goods and services exceeding \$25,000 per fiscal year. The fine is assessed as follows:

- a. \$1.5 million fine assessed for payments made to Tribal Council Member Elmer “Jay” Emery and his associated company, Rez Connections, and also for failure to audit contracts with Rez Connections. The NOV describes \$345,632 in payments made to or on behalf of Elmer “Jay” Emery and his associated company, Rez Connections. As Tribal Council Member, Emery has abused his public trust position by accepting gaming revenue payments and did so in far greater amounts than others on Council. As a member of the Tribal Council quorum, he has also demonstrated repeated willful disregard for federal and tribal laws, and thus, an appropriately high fine is assessed to reflect the serious breach of public trust.
- b. \$1 million fine assessed for payments to Jeff Taylor and Kate Wolfe Taylor of the Tribal Gaming Commission. Although the roughly \$86,000 in payments to gaming commission members is significantly less than payments to Emery and other tribal leaders, the potential damage they may have inflicted on the reputation of Indian gaming as a well-regulated industry is immeasurable. These individuals were responsible for protecting the tribal assets from abuse. The serious implications of regulators repeatedly violating the very laws they were appointed to uphold demands a proportionately stronger fine.
- c. \$1 million fine assessed for payments to Tribal Chairman Lewis Taylor, Tribal Council Member Crystal Peterson, and former Tribal Council Members Carmen Bugg and Stuart Bearhart. The NOV describes a total of approximately \$309,000 paid to these four current and former tribal officials, with Chairman Lewis Taylor receiving just over half of the total. The serious repeated violations of public trust and willfulness expressed by these officials necessitates an appropriately high fine.
- d. \$1.5 million fine assessed for payments to consultant Lawrence Larsen. Throughout the course of this Administration, the NIGC has emphasized intolerance for third parties taking advantage of tribal gaming operations. Larsen accepted over \$378,000 in tribal gaming revenue payments made to him or on his behalf without evidence of services provided or a contract to audit as required by federal and tribal law. The submission of reimbursement claims for nonexistent building supplies, billing the Tribe twice for the same non-gaming related trip, and failure to produce a contract for over \$300,000 accepted for “consulting” services evidence a willfulness to take advantage of the Tribe. The fine reflects both the willfulness and the seriousness of the violations.
- e. Finally, a total of \$500,000 is assessed for all other violations of misuse of revenue and failure to audit contracts greater than \$25,000. The remaining payments identified in the NOV total approximately \$426,000. For the most part,

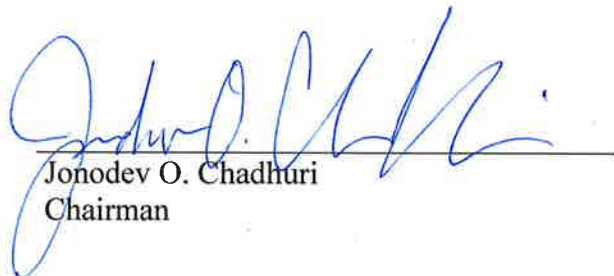
they were issued in smaller amounts to a number of individuals, many with connections to Tribal Council Members or the casino general manager(s). They are serious and concerning violations, but not perpetrated by those in positions of power or public trust. Therefore, the fine is proportionately less than those described above.

13. Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date. 31 U.S.C. § 3717.
14. After balancing the factors, I believe a \$5.5 million dollar fine is appropriate. There are few violations more serious than abusing the trust of the electorate for personal gain. The Tribe, through its submission and those of a fellow council member, has demonstrated extraordinary willfulness and bad faith in allowing the violations to continue.
15. Pursuant to 25 C.F.R. § 584.3, within 30 days after service of this Notice of Proposed Civil Fine Assessment, the Tribe may appeal the proposed fine to the full Commission by submitting a notice of appeal to the following:

NIGC Attn: Office of General Counsel
1849 C Street NW
Mail Stop #1621
Washington, DC 20240

16. The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within 10 days after filing a notice of appeal, the Tribe must file with the Commission a supplemental statement that sets forth with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The Tribe 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.

Dated this 9th day of May, 2019.


Jonodev O. Chadhuri
Chairman

CERTIFICATE OF SERVICE

I certify that this **NOTICE OF PROPOSED CIVIL FINE ASSESSMENT** has been sent by facsimile and certified mail, return receipt requested, this 9th day of May, 2019, to:

Fax #: 715-349-5768

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Shakira Ferguson
Legal Staff Executive Administrator