



Date: November 25, 2003

To: Chairman Hogen

From: Acting General Counsel

Subject: Whether the Shingle Springs Rancheria is Indian lands on which gaming may be conducted pursuant to IGRA

The Indian Gaming Regulatory Act (IGRA) requires that management contracts be approved by the Chairman of the National Indian Gaming Commission (NIGC). 25 U.S.C. § 2705(a)(4). On August 8, 2000, NIGC received a Management Agreement, dated May 5, 2000, regarding Gaming Development and Management Agreement between the Shingle Springs Band of Miwok Indians (Shingle Springs, Tribe, or Band) and Lakes KAR-Shingle Springs, LLC (Lakes or Manager). Subsequent revisions have been submitted and review of the agreement is still ongoing.

In the course of reviewing management contracts, NIGC determines whether the gaming will be conducted on Indian lands. This Memorandum addresses whether the proposed gaming facility, which will be on the Shingle Springs Rancheria, would be on Indian lands on which the Tribe can conduct gaming.

Approval of management contracts also entails review pursuant to the National Environmental Policy Act (NEPA). In January 2002, the Chairman signed a Finding of No Significant Impact (FONSI) based on the Tribe's Environmental Assessment (EA) for the proposed casino. Approval of that FONSI is now the subject of federal litigation. On August 21, 2002, El Dorado County sued NIGC and DOI alleging, among other things, that the NEPA review process was inadequate and that the land on which the casino was to be built was not Indian lands. El Dorado County does not dispute that the casino is to be built on the Rancheria but alleges that the Rancheria is not held in trust and that a gaming operation built on the Rancheria would therefore not be on Indian lands.

Having reviewed documentation that was submitted for the EA and in support of the Management Agreement, we find that the proposed casino site does in fact constitute Indian lands on which the Shingle Springs Band may conduct gaming. Pursuant to the Memorandum of Understanding between NIGC and the U.S. Department of the Interior (DOI), DOI has reviewed this opinion and concurs.

LAND DESCRIPTION

At issue is whether a one hundred sixty (160) acre parcel of land located in El Dorado County, California, constitutes Indian lands. The parcel was acquired by the United States on March 11, 1920, through a deed from the Estate of Walter J. Meldrum to the United States of America

[Barnes submission, Exh. 1]. That deed provides that, for a sum of \$1,400, the Estate deeds to the United States "The Northwest one-quarter (N.W. ¼) of section twenty-nine (29) in township ten (10) North of Range Ten (10) East, M.D. B&M." The land was designed "for the use and occupancy of the Sacramento Verona-Band of Homeless Indians." That acquisition came after approximately four (4) years of work by the John J. Terrell, Inspector and Special Indian Agent for the Department of the Interior, to purchase lands for the Sacramento-Verona Indians [Thompson Associates, Attachment 2].

It should be noted that the name of the Shingle Springs Band evolved over time but that the Band has been and continues to be the tribe for which the Rancheria was established and which exercises governmental power over the land. The March 11, 1920, deed "for the use and occupancy of the Sacramento-Verona Band of Homeless Indians" indicates the original name of the Tribe [Barnes submission, Exh. 1]. The Department of the Interior continued to use this name when, in its August 7, 1970, letter to Genevieve Cayton, it requested that she prove that she was a direct descendant of the Sacramento-Verona Band. "Only those Indians who can prove their direct relationship to the groups of Indians for whom the rancheria was acquired will be permitted to occupy the land," BIA Area Director William E. Finale wrote [Thompson Associates, Attachment 7].

On August 7, 1970, BIA wrote to 54 people who, according to BIA records, were descendants of the Sacramento-Verona Band, notifying them of Ms. Cayton's claim to the Rancheria land [Thompson Associates, Attachment 9]. Subsequently a meeting of the descendants was called [Thompson Associates, Attachment 10]. At that meeting it was decided "by those present who were named on the 1916 Census, or their descendants" to establish a committee to address issues involving the Shingle Springs Rancheria [Thompson Associates, Attachment 10].

Minutes from the June 2, 1975, meeting show the membership beginning to call itself "members of the Shingle Springs Rancheria (Verona Tract)" [Thompson Associates, Attachment 24], thus identifying members through the use of their land base.

