TO: Philip N. Hogen, Chairman

FROM: Penny J. Coleman, Acting General Counsel PJC

DATE: 4/9/08

RE: Alturas Indian Rancheria's Claim over the Benter Allotment

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The Alturas Indian Rancheria ("the Alturas Tribe") has commenced construction of a casino on a public domain Indian trust allotment ("the Benter Allotment") near Yreka, California. A number of parties have objected to the Alturas Tribe's actions.[1] To make a recommendation to the Chairman of the National Indian Gaming Commission ("NIGC") regarding whether an enforcement action under the Indian Gaming Regulatory Act ("IGRA") may be warranted, the Office of General Counsel ("OGC") must determine whether gaming on the Benter Allotment by the Alturas Tribe would be authorized under IGRA. As explained below, we believe that the Alturas Tribe does not have authority to conduct gaming on the Benter Allotment under IGRA, because to the extent that the Alturas Tribe acquired jurisdiction over these lands, such acquisition occurred after IGRA's enactment date of October 17, 1988, and the Alturas Tribe does not qualify for any exception to IGRA's general prohibition against gaming on after-acquired lands. Consequently, the Alturas Tribe may not operate a gaming facility on the Benter Allotment under IGRA, and an enforcement action would be justified against any such operation.

BACKGROUND

The Benter Allotment is a 160-acre parcel located approximately two miles south of the city of Yreka, in Siskiyou County, California, near Interstate 5. The parcel is identified

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[1] *See, e.g.*, Letter from Andrea Lynn Hoch, Office of the Governor of the State of California, to Jeffrey Nelson, NIGC (April 3, 2006); Letter from Frank J. DeMarco, County of Siskiyou, to Jeffrey Nelson, NIGC (April 3, 2006); Letter from Arch Super, Karuk Tribe, to Jeffrey Nelson, NIGC (April 4, 2006); Letter from Ron Lincoln, Quartz Valley Indian Reservation, to Jim Cason, Department of the Interior (Oct. 19, 2005); Letter from Gary Lake, Shasta Nation Tribe, to Jeffrey Nelson, NIGC (Feb. 8, 2006).

by the Bureau of Indian Affairs ("BIA") as RED-549, and the legal land description is as follows:

> The south one-half of the northwest quarter and the north one-half of the southwest quarter of Section 2, Township 44 North, Range 7 West, Mount Diablo Meridian, Siskiyou County, California, containing 160 acres, more or less.

In 1897, the Department of the Interior ("DOI") assigned the subject allotment from the public domain to Jim Benter (sometimes alternatively appearing as Jim "Bender").

In 1907, the United States issued a trust patent for this land, which identified Jim Benter as "an Indian of the Shasta tribe or band."[2] Jim Benter Trust Patent (Nov. 6, 1907). Jim Benter's son, Julius Benter, eventually inherited the entire beneficial ownership interest in the Benter Allotment. *Estate of Julius Benter*, 1 IBIA 24 (1970). Julius Benter is also identified as "an Indian of the Shasta tribe or band" on a separate 1907 trust patent issued to him for a different allotment. Julius Benter Trust Patent (Nov. 6, 1907). Julius Benter died in 1967 without any immediate surviving family members. *Estate of Julius Benter (Bender)*, 17 IBIA 86 (1989); 15 IBIA 88 (1987); 1 IBIA 24 (1970).

The BIA conducted several probate hearings and appeals over many years with regard to Julius Benter's estate, concluding in 1975 that Julius Benter's ten (10) second-cousins were each entitled to inherit an undivided one-tenth of his estate.[3] *Benter*, 17 IBIA 86 n.2. Six (6) of the ten (10) identified heirs were either enrolled with the Karuk Tribe of California ("Karuk Tribe") or were of Karuk ancestry. Letter from Dolores Voyles, Karuk Enrollment Officer (March 14, 2006). At least one of the heirs was a member of the Quartz Valley Tribe. *In the Matter of the Estate of Winnie Elsie Nelson, Deceased Quartz Valley Indian*, Order Disapproving Will and Ordering Distribution, Probate IP SA-191-N-04 (U.S. Dep't of Interior Office of Hearings and Appeals Jan. 9, 2006). There is no information in the record indicating the tribal membership of the other three

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[2] Currently, there is no federally recognized "Shasta tribe or band." A petition for acknowledgment of the Shasta Nation was filed with the BIA in 1982. 47 Fed. Reg. 36703 (Aug. 23, 1982). The petitioner is still working on documenting the petition. The currently non-recognized "Shasta Nation Tribe" has objected to the Alturas Tribe's actions on the Benter Allotment, and has indicated that it plans to prove that the Benter Allotment belongs to Shasta Nation tribal members. Letter from Gary R. Lake, Vice Chairman of the Shasta Nation Tribe to Jeffrey Nelson, NIGC (Feb. 8, 2006); *see infra* note 3 and accompanying text.

