April 9, 2012

By First Class Mail

Russell Attebery, Chairman
Karuk Tribe of California
64236 Second Avenue
Post Office Box 1016
Happy Camp, CA 96039

Re: Approval of Karuk Tribe of California ordinance amendment

Dear Chairman Attebery:

This letter responds to your request for the National Indian Gaming Commission to review and approve an amendment to the Karuk Tribe of California (Tribe) tribal gaming ordinance. The Second Amendment to the Karuk Tribal Gaming Ordinance was approved by Resolution No. 11-R-121 on October 14, 2011.

The amendment authorizes gaming on four parcels of land totally 200.2 acres known as the "Yreka Property" acquired by the Tribe on April 28, 1997 and accepted into trust on March 27, 2001. This amendment required the NIGC to conduct a legal analysis of the applicability of IGRA's restored lands for a restored tribe provision, 25 U.S.C. § 2719(b)(1)(B)(iii), in order to determine whether the Tribe is allowed to conduct gaming activities on the site.

The NIGC's Office of General Counsel (OGC) has provided me with a legal opinion, dated April 3, 2012, modifying an OGC legal advisory opinion, dated October 12, 2004. The April 3 legal opinion concludes that the Tribe was restored to Federal Recognition and that the Yreka Property qualifies as restored land. The Department of the Interior Solicitor reviewed the opinion and concurs in the legal analysis and conclusion. The record supports the opinion, and I adopt the analysis and conclusion provided herein. Therefore, the tribal gaming ordinance amendment is hereby approved.

If you have any questions, please feel free to contact Senior Attorney John Hay at (202) 632-7003.

Sincerely,

Tracie L. Stevens
Chairwoman

Memorandum

To: Tracie Stevens, Chairwoman

Through: Jo-Ann M. Shyloski, Associate General Counsel JMS

From: John R. Hay, Senior Attorney JRH

Date: April 3, 2012

Re: Modification of 2004 Legal Opinion, Karuk Tribe of California; Yreka Trust Property

On January 11, 2012, the Karuk Tribe of California (Tribe) submitted an amendment to the Tribe's gaming ordinance for approval by the Chairwoman.[1] The amendment authorizes gaming on a parcel of trust land (the Yreka Trust Property) that was the subject of a negative lands opinion issued by the National Indian Gaming Commission (NIGC) Office of General Counsel (OGC), with the concurrence of the Solicitor's Office, in October 2004 (the 2004 Opinion). Along with the amendment submitted on January 11, 2012, the Tribe resubmitted historical information provided to NIGC on December 3, 2007. That historical information was not available to the NIGC at the time of the 2004 opinion.

This memorandum concludes a legal review of whether the Yreka Trust Property is Indian lands eligible for gaming under the Indian Gaming Regulatory Act (IGRA) based on information provided by the Tribe prior to 2008. As explained below, it is our opinion that the Yreka Property is restored lands and eligible for gaming under IGRA. Accordingly, this opinion modifies the 2004 Opinion. The Department of the Interior ("Interior"), Office of the Solicitor, concurs with this opinion.

I. Background

On June 12, 2003, the Tribe requested that the OGC issue an Indian lands opinion on whether the Yreka Trust Property is eligible for gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. The Tribe submitted both a discussion of the restored lands exception under section 2719 and materials in support of the Tribe's claim that the exception applied. On February 5, 2004, the Tribe submitted supplemental information at the request of OGC. Upon evaluation of the submitted materials, on October 12, 2004, the OGC opined that the materials submitted did not demonstrate that Karuk was a "restored" tribe with a sufficient "temporal relationship" and "historical nexus" to the Yreka Trust Property to qualify for the restored lands exception.

[1] On February 11, 2011, the Tribe submitted an amendment to the Tribe's gaming ordinance for approval by the Chairwoman. The amendment to the ordinance was subsequently withdrawn, revised and resubmitted on May 5, 2011. The revised amendment was withdrawn and resubmitted on July 28, 2011, October 18, 2011, and January 11, 2012.

