



# The Confederated Tribes of the Colville Reservation



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## **Prepared Statement of the Honorable Michael E. Marchand, Chairman Confederated Tribes of the Colville Reservation**

### **Public Hearing on the Economic Impacts of Proposed Rule on Class II Gaming**

#### **National Indian Gaming Commission**

September 19, 2006

Good afternoon Mr. Chairman, members and staff of the Commission, tribal representatives and other concerned members of the audience here today. My name is Michael Marchand, and I am the Chairman of the Colville Business Council. I represent the Confederated Tribes of the Colville Reservation (“Colville Tribe” or “Tribe”) and more than 9,200 tribal members. Today, we are pleased to provide our views on the economic impacts of NIGC’s proposed rule on Class II gaming.

The Colville Tribe is located in north central Washington State, and comprises over 1.4 million acres of trust and allotted lands. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of 12 smaller aboriginal tribes and bands from across eastern and north central Washington as well as what is now British Columbia, Idaho and Oregon. The majority of our tribal members live on the reservation.

Our location is quite remote from the main commercial corridors in Washington State. The nearest entrance to an interstate highway is approximately 100 miles from Nespalem, the seat of our tribal government. Our reservation encompasses lands within economically depressed, rural areas of north central Washington.

The Colville Tribe, together with its corporate entity, the Colville Tribal Enterprise Corporation (“CTEC”), employs over 2,000 people, many of whom are non-Indians. As one of the largest employers in north central Washington, our tribal payroll contributes substantial sums to the off-reservation economy.

The economic power of the Colville Tribe has increased substantially because of Indian gaming. We have three small casinos, but our gross gaming revenues have rarely approached \$25 million in any fiscal year and have declined steadily over the past several years. We lost \$4 million in revenue after our Tribal-State Compact was finalized in 2004. We are not a “rich” gaming tribe. Yet this income has enabled us to significantly expand government services to our people, and provide over jobs for members and non-members alike. As of last month, the Tribe’s three casinos collectively employed 314 people.

The Colville Tribe uses eighty percent (80%) of its casino net revenues to fund essential tribal governmental functions, including services for elders, fire safety, police protection, gaming regulation, land use planning, social and health services, housing and education. We do not use any gaming revenues for per capita payments.

Because we are located in an economically depressed area, the Colville Tribe would like to expand its Class II gaming on several new sites. Like many other remote Indian tribes, we are too far from the urban population centers and major transportation corridors to become a major “Las Vegas” superpower in Indian gaming. Our proposed ventures would not change this outcome. Rather, it would provide us a chance to expand our market, recoup our post-Compact losses and generate additional, much-needed revenues to fund the Colville Tribal government, as well as provide jobs and economic growth for the area. Yet we face substantial hurdles, including the formidable obstacle created by NIGC’s proposed rule.

The Indian Gaming Regulatory Act (“IGRA”) has been the single most successful economic development legislation ever passed by Congress. As Chairman Hogen stated in an address to the Senate Committee on Indian Affairs on September 21, 2005, “In the years since [IGRA] was passed, Indian gaming has grown exponentially.... Revenues from Indian gaming have built roads, schools and health centers on reservations across the country and greatly reduced reservation unemployment in many areas.”

Chairman Hogen assured tribes in Tacoma last month that he’s trying to permit “a fun, profitable, attractive game that can be played in Class II....” With all due respect to Chairman Hogen, this proposed rule will have the opposite effect. The games under this rule will be exceptionally slow, less aesthetically pleasing, less enjoyable, far less appealing to players and dramatically less profitable than current Class II games. Noncompetitive machines and uninteresting facilities will result in a substantial loss of patrons and revenue, causing a disproportionate loss of jobs. Tens of thousands of American jobs will be lost in areas of this country that can least afford it. Colville is one of those areas.

The negative economic impacts of this proposed rule will have a ripple effect throughout non-Indian communities as well. When casino employment goes down, dependence on state and local support systems goes up. Severely limited governmental resources are stretched to the

breaking point. The ability to purchase goods and services is diminished. Businesses and lending institutions are impacted as well.

