

# Statesman Examiner

The voice of Colville and Northeastern Washington since 1896

\$1.25

Wednesday, January 20, 2021

Vol.80 No.3

Watch Batteries

Jewelry Repair



Colville Jewelers

684-8821

## TRIBAL MEMBERS DISPUTE TAX

### Spokane attorney says fuel charges imposed on clients federal immunity

RaeLynn Ricarte  
Statesman-Examiner

Two Colville tribal members have filed a lawsuit alleging "illegal" taxation on fuel sales by the council, as well as a refund of back taxes collected by the Tribe.

Zachary Love, an attorney from the Spokane Valley firm of ZEL & Associates, is representing Michael Finley, owner of Inchelium Short-Stop, and Gene Nicholson, owner of Gene's Native Smokes in Oroville.

Both plaintiffs are enrolled members of the Confederated Tribes of the Colville Reservation. They are seeking nearly \$900,000 in damages, plus court costs and attorney fees.

"I think this case is important because it will set a precedent for all tribes that are federally recognized," said Love.

He filed the case Jan. 4 against the Bureau of Indian Affairs, United States Department of the Interior, the Confederated Tribes of the Colville Reservation and the Colville Business Council, which is the local governing body. The case will be adjudicated in Colville Tribal Court, which is located in Nespelem.

Love said the basis of the case is that tribes have immunity from payment of state and federal taxes, so his clients should not have been required to sign the "Fuel Tax Incentive Agreement" and collect sales tax from customers.

He said there are state and federal Supreme Court decisions to back up the sovereign immunity of tribes from taxation. He contends that the higher court rulings have precedent over the business



Photo by Taylor Newquist

See TRIBES, Page A5

Inchelium Short-Stop is shown above. The owner, Michael Finley, is one of two business owners challenging fuel sales rules.



## Health officials have both good, bad news about virus

RaeLynn Ricarte  
Statesman-Examiner

The good news is that COVID-19 cases in the area are showing a downward trend, but the bad news is that many people who have risked exposure to the disease by traveling are refusing to self-quarantine, say officials from the Northeast Tri County Health District.

"That is definitely not what we want to see happen," said Matt Schanz, director, at a media briefing on Friday.

He said that people refusing to follow guidelines to reduce the spread of COVID-19 are potentially putting the lives of others at risk. In addition, he said higher case counts can hold the area back from re-opening of the economy.

He said self-quarantine is one more layer of protection

for the community.

The health district has asked people traveling out of the state or the country to isolate for 14 days upon return, regardless of the reason for travel. That recommendation followed an increase of COVID-19 cases linked to holiday travel, said Schanz.

While it can be difficult for employers to have staffers self-quarantine, it may prevent a significant number of workers from getting sick and having to quarantine simultaneously, he said.

As of Monday press time, there had been 15 new cases in Ferry County in the last 14 days, 63 in Pend Oreille and 163 in Stevens.

Stevens County has the highest total positive case count, at 1,347, and the highest number of deaths, with 19.

There have been 525 pos-

itive cases (four deaths) in Pend Oreille to date and 190 (three deaths) in Ferry.

The state's recorded hospital count as of Jan. 18 was 78 patients from Stevens County, 35 from Pend Oreille and 12 from Ferry.

Schanz said health officials continued to work with community partners, including medical providers, to advocate for social distancing, masking and other measures that will help reduce spread of the virus so that businesses can fully reopen.

He said distribution of a vaccine to fight COVID-19 was underway and being implemented in phases. See related story, Page A2.

Because it took awhile to gather report information on vaccines, the numbers of those inoculated was higher than the data shows, said Schanz.

As of Monday press time, the state reported that 12,494 doses of the vaccine had been given. The two available vaccines are the Pfizer-BioNTech COVID-19 vaccine and the Moderna COVID-19 vaccine.

At the state level, the total number of confirmed COVID-19 cases in Washington was 289,939 with 16,448 hospitalizations and 3,903 deaths, a mortality rate of 1.3%.

Within the next few days, Schanz said new vaccination statistics would be unveiled on the state's COVID-19 data dashboard.

