

Status of the Tohono O’odham Application to Establish an Indian Reservation in the City of Glendale’s Municipal Planning Area

City of Glendale v. Salazar

- **On July 23, 2010, Department of Interior sent a letter to the Tohono O’odham Nation stating that they had determined the 52 acres of the land owned by the tribe at 91st and Northern Avenues is eligible to be taken into trust under the Gila Bend Act.¹**
 - Taking land into trust—whereby the title to the land is transferred to the federal government to hold for the benefit of the tribe—is the method the federal government uses to create an Indian reservation
 - The DOI’s decision, if it stands, creates a reservation only
 - The tribe removed their request for approval of gaming on the land in August 2009
 - The tribe’s original application filed January 2009 asked for all 135 acres to be taken into trust but that request was amended after the tribe lost their lawsuit to overturn the City’s jurisdiction over part of the land
- **City sued the DOI in Federal District Court on November 4, 2010 to contest the DOI’s determination.**
 - Gila River Indian Community also sued the DOI shortly before the City filed
 - Other parties seeking to contest the DOI’s determination filed suit as well
 - The various cases have been consolidated into one action that includes:
 - Glendale
 - Gila River Indian Community
 - Local residents
 - Leadership of the Arizona Legislature
- **The City presents two claims to the Court:**
 - First, Congress lacks the Constitutional authority to remove the State of Arizona’s governmental jurisdiction over land within its sovereign territory
 - The Federal government is a government of strictly enumerated powers granted by the state to the federal government in the United States Constitution
 - The Tenth Amendment to the United States Constitution protects the sovereignty of the State of Arizona and the rights of the people of Arizona
 - Congress cannot grant itself the authority, as it did in the Gila Bend Act, to diminish the state’s governmental authority over its territory
 - To do so would allow the federal government to eliminate a state by merely passing a federal law—no such authority is granted to the federal government in the United States Constitution
 - Second, even if Constitutional, DOI’s determination does not adhere to the requirements of the Gila Bend Act
 - With respect to implemented federal laws, federal agencies can only make decisions within the specific legal authority delegated to them by Congress
 - The Gila Bend Act states that the tribe can buy only 9,880 acres of land and that the land must be laying outside corporate limits of a city or town
 - The tribe has used various means to disguise the fact that it has purchased more than 16,000 acres of land with the federal funds provided by the Gila Bend Act
 - Glendale’s exterior boundary surrounds the tribe’s land at 91st and Northern Avenues; therefore, this land does not qualify as land that can be taken into trust
 - In making its determination, the DOI ignored the information it had about the tribe’s land transactions and it interpreted the Gila Bend Act to circumvent the municipal-boundary limitation

¹ Gila Bend Indian Reservation Lands Replacement Act, PL 99-503

- **On December 3, 2010, Plaintiffs filed briefs on their arguments.**
 - Governor Brewer filed a brief supporting the City's arguments on that same day
 - Briefing will continue until early February
 - No definitive timeframe on a decision but it will be after mid-February

- **Tribe Continues to make the same misleading statements in order to garner public support for its project.**
 - The tribe claims the City continues to refuse to talk to them
 - The tribe has refused to discuss its plans until it has reservation status and then the City has no say in what is done on the land
 - City, however, has stated that it would happily discuss development of the site with the tribe acting as a proprietary entity, in other words:
 - The land cannot be turned into a reservation, which the Gila Bend Act does not require unless the site is used for gaming²
 - The development would then have a mutual benefit to both the local community and the community 65 miles away that the Gila Bend Act requires be benefited
 - Greater overall economic development than the tribe's proposed development and requires no federal approval process
 - The tribe claims that their proposal will have a tremendous economic impact
 - The tribe has been publicly silent on the fact that they removed from their application their request for federal approval for gaming
 - A large gaming facility is clearly what drives the tribe's economic assumptions, but they are not currently seeking the approval required for that to occur
 - The tribe has suggested that they might start gaming without federal approval
 - That would be a violation of federal law that the state and the city can do nothing about; only the federal government, who has pushed this proposal through its process, can stop them and it seems unlikely that they will
 - Still, because of the uncertainty, it is not likely that the tribe will secure the massive amount of financing needed for their proposal without federal approval
 - Instead of a resort, the tribe will conduct gaming on the property in a tented, temporary gaming facility, perhaps for many years or a decade
 - None of the economic benefits touted by the tribe will occur from a tented facility
 - The tribe has never provided the economic study they claim to have done that supports their numbers
 - All economic studies are premised on assumption of the future
 - If the assumptions are unsupportable, the studies' conclusions are invalid
 - For two years the tribe has hidden the economic report to prevent analysis of its assumptions
 - The tribe claims widespread support for their project
 - This is a very complex situation involving many legal, social, governmental, and economic questions that would require multiple large scale polling to formulate any potentially useful information
 - The tribe has conducted only one poll on a very small scale
 - Poll data has limited usefulness and can be highly suspect even when it is done carefully and correctly
 - Done improperly, polls can be completely misleading and couched to say whatever is desired
 - The tribe has never released the actual questions asked in their poll, so there has never been any consideration of whether the data is even usefully, much less whether it has any value whatsoever

² The requirement that the site be a reservation is found not in Gila Bend Act but in the Indian Gaming Regulatory Act ("IGRA").