The 2004 Opinion qualified that based upon the lack of information, the OGC could not conclude that Karuk was a restored tribe and that the Yreka Trust Property constituted restored lands. For example, the 2004 Opinion explained that no information was provided to demonstrate termination and that "without more, we are not prepared to find that the Tribe qualifies" as a restored tribe. Similarly, the 2004 Opinion explained that "the evidence provided by the Tribe that the parcel was once the location of aboriginal settlements is scant" and that "the Tribe has not provided evidence that the parcel remained important to the tribe throughout history."

The 2004 Opinion essentially provided a roadmap for the Tribe to submit additional information to demonstrate that it is a restored tribe and that the Yreka Trust Property is restored lands. Based on discussions with OGC staff, the Tribe subsequently provided additional information in December of 2007. The OGC did not complete its analysis of the 2007 information prior to Interior's publication of the Part 292 regulations in May 2008.

With its proposed ordinance amendment, the Tribe relies on the 2004 Opinion and the information submitted in 2007. The Tribe maintains that the Yreka Trust Property qualifies as restored land for a tribe restored to federal recognition. The ordinance amendment describes the Yreka Trust Property as follows:

> This land consists of four parcels acquired by the Tribe on April 28, 1997, and accepted into trust on March 27, 2001. The total acreage of these four parcels is 200.2 acres and the prior owner of each is identified as 'Holm' – the four parcels contain, respectively, 20 acres, 60.2 acres, 100 acres and 20 acres, and they are located within the 'Karuk Tribal Housing Authority Land' at Yreka, California.

See Karuk Tribe Resolution 11-R-121 (October 14, 2011). This description is consistent with the one submitted by the Tribe in 2003.

II. Applicability of Part 292 Regulations

In May 2008, Interior published regulations establishing criteria for the application of IGRA's exceptions to the general prohibition against gaming on newly acquired trust lands, including the restored lands exception. 73 Fed. Reg. 29,354 (May 20, 2008) (codified at 25 C.F.R. Part 292) ("the Part 292 regulations"). The Part 292 regulations became effective on August 25, 2008. 73 Fed. Reg. 35,579 (June 24, 2008).

Section 292.26 of the regulations expressly provides that the Part 292 regulations do not apply in certain circumstances. In the present matter, the Tribe argues that § 292.26(b) precludes the application of Part 292 to the Tribe's pending ordinance amendment because the NIGC issued a written opinion regarding the applicability of 25 U.S.C. § 2719 for this particular site before the effective date of the Part 292 regulations. That provision provides, in relevant part, as follows:

> [T]hese regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the National Indian Gaming

> Commission (NIGC) issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.

25 C.F.R. § 292.26(b).

The preamble to the final rule explains that under § 292.26(b),"the Federal Government may be able to follow through with its prior legal opinions and take final agency actions consistent with those opinions, even if these regulations now have created a conflict." The preamble further explains that the "regulations will not affect the Department's ability to qualify, modify or withdraw its prior legal opinions." 73 Fed. Reg. at 29,372.

We conclude that section 292.26(b) applies to the Tribe's pending ordinance amendment. NIGC hereby modifies its 2004 Opinion to consider the information provided by the Tribe in 2007 before the effective date of the Part 292 Regulations. The Tribe's 2007 information was provided at the request of NIGC in response to the 2004 Opinion. The applicable agency action is your approval of the Tribe's amended gaming ordinance. The 2004 Opinion is a written opinion regarding the applicability of 25 U.S.C. § 2719 for land to be used for a particular gaming establishment. Further, under the regulation, NIGC retains full discretion to modify the 2004 Opinion. As such, the Chairwoman can rely on a modification of the 2004 Opinion in taking a final agency action. Accordingly, we analyze the Tribe's 2007 information under the legal criteria set forth in the 2004 Opinion.

