



April 29, 2024

Sent via Electronic Mail
tobiah.mogavero@bia.gov

Bryan Mercier, Regional Director
Bureau of Indian Affairs
Northwest Region
911 NE 11th Avenue
Portland, Oregon 97232

Re: **NOI Comments, Colville Tribes Fee-to-Trust and Casino Project - Respecting Tribal Territories When Siting Casinos**

Dear Regional Director Mercier:

As a State Representative, I believe that tribes are an integral part of this country's history, culture, and future. It is important to remember that Tribal Nations are sovereigns, each with their own peoples, histories, cultures and territories. Today, I write to express concern about the Confederated Tribes of the Colville Reservation's ("Colville") intent to establish and operate a gaming facility in Pasco, Washington, 165 miles south of their reservation and within another sovereign Nation's Treaty-defined Territory. I believe by granting the Colville their petition to establish and operate a casino in another Tribe's territory sets a very harmful precedent for expanding gaming beyond the State's intention to regulate gaming in a safe and respectful manner and enter into careful compact negotiations with federally recognized Tribes both within the State, and if this Colville petition is granted, potentially with those out of State Tribes whose ceded areas include Washington.

As I understand it, with the Treaty with the Yakamas of June 9, 1855, 12 Stat 951 ("Treaty of 1855"), the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") ceded certain rights to millions of acres of tribal land to the United States Government in exchange for the establishment of the Yakama Reservation and preservation of rights throughout the ceded lands. Article I of the Treaty of 1855 defines the scope of the Yakama Nation's ceded lands, their "Treaty Territory." The City of Pasco lies within this area. Colville does not have rights within this area or outside its reservation.¹ Nor does Colville have rights under the Treaty of 1855.²

The Colville Reservation was established by the Executive Order of July 2, 1872. Colville's Reservation was diminished by an 1891 Agreement where Colville sold the northern half of their Reservation for \$1,500,000.³ In *Antoine v. United States*, the United States Supreme Court held that the 1891 Agreement reserved Colville's off-reservation hunting rights only within the diminished northern half of its

¹ *Antoine v. United States*, 420 U.S. 194, 205 (1975).

² *United States v. Oregon*, 29 F.3d 481, 486 (9th Cir. 1994).

³ *Antoine*, 420 U.S. at 197-98.



Reservation.⁴ Accordingly, Colville’s rights are limited to within the exterior boundaries of their 1872 Reservation. Neither the Executive Order of July 2, 1872 nor the 1891 Agreement extended Colville’s rights beyond the exterior boundaries of their 1872 Reservation.

Colville has sought several times to gain usufructory rights outside of their 1872 Reservation boundaries by claiming rights under the Treaty of 1855. In *United States v. Oregon*, the United States District Court for the District of Oregon and the Ninth Circuit Court of Appeals both rejected Colville’s Treaty of 1855-related claims.⁵ The Ninth Circuit reasoned that “by deliberately separating from the Yak[a]ma Nation, [Colville] failed to maintain political cohesion with the tribal entity in which the treaty fishing rights are vested [i.e., the Yakama Nation].”⁶ Thus, Colville does not have off-reservation rights outside their 1872 Reservation, including within the exterior boundaries of the Yakama Nation’s Treaty Territory. In other words, Colville has no legal claim to the Yakama Nation’s Treaty Territory, including the City of Pasco.

From my understanding, Congress has generally limited new tribal trust lands to those lands which consolidate or strengthen tribal governance over reservations, reduce checkerboarding, or protect tribal homelands.⁷ This requires a connection between the location of new trust land to a tribe’s reservation or ancestral territory. Likewise, one of the main facts a tribe must include in an application to the Secretary for a gaming compact extension or amendment is the distance from the newly acquired trust land to the tribe’s headquarters.⁸ The Indian Gaming Regulatory Act also limits gaming activities on lands taken into trust after October 17, 1988, unless certain location-based conditions are met.⁹ Specifically, gaming on newly acquired trust land is permitted if the lands (i) are within or contiguous to the tribe’s reservation; or (ii) were acquired pursuant to a land claim settlement, for an initial reservation, or restoration of a tribe’s reservation after termination.¹⁰ Congress’ clear intention was to limit tribal gaming to tribal territories. Yet, Colville is seeking to open a gaming facility in the City of Pasco, 165 miles south of their headquarters and within the Yakama Nation’s Treaty Territory.

The Secretary may only allow gaming on newly acquired trust land that don’t meet the above requirements if, with the state governor’s concurrence, the Secretary determines that gaming is in the best interest of the tribe and is not detrimental to the local community.¹¹ Because the City of Pasco is in the Yakama Nation’s Treaty Territory, the Yakama Nation is a part of the local community impacted by a potential Colville casino in that area. A Colville casino in Pasco would most certainly be detrimental to the economic health of the Yakama Nation and the Yakama Nation’s tribal sovereignty over its Treaty Territory. Similarly, the Secretary must disapprove a gaming compact or amendment if it violates the trust obligations of the United States to Indians.¹² Allowing another tribe to establish a gaming facility in

⁴ *Id.* at 205.

⁵ 29 F.3d at 486.

⁶ *Id.*; see also 25 U.S.C. § 151.3(a).

⁷ *Id.*

⁸ 25 C.F.R. § 292.17(g).

⁹ 25 U.S.C. § 2719.

¹⁰ 25 U.S.C. § 2719(a), (b).

¹¹ 25 U.S.C. § 2719(b)(1)(A).

¹² 25 C.F.R. § 293.14(c).



the Yakama Nation's Treaty Territory without the Yakama Nation's consent is a violation of the United States Government's trust obligations to the Yakama Nation.

I share the Yakama Nation's concern and join in their opposition to another Tribe operating a casino in their Treaty Territory. Regardless of the Tribes involved, one Nation should not operate a gaming facility in another Nation's territory without the affected Nation's prior consent to do so. To allow this would go against the express intent of Congress. As stated above, it also goes against the careful planning and negotiations that occur with the State and Compacted Tribes. The Compacts entered into by the State and the Tribes are drawn up with the historical intention to limit and give exclusivity of gaming to Tribes.

The process for establishing a new Tribal gaming facility is intended to consider the economic benefit to the impacted community and to the governance of the individual Tribe. This is recognized in our State's laws as well as under the Indian Gaming Regulatory Act. Washington is proud of its history. To allow for the Colville Tribe to expand gaming beyond its own territory into another Tribe's territory heralds the coming of the day and the potential for any Tribe to do so. This goes against Washington's history of regulating gaming, and the State's history of respecting individual Tribal sovereigns in the compacting process.

This is not about supporting Colville or the Yakama Nation on this. Rather, this is about the precedent that would be set if Colville is permitted to establish and operate a casino over 100 miles away from their headquarters, and in the Yakama Nation's Treaty Territory without their consent. Although I do not oppose Colville opening a new casino, I respectfully recommend that they do so within their own territory.

Thank you for your attention to this vital matter of tribal sovereignty and economic development. Please contact me if you would like to discuss this further.

Sincerely,

Representative Gina Mosbrucker
Washington State Representative
14th Legislative District