

**Testimony of J. Kurt Luger
Executive Director
Great Plains Indian Gaming Association**

**Before the Committee on Resources
U.S. House of Representatives**

**Concerning Gaming on Off-Reservation, Restored,
and Newly Acquired Lands**

March 17, 2005

Testimony of J. Kurt Luger, Executive Director Great Plains Indian Gaming Association

Introduction

Good Morning. Chairman Pombo and Members of the Committee thank you for inviting me to testify today concerning Indian gaming on off-reservation, restored, and newly acquired lands.

My name is J. Kurt Luger and I am a member of the Cheyenne River Sioux Tribe of South Dakota and my family resides on the Standing Rock Reservation near Ft. Yates, North Dakota. I serve as the Executive Director of the Great Plains Indian Gaming Association, which includes 28 Indian nations from North and South Dakota, Nebraska, Iowa, and Kansas. We work closely with both the National Indian Gaming Association and other regional Indian gaming associations, including the Minnesota Indian Gaming Association. At Great Plains Indian Gaming Association, my job is to alert our Member Tribes to the challenges that we face in Indian gaming and to provide training and technical assistance to our tribal government officials, tribal gaming commissioners, gaming management and staff.

At the outset, let me say that Indian gaming is working in rural areas of America. Indian tribes that faced 50, 60, and even 70% unemployment are now generating jobs not only for their own tribal members, but for neighboring non-Indians as well. I live and work in Bismarck, North Dakota so I will use the situation of the North Dakota Tribes as a representative example.

Indian Tribes in North Dakota

In North Dakota, 5 tribal governments operate Indian gaming facilities: the Three Affiliated Tribes of Fort Berthold – Mandan, Hidatsa, and Arikara; the Spirit Lake Sioux Tribe, the Turtle Mountain Chippewa Tribe, the Standing Rock Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe. Both the Standing Rock Sioux Tribe's reservation and the Sisseton-Wahpeton Sioux Tribe's reservation straddle the border with South Dakota.

Three Affiliated Tribes. The Three Affiliated Tribes, Mandan, Hidatsa, and Arikara, operate as a unified tribal government. These Tribes have occupied the Missouri valley for hundreds and thousands of years, planted corn, squash, and beans on the fertile flood plains, and hunted buffalo and wild game. Living in stockaded villages, the Three Affiliated Tribes were devastated by smallpox epidemics in 1792, 1836, and 1837.

Early on, the Three Affiliated Tribes established friendly relationships with the United States. They welcomed the Lewis and Clark expedition into their villages and assisted them on their journey. In 1825, the Mandan, Hidatsa, and Arikara Tribes entered into Treaties of Friendship and Trade with the United States, which states:

Henceforth, there shall be a firm and lasting peace between the United States and the [Mandan, Hidatsa, and Arikara Tribes].... *The United States ... receive the [Tribes] into their friendship and under their protection.*

The United States' treaty pledges of protection forms the basis for the Federal Indian trust responsibility. The traditional lands of the Mandan, Hidatsa, and Arikara encompassed an area of 12 million acres from eastern North Dakota to Montana and as far south as Nebraska and Wyoming. The Fort Laramie Treaty of 1851, congressional acts and executive orders reduced the Tribes' lands to 1,000,000 acres in western North Dakota.

In the early 1950s, the Three Affiliated Tribes were asked to undertake a tremendous sacrifice by allowing the United States to dam the Missouri River and flood their reservation. The original tribal headquarters was flooded and families were moved away from the fertile Missouri River flood plain up on to the high prairie. When Lake Sakakawea was formed by the dam, the new lake divided the reservation into three parts. The Tribes suffered an enormous loss of natural resources, including the most fertile land on the reservation, their community was divided and the small village life that many had known along the Missouri River was gone. The tribal headquarters were relocated four miles away in New Town, North Dakota. Today, the tribal population is about 10,000 with about 5,000 living on the reservation.

