United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

MAR 2 2000

Kevin K. Washburn, Esq.
General Counsel
National Indian Gaming Commission
1441 L Street, N.W., 9th Floor
Washington, D.C. 20005

Dear Mr. Washburn:

Your office requested a legal opinion regarding whether land held in trust by the Secretary of Interior for Betty Green falls within the definition of "Indian lands" under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-21 (1988). We conclude that the lands are "Indian lands" and therefore may be used for Indian gaming operations on the property.

Background

On July 18, 1985, the Secretary accepted title to Parcels 20 and 21 of Elk Valley Rancheria Subdivision in trust for Betty Green pursuant to Tillie Hardwick et al. v. United States, Civil No. C-79-1910-SW (N.D. Cal. 1983) ("Hardwick I") (unpublished) (on file in our office).

In Hardwick I, the United States agreed to settle litigation that challenged the purported termination of seventeen California Rancherias. The United States agreed that the individual members of the Rancherias would be restored to their status as Indians and the U.S. would recognize the Indian Tribes, Bands, Communities or groups of the seventeen Rancherias as Indian entities with the same status as they possessed prior to distribution of these Rancherias. The United States also agreed that, "any named individual plaintiff or class member who received or presently owns fee title to an interest in any former trust allotment by reason of the distribution of the assets of any of the Rancherias listed . . . shall be entitled to elect to restore any such interest to trust status, to be held by the United States for the benefit of such Indian person(s)." Id. at para. 6.

Hardwick I did not determine whether or to what extent the boundaries of the seventeen Rancherias were restored. Id. at 5. The district court reached that determination for Elk Valley Rancheria in 1987, stating that: "the original boundaries of the [Smith River and Elk Valley Rancherias] . . . are hereby restored, and all land within these restored boundaries of the plaintiff Rancherias are declared to be 'Indian Country.'" (Emphasis in original.) The court also held that the Rancheria "shall be treated by the County of Del Norte and the United States of America, as any other federally recognized Indian Reservation." (Emphasis supplied.)

See Tillie Hardwick v. United States, Civil No. C-79-1910-SW, at 4 (N.D. Cal. March 2, 1987) (Hardwick II) (unpublished) (on file with our office).

Indian Gaming Regulatory Act

The IGRA requires that any Indian gaming be conducted on "Indian lands." See, 25 U.S.C. § 2701(5). 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).

Parcels 20 and 21 meet the definition of subsection (A). It is well established that Rancherias are "for all practical purposes" reservations. Solicitor's Opinion, M-28958 (April 26, 1939) , 1 Op. Sol. On Indian Affairs 891 (U.S.D.I. 1979); cf. Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe, 498 U.S. 505, 511 (1991). When the district court ordered that the Rancherias be restored to Indian country "as they existed immediately prior to their purported termination under the Rancheria Act," the Elk Valley Rancheria returned to its status as an Indian reservation. See, Stipulation to Restoration of Indian Country and Order, Hardwick II. Parcels 20 and 21 are within the limits of the Rancheria boundaries as re-established by the district court's order. They are, thus, lands within the limits of an Indian reservation.

Furthermore, the Department of Interior, by accepting the land in trust in 1985, acknowledged that the land was part of the original Rancheria distributed to the individual, Betty Green. See, Acceptance of Conveyance, Betty Green, a.k.a. Betty Jean Green, DOI, BIA (December 6, 1987) (on file with our office). This acceptance also demonstrates that the property is within the limits of an Indian reservation. Additionally, the Pacific Region of the Bureau of Indian Affairs (BIA) sent us two reports, one received in September 1999 and the other in July 1999. Through these reports, BIA confirms that the land used for gaming is located within those boundaries. See, Reports and Map, enclosed. Furthermore, the existing gaming facility has been located on Betty Green's land since 1996. She is leasing a portion of her trust property to the Tribe for the Elk Valley Casino. A new lease was executed by the parties in April 1999 and submitted to BIA. Although the BIA has not yet approved the lease, this does not impact our legal conclusion that the facility is located on Indian lands.

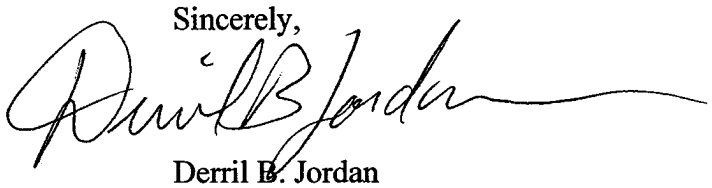
While the United States, as co-defendant, did not sign the 1987 stipulation because it concerned Del Norte County Government tax issues, the United States did sign the underlying

stipulation that restored the Tribe in 1983. In that stipulation, the United States agreed and the court held that it would not determine the boundaries of the Rancheria yet, but, "shall retain jurisdiction to resolve this issue in further proceedings herein." The stipulated judgment that plaintiff and defendant Del Norte County finalized in 1987, was one of the "further proceedings" anticipated by the 1983 stipulation. The 1987 stipulation also provides that the Rancheria, "shall be treated by the United States of America as any other federally recognized Indian reservation." For these reasons the United States considers itself bound by both stipulations.

Therefore, lands held in trust for Betty Green, an individual, are "Indian lands" under IGRA and may be used for an Indian gaming facility.

If you have any questions on this matter, please contact me or my staff lawyer, John Jasper at (202) 208-5738.

Sincerely,



Derril B. Jordan
Associate Solicitor
Division of Indian Affairs

Enclosures