

# “Restored Land” for a “Restored Tribe:” THE SUCCESSFUL QUEST OF THE KARUK TRIBE OF CALIFORNIA

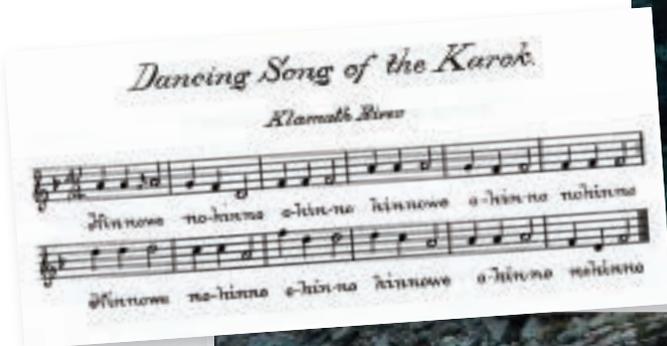
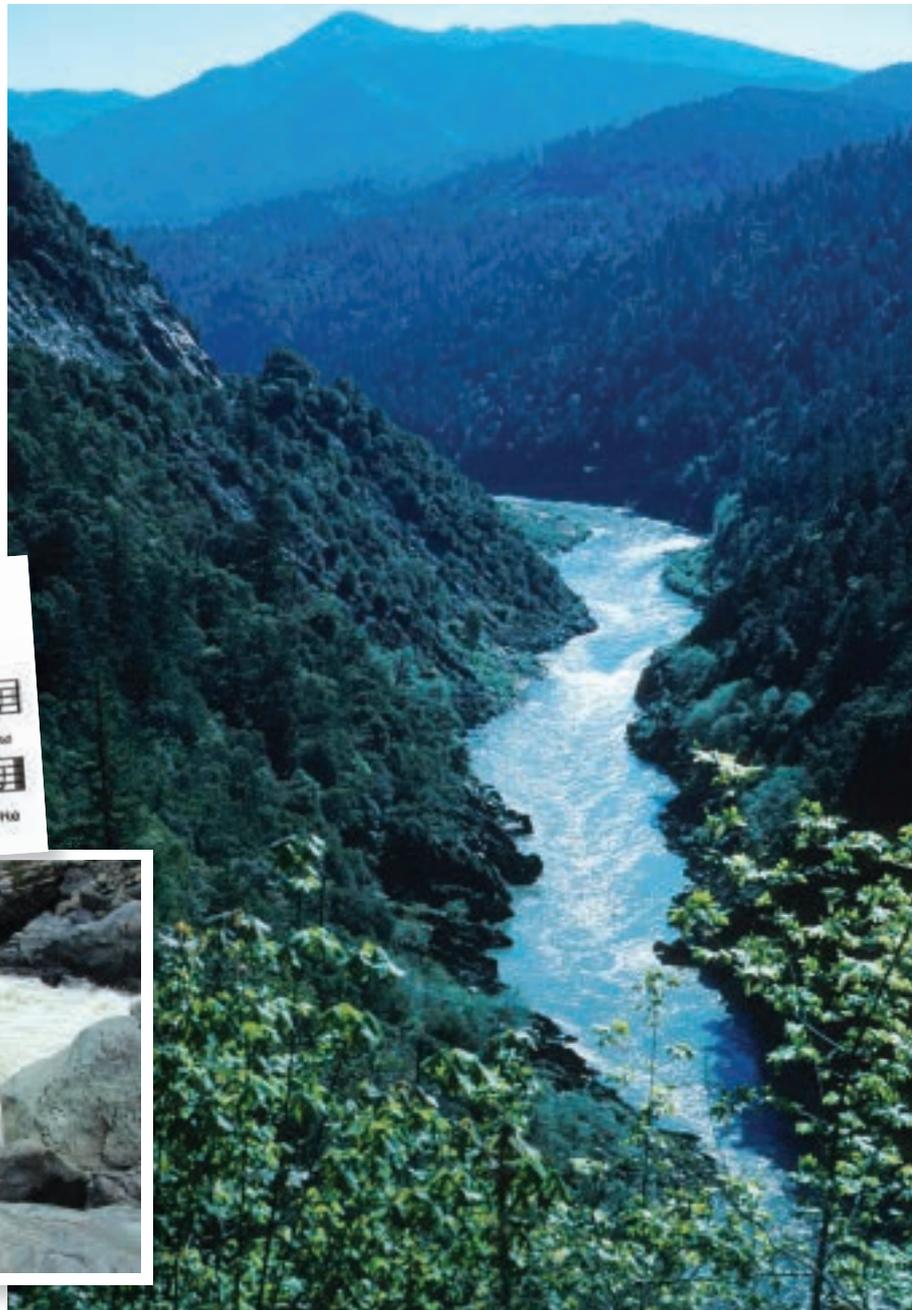
BY STEPHEN DOW BECKHAM

