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GILA RIVER INDIAN COMMUNITY FEDERAL RIGHTS-OF-WAY, EASEMENTS AND BOUNDARY CLARIFICATION ACT

NOVEMBER 29, 2018.—Ordered to be printed

Mr. HOEVEN, from the Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany H.R. 4032]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill, H.R. 4032, 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, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE

The purpose of H.R. 4032 is to confirm undocumented federal rights-of-way or easements on the Gila River Indian Reservation, clarify the reservation's northern boundary, and take certain land located in Maricopa County and Pinal County, Arizona into trust for the benefit of the Gila River Indian Community ("Tribe").

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.[1] The reservation was later expanded by several executive orders be-

[1] *See* 11 Stat. 401, Chap. 66.

tween 1876 and 1915 in Maricopa and Pinal counties, Arizona. President Rutherford B. Hayes signed one of these Executive Orders on June 14, 1879, which established the northwesterly corner of the reservation, and expanded the northern boundary of the Tribe's reservation to the middle of the Salt River.[2]

According to the Tribe, the new northwestern boundary was not immediately surveyed after President Hayes' Executive Order was issued. In 1895, the northern boundary of the reservation was surveyed, but rejected by the U.S. General Land Office; the northern boundary 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.[3]

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.[4]

The Tribe maintained that the final survey inaccurately established the mid-point of the Salt River, but failed to consider the northerly accretion of the River. The Tribe further alleged that the City of Phoenix inaccurately relied on an erroneous northern boundary to its reservation; by accepting the erroneous and fixed boundary, and by issuing patents for land based an inaccurate survey, the United States transferred the Tribe's reservation lands to non-Indians, in violation of the law, including, but not limited to, the *Non-Intercourse* Act.[5] 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 which has since contributed to boundary disputes.[6]

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. 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 individual 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 (i.e. the "Tres Rios boundary dispute").

The United States entered into a settlement with the Tribe.[7] As part of the settlement negotiations, the Tribe agreed to waive its

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[2] *See* President R. B. Hayes. Executive Order, 1 Kapp. 806, 807 (June 14, 1879).

[3] *See Letter* 529901 "E". U.S. Surveyor General, General Land Office, U.S. Department of the Interior. July 29, 1919.

[4] *Id.*

[5] 25 U.S.C. § 177

[6] For example, surveying errors by the United States led to the City of Phoenix's construction of a wastewater treatment plant which is currently discharging effluent, and the materials contained within such effluent, onto land rightfully granted to, and owned by, the Community. Moreover, the City of Phoenix is causing twice-treated effluent to enter the Reservation through recharge of the aquifer underlying the Community's northern boundary.

[7] *See Gila River Indian Community* v. *Jewell*, Civil Action No. 05–02249 (D.C. Cir. 2006).

claims related to the Tres Rios boundary dispute. In exchange, the federal government agreed to pay $12.5 million to the Tribe, and to transfer approximately 3,400 acres of land owned by the Bureau of Land Management to the Tribe. The Tribe, and the United States, filed the fully executed Joint Stipulation of Settlement with the U.S. District Court for the District of Columbia 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.

SUMMARY

The bill, H.R. 4032, reflects the terms of the settlement. The bill establishes the northwest boundary of the reservation, and settles the Tres Rios boundary dispute. The legislation includes a mandatory trust acquisition of 3,400 acres of federal land for the Tribe as part of the boundary dispute settlement. Lastly, the bill provides for surveys and the creation of a map of the federal rights-of-way on the Reservation.

LEGISLATIVE HISTORY

The bill, H.R. 4032, was introduced on October 12, 2017, by Congressman O'Halleran and referred to the Committee on Natural Resources of the House of Representatives, Subcommittee on Indian, Insular, and Alaska Native Affairs. On February 6, 2018, the Subcommittee on Indian, Insular, and Alaska Native Affairs held a legislative hearing on the bill. At that time, the Gila River Indian Community Governor Stephen Lewis testified in support of the bill. On May 8, 2018, H.R. 4032 was considered by the Committee on Natural Resources of the House of Representatives. At that time, Congressman Grijalva introduced Amendment No. 086, which made technical changes to the legislation, and was adopted by unanimous consent. On July 17, 2018, H.R. 4032 passed the House of Representatives under suspension of the rules, and on July 18, 2018, H.R. 4032 was received in the Senate and referred to the Committee on Indian Affairs.