The 1976 Articles of Association make clear that the people who descended from the Sacramento-Verona Band later identified themselves as the Shingle Springs Band. The name of the document is "Articles of Association of the Shingle Springs Band El Dorado County, California." It identifies membership as persons listed on the 1916 Census of Indians "at and near Verona" and those persons' descendents [Barnes submission, Exh. 3-C]. Subsequent activities undertaken by the Band, for example, correspondence with BIA regarding the Band's attempt to obtain improved access to the Rancheria, have the Band identifying itself as Shingle Springs Rancheria [Thompson Associates, Attachment 32].

In short, the Shingle Springs Band is the name used now by the Sacramento-Verona Band of Homeless Indians. The history of the acquisition of land for the Sacramento-Verona Band is, therefore, the history of the Shingle Springs Rancheria.

APPLICABLE PROVISIONS OF IGRA

An Indian tribe may engage in gaming under IGRA only on “Indian lands” that are “within such tribe’s jurisdiction.” 25 U.S.C. § 2710(b). If the proposed lands are not within the limits of an Indian reservation, the tribe may conduct gaming only if it exercises “governmental power” over those lands. 25 U.S.C. § 2703(4)(B); 25 C.F.R. § 502.12(b).

IGRA defines “Indian lands” as:

- (A) all lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4).

NIGC regulations further clarify the Indian lands definition:

Indian lands means:

- (a) Land within the limits of an Indian reservation; or
- (b) Land over which an Indian tribe exercises governmental power and that is either --
 - (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
 - (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12.

ANALYSIS

At issue is whether a gaming operation built on the Shingle Springs Rancheria would be on Indian lands. We find that the Shingle Springs Rancheria in California is a reservation and that gaming that takes place there is “Indian lands” as defined by 25 U.S.C. § 2703(4)(A) and 25 C.F.R. § 502.12(a).

We also find that the Shingle Springs Band has theoretical jurisdiction over the Rancheria and so may conduct gaming there pursuant to 25 U.S.C. §2710(b)(1) and (d)(1).

I. Rancherias Are Reservations.

We first turn to whether the Shingle Springs Rancheria meets a definition of “Indian lands.” We find that it meets the first definition of Indian lands because the Rancheria is a reservation. 25

U.S.C. § 2703(4) (“The term ‘Indian lands’ means—(A) all lands within the limits of any Indian reservation”); 25 CFR § 502.12(a) (“Indian lands means: (a) Land within the limits of an Indian reservation”).

The conclusion that a rancheria is a reservation is long standing and widely accepted. In 1939, the Acting Solicitor of the Department of the Interior reasoned that tracts of land in Sonoma County that were owned by the United States and purchased for the use of landless Indians in California were reservations. Determining that the State of California did not have jurisdiction to compel Indians on rancherias to obtain dog licenses, the Solicitor concluded:

These areas have been assigned to and are now occupied by certain designated bands of Indian. They are, for all practical purposes, small reservations.

Solicitor’s Opinion, M-28958 (April 26, 1939) (attached). More recently, the federal district court for the Northern District of California outlined the history of the rancherias in Central and Northern California:

In 1906, C.E. Kelsey, a San Jose attorney, was commissioned by the United States Indian office to investigate and report on the conditions of California Indians.... He recommended to the Commissioner of Indian Affairs that the government purchase land for individual Indian families in tracts not exceeding ten acres.... Kelsey’s report was submitted to Congress through the Commissioner of Indian Affairs and the Secretary of the Interior with a recommendation that his plan for California Indians be adopted. As a result of these actions, the Indian Office Appropriation Act of 1906 appropriated \$100,000 and directed the Bureau of Indian Affairs to: “purchase for the use of the Indians of California now residing on reservations which do not contain land suitable for cultivation, and for Indians who are not now upon reservations in said State, suitable tracts or parcels of land, . . . as the Secretary of the Interior may deem proper” [cites omitted]. Parcels of land, called rancherias, were purchased under the 1906 Act and under subsequent acts to implement Kelsey’s original scheme.