**T**he Indian Gaming Regulatory Act’s “Restored Land” Provision is found at IGRA Section 20(b)(1)(B)(iii), 25 U.S.C. §2719(b)(1)(B)(iii).

IGRA Section 20 defines a post 1988 trust land qualification for gaming as “restored land.” The critical sections are (B) “lands . . . taken into trust as part of” (iii) “the restoration of lands for an Indian tribe that is restored to Federal recognition.”

To satisfy Subsection (B)(iii), a tribe first has to document that it is a “restored” tribe – meaning that it had federal recognition, lost it and then regained restoration. It then has to document that the land it wants to use for gaming is on a site that constitutes a restoration of land to the tribe. The

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Traditional Karuk dipnet fisherman at Ishi Pishi Falls on the Klamath River.





The Karuk Tribe has received all necessary approvals for the Rain Rock Casino in Yreka, California. Tribal members broke ground on the project on July 29, 2016.

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“restored land” provision is poorly understood and has frequently compelled tribes to file briefs and reports with the National Indian Gaming Commission or to litigate to get the facts confirming its eligibility under (B)(iii) into a forum to prove its case and secure trust status of lands for gaming.

### **KARUK TRIBE’S LIMBO STATUS**

The Karuk Tribe, the largest in California, was never “terminated.” It was not subject to the California Rancheria Termination Act (1958) but was administratively “let go” by the Sacramento Agency of the Bureau of Indian Affairs. Without congressional authority, Bureau officials in the 1950s and 1960s ceased providing health and educational services to the Karuks. Isolated in the mountain fastness of northwestern California, the tribe was an easy target for government neglect.

In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, dozens of individual Karuks received Public Domain Allotments and Indian Homesteads. These lands were held in trust. When they generated revenues such as from timber sales, the proceeds often went into Indian Money Market accounts (I.M.M.), a further extension of

federal trust responsibility. The B.I.A.’s Field Matron Program sent public health nurses and teachers to their remote villages. Karuk children attended Greenville School and Sherman Institute, federal Indian boarding schools in California.

In spite of the individual trust lands, the tribe did not have a tribal land base. Its heavily timbered, mineral rich homeland had been taken by the United States without ratification of its treaties negotiated in 1851. Most of the Karuk lands ended up in the Six Rivers National Forest along the southern slope of the Siskiyou Mountains and the Oregon-California border. To meet community needs and plan for the future, Karuk leaders in 1976 began pressing the Superintendent of the Hoopa Agency to assist in getting trust status for 6.6 acres the tribe purchased near Orleans, California. The journey of the Karuks from unclear status to federal “restoration” required years of hard work.

“At that time,” said tribal member Mark Allison, “we had no available funds and not a dime.” He explained to Congressman Harold T. Johnson in September, 1976: “So our people bound together, and thru contributions, Potlucks, Cake & Cookie Sales, and other various fund raising events raised the necessary



amount and purchased the land.” This successful project, asserted Allison, started to transform the Karuks. “We are no longer a landless Tribe,” he proclaimed.

The route for Karuk status clarification was uncertain. In 1976, however, the Hoopa Agency enumerated “Federally Recognized Tribes & Tribal Groups.” These included the Happy Camp Karok Tribe, Inc. and the Orleans Karok Council. Persistent pressure by Karuk leaders ultimately led to a decision on June 15, 1978, by the Acting Assistant Secretary of the Interior, that the “Karok Tribe of California has a continuing relationship with the United States.” The Bureau of Indian Affairs, however, declined to conduct an election for adoption of the Orleans Karok Council’s constitution. Instead it encouraged the various Karuk “groups” to describe their governing process and to come up with a new constitution. The B.I.A. also said: “To the extent persons can be identified as tribal members, they are eligible for those individual services available to members of federally recognized tribes.”

