

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

May 3, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: **H.R. 4032 (Rep. Tom O'Halleran)**, To confirm undocumented Federal rights-of-way or easements on the Gila River Indian Reservation, clarify the northern boundary of the Gila River Indian Community's Reservation, to take certain land located in Maricopa County and Pinal County, Arizona, into trust for the benefit of the Gila River Indian Community, and for other purposes.
May 8, 2018 at 10:15 a.m.; 1324 Longworth HOB

H.R. 4032 (Rep. Tom O'Halleran), "Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act"

Summary of the Bill

H.R. 4032 was introduced by Rep. Tom O'Halleran (D-AZ) on October 12, 2017. The bill would codify certain components of the negotiated settlement of a trust accounting and mismanagement case brought by the Gila River Indian Community.¹ Specifically, the bill would clarify the northwestern boundary of the Gila River Indian Reservation along the Salt River; provide for the satisfaction and substitution of certain Gila River allottee claims relating to the electrical, irrigation, and road rights-of-way; and take approximately 3,400 acres of federal land into trust for the Tribe in Maricopa and Pinal Counties, Arizona. Gaming pursuant to the Indian Gaming Regulatory Act² would be prohibited on the lands placed into trust. The maps depicting the rights-of-way and the lands placed into trust can be found [here](#).

Cosponsors

Rep. Andy Biggs (R-AZ), Rep. Paul Gosar (R-AZ), Rep. David Schweikert (R-AZ), and Rep. Ruben Gallego (D-AZ).

Background

The Gila River Indian Reservation was established on February 28, 1859, for the Pima and Maricopa Tribes which confederated into what is known today as the Gila River Indian Community.³ The reservation was later expanded by several executive orders between 1876 and 1915 in Maricopa and Pinal counties, Arizona. President Rutherford B. Hayes signed one of

¹ *Gila River Indian Community v. Jewell* (Filed as *v. Kempthorne*), Case No. 1:06-CV-02249-TFH (June 2016).

² 25 U.S.C. §2701 et seq.

³ 11 Stat. 401, Chap. 66.

these Executive Orders on June 14, 1879, which established the northwesterly corner and expanded the northern boundary of the Tribe's reservation to the middle of the Salt River.⁴

According to the Tribe, the new northwestern boundary was not immediately surveyed after President Hayes's Executive Order was issued. In 1895, the northern boundary of the reservation was surveyed, but it was rejected because the northern boundary of the reservation had been marked at the left bank of the Salt River, rather than the "middle of the . . . Salt River" as called for in the Executive Order.⁵

Between 1910 and 1920 there were attempts to properly survey the boundary but these efforts were complicated by the disposal of land immediately adjacent to the reservation. In its 1919 letter, the General Land Office explained that the encroachment upon the Tribe's land resulted from the failure to timely survey the reservation's boundaries in the wake of the Executive Order.⁶

Due to the delayed survey and surveying errors, the final survey inaccurately established the mid-point of the Salt River and failed to consider the northerly accretion of the River. Thus, the Tribe believed that because of surveying errors and the further northward movement of the Salt River since that time, the Tribe lost land on the northern portion of its reservation due to accretion. As a result, an inaccurate northern boundary of the reservation was relied upon.

In 2006, the Tribe brought a complaint against the United States seeking an accounting and reconciliation of its trust fund accounts and non-monetary trust assets or resources. Furthermore, the Tribe asserted claims for monetary damages relating to the United States' mismanagement of the Tribe's trust funds and non-monetary trust assets or resources. The claims included breach of trust claims against the United States for failing to document rights-of-way across the reservation, collect rent, and account for the Tribe's and allottees' trust assets. Additionally, the claims included a breach of the United States' fiduciary duty for its failure to accurately survey the reservation's northwesterly boundary, resulting in illegal patenting of lands to non-Indians (commonly referred to as the "Tres Rios boundary dispute").

The Obama Administration chose to enter into a settlement with the Tribe.⁷ As part of the settlement negotiations the Tribe agreed to waive its claims related to the Tres Rios Boundary Dispute in exchange for the Obama Administration agreeing to have the United States pay \$12.5

⁴ President R. Hayes. Executive Order. June 14, 1879.

⁵ Letter 529901 "E". U.S. Surveyor General, General Land Office, U.S. Department of the Interior. July 29, 1919.