[3] Years later, this determination was contested by four members of the non-federally recognized Shasta Nation, who claimed that they were more closely related to Julius Benter than the ten second-cousins, and who claimed to have been improperly excluded from the original probate proceedings. *Benter*, 17 IBIA 86. In 1988, Administrative Law Judge William E. Hammett reopened the case, determined that the group's matriarch was—in fact—Benter's sole rightful heir, and ordered the entire remaining trust interest in the parcel to be redistributed to her. *Id.* On appeal, the Interior Board of Indian Appeals ("IBIA") vacated this order without reaching the merits, finding that the woman did not satisfy the procedural burden established in the regulations for reopening an Indian probate estate that had been closed for more than three years. *Id.* It appears that the challengers were not represented by counsel, and that no appeal of the IBIA decision was taken.

heirs. Over time, these one-tenth interests have been further divided, transferred, encumbered, or put into question through unresolved probate proceedings. For instance, the records indicate that the estates of four (4) interest-holders, cumulatively accounting for about 15% of the total ownership interest, currently are the subjects of unresolved probate proceedings within the BIA. BIA Title Status Report (Feb. 21, 2006; last verified Jan. 27, 1999) ("BIA Title Status Report"); Pacific Regional Office: Status of Probates – RED-549 (Feb. 8, 2006). Three of these four deceased interest holders, accounting for nearly 13% of the total ownership interest, were members of the Karuk Tribe. Letter from Dolores Voyles, Enrollment Officer, Karuk Tribe of California, to Dennis Whittlesey, Jackson Kelly PLLC (Feb. 2, 2006) ("Karuk Enrollment Letter").

Another 20% of the allotment interest was held by a now-deceased member of the Quartz Valley Tribe.[4] Her estate recently was settled by order of an Indian Probate Judge, who identified 18 new interest holders as her heirs-at-law, 11 of whom are reported in the order as being deceased. *In the Matter of the Estate of Winnie Elsie Nelson, Deceased Quartz Valley Indian*, Order Disapproving Will and Ordering Distribution, Probate IP SA-191-N-04 (U.S. Dep't of Interior Office of Hearings and Appeals Jan. 9, 2006). The NIGC has been informed that the heirs identified in this judge's order are enrolled members of the Confederated Tribes of the Siletz Reservation.

Approximately 1.4% of the undivided interest in the Benter Allotment has transferred out of trust and has become a fee interest. BIA Title Status Report. The records further indicate that a different 3.33% of the undivided interest is subject to a life estate held by a non-Indian, although there has been an unverified account of the life estate owner's death. *Id.*

The records indicate that in addition to the Karuk Tribe's history of members with ownership interests in the allotment, at least two living, current members of the Karuk Tribe retain ownership interests in the Benter Allotment today. Letters from Mark A. Levitan, Monteau & Peebles LLP, Counsel for Darren Rose, to Clayton Gregory, BIA Regional Director, and Virgil Akins, Northern California BIA Agency Superintendent (July 20, 2004 & Aug. 24, 2004); Karuk Enrollment Letter. The interests of these two Karuk tribal members amount to almost 3% of the total ownership interest. BIA Title Status Report. The Karuk Tribe is opposed to the Alturas Tribe's construction and planned operation of a gaming facility on the Benter Allotment. Letter from Arch Super, Karuk Tribal Chairman, to Jeffrey Nelson, NIGC (April 4, 2006) ("Karuk Opposition Letter").

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[4] The Quartz Valley Tribe has objected to the actions that the Alturas Tribe has taken on the Benter Allotment. Letter from Ron Lincoln, Quartz Valley Tribal Chairman, to Jim Cason, Acting Assistant Secretary [sic – should be Associate Deputy Secretary] (Oct. 19, 2005). In making its objection, the Quartz Valley Tribe stated that "[t]hese lands are not, and have never been within the jurisdiction of the Alturas Rancheria. The lands are within the aboriginal territories of the Shastans. Quartz Valley Indian Reservation is the only federally recognized Indian tribe for the Shasta and Upper Klamath peoples." *Id.* The Quartz Valley Reservation is approximately 25 miles away from the Benter Allotment.