Independent of the Federal Acknowledgment Program, established by Congress in 1978, the Department of the Interior on January 19, 1979, formally confirmed federal recognition of the “Karok Tribe of California” and directed that it would be entered into the list of “federally-recognized tribes.” The moment proved pivotal. The Karuks established an administrative office at Happy Camp, California. The tribal council sought federal funds to assist in developing its tribal organization and to establish a services program for its members, hundreds of whom lived in their aboriginal homelands in Siskiyou and Humboldt counties.

Slowly the pieces started coming together. The tribe in 1979 obtained \$30,000 in state funds to weatherize homes, \$30,000 from the Indian Health Service for a health needs assessment, and \$25,000 from the B.I.A. for work on a constitution and tribal administrative services. The tribe bootstrapped its work using Comprehensive Employment Training Act (“CETA”) funds for numerous projects, including updating its membership roll. CETA funded twenty-two trainees for 80% of the tribe’s professional services.

In spite of these forward steps, the Bureau of Indian Affairs continued to balk at federal recognition. In 1984, John W. Fritz in the Commissioner’s office in Washington, D.C., blocked the tribal vote on its new constitution. He raised issues about the tribal membership roll, blood quantum, and the land taken into trust for the Orleans Karok Council. Fritz dictated three potential solutions to the resolving these matters and proceeding with adop-

tion of a constitution. Ultimately the Bureau of Indian Affairs and the tribe resolved these differences and the tribe became part of the “budget process” in the Department of Interior. It members finally began to receive federal services.

At this time, qualifying land for gaming pursuant to IGRA Section 20, Part (B)(iii) became a target goal for the Karuk Tribe. It was a “restored tribe” seeking “restored lands” to be taken into trust in the City of Yreka, California for the purpose of gaming. A critical element in securing a “restored lands” decision was to prove that the Karuks had enduring historical connections to Yreka. The artificial identification of counties split the Karuk aboriginal homeland between two northwestern California counties: Siskiyou and Humboldt. Approximately 90% of Karuk country lay in Siskiyou County for which Yreka is the seat of government.

The Karuks were “river people” who inhabited the canyon of the Klamath River from its interior plateau near the Oregon-California border through a long, winding course to the Pacific Ocean. Scott River, Salmon River, and the Trinity River were major tributaries flowing north into the Klamath. The Karuks from time immemorial resided on ancient river terraces where they fished. In the nearby forests they hunted for wild game and gathered acorns, bulbs, roots, and berries. They followed a seasonal round that continues to the present day.

### **NIGC DECISION OF OCTOBER 12, 2004**

In 2004, the Karuk Tribe sought a lands determination from the NIGC. It had decided to establish a gaming operation on lands it had purchased in 1997 that are located in Yreka adjacent to Interstate 5, the primary north-south corridor between the Pacific Northwest and California. The NIGC determined the tribe had failed to make the case that it was a “restored tribe.” This negative determination on tribal status rendered moot the need to examine whether the land was “restored” for the purposes of IGRA.

NIGC staff concluded the Karuks had failed to demonstrate the tribe had been “restored to federal recognition” because there was no evidence the Tribe’s recognition had ever been terminated. Once again the Karuks were caught in limbo; they were now federally-recognized but not “restored!” Although the NIGC did not make a “restored lands” decision in 2004, it suggested the measures by which the Karuks had to make that case: (1) present the factual circumstances of its acquisition of the land, (2) provide information on the location

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Artist rendering of the River Rock Casino in Yreka, California.

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of the land, and (3) identify the temporal relationship of the land acquisition to the tribe's restoration.

To prove the "restored lands" clauses, the tribal ethnohistorian took several approaches to document Karuk use and occupancy in Siskiyou County. In 1910, the Bureau of the Census, independent of the Bureau of Indian Affairs and its compilation of the Annual Indian Census, attached special "Indian Schedules" to the Decennial Census. It obtained the information entered on these schedules through interviews. Individuals gave their tribal affiliation, that of their father and mother, and of their spouse and children. The Thirteenth Census (1910) confirmed that 68.8% of all Indians living in Siskiyou County were Karuks.