The Committee held a legislative hearing on November 14, 2018 at which it received testimony on H.R. 4032. Gila River Indian Community Councilman Barney B. Enos, Jr. testified in support of H.R. 4032, noting that the bill was critical "to enable the Community to obtain the full benefits of the settlement the Community reached with the United States resolving federal litigation that originated in 2006." The Committee also received testimony from Darryl LaCounte, Acting Director for the Bureau of Indian Affairs, in support of the bill. On November 28, 2018 the Committee held a business meeting, and reported H.R. 4032 favorably without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act may be cited as the *Gila River Indian Community Federal-Rights-of-Way, Easements and Boundary Clarification Act*.

Section 2. Purposes

Section 2 declares the intent of the Act is to codify the negotiated trust accounting and mismanagement settlement.

Section 3. Definitions

This section defines terms used in the Act.

Section 4. 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 (c) provides that the Lower Sonoran Lands are to be part of the reservation once they are taken into trust.

Subsection (d) states that Class II and III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not be allowed at any time on the land taken into trust for the Community under subsection (a)..

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

Section 5. Establishment of fixed northern boundary

Subsection (a) provides that the northern boundary of the Gila River Indian Community Reservation, 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, subject to available appropriations, the Secretary of the Interior will ensure that the new reservation boundary, as described in subsection (b), is surveyed and clearly marked.

Subsection (d) provides that the Reservation boundary, resurveyed pursuant to the Act, shall become the northern boundary of the Reservation, and 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 as set forth in subsections (b) and (c), which shall constitute the fixed northern boundary of the Reservation.

Section 6. 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, substitution for, and full satisfaction of, all claims that the Tribe, its members, and allottees may have had against the United States.

The bill becomes effective on the later of the date on which the Secretary publishes the Federal Register notice required under section 4(e), publishes in the Federal Register the notice required under section 5(e), and completes the surveys for the Federal rights-of-way required by the language of the bill.

Section 7. Federal rights-of-way

Subsection (a) provides that all the rights-of-way depicted in the ROW, Easements, and Federal and Tribal Facilities Map accompanying this Act are established, ratified, and confirmed.

Subsection (b) provides for the location of recordation of all rights-of-way established, ratified, and confirmed in Subsection (a).

Subsection (c) provides that the Federal Government shall be considered the grantee or applicant for any and all rights-of-way established pursuant to this Act.

Subsection (d) provides that either at the request of the tribe, or pursuant to 25 C.F.R. § 404–409, any rights-of-way established by this Act may be cancelled. Requests for cancellation shall be documented by a tribal resolution.

Subsection (e) provides that the granting of any rights-of-way or easement, other than those depicted in the ROW, Easements, and Federal and Tribal Facilities Map accompanying this Act, may only be done in accordance with all applicable laws and regulations.

Section 8. 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 available 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 Bureau of Indian Affairs 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.

Section 9. Hunt highway

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

COST AND BUDGETARY CONSIDERATIONS

On June 22, 2018, the Congressional Budget Office (CBO) prepared a cost estimate for H.R. 4032, as considered by the Committee on Natural Resources of the House of Representatives. The bill was not amended during consideration by the Senate Committee on Indian Affairs, so that there should be no changes to affect the cost estimate. The subsequent cost estimate can be published in the Congressional Record. The Chairman of the Committee on Natural Resources of the House of Representatives received the following letter, and cost estimate, for H.R. 4032 from the Director of the CBO.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2018.

Hon. ROB BISHOP,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for H.R. 4032, *the Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act*.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4032—Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act

H.R. 4032 would direct the Department of the Interior (DOI) to take about 3,400 acres of land into trust for the benefit of the Gila River Indian Community. The bill also would establish a permanent northern boundary for the tribe's reservation and would establish and ratify three rights-of-way and one grazing permit on that land. DOI would be required to survey the new tribal boundary and the rights-of-way and publish those surveys. Using information from DOI, CBO estimates that the administrative expenses associated with those activities would not be significant.

The land that could be taken into trust under the bill is currently managed by DOI and yields no financial benefits to the federal government. DOI is in the process of transferring that land to the Gila River Indian Community through a noncompetitive, direct land sale. H.R. 4032 specifies that once the sale of the land is finalized DOI shall, at the request of the tribe, take the land into trust for the benefit of the tribe.

Enacting H.R. 4032 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4032 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 4032 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

This cost estimate for the Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act supersedes the estimate transmitted on June 12, 2018, for the same bill. CBO's earlier estimate was based incorrect information indicating that the sale would not proceed under the bill and title to the land would be transferred to the tribe for no consideration. This revised cost estimate corrects that error.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 4032 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 4032.

CHANGES IN EXISTING LAW

In accordance with Committee rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.

