



September 30, 2019

Via U.S. Mail

Francis Steele, Chairman
Berry Creek Rancheria of Maidu Indians of California
5 Tyme Way
Oroville, CA 95966

**Re: Review of Third Amendment to Second Amended
and Restated Business Loan Agreement**

Dear Chairman Edwards:

This letter responds to the August 30, 2019, request on behalf of the Berry Creek Rancheria of Maidu Indians of California for the National Indian Gaming Commission's Office of General Counsel to review the Third Amendment to Second Amended and Restated Business Loan Agreement (Third Amendment). Specifically, you have asked for my opinion whether the Third Amendment is a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreement violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following document submitted on behalf of the Tribe which was unexecuted but represented to be in substantially final form:

- Third Amendment to Second Amended and Restated Business Loan Agreement, marked as: "SMRH DRAFT 4844-7984-1439.5"

Confining my review to the four corners of the document, it is my opinion that the Third Amendment is not a management contract and does not require the approval of the NIGC Chairman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

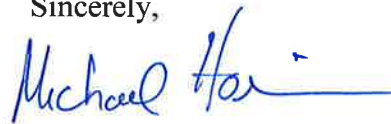
Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld. *See* 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624, at *7 (U.S., June 24, 2019). Any claim of

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confidentiality should also be supported with “a statement or certification by an officer or authorized representative of the submitter.” *See* 25 C.F.R. § 517.7(d). Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, the letter will be made public and objections will no longer be considered. *Id.*

If you have any questions, please contact NIGC Staff Attorney Heather McMillan Nakai at (202) 527-5577.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Hoenig
General Counsel

cc: Cheryl Williams (caw@williamscochrane.com)
Christine Swanick (cswanick@sheppardmullin.com)