Members of the Karuk Tribe continued to occupy historic villages in 1910: 233 Karuks lived at Somes Bar and 193 at Happy Camp. These villages were in the important food-rich fishing sections of the river where Karuks harvested salmon, sturgeon, steelhead, trout, and lamprey. The meadows of Scotts Valley and the plateau at Yreka were important locations for collecting acorns, digging camas and wild onions, and hunting for deer, elk, and other game. These traditional subsistence practices continued through the twentieth century. Today, the Karuks yet maintain a plunge-net salmon fishery at Ishipishi Falls on the Klamath and a major ceremonial site at Katamin, which in Karuk culture is the "center of the universe." Tribal members gather annually for religious ceremonies and dances at Katamin.

In 1979, the Karuk Tribe acquired a former Karuk allotment owned by 33 heirs. The site became the location of multiple uses: clinic, offices, and location of the Department of Natural Resources. In 1979, the tribe acquired 10.65 acres in trust in Happy Camp for a community center and tribal housing. In addition to other modest land purchases, the Karuks in 1987 purchased 25.59 acres in Yreka for a tribal housing project. The land was taken into trust on April 26, 1989.

Yreka, the largest city in Siskiyou County, became a hub of activity for tribal members in the twentieth century. When mining and logging jobs played out along the Klamath and its tributaries, many Indian families survived by moving to Yreka to find work. They also went there for health care, groceries, and education. In 1997, the tribe bought an additional 200.2 acres in

Yreka. This land was taken into trust on March 27, 2001.

In June, 2005, the Karuks had 3,383 enrolled members. Of those 685 (22.7%) were born in Yreka. Because of the importance of Yreka to the modern Karuks, the tribe operated on its Yreka lands an administrative office, a tribal housing program, and medical and dental clinics for its members. This land proposed site for Indian gaming was, however, purchased and taken into trust subsequent to the passage of IGRA in 1988. The Karuks thus were compelled to turn to IGRA Section 20(b)(1)(B)(iii) to qualify the site for gaming, for no other provision of the law was applicable.

### SETTING THE FACTUAL CASE FOR "RESTORED LANDS" QUALIFICATION

The notion of "restoration" of lands means that the land has been returned to tribal ownership and control and that it lies within the historic tribal occupancy area. The required NIGC analysis is whether the "land acquisition in some way restores to the Tribe what it previously had." The tribe drew on two expert witness reports: "The Karuk Tribe: Indian Residence and Tribal Presence in Siskiyou County, California, 1910-2005" (Beckham 2005), and "The Karuk Tribe of California: Federal Relationships, Termination, and Restoration" (Beckham 2006). The reports emerged from research in Record Group 75: Records of the Bureau of Indian Affairs (mostly housed in the National Archives, San Bruno) as well as census records, land records, and local historical accounts. Each of the reports was supplemented by exhibits of key documents.

The legal argument prepared by the Tribe's new legal counsel also cited the comprehensive report of July 30, 1984, of John Fritz, Deputy Secretary of the Interior wherein he referred to "[The] aboriginal sub-entities of the Karok Tribe consisted of the communities at Happy Camp, Orleans and Siskiyou (Yreka)." Darrell J. Dillion of the White House Office of Personnel Management in 1979 had identified the same three locations as aboriginal Karuk communities.

The potential casino site in Yreka lay 38 miles from tribal headquarters in Happy Camp. Maps documented that Yreka, Happy Camp and Orleans represented three points in a triangle, each side approximately the same length and that the three com-



munities framed Karuk territory. All of the land lay within the cession area of the tribe's two, unratified treaties of October 6 and 12, 1851.

On September 19, 2006, Carl J. Artman, Associate Solicitor for Indian Affairs confirmed a "restored lands" decision for the Ione Band of Miwok in Amador County, California. James E. Cason, Interior Associate Deputy Secretary, concurred a week later in the Ione case. The Artman/Cason decision identified the standard applied by the Department: "In this case the evidence is that the land being acquired is in an area that is historically significant to the Band. It is within a few miles of several historic tribal burial grounds and the site where some of the Band's ancestors signed a treaty. Many of the Band's members live in the surrounding area and the Band has used facilities in the [adjacent] city of Plymouth to hold governmental meetings in recent years establishing a modern connection to the area."