Duncan v. Andrus, 517 F.Supp. 1, 2 (N.D. Calif. 1977) (finding that the Robinson Rancheria had been unlawfully terminated).

In a companion case to *Duncan v. Andrus*, the U.S. Court of Claims asserted that rancherias are reservations. In *Duncan v. United States*, 667 F.2d 36, 38 (Ct. Cl. 1981), the Pomo Indians of the Robinson Rancheria sought monetary damages from the United States for damages caused by invalid termination of the rancheria. The rancheria had been created when the Congress in 1906 appropriated money to purchase land for the use of California Indians. In the act, Congress did not state that the California land would be held in trust. Nevertheless, the court held, the land was to be treated as a reservation:

Rancherias are numerous small Indian reservations or communities in California, the lands for which were purchased by the Government (with Congressional

authorization) for Indian use from time to time in the early years of this century—a program triggered by an inquiry (in 1905-06) into the landless, homeless or penurious state of many California Indians.

Duncan v. United States, 667 F.2d at 38 (Ct. Cl. 1981) (quoted in *Governing Council of Pinoleville Indian Community v. Mendocino County*, 684 F. Supp. 1042, 1043 n. 1 (N.D. Calif. 1988)).

We note that the State of California has taken the position that gaming on the Rancheria would be on reservation land. The gaming compact entered into by the State and the Band specifically states: “The Tribe does not currently operate a gaming facility that offers Class III gaming activities. However, on or after the effective date of this Compact, the Tribe intends to develop and operate a gaming facility offering Class III gaming activities *on its reservation land*, which is located in El Dorado County of California [emphasis added].” Section (C) of Compact Preamble. The compact, approved by the U.S. Department of the Interior on May 5, 2000, recognizes that rancherias are reservations for the purposes of gaming.

In short, the Shingle Springs Rancheria is a reservation and so meets IGRA’s and the NIGC regulation’s definitions of “Indian lands.” 25 U.S.C. § 2703(4) (“The term ‘Indian lands’ means—(A) all lands within the limits of any Indian reservation”); 25 CFR § 502.12(a) (“Indian lands means: (a) Land within the limits of an Indian reservation”). According to the Environmental Assessment, the proposed gaming operation is to be built within the limits of the Shingle Springs Rancheria. Gaming therefore would be on Indian lands as required by IGRA.

II. Land Need Not Have Been Formally Taken into Trust to Be Indian Lands.

We note that reservation status and even trust status is not dependent on whether the land is acquired explicitly through the taking-into-trust process. The *Duncan* court found that the rancheria land in question had reservation status despite lack of trust terminology:

While not expressly stating that the United States held the land as trustee, Congress clearly contemplated that this land have the same general status as reservation lands. In addition to purchasing lands, the 1906 Act authorized the Secretary of the Interior to “fence, survey and mark the boundaries of such Indian Reservations.” *See generally* United States Department of the Interior, Federal Indian Law 609 (rev. ed. 1958), (not necessary that Congress use the word “reservation” to create Indian reservation lands); *United States v. McGowan*, 302 U.S. 535, 538-9 (1938). Congress also intended that the Interior Department supervise this Indian property; Interior did so continuously until the termination at issue.

667 F.2d at 41. Moreover, the Rancheria Act of 1958, which provided for termination of rancherias, “clearly states the understanding of the 1958 Congress that Rancheria lands had been and would continue to be held in trust until final termination” even absent specific trust

documents. *Id.*¹ The *Duncan* court found liability on the part of the federal government stemming from the trust relationship to the tribe that existed despite the fact that no specific trust document existed.

Like the Robinson Rancheria, the Shingle Springs Rancheria was not specifically acquired as a trust property. Nonetheless, the Interior Department has historically treated the property as trust land and treated its relationship to the Shingle Springs Band as one of a fiduciary. The trust-like status of the land is evidenced by the circumstances of the United States' acquisition of the land. The land was deeded to the United States on March 11, 1920, pursuant to the Homeless Indians Act of June 21, 1906 and April 30, 1908. The deed stated that the land was "for the use and occupancy of the Sacramento Verona-Band of Homeless Indians." The acquisition was the outcome of several years of work by John J. Terrell, Inspector and Special Indian Agent for the Department of the Interior, to purchase lands for "remnant bands of Indians," known as the Sacramento-Verona Indians [Thompson Associates, Attachment 2; see also Barnes submission, Exhibit 4]. Correspondence between Mr. Terrell and the U.S. Department of Interior's Indian Service indicates concerted efforts by Mr. Terrell to accomplish his assigned mission of finding landless Indians around Sacramento a permanent home [Thompson Associates, Attachment 2].