Spirit Lake Sioux Tribe. The Spirit Lake Sioux Tribe is composed of the Sisseton-Wahpeton and Yankton bands of the Dakota or Sioux Nation. Originally residing in Minnesota and eastern North Dakota, the Spirit Lake Sioux Reservation was established by the Treaty of 1867 with the United States. The Treaty of 1867 provides that: "The ... Sioux Indians, represented in council, will continue ... friendly relations with the Government and people of the United States...." The Treaty recognizes the Spirit Lake Sioux Reservation as the "permanent" reservation of the Tribe.

The Tribe has worked to develop jobs through manufacturing, providing Kevlar helmets and military vests to the Pentagon through Sioux Manufacturing Corporation, yet with a reservation population of over 6,000 people, the Tribe has struggled with 59% unemployment as the Defense Department budget was cut in the 1990s. The Spirit Lake Reservation encompasses 405 square miles north of the Sheyenne River in northeastern North Dakota.

Turtle Mountain Chippewa Tribe. The Chippewa or Ojibwe people originally inhabited the Great Lakes Region and began to hunt and trade in North Dakota in the late 18th and early 19th Centuries. Historically, the Chippewa and the Dakota fought wars with each other, but they settled their differences through the Treaty of Sweet Corn in 1858.

In 1882, Congress set aside a 32 mile tract in Northeastern North Dakota for the Turtle Mountain Band of Chippewa 11 miles from the Canadian border. With the passing of the great buffalo herds, the Chippewa turned to agriculture and ranching, and faced many difficulties due to encroachment by settlers. Today, almost 20,000 tribal

members live on the 6 x 12 mile Turtle Mountain reservation, and Belcourt, North Dakota has become the 5th largest city in the state.

Standing Rock Sioux Tribe. The Standing Rock Sioux Tribe is composed of Sitting Bull's Band, the Hunkpapa, and the Yanktonai, with some Black Foot Sioux on the South Dakota side. In the Fort Laramie Treaty of 1868, the United States pledged that: "The Government of the United States desires peace and its honor is hereby pledged to keep it." The Treaty also provides that the Great Sioux Reservation was to serve as the "permanent home" of the Sioux Nation.

Yet, in 1876, General Custer and the 7th Cavalry came out to Sioux country to force the Sioux tribes on to diminished reservations. In 1889, the Federal Government once again called on the Sioux Nation to cede millions more acres of reservation lands, and the Standing Rock Sioux Reservation was established by the Act of March 2, 1889. Sitting Bull had opposed the land cession and in 1890, he was murdered by BIA police acting in concert with the U.S. Cavalry.

The Standing Rock Sioux Reservation is composed of 2.3 million acres of land lying across the North and South Dakota border in the central area of the State. Like the Three Affiliated Tribes, the Standing Rock Sioux Tribe was asked to make a substantial sacrifice for flood control and ceded almost 56,000 acres of the best reservation land for Lake Sakakawea. Tribal members were removed from their traditional homes along the Missouri River flood plain and relocated well up above the river. Today, the population of resident tribal members is almost 10,000.

Sisseton-Wahpeton Sioux Tribe. Located in Southeastern North Dakota and Northeastern South Dakota, the Sisseton-Wahpeton Sioux Tribe has a total enrollment of over 10,000 tribal members and a resident population of about 5,000 tribal members. The Tribe was originally located in Minnesota, but pressure from white settlers pushed the Tribe westward. The Treaty of 1858 with the United States established the Sisseton-Wahpeton Sioux Reservation, which today has approximately 250,000 acres in North and South Dakota.

Indian Gaming in North Dakota

Since the beginning of tribal gaming in North Dakota, the primary function has been to provide employment and economic development opportunities. Indian gaming has also provided vital funding for tribal government infrastructure, essential services including police and fire protection, education, and water and sewer services, and tribal programs, such as health care, elderly nutrition, and child care.

There are five Indian gaming facilities in the state—Four Bears Casino & Lodge (Three Affiliated Tribes), Sky Dancer Casino & Lodge (Turtle Mountain), Spirit Lake Casino (Spirit Lake Sioux), Dakota Magic Casino (Sisseton-Wahpeton), and Prairie Knights Casino & Lodge (Standing Rock). Together, the gaming facilities employ almost 2,000 North Dakota residents. About 70% of the employees are tribal members,

and the balance are our non-Indian neighbors, and taking into account the multiplier effect of the \$112 million of economic activity generated by Indian gaming in North Dakota, Indian gaming generates an additional 2,000 jobs statewide. Since 1997, the combined economic impact of Indian gaming and related activity has exceeded \$1 billion statewide.

