

Karuk Tribe of California



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November 17, 2003

Honorable Aurens Martin
Assistant Secretary - Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W., MS 4140-MIB
Washington, D.C. 20240

Re: Alturas Rancheria; Proposed Casino in Yreka, California

Dear Assistant Secretary Martin:

On behalf of the Karuk Tribe of California, a federally recognized Indian tribe, I write to inform you of a situation that is developing in Yreka, California that could have adverse consequences for Indian tribes in California. Specifically, the Alturas Rancheria reportedly seeks to open a casino, service station, and hotel in Yreka, California - away from its existing reservation in Alturas, California, on a public domain allotment over which only the Karuk Tribe of California exercises any governmental authority, if any.

The Alturas Rancheria's effort to strategically relocate from Alturas, California to Yreka, California smacks of greed, treads on the BIA-acknowledged ancestral territory of the Karuk Tribe, and is contrary to public policy. The Bureau of Indian Affairs must prohibit Alturas Rancheria's attempt to relocate from its reservation where it already successfully conducts gaming to Yreka, California.

The Alturas Rancheria's reservation is located in Modoc County, California. We understand that the United States holds beneficial title to land in Modoc County for the Alturas Rancheria and that the Alturas Rancheria is not a landless tribe. Although the Alturas Rancheria has successfully developed a casino on its lands in Modoc County, it was wooed to a site in Yreka, California near Interstate 5 and entangled in a scheme concocted by developers seeking to line their own pockets - not to financially assist the Alturas Rancheria.

The Investor's Scheme

We understand that Darren Rose (a member of the Karuk Tribe) and his brother, Darwin Joe Rose, are the majority (i.e., 51+%) beneficial owners of a 160-acre public domain allotment located in or near Yreka, California ("Rose land"). The Rose land was patented in trust in or around 1897 by the United States for the benefit of Jim Benter, a Shasta Indian. By probate succession, Darren Rose owns approximately 41% of the undivided interest in the land. Darwin Joe Rose owns approximately 12% of the undivided interest in the land. In order to be successful, the property will have to be partitioned to divide the interest in the property and to separate any fee interest included therein.

We understand that Darren Rose ("Rose") has entered into an Alliance Agreement with Tribal Consultants of Ohio ("TCO"). The Alliance Agreement provides that Rose will: 1) locate an Indian tribe

that will enroll Rose (and possibly other allottees); 2) partition the 160 acre parcel; 3) enter into a ground lease for the trust land to the selected/participating tribe; 4) require the selected/participating tribe to subsequently sublease the land to TCO for construction of a turn-key gaming facility; and 5) require TCO to sub-lease the land and facility back to the Tribe. In return, Rose and TCO expect that the Tribe will dedicate 100% of the net revenues from the gaming facility to payment of rent, debt reduction, operating expenses, and if any funds are remaining, the Tribe will be paid the remaining funds.

We understand that in addition to the basic requirements outlined above, the Alliance Agreement would require some, if not all of the allottees to be enrolled in the Alturas Rancheria (unless already a member) and a corresponding Tribal constitutional amendment, if necessary. Rose requires an Indian tribe to exercise governmental power over the Rose land before that land will be considered "Indian lands" pursuant to IGRA. Hence, Rose seeks to "shop" for a willing tribe to adopt him and any other necessary allottees in order to argue the exercise of governmental power under IGRA. Of course, simply adopting a person (whether or not they meet the eligibility requirements of the selected tribe) does not equate to the exercise of governmental power under IGRA.

The Land Does Not Constitute "Indian Lands" under IGRA

The NIGC and the BIA have been involved in a continuing line of cases arising out of the Tenth Circuit Court of Appeals involving the Miami Tribe of Oklahoma and its efforts to engage in gaming in the State of Kansas. See, e.g., *State of Kansas v. U.S.*, 2001 WL 476509 (10th Cir. May 4, 2001) (enrollment of previously unenrolled persons and lease of their land does not confer jurisdiction to the Tribe).

The Indian Gaming Regulatory Act ("IGRA") prohibits the Alturas Rancheria's attempt to utilize Rose's off-reservation public domain allotment for gaming purposes. The proposed site is located in or near Yreka, California and is owned by the United States of America in trust for the benefit of Rose, an enrolled member of the Karuk Tribe, and for various other Indians. There are also fee interests in said land. Rose and his brother are the majority owners of the allotment. Rose is willing to lease the land to the Alturas Rancheria for the construction of a gaming facility thereon.

Under IGRA, tribal gaming is authorized to be conducted only on "Indian lands." That term is defined in Section 4(4) of IGRA as meaning:

- (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) (emphasis added).

The land is not within the limits of any Indian reservation. Adoption of Rose into the Alturas Rancheria, alone, does not result in the Alturas Rancheria's exercise of governmental power over the public domain allotment. Here, the Rose land is not held in trust for a tribe, rather, it is held for several individuals (including non-Indians). Furthermore, based upon Rose's status as an enrolled member of the Karuk Tribe, if any tribe exercises jurisdiction over the land, it is the Karuk Tribe -- not the Alturas Rancheria.

Conclusion

California Indian tribes face many issues in meeting our obligations under the tribal-state compacts and in working to mitigate impacts from existing reservations, as well as addressing the legitimate issue of acquiring land for recognized tribes, some of which are currently landless. This is challenging enough without creating additional community outcry because of nomadic, financial based relocation by the Alturas Rancheria because Alturas, California does not accommodate the Alturas Rancheria's financial designs.

Many other tribes are located far from ideal markets and have opened casinos on their reservations hoping to make gaming profitable, or have chosen to accept revenue sharing under the tribal-state compact. The Alturas Rancheria has done both. It operates a casino with less than 350 gaming devices, thus, maintaining its eligibility for revenue sharing under the 1999 tribal-state compact. Approval of the Alturas Rancheria's quest to locate to a more favorable market ignores the reality of that Tribe's existing reservation and gaming facility and the contradicts California voters' collective will that Indian gaming be limited to tribal lands - not more favorable urban areas.

The Karuk Tribe of California urges you to deny the Alturas Rancheria's investor's greed motivated attempt to relocate the Alturas Rancheria from Modoc County in search of a more favorable gaming market to enrich its investors. We further urge the BIA to conduct the necessary environmental assessments and to examine closely the scheme concocted by the investors as that scheme is inconsistent with the policy of IGRA, i.e., that gaming should benefit Indian tribes.

Please contact the undersigned at (530) 493-5305 if you have any questions.

Sincerely,



Alvis Johnson
Chairman

cc: City Council, City of Yreka
Board of Supervisors, County of Siskiyou
Honorable Phil Hogen, Chairman, NIOC
Clay Gregory, BIA, Pacific Region
Virgil Akins, BIA, Northern California Agency
Honorable Dianne Feinstein
Honorable Barbara Boxer
Honorable Wally Herger
Honorable John T. Doolittle
Honorable Richard Pombo