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Testimony of Chairman Dallas Massey, Sr. White Mountain Apache Tribe Arizona

Oversight Hearing Regulation of Indian Gaming Tuesday, June 28, 2005

June 27, 2005

**WRITTEN TESTIMONY
of
Dallas Massey Sr.**

Thank you for inviting me to be part of these proceedings. My name is Dallas Massey Sr., Chairman, White Mountain Apache Tribe.

I am pleased to be able to add my remarks to those of Chairwoman Juan-Sanders and help you learn more about our system in Arizona. As the Chairwoman explained, gaming in Arizona is limited and regulated and is working for all of us.

The White Mountain Apache Tribe is located in east central Arizona on the Fort Apache Indian Reservation. Our land covers more than 1.6 million acres. The Tribe has over 12,000 members located on nine major reservation communities. Within our land base, our members experience serious poverty and unemployment. Our median family income is just \$9,200 a year. Our casino provides not only an important source of revenue, but it also is a major source of employment for our people.

For years, before gaming, my tribe struggled to move forward without adequate schools or housing, health care, roads, telephone systems, water, and police and fire protection. While gaming revenues

are helping us make strides, our needs are so overwhelming that my people often go without food, electricity, employment and shelter. Our average income is far below the federal poverty level and our unemployment rate is 60%.

We have many natural resources on our land – including timber. But we do not see our land as a resource to exploit. We manage our land with traditional techniques out of respect for the Creator and creation. At the same time, we understand the need to develop extensive infrastructure so we can attract ecologically compatible industry to selected areas of our reservation. These competing needs and commitments make it difficult for us to finance the most basic services for our people.

In the summer of 2002, the White Mountain Apache Tribe suffered a horrible loss when the Rodeo-Chedeski fire swept through our reservation. This was not only a physical but also an emotional loss because we feel such strong cultural ties to our land. To fight the blaze, we mobilized nearly 400 men and women. Still, the fire charred 276,000 acres of the Fort Apache Reservation. Our tribe has been working hard to salvage the forest and our economy, but because of the fire, the land scarred by the fire cannot be logged for 100 to 150 years. For the next 30 years, we will be cutting half of what the Tribe planned to harvest. Loss of income is exacerbated by job losses.

Even with the mill fully operating, unemployment on our reservation hovered at 60 percent. Without the mill operating, the casino becomes an even more critical source for employment.

With revenues from gaming, the White Mountain Tribal government is funding necessities like a daycare facility. We are making improvements to our schools, health care and housing. But building projects are costly and the needs, like our land base, are enormous.

Yet despite our daily struggle with severe revenue shortfalls, our tribe, like other Arizona tribes, is sharing a portion of our gaming revenues with the people of Arizona. In 2004, Arizona gaming tribes contributed nearly \$38 million in revenues sharing payments to the State. Revenues supported education, emergency health care, wildlife conservation and tourism throughout Arizona. Shared revenues also provided treatment and support to help problem gamblers. In addition, and as described in more detail below, part of this \$38 million funded the Arizona Department of Gaming's regulation of Indian gaming in the State. As Chairwoman Saunders explained, our revenue sharing system is unique. Because our compact ensures that tribes with casinos near urban locations pay the lion's share of revenue sharing, smaller, more rural tribes, like mine, are not unfairly burdened.

A Snapshot of Our Industry

In 2004, 21 tribes have compacts and 15 have gaming facilities, with 11,831 slot machines and 424 table games. To regulate the industry, Arizona tribes and the state of Arizona spend more than \$35 million annually in oversight. In total, the state has 567 regulatory employees, a number that is exclusive of NIGC staff. This equates to one regulatory employee for every 21 games. In comparison, Atlantic City, which has 34,225 games in play, has one regulatory employee for every 95 games; and Nevada, which has 211,760 games in play, has one regulatory employee for every 492 games. Arizona spends roughly \$3,000 per year per game for regulation, while Atlantic City, with an industry three times the size, spends \$672 per game per year and Nevada, with nearly twenty times the games, spends \$118 per game per year.

How did Arizona develop such a system?

