112TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
112–440

GILA BEND INDIAN RESERVATION LANDS REPLACEMENT CLARIFICATION ACT

APRIL 16, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2938]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2938) to prohibit certain gaming activities on certain Indian lands in Arizona, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gila Bend Indian Reservation Lands Replacement Clarification Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 1986, Congress passed the Gila Bend Indian Reservation Lands Replacement Act, Public Law 99–503, 100 Stat. 1798, to authorize the Tohono O'odham Nation to purchase up to 9,880 acres of replacement lands in exchange for granting all right, title and interest to the Gila Bend Indian Reservation to the United States.

(2) The intent of the Gila Bend Indian Reservation Lands Replacement Act was to replace primarily agriculture land that the Tohono O'odham Nation was no longer able to use due to flooding by Federal dam projects.

(3) In 1988, Congress passed the Indian Gaming Regulatory Act, which restricted the ability of Indian tribes to conduct gaming activities on lands acquired after the date of enactment of the Act.

(4) Since 1986, the Tohono O'odham Nation has purchased more than 16,000 acres of land. The Tohono O'odham Nation does not currently game on any lands acquired pursuant to the Gila Bend Indian Reservation Lands Replacement Act.

(5) Beginning in 2003, the Tohono O'odham Nation began taking steps to purchase approximately 134.88 acres of land near 91st and Northern Avenue in Maricopa County, within the City of Glendale (160 miles from the Indian tribe's headquarters in Sells). The Tohono O'odham Nation is now trying to have these lands taken into trust status by the Secretary of the Interior pursuant to the Gila Bend Indian Reservation Lands Replacement Act of 1986 ("Gila Bend Act"), and has asked the Secretary to declare these lands eligible for gaming, thereby allowing the Indian tribe to conduct Las Vegas style gaming on the lands. The Secretary has issued an opinion stating that he has the authority to take approximately 53.54 acres of these lands into trust status, and plans to do so when legally able to do so.

(6) The State of Arizona, City of Glendale, and at least 12 Indian tribes in Arizona oppose the Tohono O'odham Nation gaming on these lands. No Indian tribe supports the Tohono O'odham Nation's efforts to conduct gaming on these lands.

(7) The Tohono O'odham Nation's proposed casino violates existing Tribal-State gaming compacts and State law, Proposition 202, agreed to by all Arizona Indian tribes, which effectively limits the number of tribal gaming facilities in the Phoenix metropolitan area to seven, which is the current number of facilities operating.

(8) The Tohono O'odham casino proposal will not generate sales taxes as the State Gaming Compact specifically prohibits the imposition of any taxes, fees, charges, or assessments.

(9) The proposed casino would be located close to existing neighborhoods and a newly built school and raises a number of concerns. Homeowners, churches, schools, and businesses made a significant investment in the area without knowing that a tribal casino would or even could locate within the area.

(10) The development has the potential to impact the future of transportation projects, including the Northern Parkway, a critical transportation corridor to the West Valley.

(11) The Tohono O'odham Nation currently operates three gaming facilities: 2 in the Tucson metropolitan area and 1 in Why, Arizona.

(12) Nothing in the language or legislative history of the Gila Bend Indian Reservation Lands Replacement Act indicates that gaming was an anticipated use of the replacement lands.

(13) It is the intent of Congress to clarify that lands purchased pursuant to the Gila Bend Indian Reservation Lands Replacement Act are not eligible for Class II and Class III gaming pursuant to the Indian Gaming Regulatory Act. Such lands may be used for other forms of economic development by the Tohono O'odham Nation.

SEC. 3. GAMING CLARIFICATION.

Section 6(d) of Public Law 99–503 is amended by inserting "except that no class II 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 if such land is located north of latitude 33 degrees, 4 minutes north" after "shall be deemed to be a Federal Indian Reservation for all purposes".

SEC. 4. NO EFFECT.