The dashboard will soon allow people to see how much of the population had started the two-dose series and what percentage has been fully vaccinated.

See HEALTH, Page A2

## Sheriff's Office asks for public help on cold case

RaeLynn Ricarte  
Statesman-Examiner

The Ferry County Sheriff's Office has granted a family's request to see if the public can help provide details about the death of an elderly man a little more than eight months ago.

"We want to give them some closure," said Sgt. Justin Knisley.

The body of Leroy Johnson, 77, was found April 8, 2020, on the rocks below an old bridge abutment along the Columbia River, south of the existing Highway 395 bridge in Ferry County.

Knisley said Johnson resided in a trailer park near the scene of his death. He said the man's remains were located by a passing motorist and reported to the emergency dispatch center.

Deputies arrived at the scene to find Johnson deceased and laying on the rocks. It appeared, said Knisley, that Johnson had been alive for a short time after the fall because there were signs that he had moved from the place of impact.

An autopsy revealed that he died from traumatic injuries brought by the fall, said Knisley. He said the sheriff's office determined after an investigation that the death was an accident and not the result of either a homicide or suicide.

"We believe he fell to his death and then succumbed to his injuries," said Knisley.

He did not know exactly how many feet Johnson fell, but said it was a "steep drop."

According to reports, Johnson set a mixed drink down on the abutment that he is believed to have been standing on. What happened from there is unknown because no witnesses have come forward, said Knisley. He said Johnson's family wanted to see if additional information was out there. For that reason, he is asking anyone who might have noticed anything in the area on or around the evening of April 7, 2020, or the morning of April 8, 2020, to call the Ferry County Sheriff's Office at 509-775-3132.

## New law allows prisoners to request a new sentence



17,845

WA INMATE POPULATION

\$46,897

YEARLY COST PER PRISONER

182%

PRISONER INCREASE SINCE 1983

RaeLynn Ricarte  
Statesman-Examiner

Stevens County Prosecutor Tim Rasmussen has taken steps to respond to requests from prisoners for re-sentencing, as allowed by a new law that state legislators approved for situations when the "original sentence no longer advances the interests of justice."

Senate Bill 6164 was approved by the Legislature in 2020 and

signed into law by Gov. Jay Inslee last summer. It authorizes prosecutors to petition Superior Courts to reduce the amount of time that an offender spends behind bars. Requests for re-sentencing only move forward with the prosecutor's approval.

Rasmussen said the legislation offered little in the way of guidance about which sentences should be considered for a reduction, or how requests should be evaluated. So, he spent several

months looking at protocols put in place in other counties and then adapted those standards to fit Stevens County.

"We have developed a protocol to create a fair and just process that makes efficient use of scarce prosecutorial resources," he said.

Rasmussen established the Stevens County Sentence Review Committee to review

See LAW, Page A2

Inside

Business: Colville Mountain matches grant, Page A5  
Opinion: Readers have lots to say in letters, columns, Pages A3,4  
Sports: Nitehawk paint ball holds games, Page B1



(USPS 520-680)

## Weekly weather

Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday
January 20	January 21	January 22	January 23	January 24	January 25	January 26
						
10% chance rain	20% chance rain	15% chance rain	5% chance rain	45% chance snow/rain	45% chance snow/rain	35% chance snow
High <b>35</b> Low <b>23</b>	High <b>32</b> Low <b>21</b>	High <b>32</b> Low <b>13</b>	High <b>29</b> Low <b>13</b>	High <b>28</b> Low <b>20</b>	High <b>32</b> Low <b>21</b>	High <b>32</b> Low <b>21</b>

10-Day forecast collected from the Weather Channel on Jan. 18

## Statesman-Examiner

**Location**  
220 S. Main St.  
Colville, WA 99114

**Mailing address**  
P.O. Box 271  
Colville, WA, 99114  
statesmanexaminer.com  
Telephone: 509-684-4567  
Fax: 509-684-3849