The remaining nearly 60% of the ownership interest in the Benter Allotment is held by an individual named Darren Rose, whose actions are at the heart of this issue. BIA Title Status Report; Memorandum from John M. Peebles, Monteau & Peebles LLP, Counsel for the Alturas Tribe, to John R. Hay, NIGC at 2 n.2 and accompanying text (Dec. 2, 2005) ("Alturas Memorandum"). Darren Rose was once a member of the Karuk Tribe, but he relinquished his Karuk membership in late September 2003. Karuk Enrollment Letter; Karuk Opposition Letter. He is now a member of the Alturas Tribe.[5] Alturas Memorandum at 2. The Alturas Memorandum does not disclose the date on which Darren Rose became a member of the Alturas Tribe, and an inquiry on this point from the NIGC to counsel for the Alturas Tribe was not answered. According to information from the State of California, Alturas Tribal representatives informed the State that in December 2005, Darren Rose had been a member of the Alturas Tribe for about two-and-a-half years. Letter from Andrea Lynn Hoch, Office of the Governor of the State of California, to Jeffrey Nelson, NIGC at 3 n.5 (April 3, 2006).

Darren Rose obtained part of his nearly 60% interest in the Benter Allotment through inheritance. He obtained the other portion of his interest over the years through BIA-approved trust-to-trust transfers from several other individual heirs. *E.g.*, Deed to Restricted Indian Land by and between Robert W. Rose, a Karuk Indian, and the United States of America in trust for Darren Paul Rose, Grantee, a Karuk Indian (entered Oct. 30, 2003, appv'd Jan. 14, 2004); Deed to Restricted Indian Land by and between Darwin Joseph Rose, a Karuk Indian, and the United States of America in trust for Darren Paul Rose, Grantee, a Karuk Indian (entered Dec. 18, 2003, appv'd Jan. 14, 2004). As stated above, the Karuk enrollment officer has informed us that Darren Rose relinquished his Karuk tribal membership in late September 2003. Karuk Enrollment Letter. However, the trust-to-trust transfer documents indicate that Darren Rose held himself out to the BIA as a member of the Karuk Tribe until as late as December 18, 2003. According to information from the BIA Pacific Region Land Titles and Records Office, all of the trust deeds submitted by Darren Rose indicated that Rose was a member of the Karuk Tribe, and the BIA did not approve or accept any trust deed that grants an interest in the Benter Allotment to any individual identified as a member of the Alturas Tribe.

The Alturas Tribe has now commenced construction of a gaming facility on the Benter Allotment, claiming legal jurisdiction over the land through the ownership interest of Darren Rose. Alturas Memorandum at 6-10. The Alturas Tribe occupies a 20-acre rancheria near the City of Alturas, in Modoc County, California, approximately 125 miles away from the Benter Allotment. The Alturas Rancheria was created in 1924 when the United States purchased the 20-acre parcel in Modoc County under a 1923 Interior Appropriation Act that provided funds to purchase lands for homeless Indians in California. Memorandum from DOI Pacific Southwest Regional Solicitor, to BIA Regional Director (Sept. 9, 1999). The original occupants of the Alturas Rancheria were Pit River Indians.[6] *Id.* Now, however, the Alturas Tribe is recognized as separate from

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[5] Indian tribes retain inherent power to determine their own tribal membership. *Montana v. U.S.*, 450 U.S. 544, 564 (1981); *Santa Clara Pueblo v. Mar*tinez, 436 U.S. 49, 72 n.32 (1978).

[6] The DOI's annual list of federally recognized tribes previously identified the Alturas Tribe as the Alturas Rancheria of Pit River Indians of California. *E.g.*, 58 Fed. Reg. 54364, 54366 (Oct. 21, 1993).

the Pit River Tribe, which occupies six other rancherias in the region. 70 Fed. Reg. 71,194 (Nov. 25, 2005). The Secretary of the Interior approved the Alturas Tribe's constitution in 1972. Memorandum from DOI Pacific Southwest Regional Solicitor, to BIA Regional Director (Sept. 9, 1999). In February 2005, the Alturas Tribal Administrator reportedly informed the attendees of a Yreka town-hall meeting that the Alturas Tribe consisted of five adult members and four children. John Diehm, *Proposed Casino Touts Creation of 500 Jobs*, Siskiyou Daily News, Feb. 9, 2005; *see also* Letter from Andrea Lynn Hoch, Office of the Governor of the State of California, to Jeffrey Nelson, NIGC at 2 (April 3, 2006). The Alturas Tribe operates an existing Class III gaming facility called the Desert Rose Casino on the Alturas Rancheria.