III. The Karuk Tribe lost its government-to-government relationship

As explained in the 2004 Opinion, the Tribe did not provide information to substantiate a claim that the United States terminated the relationship with the Tribe. In 2007, the Tribe supplied historical documentation concerning the administrative termination of the Tribe's government-to-government relationship. The information submitted in 2007 demonstrates that the Tribe was administratively terminated.

In this case, Interior's records from the late 1970s and 1980s demonstrate that for a period between the late 1940s through the 1970s, the federal government did not recognize a government-to-government relationship with this Tribe.[2] As discussed more

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[2] Part of the confusion surrounding the Tribe's history may be caused by the various identifications used by the United States for the Tribe. In a 1978 review of the Karuk situation, Interior noted:

> [T]he Karok Indians have been referred to as Karok, Klamath, Klamath River, Lower Klamath and Upper Klamath Indians. We have even seen the Karok Indians referred to as the Karouk Band of Klamath River Indians. However, the Klamath River Indians, i.e., Yurok, Hoopa and Karok, are not a single entity since each belong to a different linguistic group.

Memorandum to Deputy Assistant Secretary – Indian Affairs from John V. Meyers, Tribal Relations Specialist and Mitchell L. Bush, Tribal Enrollment Specialist, subject: Status Brief – Karok Tribe of

fully below, the record demonstrates that the Tribe's government-to-government relationship was administratively terminated during this period.

As set forth in the 2004 Opinion, the Karuk Tribe clearly was a federally recognized tribe as evidenced by a treaty with the United States in 1852 and subsequent government-to-government interactions. As late as 1944, the federal government still recognized the Karuk Tribe of California. In that year, the Hoopa Valley Agency of the Bureau of Indian Affairs ("BIA") included the Tribe in its Ten Year Program Report wherein it acknowledged service responsibility for the Tribe. It further acknowledged responsibility for Karuk allottees and referenced appeals for funds to be appropriated to acquire land for the Tribe. Meyers-Bush Memo at 3. However, as confirmed through Interior documents from the 1970s and 1980s, for the three decades spanning the late 1940s through January 15, 1979, Interior effectively did not recognize a government-to-government relationship with the Tribe.

Interior documents explain that during this time period, the BIA denied services to Karuk based on a determination that they were not federally recognized and therefore not eligible for services. Meyers-Bush Memo at 1; Letter from Superintendent Weller to Commissioner of Indian Affairs (Dec. 20, 1978) (recommending extension of "full Federal recognition."). The Meyers-Bush Memo explains that beginning in the termination era of federal Indian policy, the BIA stopped providing services to many tribes, including the Karuk Tribe. Meyers-Bush Memo at 3-4.

In the early 1970s, the Karuk Tribe approached the BIA in an attempt to organize under the Indian Reorganization Act ("IRA"), 25 U.S.C. § 476. Letter from John W. Fritz, Deputy Assistant Secretary – Indian Affairs (Operations), to Dan Swaney, Superintendent, Northern California Agency (July 30, 1984) ("Fritz Letter"). The BIA informed the Tribe that it was "not a Federally recognized Indian entity" and could not organize under the IRA. It could, however:

> organize as a corporation or non-profit association under California State law. The group was further advised that although the Bureau would recognize the organization for the purposes for which it organized i.e., to promote cultural, social, education and economic well-being of its members, such recognition would not constitute official Federal recognition of an Indian tribe. The Orleans group incorporated as a non-profit organization on March 24, 1971.[3]

Id.

California (Apr. 21, 1978) ("Meyers-Bush Memo"). Today, the Tribe is known as the Karuk Tribe of California. The Tribe is comprised of three communities located in Orleans, Happy Camp, and Yreka, California. *Id.*

[3] The "Orleans group" mentioned in the Fritz Letter as incorporating under state law was one of the three community groups of the Tribe. The entity that sought to organize under the IRA and was rejected by the BIA as unrecognized was the Klamath River Inter-tribal Council, which was then the governmental body of the Tribe as a whole.

