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Testimony
Before the Committee on Resources
United States House of Representatives

Hearing on the Second Discussion Draft of Legislation Regarding
Off-Reservation Indian Gaming
November 9, 2005

On Behalf of the Confederated Tribes of the Grand Ronde Community of Oregon (“Grand Ronde” or “Tribe”) I respectfully submit the following comments on Chairman Richard Pombo’s revised draft bill to restrict off-reservation gaming (“revised draft bill”). I also thank the distinguished members of the Committee on Resources for providing us the opportunity to submit testimony as part of this hearing on Chairman Pombo’s proposed legislation. Please make these comments part of the official hearing record.

Addressing off-reservation gaming is an extremely important issue to the Confederated Tribes of Grand Ronde and, I believe, all the people of the State of Oregon. In general, we have three main concerns: (1) an explosion of off-reservation casinos undermines the policy foundation of IGRA – self-sufficiency and economic opportunity – that has done so much good for all of Indian country, (2) an explosion of off-reservation casinos threatens continued public support for existing Indian gaming in Oregon and across the nation, and (3) each approval of another off-reservation casino sets a bad precedent that will forever change the nature and character of both the Indian gaming industry and the surrounding communities in which we live.

Mr. Chairman, these are not just my opinions or the opinions of Grand Ronde. Numerous public opinion polls taken in Oregon over the past year support my concerns about the impact of allowing more off-reservation casinos.

Over the last year, Grand Ronde has been an active participant in discussions on ways to deal with off-reservation gaming issues. Members of Grand Ronde Tribal Council and staff attended the Oversight Field Hearing on the original Discussion Draft regarding off-reservation gaming in Sacramento, California on June 6, 2005. The Tribe also spoke with Senator McCain during his visit to Oregon on October 24, 2005, and we attended a Senate Indian Affairs Committee oversight hearing on “Lands eligible for gaming pursuant to the Indian Gaming Regulatory Act” July 27, 2005. In addition, we have met with members of the Oregon and Washington Congressional Delegations both in Oregon and in Washington, D.C. to discuss our concerns. Tribal staff has met with and discussed off-reservation gaming issues with staff of the Committee on Resources and Senate Indian Affairs Committee.

Grand Ronde understands the concern over the growing number of tribes seeking to have lands taken into trust for gaming far from existing reservations, where they have no ancestral ties, or where other tribes have strong ancestral ties. We also believe strongly in the Indian Gaming Regulatory Act (IGRA) provisions which recognize the special circumstances of restored tribes and provide that lands restored to once terminated tribes should be available for gaming just as reservation land of non-terminated tribes is available for gaming. Therefore, Grand Ronde approaches cautiously the process of amending IGRA and opposes any IGRA amendment that would limit the Tribe’s ability to obtain off-reservation restored or aboriginal lands for gaming purposes.

Grand Ronde History

Grand Ronde is one of many tribes victimized by the federal Termination policy of the 1950s. In 1954, the federal government wrongly ended its recognition of the Tribe as a government destroying our tribal economy and Indian land base. After much struggle and sacrifice, the Tribe's federal recognition was restored on November 22, 1983, and a small fraction of our pre-termination reservation land base (9,811 acres compared to our original reservation of over 60,000 acres) was returned to the Tribe in 1988. In 1994, the Department of the Interior approved a compact between the Tribe and the State of Oregon for a gaming facility on approximately 5.5 acres of restored Tribal land. This land is within the Tribe's original reservation boundary. The Tribe, through Spirit Mountain Gaming, Inc., a tribally chartered corporation wholly owned by the Tribe, operates Spirit Mountain Casino on this restored land. The casino provides much needed revenue for Tribal government programs and on-reservation employment opportunities for our Tribal members. Spirit Mountain Casino is the primary revenue source for Tribally funded government programs.

Historic Opposition to Off-Reservation Gaming

Grand Ronde has invested millions of dollars in Spirit Mountain Casino and related facilities. We did so in reliance on the State of Oregon's long-standing Indian gaming policy that limited each tribe to one on-reservation casino. A policy that Grand Ronde has consistently supported. In 1996, the Tribal Council unanimously adopted a Resolution opposing "the efforts of other tribes to have land taken into trust for gaming outside of their original reservation boundaries or nonadjacent to their current reservation." Unfortunately, Oregon's Governor has implemented a change in Oregon's policy against off-reservation gaming by approving a compact with the Warm Springs Tribe for Oregon's first off-reservation casino on land that may be taken into trust in the Columbia River Gorge far from the Warm Springs approximately 640,000 acre reservation. The Cowlitz Tribe in Washington, through a partnership with the Mohegan Tribe, is attempting to develop a large casino on lands a little more than 15 miles north of Portland, Oregon, on lands which is outside the Cowlitz Tribe's historic lands. If either of these off-reservation casinos is built it will have serious detrimental effects on Grand Ronde's on-reservation casino with potentially devastating affects on our ability to provide critical governmental services and employment opportunities for our members.

Comments on Second Discussion Draft Legislation

Grand Ronde's history and experience as a restored tribe provides a background against which it views IGRA and the revised draft bill. Grand Ronde agrees with the revised draft bill's requirement that restored lands for gaming be lands where the Indian tribe has its primary geographic, social and historical nexus to the land. This is consistent with the Tribe's historical opposition to off-reservation gaming. We also agree that concurrence of nearby Indian tribes should be required before restored lands are acquired in trust for gaming purposes.

