

ISSUE BRIEF: THE UNITED STATES' OBLIGATION TO REPLACE DAMAGED RESERVATION LAND



Background

The Tohono O'odham Nation is a federally recognized tribe located in southern and central Arizona. With 28,000 members, it has the second largest tribal land base in the country and historically it is one of the most impoverished regions in the U.S.

In the early 1980s, the federal government's construction of the Painted Rock Dam caused continuous flooding, ruining thousands of acres in the Nation's San Lucy District. To remedy this, Congress passed the Gila Bend Indian Reservation Lands Replacement Act (Public Law 99-503), which allowed the Nation to purchase replacement land and mandated that the Secretary of Interior take land meeting the law's requirements into trust.

The Nation purchased property in 2003 that meets all criteria in the Act and it is now seeking to place the land into trust so that it can be used for economic development purposes.

San Lucy District and Painted Rock Dam

San Lucy District, a political subdivision of the Tohono O'odham Nation, was created by Executive Order in 1882 and originally encompassed 22,400 acres of land.

In 1960 the U. S. Army Corps of Engineers completed construction of the Painted Rock Dam on the Gila River. Both the Bureau of Indian Affairs (BIA) and the Corps assured the Nation flooding would not harm agricultural use of lands within the San Lucy District. However, 9,880 acres were rendered unusable for economic development purposes due to continual flooding in the late 1970s and early 1980s. Included among the destruction was a 750-acre farm that had previously provided tribal revenues. The loss of these lands forced tribal members to crowd into a 40-acre parcel of land.

Congress Passes Gila Bend Indian Reservation Lands Replacement Act

Congress first moved to remedy the plight of the 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 lands failed, Senators Barry Goldwater and Dennis DeConcini, and Congressmen John McCain and Mo Udall, sponsored legislation that became the Gila Bend Indian Reservation Lands Replacement Act to resolve the situation.

The Act was signed into law in 1986. The law authorizes the Nation to purchase up to 9,880 acres of private lands located in Pima, Pinal, or Maricopa Counties as replacement reservation lands.

It also provided funds for land and water rights acquisition, economic development, and relocation costs. The Law also

requires the Secretary of the Interior to take replacement land into trust for the Nation and dictates that the land "*shall be deemed to be a Federal Indian Reservation for all purposes.*"

Indian Gaming Regulatory Act (IGRA)

IGRA was passed by Congress in 1988 and allows tribes to conduct gaming on their lands. IGRA generally prohibits gaming on reservation lands acquired after 1988 but explicitly includes limited exceptions which are intended to assist tribes that were disadvantaged when IGRA was enacted in 1988.

One exception is for "lands taken into trust as part of the settlement of a land claim." The purpose of this exception is to provide the same legal rights and protections for replacement lands acquired in land claim settlements as would have been available to the lands taken from the tribe. Under the Gila Bend Indian Reservation Lands Replacement Act, the federal government settled claims for the Nation's loss of lands and promised to take replacement lands "suitable for sustained economic use" into trust.

Proposition 202

In 2002 Arizona voters passed Proposition 202 which established updated guidelines for Indian gaming and ensured its continuation well into the future. Because it is one of the largest tribes in Arizona, the Proposition also allows the Nation to construct two additional casino operations.

The Nation's Property

In 2003 the Nation acquired a 135-acre parcel in unincorporated Maricopa County near Glendale. The property is adjacent to Northern Avenue between 91st Ave and 95th Ave. The land meets all requirements of the federal law.

The Nation plans to construct a state-of-the-art integrated resort and casino for economic development purposes. In addition to a casino, the new resort will include a hotel, retail shops and many other top amenities that compliment the Glendale community.

Conclusion

The Nation has a right under the Reservation Lands Replacement Act to acquire land within Maricopa County to replace lost tribal lands, and IGRA permits gaming on the acquired land. Under Proposition 200, Arizona voters authorized the Nation to construct additional casinos.

The Nation is committed to building an integrated resort and casino and being a good neighbor to the Glendale community so that it can continue to provide desperately needed services to its members.