That Terrell's mission was to create a type of reservation for the landless Indians is made clear by correspondence between him and the Chief Clerk for the Commissioner of Indian Affairs in which Terrell was questioned about his inclusion of several people in his 1916 Census of the "Verona-Sacramento River Indians" who may be Hawaiians [*Id.* at December 4, 1916, letter]. Terrell responded that the three or four Hawaiians are men that had married "native California Indian women, mostly full bloods" and that these people would need to be included in the census of Indians who would live on the land since they were "very much attached to their women and children, therefore, will not likely desert them....The probabilities [sic] are that sooner or later most, if not all the Indians of these Hawaiian Indians, will desire to go upon this home...[T]heir families will surely desire to identify themselves with these, or rather reidentify themselves with these two remnant bands." [*Id.* at December 3, 1917, letter]. Terrell expressed concern that the landless Indians will not be able to afford living on the land obtained for them ["The chief trouble has been and will continue that, these non-reservation Indians (landless) having to live from hand to mouth, are hardly able to take advantage of these land purchases, not financial able to secure material sufficient to erect even a cheap house, therefore, with many the taking advantage of such opportunities will be slow."]

In response to Mr. Terrell's work, the Indian Service directed him to purchase the land "for the use and occupancy of the Sacramento-Verona bands of Indians of El Dorado County, California" [*Id.* at January 12, 1918, letter]. The Indian Service also stated that the "Hawaiian Indians" who had "intermarried with the California Indians" were to be able to join the bands on a case-by-case basis.

¹ In 1958, Congress enacted the California Rancheria Act (P.L. 85-671, 72 Stat. 619-621), amended in 1964 (P.L. 88-419, 78 Stat. 390-91). The 1958 Act terminated the trust relationship between the United States and the Indian people on 41 enumerated rancherias and reservations in California. The 1964 amendment included all rancherias and reservations lying wholly within California.

On June 15, 1918, the owner of the land, Mr. Walter J. Meldrum, requested that the Indian Service return the contract for the purchase of the land for the landless Indians. The Indian Service responded with a demand to know “whether or not you intend to abide by the terms of the said contract” [*Id.* at August 15, 1918, letter]. When Mr. Meldrum subsequently died, the federal government requested that the estate submit the deed for the land: “The deed may be in the usual form employed in California; the conveyance should be to the United States of America for the use and occupancy of the Sacramento-Verona Band of Landless Indians of California” [*Id.* at April 9, 1919, letter]. On April 12, 1920, the attorney for the Meldrum estate sent the Commissioner of Indian Affairs the abstract and deed to the parcel of land [Thompson Associates, Attachment 3].

The history of the acquisition of the Rancheria leads to the conclusion that the land was intended to be and was in fact acquired for a very specific purpose: habitation by what was left of Sacramento-area Indians. Subsequent history also shows that the Department of the Interior maintained the land as a trust acquisition for the Indians, who became known as the Shingle Springs Band of Miwok Indians.

For reasons that are unclear, perhaps the minimal accessibility of the land, the Shingle Springs Rancheria was not inhabited after the federal government acquired it for the local landless Indians. The Department of the Interior retained its trust relationship to the Indians through the land, however. In the 1960s under the Rancheria Act, the BIA tried four times to sell the Rancheria. [Thompson Associates, Attachments 6 and 10; Barnes submission, Exh. 4]. Because offers were significantly below the property’s appraised value, the land was not sold.