Although tribes in Arizona have different backgrounds, cultures and competing interests, they united to agree upon a common policy for Indian gaming in Arizona. They gave up their parochial interests, which was not an easy decision or an easy process. Today tribes continue to be committed and dedicate tremendous resources to the

regulation of Indian gaming. Tribal governments are dedicated to building and maintaining strong regulatory systems because our sovereign authority, government operations and resources are at stake.

When Proposition 202 was passed by Arizona voters in 2002, it contained several innovations that, at the time, represented some of the best practices from around the country. For example, it details a progressive approach to revenue sharing. In the Arizona model, the more you make, the more you pay. Agreement on revenue-sharing was not an easy decision for tribal leaders to reach. Establishing a sliding scale from 1% to 8% made this easier to accept. Arizona tribes provide 12% of the State-shared revenue to local cities and towns, or through them, to qualified non-profits. In Arizona, more than 90% of the revenue sharing is paid by the large urban tribes who make the most revenues.

Another innovation is that the tribal-State gaming compacts only allow Arizona tribes to increase the number of slot machines they operate by leasing machine rights from other tribes that are not using their gaming rights. These arrangements are done on a tribal government-to-tribal government basis. For example, the Salt River Pima-Maricopa Indian Community contracted with the Havasupai Tribe which is located at the bottom of the Grand Canyon and the Hualapai

Tribe in northeast Arizona in Peach Springs to lease their machine rights. For the Havasupai, these revenues more than doubled the Tribe's annual budget.

And the Arizona model protects our exclusivity. Two so-called "poison pills" keep slot machine gaming and other potential gaming limited to the compacts.

Proposition 202 provided for additional regulation over Indian gaming by the Arizona Department of Gaming. Arizona gaming tribes contributed \$8 million to the Arizona Department of Gaming (ADOG) in 2004. The tribal contribution nearly fully funds ADOG, since its total budget is almost \$10 million. ADOG receives no State general funding. This increase in funding has enabled ADOG to grow from 75 full-time employees in 2003 to 105 full-time employees in 2004. ADOG receives additional funding from fees paid by gaming vendors and gaming employees for their State certification.

In addition to being licensed by the tribes, gaming vendors and gaming employees must be licensed by ADOG. That process includes background checks for suitability. ADOG also inspects Indian gaming facilities to review gaming transactions, the integrity of games, and vendor payments. Clearly, Indian gaming in Arizona is a highly regulated industry. In our industry, nothing is left to chance.

Our system is limited and regulated and it works. From our experience our model interprets the letter and the intent of IGRA. It generates revenues for tribes to encourage self-sufficiency and recognizes that tribal lands present tribes with different opportunities.

Therefore, we would like to be on record to remind the Committee that there are financial impacts and hardships to tribes when fees are raised. Arizona tribes are opposed to a fee system for NIGC that would create unfair burdens for those tribes least able to pay.

Arizona tribes also believe that revenue sharing should be capped to ensure that more money is generated for tribal needs and regulation rather than using revenues from tribal governmental gaming to offset state deficits. Senator McCain, when you drafted IGRA, you said no authority could tax Indian gaming revenues. Tribal governmental gaming was instituted to help tribes deliver essential government services to their members, not to provide state governments with a way to meet budget shortfalls.

Arizona tribes believe that tribal governments must retain the primary responsibility for regulating tribally-owned and operated gaming operations. Fifteen years of federal policy under the Indian Gaming Regulatory Act have created a highly developed, well funded, and extensive state-tribal regulatory system that should be supported

by the U.S. Congress and not supplanted with wasteful or duplicative federal regulations. The National Indian Gaming Commission's authority over class III gaming should be supplemental and deferential to class III regulation under negotiated tribal-state gaming compacts.

Arizona tribes already fully fund an adequate State-tribal regulatory system and should not be forced to pay for increases in National Indian Gaming Commission fees. Furthermore, any increase in the National Indian Gaming Commission's funding should be based on specific budget justifications submitted to the Appropriations Committee and not based on automatic funding increases.

Thank you for giving me the opportunity today to represent the White Mountain Apache Tribe. On behalf of Arizona tribes, we invite this Committee to come to Arizona and see our system working.