The limitation on gaming set forth in the amendment made by section 3 shall have no effect on any interpretation, determination, or decision to be made by any court, administrative agency or department, or other body as to whether any lands located south of latitude 33 degrees, 4 minutes north taken into trust pursuant to this Act qualify as lands taken into trust as part of a settlement of a land claim for purposes of title 25 U.S.C. 2719(b).

PURPOSE OF THE BILL

The purpose of H.R. 2938, as ordered reported, is to prohibit certain gaming activities on certain Indian lands in Arizona.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2938 addresses a "reservation shopping" controversy in the State of Arizona where the Secretary of the Interior is creating a

satellite reservation for a tribe to open a casino in the potentially lucrative gambling market near Phoenix, Arizona. Specifically, Interior has agreed—over the objections of the Governor of Arizona, a majority of recognized tribes in Arizona, and the affected city—to create trust lands for a casino in the City of Glendale, for the benefit of the Tohono O'odham Nation (TO Nation). The TO Nation is one of the largest recognized tribes in the United States, with a reservation stretching from the U.S.-Mexico border to the Tucson area. The tribe currently operates three casinos on its existing reservation lands, including in the Tucson market.

H.R. 2938 prohibits the off-reservation casino in Glendale. As explained by the Salt River Pima-Maricopa Indian Community (Arizona):

> H.R. 2938 is necessitated by the [TO] Nation's efforts to manipulate the Gila Bend Act in a manner that would directly violate their commitments made in the current Arizona compacts. The [TO] Nation is currently trying to utilize the 1986 Gila Bend Act to acquire lands more than 100 miles from its existing reservation, in our tribe's aboriginal lands, to develop a casino in the Phoenix metropolitan area.

(Testimony of Diane Enos, President, Salt River Pima-Maricopa Indian Community before the Subcommittee on Indian and Alaska Native Affairs, October 4, 2011).

As noted above, the Glendale casino project violates commitments made to Arizona. The TO Nation co-sponsored a tribal advocacy campaign to persuade Arizona voters to authorize exclusive gaming rights to tribes in exchange for certain limitations. One of these limitations was that "there will be no additional facilities authorized in Phoenix." (See "Yes on 202—The 17-Tribe Indian Self-Reliance Initiatives, Answers to Common Questions," co-sponsored by the Tohono O'odham Nation, on file with the Committee on Natural Resources; also see Appendix I, joint announcement of the Governor of Arizona and Arizona Indian Gaming Association dated February 20, 2002). Arizonans subsequently voted against a competing ballot initiative to liberalize gaming rights for non-Indians, while voting to pass Proposition 202, granting tribes exclusive rights. Around the same time, however, the TO Nation was apparently maneuvering to purchase the Glendale property.

H.R. 2938 simply enforces the commitments made to Arizona by the TO Nation and stops the Secretary of the Interior from setting a precedent that may lead to an expansion of off-reservation casinos in other states. As reported by the Committee, H.R. 2938 permits the TO Nation to use the Glendale land for any other purpose besides gaming. Moreover, the reported bill does not stop the tribe from opening a casino on lands acquired for its benefit south of Phoenix (provided such lands meet other criteria set forth in applicable law), nor does it change the tribe's ability to seek land for gaming under another Act of Congress, such as the Indian Reorganization Act of 1934. Finally, the bill has no affect on the TO Nation's rights to conduct gaming on its existing reservation, where it currently operates three casinos, including two near the City of Tucson.

While there is an understandable argument that this matter can and should be resolved by the Secretary of the Interior and the Courts, Congress reserves the right to adjust its policy respecting Indian tribes, a power the Supreme Court has referred to as "plenary." And this case so warrants it because the Secretary of the Interior's handling of trust land actions and gaming policy have lately been opaque and the cause of numerous controversies. This one is no exception.