In 1973, the BIA informed the Office of the Vice President of the United States that the "Orleans Karok Tribal Council of California is not a federally recognized tribe. The group has no land base and is merely a group of scattered descendants living in an urban setting." Letter from Ted B. White, Chief, Division of Tribal Government Services, BIA, to Robert Robertson, Executive Director, National Council on Indian Opportunity, Office of the Vice President (Nov. 15, 1973). The letter added: "[t]he Indians residing on the Hoopa Extension are federally recognized but have never organized." *Id.*

In 1976, the Orleans Karuk Council delivered a constitution to the BIA pursuant to the Tribal Government Development Program contract. Fritz Letter at 1. At this point, it was determined that "since Orleans had no land base, it was not eligible to organize under the IRA even if the group had federal recognition." *Id.* The Fritz Letter goes on to state: "[t]he Orleans group finally acquired some six acres of land which was subsequently taken into trust status by the Area Director for such Orleans Karoks of one-half degree Indian blood as the Secretary might designate. Since the Orleans group was not Federally recognized, the only way the Bureau could deal with the Orleans group was to recognize it as a half-blood Indian community pursuant to Section 19 of the IRA." *Id.*

In 1977, the Orleans group's application for a Public Law 93-638 grant was denied based on its lack of federal recognition. The result of this decision is detailed in the Fritz Letter:

> On November 18, 1977, Assistant Secretary Gerard advised the Sacramento Area Director that the Orleans Karok group was not a Federally recognized Indian entity but was recognized as a half-blood community only and therefore not eligible to participate in 638 grants and contracts. The Bureau advised the Orleans group that it might want to petition for acknowledgment through the Federal Acknowledgment Project [sic]. In the alternative, those Orleans Karoks who possessed one-half or more degree Indian blood were eligible for certain Bureau services afforded individual Indians under Section 19 of the IRA.

Fritz Letter at 1-2. Deputy Assistant Secretary Fritz explained that "[b]ecause of the confusion over the status of Orleans and subsequent overtures from Happy Camp and Siskiyou County Indian Association for Federal recognition, it was decided to make an in-depth review of Karok recognition." Fritz Letter at 2.

In April of 1978, the BIA issued the Meyers-Bush Memo to assist the Assistant Secretary's determination of the Tribe's status. The impetus of the Meyers-Bush Memo was several individual petitions by the Karuk sub-groups for recognition as separate entities and that "these petitions were a reaction to denials of Bureau services in that such denials were based on an internal Bureau determination that the various entities requesting services were not Federally recognized." Meyers-Bush Memo at 1. Interior closely examined the historical record and concluded that its determination that federal services to the Tribe should have been denied because it was not federally recognized "was not entirely accurate." Meyers-Bush Memo at 1. The Memo noted that no action

had been taken by the BIA towards the Tribe from 1944 until sometime after 1968 when Tribal members began receiving BIA health and education services. *Id.* at 3. In the late 1960s, Karuk members "were re-established into the service population." *Id.* at 4. Nearly a decade later, Interior officials concluded that "the Karok Tribe has had and continues to have a trust relationship with the Federal Government; the members of the tribe continue to have all rights and benefits accruing to members of a Federally recognized tribe, and that full services to the *tribe should be reinstated immediately*."[4] *Id.* at 4. (emphasis added).