When citizens are gainfully employed in tribal casinos that require a satisfactory credit rating, clean criminal record, no contact with known criminals and maintenance of suitability for licensing, the ripple effect in state and local communities is enormous. There is a reduction of public entitlement costs, emergency room use, drug offenses, domestic violence, property crimes, alcohol related crimes, court hearings, incarcerations and unemployment claims. There is also an increase in employment, earnings and payment of taxes and a stabilization of family life that helps keep children in school and out of trouble. At CCT, we have seen a number of success stories where tribal members employed by our casinos have turned their lives around and become positive role models.

In Washington State, Indian gaming greatly benefits non-Indian communities. This is evidenced by the fact that fully 75% of tribal gaming casino employees are non-Indian. Casinos and other tribal businesses, although not directly taxed by the state, have spawned a \$3.2 billion “Indian economy” that generates jobs, spending and taxes throughout the region. Most of the purchases generated by this Indian economy are made off the reservation and are subject to state taxation. In Washington State, state and local taxes from Indian gaming total \$141 million annually.<sup>1</sup>

Class II gaming is a safety net for Tribes that cannot engage in Class III gaming. This Class II insurance policy is particularly important because of blanket prohibitions under state law for Tribes located in states that refuse to negotiate in good faith for Class III gaming. IGRA’s “good faith” requirements were effectively destroyed by the *Seminole* decision. The proposed Class II rules would effectively relegate Class II gaming to the junk heap, leaving tribes at the mercy of states for Class III activities.

Smaller tribes, as well as Tribes with limited income, will also be disproportionately impacted. Adding insult to injury, if they cannot afford to send representatives to meet with the NIGC, they are relegated to a “paper response” and effectively denied government-to-government consultations.

Chairman Hogen claims that there is a “desperate need to bring some clarity” to Class II gaming and has indicated that this proposed rule is for the benefit (and protection) of tribes. He says that the NIGC will no longer have to shut down Class III gaming (under the guise of Class II) and issue huge fines. With all due respect to Chairman Hogen, Colville does not share the confusion that the NIGC has over what constitutes a Class II bingo game, nor do the federal courts. In fact, this proposed rule would also outlaw the Class II electronic bingo games previously approved by the NIGC and Chairman Hogen’s own statement in a letter to the Oklahoma tribes, that “it doesn’t matter how the games look. If it is bingo, it is Class II.”

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<sup>1</sup> See p. 11, “The Character and Effects of the Indian Economy in Washington State,” Jonathan B. Taylor, Cambridge, MA, 07-10-06.

The NIGC has repeatedly told tribes that no economic impact study has been done. No determination has been made about the economic devastation this proposed rule will have in Indian country. Unfortunately, the NIGC has the cart before the horse. The Colville Tribe urges the NIGC to conduct and publish a thorough economic study before finalizing this proposed Class II rule. We ask that the NIGC stop the current regulatory train and:

- take into consideration both the considerable information obtained from tribes in response to the current proposal and the economic impact data from the study;
- should the NIGC decide to proceed with a revised Class II proposal, ensure that the proposal takes into consideration all of the above; and
- provide sufficient time and meaningful opportunity for additional tribal input *before* finalizing a Class II rule.

As the federal trustee under IGRA, the NIGC has a trust responsibility to promote tribal economic development, tribal self-sufficiency, and strong tribal government—not to be an agent of economic destruction. 25 U.S.C. § 2701(4). Congress enacted IGRA “to protect [Indian] gaming as *a means of generating tribal revenue.*” 25 U.S.C. § 2702(3) (emphasis added). However, this proposed rule would diminish tribal revenues by establishing an overly-restrictive regulatory regime that violates both the basic tenets of IGRA and long-standing federal policy.

Thank you for this opportunity to present the Colville Tribe’s views on these issues of critical importance to Indian Country. I would be pleased to answer any questions the Commissioners may have.