

**Testimony of Todd Mielke, Spokane County Commissioner**  
**Before the House Natural Resources**  
**Subcommittee on Indian and Alaska Native Affairs**  
**September 19, 2013**

My name is Todd Mielke. I am a Spokane County Commissioner and currently serve as the President of the Washington State Association of Counties. Today I am speaking on behalf of Spokane County, Washington to discuss our experience with the Bureau of Indian Affairs and off-reservation gaming.

Spokane County enjoys generally constructive working relationships with other government jurisdictions, including local tribal governments, though that doesn't mean we always agree. On the question of whether the Spokane Tribe should be allowed to open an off-reservation casino, however, the County is deeply frustrated.

The County meets the criteria of the Department of Interior's definition of an "appropriate local official" in the regulations it uses to implement Section 20 of the Indian Gaming Regulatory Act (IGRA). As such, the County has provided written evidence of the clear and unambiguous detriment that the Spokane Tribe's proposed off-reservation casino would cause to Spokane County and the citizens we represent.

And while the BIA accommodated our and other local governments' efforts to submit evidence of the great harm that would be caused to our community as a result of the Spokane Tribe's proposal, we are very concerned that, at least up to this point, the BIA's process has not given those concerns the weight they deserve in determining whether or not to allow the Spokane Tribe to move forward. Why do I say this? Because the County has been informed that BIA's Regional Director has recommended that the Secretary issue a finding that the proposed casino will not be detrimental to the surrounding community despite the overwhelming evidence to the contrary.

This raises several very significant questions: who gets to define detriment? The local community in which the proposed off-reservation casino is to be located -- or the BIA? And what happens when, as in our case, we believe that a proposed off-reservation casino would have deep, un-mitigatable negative impacts and the BIA disagrees? I would submit that detriment has to mean something and that local government officials need to play a role in defining what that means for their jurisdiction.

I'd like to provide some context. More than a decade ago, the Spokane Tribe filed a request with the Bureau of Indian Affairs to have 145 acres of Spokane County land acquired in trust. The County opposed the trust acquisition because it did not want gaming on the proposed site. The Tribe, however, assured the County and the public that it did not plan to develop a casino. So without headquarters review or an EIS, the BIA acquired the land in trust. By 2007, however, the Tribe began to pursue a massive gaming operation on the site which would also include a 300-room hotel tower, a number of restaurants and bars, a convention/banquet area, and a significant retail complex.

The Spokane Tribe is not a landless tribe, nor does it lack for revenue from its business enterprises. In fact, it has one of the largest reservations in the Northwest, with more than 165,000 acres, including vast timber and other natural resource holdings. In addition, the Tribe has two other casinos and reported \$54 million in revenue for their Tribal Enterprises in 2011. I want the Spokane Tribe to succeed, and in my experience, they are highly effective at advocating for their interests. But I can't, as a representative of the over 485,000 residents of Spokane County support something that I know will be so detrimental to their future.

The opposition to the Tribe's proposal is extraordinary. In addition to the County, jurisdictions representing the vast majority of the area's residents including the nearby Cities of Spokane and Cheney have written to oppose the Spokane Tribe's proposed off-reservation casino because of the great harm it would cause their governments and their citizens. Additionally, the BIA has received letters opposing the Tribe's development from U.S. Representative Cathy McMorris Rogers; the current and former Secretaries of the State of Washington; numerous state Senators and Representatives, and the Spokane Chamber of Commerce, known as Greater Spokane Inc. Yet the Department has stated that public sentiment is not a legitimate basis for denying an application.

Only the City of Airway Heights, which represents less than 5,000 – or 1% - of the region's residents, supports the project. And only Airway Heights will receive any mitigation for the impacts the project would generate.

What's at stake is tremendously important - Fairchild Air Force Base. Spokane County is home to the only Air Force tanker base in the western continental United States. The base is responsible for refueling missions throughout the world, but is particularly important strategically for protecting the nation's western borders. It is also the economic driver of the region. Fairchild is the largest single site employer in Spokane and has an economic impact of approximately \$1.5 billion annually.

The Tribe, however, has proposed to build its casino and hotel tower 8/10ths of a mile from the Base's only runway, and less than a 1,000 feet directly beneath the tanker flight training path. Basic common sense dictates that building a casino and hotel tower that expect to see thousands of visitors each day will undermine the Base's ability to conduct effective, real-life mission training. Indeed, it is difficult to imagine an activity less consistent with the needs of a military base that trains tanker pilots in day and night operations than siting a brightly lit casino with thousands of visitors less than a 1,000 feet beneath training approaches. The County's land use regulations do not permit any concentrated development like what the Tribe is contemplating at the proposed site. Nor do the recently adopted Joint Land Use Study regulations adopted by all the regional jurisdictions in collaboration with the Department of Defense, except the City of Airway Heights, which has deviated from all other jurisdictions and within whose boundaries the casino-resort is proposed to be located.

The overwhelming regional opposition due to detriment should have resulted in a finding of detriment and a denial of the proposed gaming facility. Yet, as noted earlier, the Regional Director appears to have ignored this evidence and approved the project.

The Regional Office's disregard of the impacts on the surrounding community is not permitted under IGRA. Section 20 was included in IGRA to prevent the unfettered expansion of off-reservation casinos. The interpretation of IGRA has historically been to start from the perspective that off-reservation gaming is prohibited. In fact, the Department not only supported limiting the expansion of gaming, it presented a plan to Congress to restrict gaming to reservations. And the exceptions to the gaming prohibition were to be narrowly interpreted to permit landless and newly-recognized tribes to have the opportunity to have casinos in their historic territories -- not to permit tribes to expand beyond tribal lands because other locations were potentially more lucrative. And local jurisdictions were given deference in helping to determine what was best for their community.

Today, due to our own experience, it appears that those prior standards are in question. We have spent hundreds of thousands of dollars in data analysis only to have the Department apparently dismiss it, though, the BIA has informed the County that it is not permitted to see the Regional Director's decision.

In addition to how it determines community impacts, the Department changed how it evaluates the impact on tribes. Today, the department only measures whether the applicant tribe will be benefitted and the calculation it conducts is simple -- does the proposed site give the tribe greater access to a metropolitan area so that it can make more money? There is no longer consideration of whether another tribe has invested millions to develop a destination gaming resort on their reservation or whether it will be disadvantaged by being further away from metropolitan areas compared to their new competition. There is no longer consideration of whether a tribe that has previously met the standards for off-reservation gaming that the Department used to apply will be negatively impacted by this new competition. The end result of this new approach will be a race where tribes attempt to leap-frog to better locations, undermining the investments of other tribes and the impacts on the community at large. Off-reservation gaming will no longer be the exception to the rule -- it will be the rule.

In a state where governmental services are funded through the collection of sales and property taxes generated in the community, the BIA's actions have the effect of diverting limited tax dollars to a non-taxpaying entity. The community is subsidizing the gaming operation whether it supports the activity or not. The result is fewer tax dollars available to pay for roads, criminal justice systems, local schools, public transportation, and social services.

In closing, Spokane County's view is that the process is broken. BIA's policy towards off-reservation gaming has changed dramatically in a relatively short period of time. It appears to have abandoned the principle that off-reservation gaming is to be the rare exception. The Department is no longer an objective arbitrator of whether any standards are being met. The Department is clearly a project proponent.

If the Department can conclude that a proposed off-reservation casino that would be located directly beneath military training operations and which is opposed by 99% of the region will not be detrimental to the surrounding community, the detriment standard is now meaningless.