On June 9, 1978, the Acting Assistant Secretary – Indian Affairs responded to an inquiry on the status of the Orleans Karok Indians. Letter to LeRoy W. Wilder, Association on American Indian Affairs Inc., from Rick Lavis, Acting Assistant Secretary – Indian Affairs. The letter noted that Orleans was not a federally recognized tribe, but part of the Karuk Tribe of California, which "had a Federal relationship with the United States that has never been terminated by Congress. Conclusions that the relationship had been terminated or never existed may have been based on an insufficient review of a very complex situation." *Id.*

On June 15, 1978, the Assistant Secretary – Indian Affairs explained that the Department had made a "recent determination that the Karok Tribe of California had a continuing relationship with the United States[.]" Memorandum to Sacramento Area Director from George Bandman, Acting Assistant Secretary – Indian Affairs re: Orleans Karuk Council. The Memorandum explained that the Orleans Karok had submitted a constitution "prior to our determination that a Federal relationship did, in fact, exist between the United States Government and the Karok Tribe." *Id.* Underscoring that the Tribe had been administratively terminated, in October 25, 1978, the Director of the Office of Indian Services at the BIA, stated that "[o]nce we may be assured that a continuing relationship with the tribe is legally proper, we are prepared to provide such assistance as may be necessary to formally organize the tribe." Letter to Duane A. Ward, Chairman Siskiyou County Indian Association from Theodore C. Krenzke, Director Office of Indian Services (October 25, 1978).

In December of 1978, the Superintendent of BIA's Hoopa Agency opined:

> It is the belief of this Agency that the Karok Tribe has always had a continuing trust relationship with the Federal Government and that they should be extended full Federal recognition. We recommend that the Karok Tribe be granted this privilege in order that they may avail themselves of all Federal services granted Tribes with Federal recognition.

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[4]The Meyers-Bush Memo discounted any argument that the Tribe abandoned tribal relations, explaining: "We believe that due to the historical nature of the 'tribal governing system' and pressure from the Central Office to petition for recognition as separate entities, we have been instrumental in such abandonment if that argument is to be given weight." Meyers-Bush Memo at 4.

Letter to Commissioner of Indian Affairs from Joe G. Weller, Superintendent, Hoopa Agency (Dec. 20, 1978).[5]

On January 15, 1979, the Assistant Secretary – Indian Affairs found that "the continued existence of the Karoks as a federally recognized tribe of Indians has been substantiated." Memorandum to Sacramento Area Director from Assistant Secretary – Indian Affairs, re: Revitalization of the Government-to-Government Relationship Between the Karok Tribe of California and the Federal Government (Jan. 15, 1979). "In light of this finding, I am herby [sic] directing that the government-to-government relationship, with attendant Bureau services within available resources, be re-established." *Id.* Accordingly, the Assistant Secretary directed that the Tribe be added to the BIA list of federally recognized tribes. *Id.*[6]

As a whole, the history of the Karuk Tribe of California indicates that commencing in the 1890's Interior recognized the Karuk Tribe and provided numerous services such as education, health care and social services to the Tribe. Interior administratively terminated its government-to-government relationship with the Tribe beginning in approximately 1944. Tribal members did not receive BIA services again until at least 1968. In 1971, Interior informed the Tribe it was not and could not be a federally recognized tribe, but could form a corporation or non-profit association. In 1978, Interior undertook a comprehensive review of the Tribe's situation and concluded that its earlier internal determination that the Tribe and its members should not receive services because the Tribe or its sub-communities were not Federal recognized "was not entirely accurate." In 1979, Interior re-established a government-to-government relationship with the Tribe, and the Karuk Tribe was added to the list of federally recognized tribes.

IV. Restored tribe analysis of new information under NIGC 2004 analysis

We conclude that the Tribe's new information demonstrates that the Tribe constitutes a restored tribe. Under IGRA and the case law developed prior to Interior's promulgation of the Part 292 regulations, a tribe claiming to be restored was required to demonstrate a history of governmental recognition, a period of non-recognition, and then reinstatement of recognition. *See Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 369 F.3d 960, 967 (6th Cir. 2004).

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[5] In September of 1978, Interior published regulations for acknowledging American Indian tribes. 43 Fed. Reg. 39361 (Sept. 5, 1978). Neither the Karuk Tribe nor its sub-entities petitioned for recognition. Receipt of Petition for Federal Acknowledgment of Existence As Indian Tribes, 44 Fed. Reg. 116, 116 (Jan. 2, 1979).