In mid-2004, Darren Rose asked the BIA to partition the Benter Allotment among the undivided interest holders, such that he would become the sole beneficial interest owner of 94.6 acres of trust land within the 160-acre Benter Allotment. Letters from Mark A. Levitan, Monteau & Peebles LLP, Counsel for Darren Rose, to Clayton Gregory, BIA Regional Director, and Virgil Akins, Northern California BIA Agency Superintendent (July 20, 2004 & Aug. 24, 2004). The BIA has not granted Mr. Rose's request, and the beneficial ownership interest in the Benter Allotment remains fractionated and undivided.

Two issues have caused problems with the partition proposed by Darren Rose. First, the BIA concluded that it may not represent the interests of the undetermined heirs during the proposed partition proceeding. Letter from Amy L. Dutschke, BIA Acting Regional Director, to Mark A. Levitan, Monteau & Peebles, LLP (July 12, 2004). Second, the BIA has been precluded by court order in the class-action lawsuit *Cobell v. Norton*, Civ. 1:96CV01285 (D.D.C.), from communicating with potential class members related to the sale, exchange, transfer, or conversion of Indian trust land, without receiving a signed waiver or confirmation of consultation form. *See,* e.g., Letter from Amy Dutschke, BIA Acting Regional Director, to Darren P. Rose (Feb. 10, 2005). The BIA sent letters to this effect to the Benter Allotment interest owners, *id.*, but did not receive either the signed waiver form or the signed consultation notice from any owner other than Darren Rose. Letter from Amy L. Dutschke, BIA Acting Regional Director, to Darren P. Rose (May 9, 2005). Therefore, the BIA stated that it has been unable to provide notice of the proposed partition to the other allotment interest holders, and indicated that it may not be able to take further action on the proposal. *Id.*

Finally, neither Darren Rose nor the Alturas Tribe has requested or secured a lease or other contractual permission of the co-owners to take possession of the Benter Allotment.[7] Letter from BIA Regional Director to Mark A. Levitan, Counsel to Darren Rose (Dec. 9, 2005). This situation has led the BIA question the Alturas Tribe's authority to commence construction or otherwise exert jurisdiction over the Benter Allotment. *Id.* at 2. Nevertheless, Darren Rose and the Alturas Tribe, together with certain financial partners, have fenced off the Benter Allotment and commenced construction of what they plan to call the Shasta Mountain Casino.

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[7] "An Indian landowner of a fractional interest in a tract must obtain a lease of the other trust and restricted interests in the tract, under these regulations, unless the Indian co-owners have given the landowner[] permission to take or continue in possession without a lease." 25 C.F.R. § 162.104(b).

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

Assuming other prerequisites are met, IGRA permits a federally recognized Indian tribe to establish gaming facilities on its "Indian lands." 25 U.S.C. § 2710(b)(1), (d)(1). Under the statutory and regulatory definitions of "Indian lands" set forth below, if the land upon which gaming is contemplated is not within the limits of the tribe's current reservation, then 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 follows:

> (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).

The NIGC's regulations further clarify the "Indian lands" definition by providing that:

> *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.

A determination that a particular parcel fits the definition of Indian lands is not necessarily the end of the inquiry, because IGRA contains a general prohibition—with certain limited exceptions—against gaming on Indian lands "acquired by the Secretary [of the Interior] in trust for the benefit of an Indian tribe after October 17, 1988 . . . ." 25 U.S.C. § 2719(a). If the Indian lands are subject to this provision, gaming under IGRA will not be allowed unless the tribe can demonstrate that it qualifies for one or more of the limited exceptions provided in the statute. 25 U.S.C. § 2719.