When BIA received a claim in the 1970s that a Genevieve Cayton had taken possession of the Rancheria, BIA asked her to furnish evidence that she was a descendant of the Sacramento-Verona Band of Homeless Indians, stating, “Only those Indians who can prove their direct relationship to the groups of Indians for whom the rancheria was acquired will be permitted to occupy the land” [Thompson Associates, Attachment 7]. Further evidence that the government treated the land as trust land is that BIA also notified known members of descendants of the band of Ms. Cayton’s claim [*Id.*, Attachment 9] and held a meeting November 30, 1970, among the BIA and several members of the band to discuss what to do with the land [*Id.*, Attachment 10]. At that time the Band decided that it should determine its exact membership.

In 1998, the BIA reasserted in a letter to a Rancheria resident that the Shingle Springs Rancheria “was purchased by the United States for Indian use” and that the Rancheria “is the recognized land base for the Shingle Springs Band of Indians” [Barnes submission, Exh. 1].

The fact that Congress acquired the Shingle Springs Rancheria specifically for the Sacramento-area homeless Indians, held it for them, sought defeasance of the land, kept the land when no adequate bid was received, and reasserted the land’s purpose as a base for the Shingle Springs Band of Indians all indicate that the Rancheria is held by the United States in effect as trust land.

This conclusion is bolstered by the fact that the BIA continues to recognize rancheria lands held for Indian tribes as de facto trust lands. In a March 29, 2002, letter to the Chairperson of the Dry

Creek Rancheria, Dale Risling, Sr., Superintendent of BIA's Central California Agency, addressed the issue of the status of the Dry Creek Rancheria. That rancheria was held in fee pursuant to a 1915 deed to the United States. The United States had purchased the land pursuant to the 1914 Indian Appropriation Act. Mr. Risling stated:

There is no distinction between the way the United States acquired and holds title to the Dry Creek Rancheria on the one hand, and "trust" or "reservation" status of Indian lands generally, on the other hand. All Indian trust lands are held in fee by the United States "for the benefit" of Indians. Given the United States' trust relationship with, and fiduciary duty to, the Dry Creek Band, the Tribe's lands are held in trust, regardless of whether the word "trust" is in the deed.

[Administrative Record #2a.] Acting Assistant Secretary-Indian Affairs Aurene Martin confirmed this position in an April 9, 2003, letter to Representative Mike Thompson. "We concur with the Superintendent's determination," Martin said. "Our views regarding this matter recently have been upheld by the U.S. district court for the Northern District of California in *Proschold v. United States*...."²

Concurring with the Superintendent's determination that the Dry Creek Rancheria was held in trust, Martin added:

We believe that the Dry Creek Rancheria lands are within the definition of the term "Indian lands" as defined in 25 U.S.C. 2703(4) because they are both within the limits of the Band's reservation and are held in trust for the benefit of the Band. Finally, the Band has negotiated a Class III gaming compact with the State of California, and this compact has been approved by the Secretary of the Interior....

[Administrative Record #2b].

Shingle Springs Rancheria, like Dry Creek and other California rancherias, is land that the United States acquired for the benefit of landless Indians, in this case for the Sacramento-Verona Indians pursuant to the Homeless Indian Acts of 1906 and 1908. The government has treated the land as a trust asset of the Tribe. As a result, the Shingle Springs Rancheria is considered de facto trust lands and meets the definition of "Indian lands" under IGRA.

² At issue in *Proschold*, 244 F. Supp. 2d 1027 (N.D. Cal. 2002), was whether a property owner who had granted the United States an easement for access to an Indian reservation could sue the government under the Quiet Title Act. The government moved to dismiss, arguing that it could not be sued because the case fit into an exception to jurisdiction under the QTA, specifically that the United States could not be named where the land in question is "trust or restricted Indian lands." 244 F. Supp. at 1031. While the easement had been transferred in fee, the court found that the United States had made a colorable claim that the government's interest in the land was "as a trustee for the Tribe" and that the government considered the easement to be "trust assets of the Tribe." *Id.*

III. Shingle Springs Band Has Jurisdiction Over the Rancheria.

For a tribe to be able to conduct gaming, the land on which it games must not only meet a definition of Indian lands, but also must be land over which the tribe has jurisdiction. 25 U.S.C. § 2710(b)(1) and (d)(1)(A). Indian tribes are “invested with the right of self-government and jurisdiction over the persons and property within the limits of the territory they occupy, except so far as that jurisdiction has been restrained and abridged by treaty or act of Congress.” *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1982). As a general matter, tribes are presumed to possess tribal jurisdiction within “Indian country.” *See South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998).