[6] The BIA began publishing a list of federally recognized Indian tribes in 1979. The Karok Tribe of California appeared on this initial list. Notice, Indian Tribal Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 44 Fed. Reg. 7235, 7235 (Feb 6, 1979).

In 2004, we determined that the Karuk Tribe was first recognized by the federal government during the negotiations for the never-ratified 1852 California Treaty R. We have long recognized these treaty negotiations as indicative of a federal relationship despite Congress's failure to ratify the treaty. The 2004 Opinion concluded, however, that "there does not seem to be any evidence that this relationship was ever administratively terminated[.]"

The information supplied by the Tribe in 2007 demonstrates that it was administratively terminated. In 1971, Interior informed the Tribe that it was not federally recognized and could not organize under the IRA because it was landless. *See* Letter from John W. Fritz, Deputy Assistant Secretary-Indian Affairs, to Dan Swaney, Superintendent, Northern California Agency (July 30, 1984). On November 18, 1977, Interior instructed the Orleans Karuk that it needed to go through the Federal Acknowledgment Process to become federally recognized. Fritz Letter at 1-2. Shortly thereafter, Interior proceeded to conduct "an in depth review of Karok recognition." *Id.* at 2. Upon concluding that its prior determinations were "not entirely accurate," the Tribe's status was restored on January 15, 1979. After more than three decades of uncertainty and confusion, the Assistant Secretary – Indian Affairs firmly and finally re-established the government-to-government relationship and directed the Karuk Tribe of California be added to the list of federally recognized tribes. By February of 1979, the Tribe was included on the list of federally recognized tribes.

Although Congress never formally terminated the government-to-government relationship between the Karuk Tribe and the United States, the new information submitted by the Tribe supports the conclusion that Interior had administratively terminated its relationship with the Tribe, which thereafter was officially restored.

Restored lands analysis

In order to constitute restored lands eligible for gaming under IGRA, the Tribe must not only demonstrate that it is a restored tribe, it also must demonstrate that the proposed gaming site was "land taken into trust as part of . . . the restoration of lands for an Indian tribe" under 25 U.S.C. § 2719(b)(1)(B)(iii). The language of the statute does not require that a "restoration of lands" be accomplished through congressional action or in the very same transaction that restored the tribe to Federal recognition. Lands may be restored to a tribe through the administrative fee-to-trust process under 25 C.F.R. Part 151. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 198 F. Supp. 2d 920, 935-36 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004) ("*Grand Traverse Band II*"); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 161-64 (D.D.C. 2000); *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 46 F. Supp. 2d 689, 699-700 (W.D. Mich. 1999) ("*Grand Traverse Band I*"). As stated by the United States District Court for the Western District of Michigan:

> [A]ccepting the State's position that some limitation is required, nothing in the record supports the requirement of Congressional action. Neither the statute nor

> the statutory history suggests such a limitation. Given the plain meaning of the language, the term "restoration" may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.

Grand Traverse Band II, at 935.

Land acquired after restoration may be limited by one or more factors: "For example, land that could be considered part of such restoration might appropriately be limited by the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration." *Id.* The NIGC adopted this three-factor analysis in the 2004 Opinion. In light of this analysis, we now re-examine the conclusions reached in the 2004 Opinion taking into consideration the Tribe's subsequently submitted information.

Factual circumstances

The factual circumstances of the Tribe's acquisition of the property are set forth in our 2004 Opinion. To briefly summarize, the Tribe acquired the Yreka parcel in 1997 using funding from the Department of Housing and Urban Development for the purpose of providing housing to tribal members. Interior accepted the land into trust in March 2001.