LEGAL ANALYSIS

In this case, we have serious doubts about the Alturas Tribe's claim of jurisdiction over the Benter Allotment. There are several facts that do not support the Tribe's arguments. First, it appears that Darren Rose was recently adopted into the Alturas Tribe simply to

support a claim for jurisdiction over the land and construct a casino thereon. Second, multiple tribes have members with recognized interests in, or claims to, the allotment. Those tribes have a prior claim to jurisdiction under the same theory as promoted by the Alturas Tribe, and have objected to the Alturas Tribe's actions. Moreover, the original allottee was not a member of the Alturas Tribe; neither the BIA nor the non-Alturas allotees have consented to a casino; the Alturas Tribe's reservation is over 100 miles away from the allotment; and finally, the allotment is not within the aboriginal territory of the Alturas Tribe.[8] Nonetheless, we need not decide what tribe, if any, has jurisdiction over this allotment.

To game on this parcel, the Alturas Tribe must fall within one of the exceptions of 25 U.S.C. § 2719. It does not. Therefore, even without deciding the jurisdictional issue, we conclude that the Alturas Tribe cannot game on the Benter Allotment.

Unless one of the statutory exceptions applies, IGRA prohibits gaming on "lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988"—the date that IGRA was enacted. 25 U.S.C. § 2719(a). Where statutory language is ambiguous, a court will defer to the NIGC's reasonable interpretation of the language. *U.S. v. Seminole Nation of Oklahoma*, 321 F.3d 939, 944 (10th Cir. 2002). In this case, such ambiguity is evident when the statutory language is compared to congressional intent. In enacting the after-acquired lands provision, Congress intended to restrict each Indian tribe's gaming opportunities to the lands upon which that tribe could game when IGRA was enacted, unless the tribe qualified for one or more of the statutory exceptions. So for instance, even though the after-acquired lands provision speaks only of lands acquired "in trust" for the benefit of an Indian tribe, the Secretary of the Interior has previously determined that Congress did not intend to limit the restriction to *per se* trust acquisitions, but must have intended the restriction also to apply to after-acquired restricted fee lands. Letter from Secretary Gale Norton, DOI, to Cyrus Schindler, Seneca Nation of Indians at 7 (Nov. 12, 2002).

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[8] The Alturas Tribe argues that "the Alturas Tribe is one of the successors in interest to the aboriginal Achumawi-Atusgewi-Shasta people, whose aboriginal territory included the lands of the Benter Allotment." Alturas Memorandum at 9 (citing Pat Wenger, *Alturas Rancheria and the Achumawi-Atusgewi-Shasta People* (Nov. 7, 2005) (Unpublished Report)). We are not persuaded. The United States has never recognized the combined "Achumawi-Atusgewi-Shasta people" as a single tribe, and after reviewing the unpublished report cited by the Alturas Tribe, we decline to view the combined "Achumawi-Atusgewi-Shasta people" as a single political entity capable of being considered a predecessor to the Alturas Tribe. The original members of the Alturas Rancheria were Pit River Indians. Memorandum from DOI Pacific Southwest Regional Solicitor, to BIA Regional Director (Sept. 9, 1999). The Pit River Indians are alternatively known as the Achumawi Indians, a name and grouping based on the shared Achumawi language. 8 Smithsonian Institution, *Handbook of North American Indians: California* 225 (Robert F. Heizer vol. ed., 1978). Historically, the Achumawi Indians were politically divided into autonomous "tribelets" or "bands" controlling certain territories. *Id.* at 230. Even adopting the expansive view of all Achumawi-speaking Indians and all Achumawi "triblets" as one combined political "tribe," the aboriginal territory of the Achumawi-speaking Indians extended only as far northwest as Mt. Shasta. *Id.* at 225, 226 fig. 1. Mt. Shasta is approximately 35 miles to the southeast of the Benter Allotment. Therefore, the Benter Allotment is outside of the Alturas Tribe's aboriginal territory.

These interpretations of the statute are supported by the legislative history. With respect to lands acquired after October 17, 1988, the Select Committee on Indian Affairs stated, "[g]aming on newly acquired tribal lands outside of reservations is not generally permitted unless the Secretary [of the Interior] determines that gaming would be in the tribe's best interest and would not be detrimental to the local community and the Governor of the affected State concurs in that determination." S. Rep. No. 446, 100th Congress, 2d Session 8 (1988). *In re Wyandotte Gaming Commission Ordinance*, National Indian Gaming Commission (Sept. 14, 2004).