The controversy stems from a peculiar application of two statutes enacted in the 1980s and a tribal-state compact ratified in 2002. In 1986, Congress passed the Gila Bend Indian Reservation Lands Replacement Act. That Act authorizes the TO Nation to purchase up to 9,880 acres of replacement lands to compensate the Nation for years of consistent flood damage to its farming property caused by a federally-constructed project called the Painted Rock Dam on the Gila River (Public Law 81–516). Amendments to that Act directed the Secretary of the Interior to accept replacement lands into trust for "sustained economic use" (Public Law 99–503, Section 2(4)) and such lands shall be deemed an Indian Reservation for all purposes. Furthermore, the replacement lands must be non-incorporated and within three counties (Pima, Pinal, or Maricopa) in Arizona. Though the Congress intended to make lands of any character available to the tribe, the intent was to replace primarily agricultural lands with an equal number of acres. Since 1986, the TO Nation has reportedly purchased more than 16,000 acres of land.

Two years later, on October 17, 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) (25 U.S.C. 2071 *et seq.*) to provide a federal framework for tribes to conduct gaming on Indian lands in existence as of the date of enactment of that Act. Section 20 of IGRA (25 U.S.C. 2719) prohibits gaming on lands acquired in trust for a tribe after October 17, 1988, except in certain (supposedly rare) circumstances. One of these circumstances is when "lands are taken into trust as part of a settlement of a land claim" (25 U.S.C. 2719(b)(1)(B)(i)). This is sometimes called the "land claim exception." The Act did not define "land claim" for the purpose of the gaming exception. It is generally understood that Indian land claims historically arose when non-Indians acquired Indian lands in violation of the Trade and Intercourse Acts, a series of related laws prohibiting the sale or transfer of Indian lands without authorization from Congress. The Gila Bend Act of 1986 was not a redress of a violation of the Trade and Intercourse Acts.

In 2003, the TO Nation—using a non-tribal entity—began quietly purchasing 134 acres of non-incorporated land near the Phoenix metropolitan area (located between the cities of Glendale, Peoria, and Tolleson). On January 28, 2009, the TO Nation asked the Secretary of the Interior to accept this parcel of land in trust. Though the tribe had by then purchased lands exceeding its 9,880-acre limit, in July 2010, the Secretary determined that the Glendale property met the requirements of the Gila Bend Indian Reservation Land Replacement Act of 1986 and that the Secretary had an obligation to take the land into trust. In effect, the Secretary allowed the tribe to determine which of the over 16,000 acres of land it had purchased would count against the 9,880-acre limit in the 1986 Gila Bend Act.

On August 26, 2010, the Secretary issued a decision to hold the land in trust (75 Fed. Reg. 52,550). Believing it to violate the law, the Gila River Indian Community, the City of Glendale, and other plaintiffs challenged this decision in U.S. District Court. The Court upheld the Secretary's decision and the plaintiffs have filed an appeal, which is currently pending in the Ninth Circuit Court of Appeals. It is important to note that, because of the litigation, the Glendale property is not actually held in trust, yet.

If the land is finally placed in trust, the record strongly suggests the TO Nation will conduct gaming in Glendale without the need for further agency action. And the question whether the land claim exception is being correctly applied will not be subject to a legal challenge because under the Department of the Interior's gaming regulations, an "opinion" on a land claim exception requested by a tribe regarding its newly acquired lands "is not, per se, a final agency action under the Administrative Procedures Act (APA)" (*see* Federal Register/Vol. 73, No. 98/Tuesday, May 20, 2008, p. 29358).

The foregoing history of the controversy demonstrates the lengths to which the prospect of a lucrative urban casino is turning what Congress in 1988 regarded as a tribal government power—the regulation of gaming on an Indian Reservation—into a commercial venture in targeted urban markets, a practice that some say should be subject to State regulation. Indeed, in 2006 a majority of Members of the House voted to eliminate the Indian land claim exception altogether and to impose additional restrictions on off-reservation (*see* H.R. 4893, the Restricting Indian Gaming to Homelands of Tribes Act of 2006).