Serving Northeast  
Washington  
since 1896

**Management**  
RaeLynn Ricarte  
General Manager  
Cindy Montgomery Bookkeeper

**Circulation**  
Chris McIlroy  
Specialist

**Advertising**  
Shannon Chapman  
Sales Lead  
Chris McIlroy  
Sales Consultant

**Newsroom**  
Michael Brock  
Deer Park Editor  
Taylor Newquist  
Sports Editor

**Pressroom**  
Josh Martin  
Manager  
Ben Rochon  
Pressman  
Matt Rochon  
Delivery Driver

**Subscription Rates**  
(Payable in advance)  
Stevens, Ferry, Pend  
Oreille Counties

One-year	\$38
One Year (senior)	\$35
Nine-month	\$33
Six-month	\$29

Out of Area

One-year	\$46
Nine-month	\$39
Six-month	\$34

**Obituary Rates**  
(Payable in advance)  
The Statesman-Examiner  
publishes paid obituaries  
and free death notices.  
Obituaries cost \$70 for the  
first 200 words, plus 20  
cents for each additional  
word. One-column photo-  
graph included, additional  
\$10 each. Must be prepaid.  
Death notices should  
include name, age, home-  
town, date and location of  
death; and date and loca-  
tion of services. For more  
information, email [obits@statesmanexaminer.com](mailto:obits@statesmanexaminer.com)  
or call 509-684-4567.

  

Like us on Facebook:  
[www.facebook.com/SENNewspaper](http://www.facebook.com/SENNewspaper)  
Follows us on:  
Twitter: @SENNewsteam  
Instagram:  
[@statesman.examiner](https://www.instagram.com/statesman.examiner)

  
Washington Newspaper Publishers Association  
EST. 1997

## Corrections

The Statesman-Examiner strives to provide accurate information for readers and advertisers.

However, errors and clarifications do occur and we want to set the record straight as soon as possible.

Email corrections to [editor@statesmanexaminer.com](mailto:editor@statesmanexaminer.com) at your earliest opportunity. Corrections will be published here.

## COVID vaccine appointments available for scheduling

Statesman-Examiner

The Northeast Tri-County Health District released an update on the next phase (B1) of vaccinations to be scheduled in Ferry, Pend Oreille and Stevens counties last week.

All people over 70 years old and those over 50 in a multi-generational household are able to schedule an appointment to receive the vaccine, dependent upon availability. Those who qualify should contact their local health care provider from the following that will be administering vaccinations:

Ferry County Health – [www.fcphd.org](http://www.fcphd.org) – (509) 775-8686

Newport Hospital and Health Services – [www.newporthospitalandhealth.org](http://www.newporthospitalandhealth.org) – (509) 447-6332

Newport Safeway Pharmacy – <https://bit.ly/3qhguUX>

NEW Health Programs – [www.newhp.org](http://www.newhp.org) – Colville (509) 684-1440 – Chewelah (509) 935-8424 – Nine Mile Falls (509) 464-3627

Providence Health Care (Mount Carmel/St. Joseph's) – [coronavirus.providence.org](http://coronavirus.providence.org) – (509) 685-5300

Colville Safeway Pharmacy – <https://bit.ly/3sxaKbM>

Those who do not meet the current criteria are being asked to wait to call for an appointment until their group becomes eligible.

The Washington State Department of Health anticipates the next phase (B2) to become eligible in February for high-risk critical workers who are 50 years or older, and work in agriculture, food processing, grocery stores and K-12. The B3 phase will come in March for those 16 years or older with two or more underlying conditions. The B4 phase is anticipated for April for high-risk critical workers under 50 in the fields mentioned in B2.

## Health

Continued from Front Page

As of Jan. 12, the state had received 624,975 doses of vaccine, with another 123,275 costs due to arrive the same week.

The supply was sent to 142 county sites and 11 tribal sites.

Schanz said the health district was concerned about having Stevens, Ferry and Pend Oreille counties included in the same region to drive reopening as Spokane County, the second largest city in Washington.

Due to Spokane's high population rate, the number of cases was much higher and could affect the ability of the rural areas to move

into Phase 2 of Gov. Jay Inslee's Roadmap to Recovery plan.

"No matter what we do to drive down rates, it won't matter very much if we're lumped into a great population center," said Schanz.