Tribal-State Relations

All of the North Dakota tribes have worked to maintain positive government-to-government relationships with the State of North Dakota. Our Tribal-State compact acknowledges that:

The Tribe and the State mutually recognize the positive economic benefits that gaming may provide to the Tribe[s] and to the region of the State adjacent to the Tribal lands, and the Tribe and the State recognize the need to insure that the health, safety and welfare of the public and the integrity of the gaming industry of the Tribe and throughout North Dakota be protected.

The Tribes in North Dakota have worked very hard to preserve a strong relationship with the State, and the State for, its part, has worked in good faith with the Tribes.

In fact, the State Attorney General is vested with authority to regulate gaming under state law and works with the tribal governments through our compacts. Attorney General Wayne Stenjem has complimented the tribal governments on our record of strong regulation and has cooperated with the tribal regulatory agencies to apprehend and prosecute those who attempt to cheat our casinos. The Attorney General has recognized that Indian gaming has created important jobs and generated vital revenue for tribal self-government and has made it clear that he is proud that the State of North Dakota has not asked for revenue sharing. State officials in North Dakota know that tribal governments have many unmet needs and it helps the whole state, when tribal governments have a way to create jobs and generate essential governmental revenue.

After Acquired Lands

In general, the Indian Gaming Regulatory Act is intended to strengthen tribal self-government by safeguarding Indian gaming as a way to fund essential tribal government infrastructure, services and programs. The Act establishes a general policy that Indian gaming shall be conducted on trust land acquired prior to its passage in 1988. Because of the complex history of Federal takings of Indian lands, Section 20 of the Act provides several necessary exceptions:

- Lands Contiguous to Indian Reservations or Within the Last Reservation of a Tribe No Longer Has Reservation Borders;
- Lands Recovered Under Land Claims;
- Lands for Newly Recognized Tribes; and

- Lands Acquired Through Consultation with Local Governments and Neighboring Indian Tribes and a Two-Part Determination by The Secretary of the Interior with the Concurrence of the State Government.

The first three exceptions for trust land within historic reservation boundaries, trust lands under land claims, and lands for newly acquired lands fall into the category of addressing problems created by the United States' historic takings of Indian lands and injustices. The last exception, however, is a discretionary exception that requires the development of a broad consensus that such an acquisition is in the best interests of the Tribe and not adverse to the surrounding community.

The Indian Tribes in North Dakota are engaged in gaming on Indian lands acquired prior to the Indian Gaming Regulatory Act, or in the case of the Sisseton-Wahpeton Sioux Tribe, on trust land acquired within the original boundaries of its reservation under the 1867 Treaty.

To date, there have been no off-reservation land acquisitions under the two-part Secretarial process. The Turtle Mountain Band of Chippewa has indicated that it is considering an off-reservation acquisition under the secretarial process set forth in Section 20.

Section 20 explains that the limitation on Indian gaming to lands acquired prior to 1988 shall not apply when:

The Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines 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 ... concurs....

25 U.S.C. 2719(b)(1) (emphasis added).

At the Great Plains Indian Gaming Association, we believe that under existing law it is very important for the Secretary of the Interior to thoroughly consult with local governments and "neighboring" Indian tribes. In fact, in North Dakota we all consider ourselves to be "neighbors" in the tribal community, and we believe that all Tribes should be consulted concerning any Section 20 after acquired land application in North Dakota or even near the North Dakota border in Minnesota, South Dakota or Montana. After all, while we live in areas that are large geographically, our population is small and we often draw our customer base from a substantial distance away. The same is true in other Great Plains states.

Committee Proposal

On behalf of the Great Plains Indian Gaming Association, I want to thank Chairman Pombo and the Committee for issuing this bill in a discussion draft. Working

with tribal government prior to the introduction of the bill honors our tribal government-to-government relationship with the Federal Government. We want to work with you as your process moves forward.

