

**TESTIMONY OF
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OFFICE OF THE ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 2938**

October 4, 2011

Good afternoon, Mr. Chairman and Members of the Committee. My name is Paula Hart. I am the Director of the Office of Indian Gaming in the Office of the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's testimony on H.R. 2938, the 'Gila Bend Indian Reservation Lands Replacement Clarification Act', which is a bill that if enacted would prohibit Class II and Class III gaming activities on certain lands in Arizona.

Background

The Tohono O'odham Nation (Nation) is a federally recognized tribe located in southern and central Arizona. The Nation has approximately 30,000 enrolled members, and has one of the largest tribal land bases in the country.

The San Lucy District is a political subdivision of the Nation. It was created by Executive Order in 1882 and originally encompassed 22,400 acres of land. In 1960, the U. S. Army Corps of Engineers (Corps) completed construction of the Painted Rock Dam on the Gila River. Both the Bureau of Indian Affairs (BIA) and the Corps assured the Nation that flooding would not impair agricultural use of lands within the San Lucy District.

Nevertheless, construction of the dam resulted in continuous flooding of nearly 9,880 acres of land within the San Lucy District, rendering them unusable for economic development purposes. Included among the destruction was a 750-acre farm that had previously provided tribal revenues. The loss of these lands forced a number of the Nation's citizens to crowd onto a 40-acre parcel of land.

Gila Bend Indian Reservation Lands Replacement Act P.L. 99-503

Congress first moved to remedy the plight of the Nation's San Lucy District in 1982, when it directed the Secretary of the Interior to study the flooding and identify replacement lands within a 100-mile radius. After attempts to find replacement lands failed, Senators Barry Goldwater and Dennis DeConcini, along with then-Congressmen John McCain and Mo Udall, sponsored legislation to resolve the situation.

Congress enacted the Gila Bend Indian Reservation Lands Replacement Act (Public Law 99-503) (Gila Bend Act) in 1986 to redress the flooding of the Nation's lands.

The Gila Bend Act authorized the Nation to purchase private lands as replacement reservation lands. It authorized the Secretary of the Interior to take up to 9,880 acres of land in Pima, Pinal, or Maricopa Counties into trust for the Nation, subject to certain other requirements, and mandated that the land "*shall be deemed to be a Federal Indian Reservation for all purposes.*"

Assistant Secretary's Decision

The Nation purchased a 53.54 acre parcel (Parcel 2) in Maricopa County, Arizona, and requested that the Secretary acquire the land in trust pursuant to the Gila Bend Act. On July 23, 2010, Assistant Secretary Echo Hawk issued a letter to Ned Norris, Jr., Chairman of the Tohono O'odham Nation, stating that the Nation's request for the trust acquisition of Parcel 2 satisfied the legal requirements of the Gila Bend Act and that the Department was obligated to, and therefore would, acquire the land in trust pursuant to congressional mandate. This decision is currently the subject of several lawsuits, one of which is pending before the United States Court of Appeals for the Ninth Circuit.

H.R. 2938

H.R. 2938, the Gila Bend Indian Reservation Lands Replacement Clarification Act would amend the original Gila Bend Act of 1986, by adding at the end of "*Any such land which the Secretary holds in trust [pursuant to the Gila Bend Act of 1986] shall be deemed to be a Federal Indian Reservation for all purposes,*": "except that no class II gaming or class III gaming activities, as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), may be conducted on such land."

The Department opposes H.R. 2938.

Congress was clear when it originally enacted the Gila Bend Act in 1986, where it stated that replacement lands "*shall be deemed to be a Federal Indian Reservation for all purposes.*" By this language, Congress intended that the Nation shall be permitted to use replacement lands as any other tribe would use its own reservation trust lands.

The Gila Bend Act was intended to remedy damage to the Nation's lands caused by flooding from the construction of the Painted Rock Dam. The United States and the Tohono O'odham Nation agreed to the terms of the Gila Bend Act, which included restrictions on where and how the Nation could acquire replacement lands. H.R. 2938 would impose additional restrictions beyond those agreed upon by the United States and the Tohono O'odham Nation 25 years ago. The Department cannot support unilaterally altering this agreement so long after the fact.

While the purpose of H.R. 2938 may be to restrict the Nation from conducting gaming on the 53.54 acre parcel in Maricopa County, Arizona, the effect of H.R. 2938 would reach *all* lands under the Gila Bend Act – including those that have already been acquired.

H.R. 2938 could also alter established law that prohibits gaming, authorized under the Indian Gaming Regulatory Act (IGRA), on lands acquired by the Secretary into trust for the benefit of an Indian tribe after October 17, 1988, except in certain circumstances. The effect of this legislation would be to add a tribe-specific and site-specific limitation to IGRA's prohibition. The process for determining whether lands qualify for an exception to this prohibition is firmly established.

The Department is aware that the Nation's request to acquire land in trust for gaming purposes in Maricopa County has been the subject of significant contention among tribes and local governments in the State of Arizona. As previously noted, the Assistant Secretary's decision on July 23, 2010, to approve the trust acquisition pursuant to congressional mandate has been the source of litigation, which is still pending. However, IGRA already establishes a process to determine whether lands are eligible for gaming, and that question is pending before the Department. The Department's opposition to H.R. 2938 is not based upon any particular analysis of whether the land in Maricopa County would be eligible for gaming, but rather for the other policy concerns expressed in this testimony.

The Department respects Congress's authority to legislate in this area. However, we are concerned about establishing a precedent for singling out particular tribes through legislation to restrict their access to equal application of the law. This Administration has consistently held the position that fair and equal application of our laws toward all tribes is essential to upholding the United States' nation-to-nation relationship with Indian tribes.

For these reasons, the Department opposes H.R. 2938. This concludes my prepared statement. I am happy to answer any questions the Subcommittee may have.