Spokane County currently has 30,756 total positive cases, resulting in 1,625 hospitalizations and 415 deaths.

Schanz and Dr. Sam Artzis, health officer, said they were advocating to have the rural counties viewed separately but, at the same time, were appreciative of the support that Spokane County provided for hospitalized patients.

Colville School Supt. Pete Lewis also participated in the press briefing. He said administrators were looking at ways to provide students with more in-class time.

"We want to figure out ways to get kids back to school," he said.

Schanz said schools and businesses are following guidelines to help reduce COVID-19 cases:

- Requiring everyone to wear a mask or face covering when indoors where it is difficult to maintain physical distancing of at least 6 feet.

- Asking people to stay home when sick.

- Requiring non-essential employees to stay home and away from others if they are awaiting the results of a COVID-19 test or have been notified that they are in a close contact of a positive case (for 14 days since last exposure).

For more information about COVID-19 in the local area, visit [www.netchd.org/wa.gov](http://www.netchd.org/wa.gov) or call 509-684-1301.

## County case has final trial court hearing

RaeLynn Ricarte  
Statesman-Examiner

Spokane Superior Court Judge Maryann Moreno recently ruled that three county commissioners — two no longer in office — had to refund pay and benefits they received between Aug. 20 and Aug. 31 in 2020.

Moreno determined after hearing arguments from lawyers on both sides that the county officials should refund a total amount of \$6,728.

Wes McCart, who was re-elected to his District 1 seat, and former commissioners Don Dashiell and Steve Parker, had argued that they should owe only the amount they received, a total of \$3,441. McCart said that calculation was supported by an opinion from his wife, Pam, who is treasurer for the town of Chewelah.

Because the commissioners are salaried workers, McCart said their calculations were based upon a 31-day month with 20 work days.

"We weren't arguing that we

didn't owe the money — all we wanted to do was pay the right amount," said McCart.

Moreno agreed with the George Ahrend, the special deputy prosecutor that Stevens County Prosecutor Tim Rasmussen had hired to handle the case. He argued that the gross amount the commissioners received while their offices were vacated needed to be returned because those funds had been paid out to other agencies at a cost to local taxpayers.

His argument was based upon calculations made by Stevens County Auditor Lori Larsen.

The commissioner's attorney, Alison Turnbull, argued that Larsen did not process payroll, nor had she ever done so in the past, so her calculations were not correct.

She told Moreno that McCart's wife had been managing payroll for many years, so was knowledgeable about the issues.

There are no more matters to be decided in the suit that was brought by Rasmussen almost two years ago to recover \$130,000 in

homelessness funds the commission approved for two private projects.

After McCart, Dashiell and Parker repaid the \$130,000 that Rasmussen demanded, Moreno determined they also owed \$54,000 of interest, plus several thousand in other costs.

"I am glad to see this mess ending," said Rasmussen. "I wish it had never happened, but I am satisfied that I did what my duty required me to do."

He brought the case against the commissioners after getting a state auditor's opinion that they had unlawfully gifted public funds to help two private parties resolve housing issues.

In August, Moreno determined the commissioners had committed unconstitutional acts, which forced them to leave office. McCart returned to his post for a new term after being elected by a sizable majority vote in November.

The larger monetary judgment leveled against the commissioners in September is under appeal.

## Law

Continued from Front Page

resentencing requests on a case-by-case basis. The committee is made up of attorneys in the prosecutor's office and may include a non-attorney staff member as needed.

The group will convene quarterly to consider requests from offenders and to consider cases independently identified by members of Rasmussen's staff as possible candidates for resentencing.

Currently, there have been about a dozen requests for resentencing, he said.

"Some more or less demand a resentencing, while others are thoughtful and actually provide a reason why they believe that being in prison no longer serves the interest of justice," said Rasmussen.

"Some of the requests are from persons who were convicted of murder and who received long sentences, but some are from folks who will be released soon and do not want to serve the last few months of the sentence they received."

When asked who might be a candidate for resentencing, Rasmussen said it might include a 72-year-old man who was sentenced to 34 years in prison for murder and has six years remaining.