⁶ *Id.*

⁷ *Gila River Indian Community v. Jewell (Filed as v. Kempthorne)*, Case No. 1:06-CV-02249-TFH (Dec. 20, 2006).

million to the Tribe and transferring approximately 3,400 acres of Bureau of Land Management land (Lower Sonoran Lands) to the Tribe.⁸

The Tribe and the United States filed the fully executed Joint Stipulation of Settlement with the D.C. District Court on June 22, 2016. On March 20, 2017, the Tribe and the United States filed a joint stipulation to dismiss the Gila River trust case with prejudice.

Legislation is needed by the Tribe to obtain the full benefits under the Joint Stipulation of Settlement, including:

- Establishment of a map of the rights-of-ways on the reservation;
- Establishment of the northwest boundary of the reservation to settle the Tres Rios Boundary Dispute by the Tribe relinquishing land that is currently part of the reservation to avoid a title dispute with the City of Phoenix and private land owners;
- A mandatory trust acquisition, which waives application of the National Environmental Protection Act,⁹ of 3,400 acres of federal land for the Tribe as part of the Tres Rios Boundary Dispute settlement; and
- Surveys for the federal rights-of-ways on the reservation included on the map that will accompany the Act.

Selected Section-by-Section Analysis of H.R. 4032

Sec. 3. Purposes.

Section 3 declares the intent of the Act is to codify the negotiated trust accounting and mismanagement settlement.

Sec. 5. Land into Trust for Benefit of the Community.

Subsection (a) provides that after a request by the Tribe, the Secretary of the Interior will take the Lower Sonoran Lands into trust for the benefit of the Tribe.

Subsection (b) provides that the map of the lands taken into trust must be on file and made publicly available no later than 180 days after enactment of the Act.

Subsection (d) states that Class II and III gaming is prohibited on the lands taken into trust.

Subsection (e) requires the Secretary to publish the full metes-and-bounds description of the Lower Sonoran Lands no later than 180 days after the enactment of this Act.

⁸ The Bureau of Land Management lands are contiguous to the reservation and include a number of highly significant cultural resources and cultural sites throughout the tracts that are of considerable cultural significance to the Community.

⁹ 42 U.S.C. §431 et seq.

Sec. 6. Establishment of Fixed Northern Boundary.

Subsection (a) provides that the northern boundary of the Gila River Indian Community Reservation that was created by the 1879 Executive Order is modified to be fixed, permanent, and not ambulatory.

Subsection (b) provides that the portion of the reservation boundary created by the Executive Order (along the middle of the Salt River) is modified to be a fixed and permanent boundary.

Subsection (c) provides that the Secretary will ensure that the new reservation boundary as described in subsection (b) is surveyed and clearly marked.

Subsection (d) provides that no other portion of the reservation boundary will be affected by this Act except as specifically set forth in the Act.

Subsection (e) provides that the Secretary shall publish in the Federal Register the modification and the resurvey of the reservation boundary.

Sec. 7. Satisfaction and Substitution of Claims.

This section provides that the negotiated settlement and the benefits received by the Tribe pursuant to this Act shall be in complete replacement of and substitution for, and full satisfaction of all claims that the Tribe, its members, and allottees may have had against the United States.

Sec. 8. Federal Rights-of-Way.

All the rights-of-way depicted in the ROW, Easements, and Federal and Tribal Facilities Map accompanying this Act are established, ratified, and confirmed.

Sec. 9. Survey.

Subsection (a) provides that the Bureau of Indian Affairs (BIA) shall undertake and complete a survey of each of the federal rights-of-way established under this Act no later than six years after enactment.

Subsection (b) provides that the BIA is authorized, subject to appropriations, to contract for the survey of all federal rights-of-way established pursuant to this Act to the Tribe or a third party.

Subsection (c) provides that upon completion of all surveys authorized and undertaken, the Tribe and the BIA can determine if any anomalies exist with respect to certain federal rights-of-way, and can choose to remove that anomaly from the ROW, Easements, and Federal Tribal Facilities Map.

Sec. 10. Authorization of Appropriations.

Subject to available appropriations, there are authorized to be appropriated such sums as necessary for the Secretary of the Interior to take actions required under this Act, as well as undertake all surveys authorized of all federal rights-of-ways and easements depicted on the ROW, Easements, and Federal and Tribal Facilities Map.

Sec. 11. Hunt Highway.

This section clarifies that nothing in this Act shall impact any right-of-way or easement associated with Hunt Highway in Pinal Country, Arizona, including the portion that traverses the reservation.

Cost

Unknown.

Administration Position

The Department of the Interior submitted a statement of support for the February 6, 2018, hearing record, with technical recommendations.

Anticipated Amendment

The Committee anticipates that an amendment will be offered to address the technical recommendations provided by the Department of the Interior, and to remove the authorization for appropriations section of the bill.