Historically, the term “Indian country” has been used to identify land that is subject to the “primary jurisdiction . . . [of] the Federal Government and the Indian tribe inhabiting it.” *Alaska v. Native Village of Venetie Tribal Gov’t*, 522 U.S. 520, 527 n.1 (1998). The U.S. Code defines “Indian country” as:

- (a) all land within the limits of any Indian reservation...
- (b) all dependent Indian communities..., and
- (c) all Indian allotments, the Indian titles to which have not been extinguished....

18 U.S.C. § 1151.

The *Venetie* court observed that Section 1151 incorporates two criteria the Supreme Court “previously . . . had held necessary for a finding of ‘Indian country’ ... first, [the lands] must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence.” *Venetie*, 522 U.S. at 527.

Prior to the enactment of Section 1151 in 1948, the Court had found that reservation lands and allotments satisfied those two requirements. *See, e.g., United States v. Pelican*, 232 U.S. 442, 449 (1914) (Indian country includes individual Indian allotments held in trust by the United States because they “remain Indian lands set apart for Indians under governmental care”); *Donnelly v. United States*, 228 U.S. 243, 269 (1913) (Indian country includes lands within formal reservations). The *Venetie* court also observed that Congress used the term “dependent Indian communities” in Section 1151(b) to codify the Court's understanding, as expressed in *United States v. McGowan*, 302 U.S. 535 (1938), and *United States v. Sandoval*, 231 U.S. 28 (1913), that other lands, although not formally designated as reservations, may also possess the attributes of “federal set-aside” and “federal superintendence” characteristic of Indian country. *Venetie*, 522 U.S. at 530; *see, e.g., McGowan*, 302 U.S. at 538-539 (Reno Indian Colony land held in trust by the United States is Indian country); *Sandoval*, 231 U.S. at 45-49 (Pueblo Indian lands).

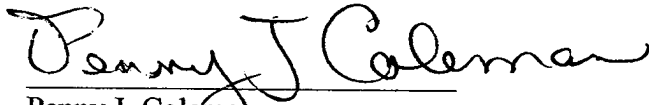
Under Section 1151 and consistent with *Venetie* and other Supreme Court decisions, the Band's Rancheria land is “Indian country.” As stated above, the Rancheria is a reservation and so meets the criteria for Indian country under 18 U.S.C. §1151(a). It was, furthermore, “validly set-aside

for the tribe under the superintendence of the federal government,” *United States v. McGowan*, 302 U.S. at 539, quoted in *Venetie*, 522 U.S. at 529, in that the land was obtained and set aside for the beneficial use of the Shingle Springs Band. The federal government has maintained superintendence over the land as evidenced by the its trust-like relationship to the Rancheria. Because the Rancheria is “Indian country,” the Shingle Springs Band has jurisdiction over it.³

CONCLUSION

Case law, past and present practice of the U.S. Department of the Interior, and the State of California all indicate that the Shingle Springs Rancheria is, as a matter of law, a reservation. We conclude that the Rancheria is therefore Indian lands as defined at 25 U.S.C. § 2703(4)(A) and 25 C.F.R. § 502.12(a). Furthermore, because the Band has jurisdiction over the Indian lands, it is land on which gaming may be conducted pursuant to IGRA.

Questions about this opinion may be directed to me or to Cynthia Shaw, Office of General Counsel.


Penny J. Coleman
Acting General Counsel

cc: Shingle Springs Band
Lakes/KAR
Associate Solicitor-Indian Affairs

³ We do not address whether the Tribe exercises present day governmental power over the land. That analysis is necessary only under the definition of Indian lands at 25 C.F.R. § 502.12(b), which provides that Indian lands are those held in trust by the United States and over which the Tribe exercises governmental power. In the case at hand, the definition of Indian lands at 25 C.F.R. §502.12(a) is met. When, as here, the land is within the limits of an Indian reservation no showing of exercise of governmental power is required.