



September 20, 2012

*Via U.S. Mail and Facsimile*

James Edwards, Chairman  
Berry Creek Rancheria of Maidu Indians of California  
5 Tyme Way  
Oroville, CA 95966  
Fax: (530) 534-1151

Re: Review of loan documents for the Berry Creek Rancheria of Maidu Indians of California

Dear Chairman Edwards:

This letter responds to the request on behalf of the Berry Creek Rancheria of Maidu Indians of California (Tribe) for the National Indian Gaming Commission's Office of General Counsel to review the first amendment to the Tribe's second amended loan agreement dated September 17, 2010, with Bank of America. Specifically, you have asked for an opinion whether the second amended loan agreement, as amended by the first amendment, constitutes a management contract requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the second amended loan agreement, as amended by the first amendment, violates IGRA's requirement that a Tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions:

- First amendment to second amended and restated business loan agreement marked at top right as "SMRH DRAFT 9/17/12" and at bottom left as "SMRH:200509460.7" (First Amendment);
- Second amended and restated business loan agreement conformed to include changes in first amendment to second amended and restated business loan agreement dated as of September \_\_, 2012, marked at bottom left as "SMRH:200513745.3" (Conformed Second Amended Loan Agreement).

The second amended loan agreement, as amended by the First Amendment and collectively represented in the Conformed Second Amended Loan Agreement, contains terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See* [www.nigc.gov/Reading\\_Room/Management\\_Review\\_Letters.aspx](http://www.nigc.gov/Reading_Room/Management_Review_Letters.aspx).

Chairman Edwards

Re: Review of Loan documents for the Berry Creek Rancheria of Maidu Indians of California

September 20, 2012

Page 2 of 2

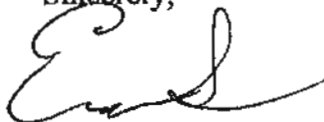
Applying the same analysis here, it is my opinion that the second amended loan agreement, as amended by the First Amendment and collectively represented in the Conformed Second Amended Loan Agreement, does not constitute a management contract and does not require the approval of the Chairwoman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

It is my understanding that First Amendment and Conformed Second Amended Loan Agreement are represented to be in substantially final form with respect to terms affecting this opinion, and if such terms change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the second amended loan agreement, as amended by the First Amendment and collectively represented in the Conformed Second Amended Loan Agreement, as listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

I anticipate that this letter will be posted to the NIGC's website. Prior to posting, NIGC will notify you and give you an opportunity to identify and request that information subject to the exemptions under FOIA be redacted or withheld. A list of the FOIA exemptions may be found at 25 U.S.C. § 552(b).

I am also sending a copy of the First Amendment and Conformed Second Amended Loan Agreement to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Senior Attorney Melissa Schlichting at (202) 632-7003.

Sincerely,



Eric Shepard  
Associate General Counsel

cc: Paula Hart, Director  
Office of Indian Gaming  
(via US Mail w/ incoming)

Patrick Marshall, Esq.  
Fredericks Peebles & Morgan LLP  
(via e-mail: pmarshall@ndnlaw.com)