

National Indian Gaming Commission

SETTLEMENT AGREEMENT

SA-06-05

INTRODUCTION

This Settlement Agreement ("Agreement") is entered into by and between Mark Chino, President of the Mescalero Apache Tribe, a federally-recognized Indian tribe ("Tribe") and Philip N. Hogen, the Chairman of the National Indian Gaming Commission ("Chairman") relating to the matters contained in Notice of Violation No. NOV-06-05.

RECITALS

Whereas, the Tribe has conducted gaming on Indian lands at facilities named Inn of the Mountain Gods Resort and Casino and Casino Apache in Mescalero, New Mexico since approximately August, 1996;

Whereas, the Chairman and the Tribe desire to resolve issues related to Notice of Violation No. NOV-06-05.

Therefore, the Chairman and the Tribe have agreed to execute this Agreement and perform in accordance with the following covenants and conditions:

TERMS OF SETTLEMENT

1. This Agreement is entered into pursuant to 25 C.F.R. § 575.6 (b) and shall be effective upon the signature of all parties.
2. On January 31, 2006, the NIGC issued Notice of Violation No. NOV-06-05 to the Tribe relating to the:

- a. failure to submit a timely annual audit report; and
- b. Inn of the Mountain Gods Resort and Casino and Casino Apache's untimely submissions of the quarterly statements and fee payments to the NIGC for the following quarters:

<u>Quarter:</u>	<u>Due:</u>	<u>Received:</u>
1st 2001	3/31/01	4/11/01
1st 2002	3/31/02	4/2/02
1st 2003	3/31/03	4/3/03
2nd 2003	6/30/03	8/18/03
3rd 2003	9/30/03	10/7/03
4th 2003	12/31/03	1/5/04
2nd 2004	6/30/04	7/2/04

- 3. Rather than contest the issues of the timeliness of the submission of the annual audit report and quarterly statements and fee payments, the Tribe agrees to the terms and conditions set forth in this Settlement Agreement.
- 4. The Tribe agrees that it was required to timely submit an annual audit report of its gaming operations for the fiscal year ending April 30, 2005 to the NIGC.
- 5. The Tribe agrees that it did not timely submit to the NIGC an annual audit report for the fiscal year ending April 30, 2005, as required by the Indian Gaming Regulatory Act ("IGRA") and NIGC regulations.
- 6. The Tribe admits that the failure to submit an annual audit report in a timely fashion is a violation of IGRA and NIGC regulations.
- 7. The Tribe agrees to submit its annual audit report for the fiscal year ending April 30, 2005 no later than April 30, 2006.

8. The Tribe further agrees to submit its annual audit report for the fiscal year ending April 30, 2006 no later than August 29, 2006.
9. The Tribe agrees to pay a fine in the amount of Ten Thousand Dollars (\$10,000.00) for the audit report violation. Five Thousand Dollars (\$5,000.00) of the fine will be paid on or before March 31, 2006. The remaining Five Thousand Dollars (\$5,000.00) will be suspended pending the submission of the annual audit report for the fiscal year ending April 30, 2005 and timely submission of the annual audit report for the fiscal year ending April 30, 2006. Upon submission of the annual audit report for the Inn of the Mountain Gods Resort and Casino and Casino Apache for the fiscal year ending April 30, 2005 and the timely submission of the annual audit report for the fiscal year ending April 30, 2006, the Chairman will forgive the suspended Five Thousand Dollar (\$5,000.00) fine. If the Tribe fails to submit the aforementioned audit report by such dates, the remaining Five Thousand Dollars (\$5,000.00) of the fine will be paid on or before September 30, 2006.
10. The Tribe agrees that it was required to timely submit quarterly statements and fee payments for each gaming operation to the NIGC.
11. The Tribe agrees that it did not submit to the NIGC quarterly statements and fee payments as required by IGRA and NIGC regulations for Inn of the Mountain Gods Resort and Casino and Casino Apache for each of the following quarters:

<u>Quarter:</u>	<u>Due:</u>	<u>Received:</u>
1st 2003	3/31/03	4/3/03
2nd 2003	6/30/03	8/18/03
3rd 2003	9/30/03	10/7/03
4th 2003	12/31/03	1/5/04

2nd 2004

6/30/04

7/2/04

12. The Tribe admits that failure to timely submit quarterly statements and fee payments is a violation of IGRA and NIGC regulations.
13. The Tribe agrees to submit its quarterly statements and fee payments for each quarter of 2005 by April 30, 2006.
14. The Tribe further agrees to submit its 2006 quarterly statements and fee payments for Inn of the Mountain Gods Resort and Casino and Casino Apache no later than March 31, June 30, September 30 and December 31, 2006.
15. The Tribe agrees to pay a fine in the amount of Ten Thousand Dollars (\$10,000.00) for the quarterly statement and fee payment violations. Five Thousand Dollars (\$5,000.00) of the fine will be paid on or before March 31, 2006. The remaining Five Thousand Dollars (\$5,000.00) will be suspended pending the submission of the quarterly statements and fee payments for each quarter of 2005 and the timely submission of the quarterly statement and fee payment for the Inn of the Mountain Gods Resort and Casino and Casino Apache for the quarters ending March 31, June 30, September 30 and December 31, 2006. Upon successful submission of the aforementioned quarterly statements and fee payments by such due dates, the Chairman will forgive the suspended Five Thousand Dollar (\$5,000.00) fine. If the Tribe fails to submit the Inn of the Mountain Gods Resort and Casino and Casino Apache quarterly statements and fee payments for 2005 by March 31, 2006 and/or fails to timely submit the quarterly statement and fee payment for the Inn of the Mountain Gods Resort and Casino and Casino Apache for the quarters ending March 31, June 30, September

30 and December 31, 2006, the remaining Five Thousand Dollars (\$5,000.00) of the fine will be paid on or before January 1, 2007.

16. The Chairman agrees upon execution of this Agreement to waive the right to impose any further civil fine for Notice of Violation No. NOV-06-05 against the Tribe, unless the Tribe fails to comply with this Agreement. If the Tribe fails to comply with this Agreement, the Chairman reserves the right to initiate an enforcement action against the Inn of the Mountain Gods Resort and Casino and Casino Apāche as outlined under 25 C.F.R. § 573.6.
17. The Tribe agrees upon execution of this Agreement to waive its right, if any, to further review of Notice of Violation No. NOV-06-05, including all rights to appeal to the full Commission as outlined in 25 C.F.R. § 577 *et seq.* and judicial review pursuant to 25 U.S.C. § 2714.
18. Subsequent to the parties' acceptance of this Agreement, the civil fine assessment set forth herein will become a Final Assessment Order of the Commission.

ADDITIONAL COVENANTS

1. This Agreement constitutes the entire agreement between the Chairman and the Tribe and supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter hereof. 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 both parties.

2. The Tribe stipulates that the Notice of Violation shall be deemed a final order of the Commission and a final agency action pursuant to 25 C.F.R. § 577.9(d).
3. The Chairman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein and above set shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.
4. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.
5. Acceptance of this Agreement is contingent upon approval by the Mescalero Apache Tribal Council.

Mescalero Apache Tribe

By: Mark Chino
Mark Chino
President

4/27/06
Date

National Indian Gaming Commission

By: Philip N. Hogen
Philip N. Hogen
Chairman

5/9/06
Date