Tribal regulation of gaming has been extraordinarily successful for many tribes that were previously impoverished. In most States where it is conducted, citizens understand and respect a tribe's right to regulate gaming as a core function of government and for funding tribal government services. Reservation shopping, however, is changing the complexion of tribal gaming, causing local political strife (as in Arizona) and leading to expensive litigation benefiting no one.

H.R. 2938 restores the status quo as understood by Arizona voters, the Governor of Arizona, the Legislature of Arizona, and all but one tribe in Arizona when Prop 202 was passed and non-tribal casino gaming prohibited. The bill is sponsored by the Representative for the City of Glendale, and supported by most of the Arizona House Delegation. It does not amend IGRA or effect wide-ranging tribal policy: it addresses one instance where the State, the Members representing the affected area, and most tribes seek to ensure a delicate, negotiated compromise benefiting all sides is maintained.

During markup of the bill, the Natural Resources Committee adopted an amendment offered by Congressman Paul Gosar (R–AZ) which minimizes the reach of the legislation in prohibiting gaming on trust lands acquired under the 1986 Gila Bend Act in the Phoenix Metropolitan area, while allowing it on trust lands in the aboriginal region of the TO Nation. It also represents a good faith compromise to the concerns raised in the hearing by the Department of the Interior.

COMMITTEE ACTION

H.R. 2938 was introduced on September 15, 2011, by Congressman Trent Franks (R–AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On October 4, 2011, the Subcommittee held a hearing on the bill. On November 17, 2011, the Natural Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs was discharged by unanimous consent. Congressman Paul Gosar (R–AZ) offered amendment designated .986 to the bill; the amendment was adopted by a bipartisan record vote of 33–10, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: November 17, 2011 Recorded Vote #: 9

Meeting on / Amendment: **HR 2938** – An amendment offered by Mr. Gosar was AGREED TO by a roll call vote of 33 yeas and 10 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			*Mr. Heinrich, NM*	X		
Mr. Markey, MA Ranking		X		**Mr. Benishek, MI**	X		
Mr. Young, AK	X			*Mr. Lujan, NM*	X		
Mr. Kildee, MI	X			**Mr. Rivera, FL**	X		
Mr. Duncan of TN	X			*Mr. Sarbanes, MD*		X	
Mr. Defazio, OR	X			**Mr. Duncan of SC**	X		
Mr. Gohmert, TX				*Ms. Sutton, OH*		X	
Mr. Faleomavaega, AS				**Mr. Tipton, CO**	X		
Mr. Bishop, UT	X			*Ms. Tsongas*		X	
Mr. Pallone, NJ	X			**Mr. Gosar, AZ**	X		
Mr. Lamborn, CO	X			*Mr. Pierluisi, PR*		X	
Mrs. Napolitano, CA				**Mr. Labrador, ID**	X		
Mr. Wittman, VA	X			*Mr. Garamendi, CA*		X	
Mr. Holt, NJ		X		**Ms. Noem, SD**	X		
Mr. Broun, GA	X			*Ms. Hanabusa, HI*	X		
Mr. Grijalva, AZ		X		**Mr. Southerland, FL**	X		
Mr. Fleming, LA	X			**Mr. Flores, TX**	X		
Ms. Bordallo, GU				**Mr. Harris, MD**	X		
Mr. Coffman, CO	X			**Mr. Landry, LA**	X		
Mr. Costa, CA	X			**Mr. Runyan, NJ**	X		
Mr. McClintock, CA		X		**Mr. Johnson, OH**	X		
Mr. Boren, OK	X			**Mr. Amodei, NV**	X		
Mr. Thompson, PA	X						
Mr. Sablan, CNMI		X					
Mr. Denham, CA	X						
				TOTALS	33	10	

The bill, as amended, was then ordered favorably reported to the House of Representatives by a bipartisan record vote of 32–11, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: November 17, 2011 Recorded Vote #: 10