The same analysis applies here. The purpose of IGRA's after-acquired lands prohibition is to restrict tribes that had Indian lands on October 17, 1988, from conducting gaming operations elsewhere. The Alturas Tribe had a reservation on October 17, 1988, and today conducts a gaming operation on its pre-IGRA reservation lands. Moreover, on October 17, 1988, the Alturas Tribe had no claim that the Benter Allotment was acquired into trust for its benefit, and therefore had no authority to conduct gaming on that site. To the extent that the Alturas Tribe can now assert that it has jurisdiction over the Benter Allotment, such jurisdiction was acquired, if at all, after 1988. It is clear that Congress intended to limit new gaming opportunities on lands far from a tribe's current or former reservation to very specific isolated circumstances. *In re Wyandotte Gaming Commission Ordinance*, National Indian Gaming Commission (Sept. 14, 2004). The Alturas Tribe cannot circumvent the purpose of Congress' after-acquired lands prohibition by simply acquiring a member as opposed to acquiring the lands. Therefore, we interpret the after-acquired lands prohibition as applying to a tribe's acquisition of any post-IGRA jurisdictional interest over existing trust lands, just as it would be triggered by a direct post-IGRA acquisition of the land into trust.

In this case, assuming for purposes of analysis that the Alturas Tribe can claim that the enrollment of a beneficial interest owner gives the Alturas Tribe a jurisdictional interest in the allotment, then such interest was obtained when Darren Rose became a member of the Alturas Tribe—well after October 17, 1988. Therefore, the Alturas Tribe would have to demonstrate that it meets at least one of the exceptions in 25 U.S.C. § 2719 in order to conduct gaming on the after-acquired lands.

The Alturas Tribe has not made any such demonstration, and for the reasons stated immediately below, we do not believe that the Alturas Tribe would qualify for any of the exceptions. Because the Benter Allotment is approximately 125 miles away from the Alturas Rancheria, it is not within or contiguous to the Alturas Tribe's pre-IGRA reservation. 25 U.S.C. § 2719(a)(1). Because the Alturas Tribe had a reservation on October 17, 1988, it cannot qualify for the exceptions under 25 U.S.C. § 2719(a)(2). There has been no two-part determination by the Secretary of the Interior in this case. 25 U.S.C. § 2719(b)(1)(A). Similarly, there has been no land claim litigation or a settlement thereof. 25 U.S.C. § 2719(b)(1)(B)(i). The Alturas Tribe was not acknowledged by the Secretary under the Federal acknowledgement process, and the Alturas Tribe has a pre-existing reservation, so it is not qualified for the exception in 25 U.S.C. § 2719(b)(1)(B)(ii). Finally, the Alturas Tribe does not qualify for the restoration of lands exception, 25 U.S.C. § 2719(b)(1)(B)(iii), because nothing in the record indicates

that the Alturas Tribe is a restored tribe; and even if it were considered a restored tribe, the Benter Allotment would not qualify as restored lands under the relevant factors that we consider in such analyses, which include the factual circumstances of the acquisition, the location of the acquisition, and the temporal relationship of the acquisition to the tribal restoration. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 198 F. Supp. 2d 920, 935 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004); Letter from Penny J. Coleman, NIGC Acting General Counsel, to Bradley G. Bledsoe Downes, Esq., at 5 (Oct. 12, 2004) ("NIGC Karuk Opinion"). Specifically, the Alturas Tribe already has reservation land upon which it conducts gaming; the Alturas Tribe lacks historical connections to the area; and the timing of the Alturas Tribe's recent acquisition of jurisdiction over the Benter Allotment compared either to the 1924 creation of the Alturas Rancheria or the 1972 approval of the Alturas Tribe's constitution would not weigh in the favor of a finding of restored lands.

CONCLUSION

Even assuming that the Alturas Tribe did obtain jurisdiction over the Benter Allotment, our opinion is that the Alturas Tribe still would not be authorized to conduct gaming there, because the after-acquired lands prohibition in IGRA would apply to the Alturas Tribe's post-IGRA acquisition of jurisdiction.

Because IGRA's after-acquired lands provision prohibits the Alturas Tribe from gaming on the allotment, it is not necessary to examine the other components of the definition of Indian lands. Therefore, it is the opinion of the OGC that an enforcement action would be legally justified if the Alturas Tribe commences gaming on the Benter Allotment. The Department of the Interior, Office of the Solicitor concurs in this opinion.