The Yreka parcel was not included among the Tribe's first trust acquisition requests, and it was not the Tribe's first trust acquisition. Nor was it the Tribe's first trust acquisition after Congress enacted IGRA in 1988. Specifically, between 1977 and 1999, Interior granted 10 trust acquisition requests submitted by the Tribe. These requests included 20 separate parcels totaling 398 acres accepted into trust for the benefit of the Tribe prior to trust acquisition of the Yreka parcel. The Tribe argues that upon restoration, its most pressing need was for housing. One cannot ignore the fact that the Tribe consists of three population centers, all of which were in need of housing and governmental services. The first parcels acquired by the Tribe were in Happy Camp, which is the tribal headquarters. These parcels were used for tribal housing and a community center. These acquisitions were followed by ones in Yreka that were used for housing.

In our opinion, these prior trust acquisitions, and the Tribe's particular use of the properties, support the conclusion that the Yreka Trust Property acquisition was part of a broad tribal restoration scheme. Therefore, we believe that the factual circumstances of the acquisition weigh in favor of concluding that the parcel constitutes restored lands.

Location of the parcel

Historical Connections

In our 2004 Opinion, we opined that the Tribe had failed to provide sufficient evidence to establish that the parcel remained important to the Tribe throughout history. Specifically, we noted that while the parcel was located within the cessation area of a treaty that was signed on November 4, 1851, that treaty did not specify which acreage belonged to the Karuk and which belonged to other signatories.

As part of its 2007 submission, the Tribe included a report (the "Beckham Report") prepared by Dr. Stephen Dow Beckham, a professor of history at Lewis & Clark College. The report documents a history of Karuk activity in the Yreka area from a period preceding federal record keeping for that area. According to the report, during the 1920s, the BIA made payments to schools throughout Siskiyou County for the enrollment of Karuk children. *See* Beckham Report at 25. These payments appeared to cease during World War II, although the BIA stopped collecting social statistics. *Id.* at 43. Dr. Beckham also compiled correspondence from the BIA which concludes that the Tribe had a long-standing presence in Yreka. For example, the BIA, as part of a review of the status of the Tribe, issued a report finding that "the aboriginal subentities of the Karok Tribe consisted of the communities at Happy Camp, Orleans and Siskiyou (Yreka)." *See* Fritz Letter at 2; 13 IBIA 76, 78 (1985). Further, in 1978 the BIA acknowledged that the Tribe's "aboriginal camp sites were in precisely the same locations as they are today." *See* Meyers-Bush Memo at 1. In addition, the record includes oral history from a tribal elder who recalled his grandmother's statements concerning her connection to all of Siskiyou County, thus corroborating the written historical record on this point. *See* Declaration of Charles Thom, Sr., 2007. Therefore, there is evidence of historical connections between the Tribe and the vicinity of the Yreka Trust Property sufficient to weigh in the Tribe's favor.

Modern Connections

The parcel is located 38 miles from the tribal headquarters at Happy Camp. The Yreka Trust Property was taken into trust to provide housing to the Tribe. Further, the Tribe has provided numerous declarations from tribal members, including the Tribal Chairman, describing modern connections to the Yreka area. For instance, one tribal member was born in Yreka in 1932, graduated from high school in Yreka in 1949, and then returned to Yreka in 1954 having served in the Korean War. *See* Declaration of Stanley Jerden, October 29, 2007. The tribal member, Mr. Jerden, also recounts tribal council meetings held in the 1960s that he and others from Yreka attended. *Id.* Tribal member Lorelai Ginette Super stated that she was born in Yreka in 1941 and during the late 1950s "attended tribal council meetings with my mother in Yreka, Happy Camp, Orleans, and Scotts Valley. The tribal council meetings were always a mixture of people from all four of these communities." *See* Declaration of Lorelai Ginnette Super, October 30, 2007. One tribal member, who served on the Happy Camp Tribal Council, stated that he moved to Yreka after World War II to work on a logging contract in 1953. He stated