Meeting on / Amendment: **HR 2938** – Favorably reported to the House of Representatives, as amended, by a roll call vote of 32 yeas and 11 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			*Mr. Heinrich, NM*	X		
Mr. Markey, MA Ranking		X		**Mr. Benishek, MI**	X		
Mr. Young, AK	X			*Mr. Lujan, NM*	X		
Mr. Kildee, MI	X			**Mr. Rivera, FL**	X		
Mr. Duncan of TN	X			*Mr. Sarbanes, MD*		X	
Mr. Defazio, OR		X		**Mr. Duncan of SC**	X		
Mr. Gohmert, TX				*Ms. Sutton, OH*		X	
Mr. Faleomavaega, AS				**Mr. Tipton, CO**	X		
Mr. Bishop, UT	X			*Ms. Tsongas*		X	
Mr. Pallone, NJ	X			**Mr. Gosar, AZ**	X		
Mr. Lamborn, CO	X			*Mr. Pierluisi, PR*		X	
Mrs. Napolitano, CA				**Mr. Labrador, ID**	X		
Mr. Wittman, VA	X			*Mr. Garamendi, CA*		X	
Mr. Holt, NJ		X		**Ms. Noem, SD**	X		
Mr. Broun, GA	X			*Ms. Hanabusa, HI*	X		
Mr. Grijalva, AZ		X		**Mr. Southerland, FL**	X		
Mr. Fleming, LA	X			**Mr. Flores, TX**	X		
Ms. Bordallo, GU				**Mr. Harris, MD**	X		
Mr. Coffman, CO	X			**Mr. Landry, LA**	X		
Mr. Costa, CA	X			**Mr. Runyan, NJ**	X		
Mr. McClintock, CA		X		**Mr. Johnson, OH**	X		
Mr. Boren, OK	X			**Mr. Amodei, NV**	X		
Mr. Thompson, PA	X						
Mr. Sablan, CNMI		X					
Mr. Denham, CA	X						
				TOTALS	32	11	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 2938—Gila Bend Indian Reservation Lands Replacement Clarification Act

H.R. 2938 would prohibit gaming (gambling other than social games for prizes of minimal value) activities on certain lands owned by the Tohono O'odham Nation (hereafter referred to as the Nation) and placed in trust with the federal government in Arizona. CBO estimates that the bill would have no significant impact on the federal budget. Enacting H.R. 2938 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2938 would prohibit the Nation from conducting gaming activities on some land in Arizona. That prohibition would be an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). Based on information from the Nation about when, absent enactment of this bill, it expects to begin collecting revenue from a proposed casino and the uncertainty of future legal challenges to the project, CBO estimates that the cost of the mandate in the first five years after enactment would not exceed the annual threshold established in UMRA ($73 million in 2012, adjusted annually for inflation).

H.R. 2938 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Martin von Gnechten (for federal costs) and Melissa Merrell (for intergovernmental costs). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that the bill would have no significant impact on the federal budget. Enacting H.R. 2938 would

not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to prohibit certain gaming activities on certain Indian lands in Arizona.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

GILA BEND INDIAN RESERVATION LANDS REPLACEMENT ACT

(Public Law 99–503)

* * * * * * *

USE OF SETTLEMENT FUNDS; ACQUISITION OF LANDS

SEC. 6. (a) * * *

* * * * * * *

(d) The Secretary, at the request of the Tribe, shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (c) which meets the requirements of this subsection. Any land which the Secretary holds in trust shall be deemed to be a Federal Indian Reservation for all purposes *except that no class II 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 if such land is located north of latitude 33 degrees, 4 minutes north*. Land does not meet the requirements of this subsection if it is outside the counties of Maricopa, Pinal, and Pima, Arizona, or within the corporate limits of any city or town. Land meets the requirements of this subsection only if it constitutes not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village. The Secretary may waive the requirements set forth

in the preceding sentence if he determines that additional areas are appropriate.