Legal counsel for the Karuk Tribe drew on this standard and applied it to Yreka. The arguments for Karuk connections to Yreka—aboriginally, historically, and in the modern era—were comparable, indeed almost identical to those in the Ione Band of Miwok case.

Establishing the temporal relationship of the Karuk Tribe to the land was also complicated. With extremely limited funds, the tribe had been able to secure several parcels of land subsequent to 1979, but most were inexpensive rural lands along the Klamath River. Its purchases were tempered by land prices as well as the need to provide services and housing to its population scattered through its three population centers in Siskiyou County. Legal counsel developed a table laying out each land acquisition by date, location, and use. In Yreka the tribe made an initial purchase of 25.59 acres for housing in 1987; the land went into trust on April 26, 1989. It purchased four more tracts in 1997 for a total of 200.2 acres taken into trust on March 27, 2001 (including the proposed casino site).

The tribal land purchases were thus a function of availability of money and meeting community needs where they were greatest. Although Yreka got initial attention in 1987, other unmet needs dictated purchases and projects in Orleans and Happy Camp. The tribe returned to Yreka in 1997 because of the growing Karuk population in that community and available funds for the purchase of the four tracts.

## THE NIGC DECISION OF APRIL 3, 2012 AND RAIN ROCK CASINO

In 2005, the NIGC reviewed a new, carefully-briefed and documented presentation of the Karuk Tribe that it was a "restored tribe" seeking a "restored lands" determination under I.G.R.A.'s (Section 20(b)(1)(B)(iii)). The tribe documented its "recognition" by the Department of the Interior in the 1970s and showed how its lands at Yreka met the standard set in the case of the Ione Band of Miwok in California's central valley.

As part of the overall tribal strategy, the legal counsel prepared and submitted to the Department of the Interior a Request for Modification of the [Negative] 2004 Legal Opinion

rejecting restored land status for the Yreka property, which was granted by Interior on April 3, 2012. With that, Yreka was officially recognized by restored land for gaming.

The tribal victory, however, proved to be but the first step in another decade of work. It had to secure funding and wend its way through a maze of necessary but sometimes unexpected challenges. These included finding financial backing, mounting a full Environment Impact Statement for the site, and seeking inter-governmental agreements with the City of Yreka and Siskiyou County. The local governments initially opposed the Karuk's proposed Rain Rock Casino, but soon perceived it as a "cash cow" to solve their economic problems. They proved so predatory in their demands that the Required Intergovernmental Agreement was finally resolved in 2015 by an arbitrator.

The tribe also had to navigate design and construction contracts, a management agreement for the project, and, in 2013, a Gaming Compact with Governor Jerry Brown for a Class III gaming operation. The tribe secured final approval of its EIS in 2014 and, later that year, legislative ratification of its gaming compact. Finally—on January 11, 2016, the tribal Watershed Crew began removing vegetation as the first step in site preparation. On July 29, 2016, the Karuks held a formal groundbreaking ceremony on the tribal trust land at Yreka. "This is the culmination of years of hard work by past and present tribal members and staff," said Chairman Russell "Buster" Attebery. "We look forward to contributing to the local economy and bringing entertainment to the region."

The route of the Karuk Tribe using Section 20(b)(1)(B)(iii) remains open to dozens of tribes and bands that were either formally "Terminated" in the 1950s or were allowed lapse into an ambiguous relationship with the United States. Tribes restored by Act of Congress and those restored by petitions through the Federal Acknowledgment Program may also opt to use this special section of IGRA.

The lesson of the Karuk Tribe, however, is that the course may prove long and exceedingly difficult. It is vital for the tribe to work with knowledgeable legal counsel and researchers who can tell the tribe's history founded on firm documentation that meets the standards expected by the NIGC. As everyone in Indian Country knows, some issues take longer to resolve. However, as the Karuk Tribe knows, that only makes the ultimate success sweeter. ❁

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