that there "were always three tribal councils: Orleans, Happy Camp and Yreka." *See* Declaration of Charles Thom, Sr., 2007. Another tribal member, Franklin Raymond Thom, stated that he was born in Yreka in 1956, lived in Sommes Bar until he was six and then moved back to Yreka. He further stated that the majority of his family lived in Yreka. *See* Declaration of Franklin Raymond Thom, 2007. Yet another tribal member was born in Yreka in 1963 and graduated from high school in Yreka in 1983. *See* Declaration of Toni Ginette Jerry, October 27, 2007. Ms. Jerry also recalled attending tribal council meetings in the 1970s in Yreka with her mother and grandmother. *Id.* One tribal member born in Yreka in December of 1953 stated that "prior to recognition, there were three Karuk communities with strong family connections and allegiances between them." *See* Declaration of Bessie Munson, October 26, 2007. Finally, one tribal member was born in Yreka in 1935, graduated from high school in Yreka in 1954, moved away for a number of years and moved back to Yreka in 2007. *See* Declaration of Thelma May Slonan, October 29, 2007. According to Dr. Beckham, of 3,383 (as of June 14, 2005) enrolled Karuks, 685 were born in Yreka.

The new information supplied by the Tribe sufficiently establishes that the Tribe had a significant historical relationship to the vicinity of the Yreka Trust Property, which it has maintained to this day. Having established a historical connection to the vicinity of the Yreka Trust Property and a modern connection to the Trust Property, we thus find that the location factor weighs in the Tribe's favor.

Temporal relationship

In our 2004 Opinion, we found an insufficient temporal relationship between the purported restoration of the Tribe and the acquisition of the parcel. Specifically, the Tribe acquired the parcel 18 years after the 1979 inclusion of the Tribe on the list of federally recognized tribes. Another two years passed before the Tribe applied to have the property taken into trust. Ultimately, the parcel was taken into trust by Interior in 2001. As explained in the 2004 Opinion, a 22 year gap between restoration and the land being brought into trust was pushing "the outer limits of what has previously been considered an acceptable delay." Our opinion expressly concluded, however, that we might be willing to find a sufficient temporal relationship if the Tribe met the other factors – the factual circumstances of the acquisition and the location of the parcel and the Tribe's historic and modern connections to it. The Tribe's 2007 information demonstrates that the Tribe satisfies those factors. We now conclude that the Tribe has satisfied the temporal relationship test because the time period between the Tribe's restoration and acquisition of the parcel demonstrates a restoration scheme.[7] Therefore, upon re-examining the 2004 Opinion under the legal landscape that existed prior to the Part 292 regulations, the parcel in question qualifies as restored lands under IGRA.

Opposition by Shasta Nation of California

[7] We note that our conclusion regarding timing is consistent with the Part 292 regulations, which establishes a 25-year period between when a tribe was restored and the submittal of an application to take land into trust. *See* 25 C.F.R. § 292.12(c)(2).

A member of the Shasta Nation of California[8], a non-federally recognized tribe, has submitted information to NIGC and argues that the Karuk Tribe has no historical connections to Yreka and, therefore, the parcel at question does not qualify for gaming. But none of the documents contradict any of the information submitted by the Karuk Tribe. Rather, the submitted materials detail the Shasta Nation's historical presence in Yreka and Karuk's historical presence in other areas of Siskiyou County. But IGRA's restored lands exception does not require the Karuk Tribe to demonstrate that it was the only tribe with historical connections to the area, or that the subject area was the only place where the Karuk Tribe has historical connections. Therefore, the documents submitted by the Shasta Nation do not change this opinion.

Recommendation: Approve the ordinance on the grounds that the parcel qualifies as restored lands for a restored tribe within the meaning of IGRA. The Department of the Interior's Office of the Solicitor concurs in this opinion.

[8] The Shasta Nation has petitioned for Federal acknowledgement as an Indian tribe under 25 C.F.R. Part 83.