* * * * * * *

DISSENTING VIEWS

H.R. 2938 will retroactively amend the Gila Bend Indian Reservation Lands Replacement Act ("Gila Bend Act")—approved and enacted by Congress 25 years ago—between the United States and the Tohono O'odham Nation (the "Nation") to prohibit the Nation from conducting class II or III gaming activities pursuant to the Indian Gaming Regulatory Act ("IGRA") on certain lands rightfully acquired by the Nation. The legislation not only upsets settled law, potentially subjecting the United States to new liability for breach of trust, breach of contract, and takings claims valued in the hundreds of millions of dollars, it also creates uncertainty respecting the finality of tribal legislative settlements and impugns the federal trust responsibility. The House should reject this irresponsible legislation.

The Gila Bend Act entitled the Nation to acquire non-reservation land anywhere within three Arizona counties, under enumerated conditions, in order to replace its original reservation lands that were rendered economically useless by the flooding caused by the United States' construction of the Painted Rock Dam ten miles downstream from the Nation's reservation. H.R. 2938, as amended, targets property in the Phoenix metropolitan area that the Nation legally acquired in 2003 for gaming purposes—property that, if taken into trust by the United States and deemed eligible for gaming activity under IGRA, threatens to carve into the market share of two other tribes with lucrative, existing gaming facilities in the area.

H.R. 2938 is an obvious attempt to legislatively prevent the Nation from exercising a right it otherwise would have to compete in the open market alongside its tribal neighbors for gaming revenue. In fact, established tribal gaming interests and others have challenged the Nation's interpretation of the Gila Bend Act in federal court. The suit's proponents have repeatedly failed to succeed on the merits in federal court and now seek, through enactment of H.R. 2938, to change the underlying land claims settlement law between the Nation and the federal government in order to prevail. Congress should not be in the business of amending existing settlement legislation without the consent of the settling tribe, especially when amendment would benefit special interests and undermine ongoing litigation.

Mr. Franks' bill would break the legally enforceable promises that the United States made to compensate the Nation for nearly 10,000 acres of reservation land lost due to federal error. Repudiation of these promises under H.R. 2938 would not only void the Nation's release of its original land claims, but could also reopen the portion of the Nation's original water rights claims that were also settled by the Gila Bend Act, amounting to as much as 32,000 acre-feet per year and valued in excess of $100,000,000 (in 1986

dollars, the year of enactment of the settlement legislation). H.R. 2938's potential retroactive effect on the Nation's water settlement is troublesome, but the legislation's prospective impact on current settlement negotiations relating to water rights claims, such as the Nation's Sif Oidak water rights claims with the Salt River Project, the Central Arizona Water Conservation District, the State of Arizona, the Maricopa-Stanfield and the Central Arizona irrigation districts, and the United States, is utterly ill-advised. If the Gila Bend Act settlement unravels due to H.R. 2938, the 32,000 acre-feet per year appurtenant to the Gila Bend Reservation may have to be added to the Sif Oidak water rights claims, thus severely complicating that water rights negotiation for the Nation and putting non-Indian parties in an untenable negotiation position.

As a policy matter, legislative settlements between the United States and tribal sovereigns are congressional affirmations of the federal trust responsibility that underpin the relationship between two sovereigns. Federal Indian law scholars have recognized that most, if not all, modern legislation dealing with Indian tribes contains a statement reaffirming the trust relationship between tribes and the federal government as a reflection of this responsibility. Congress thus routinely does, and should, take the federal trust responsibility seriously. In the case of H.R. 2938, however, Congress would renege on its word by unilaterally amending a land and water claims settlement entered into with the Nation for the benefit of tribal competitors who only stand to gain financially from legislatively restricting the Nation's lawful access to gaming under the IGRA. This is simply bad policy and a poor reflection of our nation's solemn oath to honor its legal commitments and uphold the federal trust responsibility in settlement agreements with the First Americans.