In summary, the Committee proposal would:

- Strike IGRA's existing Section 20(b) and substitute new provisions;
- A newly recognized tribe could conduct gaming on after acquired trust lands within the State where the Tribe has its primary geographic, social, and historical nexus to the land;
- A restored tribe could conduct gaming on after acquired trust land in the State where the Tribe has its primary geographic, social, and historical nexus to the land, so long as the Secretary determines that it is in the best interest of the Tribe, not detrimental to the surrounding community and the State, city, county, town, parish, village and any other local government concurs;
- The Secretary may designate two Indian Economic Opportunity Zones;
 - One on Existing Trust Land; and
 - One on Land to be Taken into Trust;
- On the Existing Trust Land, an Indian Tribe could participate in the Indian Economic Opportunity Zone provided the Secretary determines that it is in the best interest of each participating Tribe; that the State and local governments approve the project, the Tribe does not have ownership in another facility, and the "host" tribe may not receive more than 10% of the gross revenues as a management fee; and
- On the Land to Be Taken Into Trust, an Indian Tribe could participate in the Indian Economic Opportunity Zone provided the Secretary determines that it is in the best interest of each participating Tribe and lands are taken into trust for the benefit of each participating Tribe, the State and local governments approve the project; each Indian Tribe within 200 miles approves the project, and participating Tribes do not have an interest in any other facility.
- In addition, Indian tribes would be limited to conducting gaming in the State where they are primarily located, unless their reservation is along a border between states or overlaps the border.

Let me start by saying that we have made important employment, economic, social and governmental progress under IGRA, and we do not want to take a step backward. Therefore, we respectfully ask the Committee to work with us to protect IGRA and make sure that the only bill that moves forward is one developed by the Committee through the regular hearing process with the consensus of tribal governments. We do not want to be surprised by amendments on the House or Senate floor or in the Conference Committee that are not relevant to this issue or that undercut tribal rights to conduct Indian gaming as an exercise of Indian sovereignty.

Second, let me say, as I did in July – the Secretary needs to respect the interests of neighboring Indian tribes as well as tribes seeking to engage in new gaming projects. We know that your legislative process is going to take some time. Perhaps the Chairman

would consider writing a letter to the Secretary asking her to fully consider the interests of neighboring Tribes.

In our view, your draft bill would provide some clear rules for off-reservation gaming by eliminating the existing Section 20 process and substituting the Indian Economic Opportunity Zones. Before we take a final position on the draft bill, we will work with NIGA and NCAI in their Task Force meetings and we will jointly host the Task Force meeting in Minnesota on May 25th. Yet, as a preliminary matter, let me say please respect the interests of neighboring Indian tribes in both the Existing Trust and New Lands Zones. Please require agreement for tribal governments in both provisions.

On the other hand, we are also concerned about the heightened role for local governments. Local governments are just sub-units of States, so it should be enough for the Governor or the State Legislature to act on behalf of the state. We have a strong working relationship with our state governments, we think this provision could needlessly complicate that relationship. Let me be blunt, it is the State's job to make sure that the interests of local governments are protected. In addition, we do not want to see any precedent for the idea that tribal governments are subordinate to local governments. We have a direct government-to-government relationship with the Federal Government, and our tribal governments carry out our own governmental functions on our lands.

Finally, as someone who grew up on the Standing Rock Sioux Reservation in North Dakota, let me say that our Reservation was established before there were any state boundaries. We need to be very clear that Indian tribes who have Indian lands that overlap state boundaries, like the Standing Rock and Sisseton Wahpeton Sioux Tribes, must be respected by both state governments where their lands are located. This bill should not impact our Tribes with lands on both sides of the border.

Conclusion

In conclusion, I want to thank Chairman Pombo. We know you are trying to take on tough issues heads on. We respect that. But we also have some concern and want to move forward cautiously, with an opportunity for plenty of opportunity for all concerned parties to be heard. And, we want to be sure to protect Indian sovereignty and our right to self-government on our treaty lands throughout the process. We have fought for those rights for generations and we continue to fight to protect our reservation homelands to this day.

Again, thank you for the opportunity to testify today. Pilamayayelo.

As Chairman of the Great Plains Indian Gaming Association,
I concur in Mr. Luger's testimony.

Charles Murphy, Chairman, Standing Rock Sioux Tribe