The revised draft bill, however, adds other requirements which are detrimental to restored tribes. It fails to recognize the disadvantages restored tribes have for gaming as such tribes are often restored with little or no land base. In comparison, non-terminated tribes, such as the Warm

Springs Tribe, have an advantage because they generally have large land base reservations on which to establish gaming operations.

Specifically, the revised draft bill requires (1) a Secretarial determination that the proposed gaming activity would not be detrimental to the surrounding community, (2) concurrence of both the Governor and State legislature, and (3) approval by a majority vote in a referendum by the county or parish with authority over the land that is contiguous to the lands acquired in trust for the purpose of gaming. Imposing these requirements on restored land within a restored tribe's aboriginal lands places restored tribes at a disadvantage to non-terminated tribes who do not have such onerous requirements.

Grand Ronde believes that state and local governments should be consulted on a government-to-government basis, but state and local governments should not have veto power over tribal development on restored lands. In addition, requiring concurrence of both the Governor and State legislature is inappropriate. On the issue of state concurrence, it should be left to each state to decide what elected body or bodies is authorized to concur with the Secretary's decision.

Adding a requirement of county or parish approval by referendum is inappropriate. This requirement adds a significant burden to county governments, many of which may not have a referendum process or the resources to hold referendum elections. In many cases, multiple referendums would be required because more than one county or parish is contiguous to the tribe's land. The fact is that under current law and practice, local governments can have significant input into the process of taking lands into trust. In practically all cases where land is taken into trust for gaming, the Bureau must prepare an environmental impact statement which affords opportunities for input by local governments. Tribes and local governments regularly enter into intergovernmental agreements for the provision of basic services, such as water, sewer, fire, and police. Grand Ronde has worked closely with its local water association and sanitary district to improve these critical systems not only to Tribal properties but to all members of the local community. Local Grand Ronde community fire and police services receive grant funding from revenues generated by Spirit Mountain Casino.

The revised draft bill provides under Sec. 2 "Statutory Construction" that the amendment is to apply prospectively and that compacts and other agreements that govern gaming on Indian lands in effect on the date of the enactment of the Act shall not be affected by the amendments made to the Act. This language is ambiguous. The term "other agreements" is not defined and may be interpreted to encompass a multitude of negotiated agreements. At a minimum this provision should be clarified to provide that Indian lands must be held in trust for the purpose of gaming at the time of the amendment.

Suggested Alternative Legislation

Grand Ronde appreciates the Committee's effort to address the important issues surrounding off-reservation gaming. We look forward to working with you and the other members of the Committee to address the issue of off-reservation gaming in a manner that is sensitive to the

unique situation of restored tribes. Grand Ronde has provided the Oregon Congressional delegation with proposed legislation to address some of these same concerns. Our proposed legislation adds the following new requirements for taking lands into trust under the two-part determination, land settlement, initial reservation of newly acknowledged tribe and restored lands exceptions:

- (1) the Secretary determines that the lands are in the State where the tribe resides or had its primary jurisdiction;
- (2) the Secretary determines that the tribe has ancestral or historic ties to the lands; and
- (3) the Secretary consults with and obtains the concurrence of other tribes that have an ancestral or historic tie to the lands.

A copy of this proposed legislation is attached to this written testimony as Attachment A. We believe, Grand Ronde's proposed amendment directly addresses the underlying issue of tribes seeking to acquire land in trust for gaming that is far from their reservation, where they have no ancestral or historic ties and where other tribes may have ancestral or historic ties. These additional requirements will help curb the growing trend or fear of "reservation shopping".

Conclusion

Gaming issues in Indian Country are important to sustaining the economy and welfare of Grand Ronde, our Reservation and our members. We appreciate the opportunity to provide you with our comments and proposed amendments. Please do not hesitate to call me with any questions at (503) 879-2353. Your staff should also feel free to call our Tribal Attorney, Rob Greene, at (503) 879-2270 with any questions.

**ATTACHMENT A:
CONFEDERATED TRIBES OF GRAND RONDE
PROPOSED AMENDMENT TO RESTRICT OFF-RESERVATION GAMING**

25 U.S.C. § 2719

Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless –

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and –

(A) such lands are located in Oklahoma and –

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when –

(A) lands are taken into trust

(i) following a determination by the Secretary, after consultation with the Indian tribe and appropriate State and local official that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(ii) as part of a settlement of a land claim; or

(iii) as part of the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or

(iv) the restoration of lands for an Indian tribe that is restored to Federal recognition; and

(B) prior to taking lands into trust

(i) the Secretary determines that the lands are in the State where the Indian tribe resides or has its primary jurisdiction; and

(ii) the Secretary determines that the Indian tribe has ancestral or historic ties to the lands; and

(iii) the Secretary consults with and obtains the concurrence of other Indian tribes that have an ancestral or historic tie to the lands.

(2) Subsection (a) of this section shall not apply to –

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled *St. Croix Chippewa Indians of Wisconsin v. United States*, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Title 26

(1) The provisions of Title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.