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APPENDIX I

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Governor, Tribes Outline New Gaming Compacts

NR 02:13

(PHOENIX - February 20, 2002) Governor Jane Dee Hull and the Arizona Indian Gaming Association today announced they have an agreement outlining new, 10-year gaming compacts.

The agreement would limit casino gambling to Indian reservations, limit the scope of gaming on reservations and assures strong regulation on gaming. The agreement also would provide millions of dollars to remote rural tribes and brings the state over $1 billion over the next 10 years to defray state costs for education and health care for Native Americans as well as for other state and local programs.

The agreement outlines the kind of compact the Governor and the tribes would sign if the Governor's power to do so is restored. The Legislature will be asked to empower the Governor to sign a compact based on this agreement.

"This is a fair agreement that benefits the tribes and all of Arizona. It mandates strong limits on gaming and provides a substantial economic boost for the tribes and the state," said Governor Hull.

The agreement follows over two years of negotiations between the tribes and Governor Hull. The process included research on gaming operations throughout the nation and thorough discussion of the impacts and benefits of gaming in Arizona.

"Good faith negotiations require all sides to give and take. We had to find common ground and we did. The process took over two years but we are pleased with the results," the Governor said.

"This compact will improve regulation and oversight. The agreement limits casino-style gaming to the Indian lands. It limits the scope and growth of Indian gaming, including forms of gaming now unlimited under the current compacts. The agreement dedicates a portion of revenues to defray state costs for education and health care for Native Americans as well as for other programs benefiting local communities, local housing and tourism. It should produce $1 billion in the next 10 years, with $75 million in the first full year of implementation" Hull said.

(MORE)

AGREEMENT
ADD ONE

"Only with a fair agreement with our tribes can all these goals be achieved," the Governor said.

For the first time, compacts in Arizona would provide for state regulation of card games, prohibit internet gaming and provide economic benefits to remote rural tribes. At the same time, the compacts continue to limit gaming to Indian lands and protect public safety with tough regulation.

Major points in the agreement include the following:

- Number of slot machines: Capped at the current limit of 14,675 statewide.
- Class II "look-alike slot machines" will be counted against a tribe's slot machine allocation, limiting their number for the first time.
- Number of casinos: Reduced from the current allowable number by 25 percent. No additional casinos allowed in the Phoenix metropolitan area and one additional casino in the Tucson area. Rural tribes transferring machines to other tribes will see a reduction in the number of facilities.
- Numbers of slot machines per casino: The current number of 500 will be allowed to grow to 645 to 998, depending on the location. Increases will come from machines transferred from remote rural tribes.
- Transfer of machines from tribe to tribe will be allowed within limits, allowing remote rural tribes to participate in gaming for the first time. The tribes will determine the distribution of revenues resulting from such transfers. It is anticipated that millions of dollars will go to some of the poorest tribes in Arizona.
- Public disclosure: Tribes agree to allow the Arizona Department of Gaming to publicly disclose the total aggregate gaming revenue.
- Internet gaming will be prohibited unless allowed for non-Indians.
- Card games: For the first time, the state will limit and regulate card games. There will be limits on the number of card tables per facility and a limit on bets. Blackjack will be allowed.
- Revenue sharing: From 1 percent to 8 percent on a sliding scale; 1 percent of all gross gaming revenue under $25 million: 3 percent between $25 million and $75 million; 6 percent between $75 million and $100 million: and 8 percent in excess of $100 million per tribe.
- Duration: The compact will cover 10 years, with one renewal of 10 years, based on substantial compliance with compact provisions, and one additional three-year renewal for renegotiations, if the tribe continues in substantial compliance.

(MORE)

COMPACTS
ADD TWO

- Regulation: Current regulatory structure is updated with the following: law enforcement resources, remedies for compact violations, computer-monitoring system and state regulation of card rooms.