"Has justice been served? Probably," said Rasmussen.

He said the law was ap-

proved to address situations such as that of a local man given a mandatory minimum sentence of more than 1,000 months for possessing stolen firearms. The law required a series of consecutive sentences that added up to that time because the man was a previously convicted felon. One of the guns that he had stolen was later used in a homicide, said Rasmussen.

In order to be given consideration for resentencing in Stevens County, the offender must submit a written application that includes a discussion of the criteria justifying less time, the final charging document that was the basis of the conviction, the original charging document (if available), the official statement of the defendant to a guilty plea if applicable, and the final judgment and sentence.

The prisoner should also submit relevant records, such as programmatic achievements, infraction history, behavior and substance abuse treatment records, medical documentation (if relevant) and a release plan.

An offender whose request is rejected for any reason cannot reapply for two years under Rasmussen's protocol.

Sentences that do not qualify under the new law for any type of revision are: Life for aggravated first-degree murder; life for being a habitual offender; enhancements for firearms and deadly weapons; the mandatory 20-year

sentence for first-degree murder; five-year minimum for first-degree rape; and five years for sexual violence.

Rasmussen said victims and survivors will be notified if a petition for resentencing is granted. Victims will have an opportunity to be heard.

"This is a very important statutory right," he said.

Rasmussen's criteria for determining the worthiness of a petition for resentencing includes:

- Whether the offender was a juvenile or "emerging adult" at the time of the crime.

- Whether in a non-homicide/nonsexual assault case, the offender was sentenced to more than 25 years.

- Whether changes in sentencing laws or other legislative policies would have resulted in a different amount of time today.

- Whether there is evidence (not just speculation) that bias based on membership in a protected class tainted the investigation or court proceedings.

- Whether the offender is of such an advanced age that he or she presents little to no risk of harm to any person.

- Whether an offender suffers from a life-threatening medical condition, or is terminally ill.

- The amount of time the offender has served and the amount remaining.

- Whether the case would not meet current charging standards.

- Whether domestic vi-

olence or sexual abuse is a mitigating factor in the offense.

Prior to passage of the new law, Rasmussen said neither a prosecutor nor a court had direct authority to provide someone with relief from a valid judgment unless there were legal or procedural defects.

A trial court's belief that the legal consequences of a conviction were "too harsh" did not justify vacating a conviction, said Rasmussen.

The new law recognizes that the purpose of sentencing is to advance public safety through punishment, rehabilitation and restorative justice.

Supporters of the law contend that prosecutors have been given a new tool to ensure that these purposes are achieved.

The factors that a court may consider for resentencing include:

- The inmate's disciplinary record and record of rehabilitation.

- Evidence that reflects whether age, time served and diminished physical condition, if any, have reduced the inmate's risk for future violence.

- Evidence that reflects changed circumstances since the inmate's original sentencing so that his or her incarceration no longer serves the interest of justice.

If the court grants the petition, it "shall resentence the defendant in the same manner as if the offender had not previously been sentenced." Judges may choose not to grant a new

sentence but they are prohibited from imposing one that exceeds the original sentence, said Rasmussen.

Even if sentencing laws have changed, the new sentence is still governed by the laws in effect at the time of the crime.

Rasmussen said victims and survivors will be promptly notified of the outcome of the judge's ruling on resentencing.

Although he is compelled to comply with the new law, Rasmussen doesn't necessarily agree with the motivation behind its passage.

"This whole business is the result of the increasing desire in our state to not hold people accountable for their misconduct," he said.

"In the recent past, we have seen changes that limit the court's ability to impose financial obligations as punishment and sentencing changes that reduce the time served for offenses."

He said an outrageous example of this movement is a recent proposal being considered by the City of Seattle that a person cannot be prosecuted for stealing if they needed the items they shoplifted and did not have the money to buy them.

"This is the so-called 'poverty defense,'" he said.

Rasmussen said the purpose of the criminal justice system is to hold people accountable for the harm they do and make sure that victims receive justice. He does not support any deviations in law that do not accomplish both of those purposes.