- Public health and safety: Minimum gambling age raised to 21; no advertising geared to minors; problem gambling issues addressed and funded; required notice and consultation with surrounding communities for new or significantly altered gaming facilities.

- Arizona expects to receive $75 million in the first full year of the new compact and over $1 billion in the first 10 years.

- Revenue sharing funds will be used for education, health care, local communities and public safety costs, including regulating the industry.

The Arizona Indian Gaming Association includes 17 tribal governments, which represent over 90 percent of tribal members in the state.

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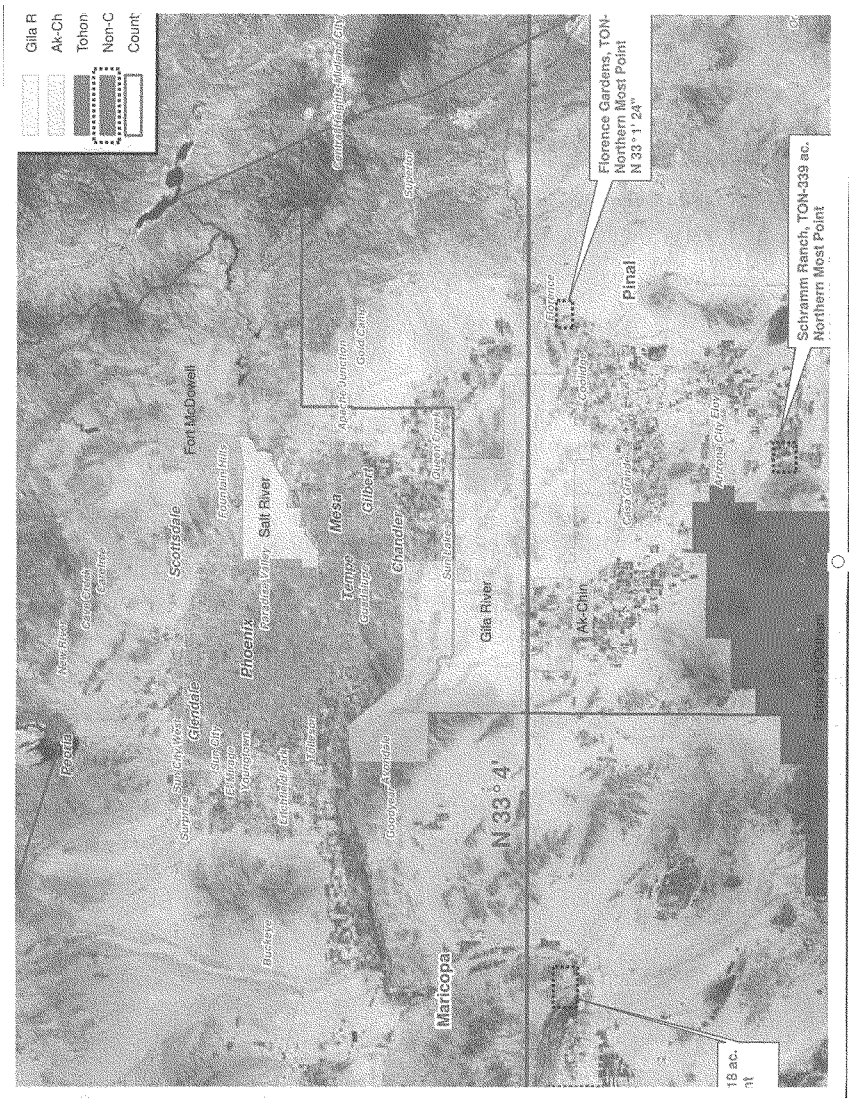
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Ak-Chin
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Schramm Ranch, TON-339 ac.
Northern Most Point
Florence
Pinal
Ak-Chin
Coolidge
Casa Grande
Eloy
Maricopa
Phoenix
Scottsdale
Fort McDowell
Salt River
Mesa
Gilbert
Chandler
Tempe
Glendale
Peoria
Gila River
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