THE TOHONO O'ODHAM NATION OF ARIZONA

TESTIMONY OF THE HON. NED NORRIS, JR., CHAIRMAN

HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
LEGISLATIVE HEARING ON H.R. 1410, THE "KEEP THE PROMISE ACT OF 2013"

MAY 16, 2013

Chairman Young, Ranking Member Hanabusa, and distinguished members of the Subcommittee on Indian and Alaska Native Affairs, my name is Ned Norris, Jr. I am the Chairman of the Tohono O'odham Nation. I want to thank you for the opportunity to testify today on H.R. 1410, legislation offensively entitled the "Keep the Promise Act of 2013".

Following is the testimony of the Tohono O'odham Nation. I ask that it be entered into the record. We respectfully request that the full text of the following federal court decisions also be entered into the record: *Gila River Indian Community, et al. v. United States and Tohono O'odham Nation,* 776 F.Supp.2d 977 (D. Ariz. 2011); *aff'd*, 697 F.3d (9th Cir. 2012); *Gila River Indian Community et al. v. Tohono O'odham Nation*, No. 11-cv-296-DGC (Order dated May 7, 2013)

EXECUTIVE SUMMARY:
A LONG HISTORY OF BROKEN PROMISES TO THE NATION

In 1986 the United States made a promise to the Tohono O'odham Nation when Congress enacted land and water rights settlement legislation, the Gila Bend Indian Reservation Lands Replacement Act, Pub. L. 99-503 (Lands Replacement Act) – legislation that the Department of the Interior has described as "akin to a treaty." *Tohono O'odham Nation v. Acting Phoenix Area Director, Bureau of Indian Affairs*, 22 IBIA 220, 233 (1992). This settlement legislation was intended to compensate the Nation for the Army Corps of Engineers' unauthorized destruction of the Nation's Gila Bend Indian Reservation. Among other things, the United States promised in that settlement legislation that the Nation could acquire new reservation land in Maricopa County to replace its destroyed Gila Bend Reservation land (which also was located in Maricopa County). The United States also promised that the new land would be treated as a reservation for *all* purposes.

In 2003 the State of Arizona made a promise to the Tohono O'odham Nation when it entered into a tribal-state gaming compact with the Nation. The Nation negotiated that compact in good faith and the terms of that Compact are clear on their face. The Compact allows the Nation

to conduct gaming on land that meets the requirements of the Indian Gaming Regulatory Act (IGRA). IGRA expressly allows tribes to conduct gaming on land acquired as part of the settlement of a land claim. Both the Department of the Interior and the Federal District Court of Arizona have confirmed that the land the Nation acquires under its 1986 settlement statute is land acquired as part of the settlement of a land claim as defined by IGRA.

In 2012, the House of Representatives, at the behest of the State of Arizona and two extraordinarily wealthy Indian tribes, passed H.R. 2938, legislation that, if it had been enacted by the full Congress, would have broken both the United States' 1986 federal settlement act promise and the State of Arizona's 2003 tribal-state gaming compact promise to the Nation because its sole purpose was to prevent the Nation from conducting gaming on replacement land located within a certain portion of Maricopa County.

In 2013, the sponsors of H.R. 1410 are back with a new version of H.R. 2938. This bill, clothed in new language to make it appear as if it is a law of general applicability, in fact is effectively applicable only to the Tohono O'odham Nation. H.R. 1410, if enacted, will break the United States' 1986 promise to the Nation and break the State's 2003 promise to the Nation. Like last year's bill, H.R. 1410 is special interest legislation which would create a no-competition zone for the wealthy tribes, including the Salt River Indian Community, which now have a monopoly on one of the largest gaming markets in the United States.

Every allegation that has been made about my Nation, every falsehood and every accusation about the integrity of how the Nation has conducted itself in the pursuit of its replacement lands has been soundly rejected by the federal courts. These courts have considered all the evidence – thousands of pages of deposition testimony and thousands of pages of contemporaneous documents – and they have concluded, over and over and over again, that the Nation has at all times acted in accordance with the law. And, most importantly for the purposes for which we are gathered together here today, the federal district court for the District of Arizona has ruled that the "promise" on which H.R. 1410 is predicated simply did not exist. With these court decisions, the lies and slander about my Nation must now stop.

H.R. 1410 is an ugly black mark on the United States' and the State of Arizona's long relationship with the Tohono O'odham Nation. It is a return to the nineteenth century practice of breaking promises to Indian tribes when it is convenient for a non-Indian interest -- but with a new twist. Now the United States is considering breaking the solemn commitments it and the State of Arizona made to my people to protect the monopoly of a couple of wealthy tribes.

As is obvious from every single federal court decision rejecting the arguments of the State and the wealthy tribes, the Tohono O'odham Nation has followed applicable federal and state law every step of the way. Yet the sponsors of this legislation have entitled the bill the "Keep the Promise Act". This title suggests that I, and the Tohono O'odham people, are liars and cheats. We are deeply offended by this.

As the great Supreme Court Justice Hugo Black famously said in *Federal Power Commission v. Tuscarora Indian Nation*, "great nations, like great men, should keep their word." With all due respect, I am asking the United States to be a great nation, and to keep its word to the Tohono O'odham. And I am asking the Gila River Indian Community, the Salt River Indian Community, and the State of Arizona to stop, finally, the cruel and dishonorable campaign of lies and misinformation which has caused so much harm to the Tohono O'odham Nation, and so much harm to the people of the West Valley who have waited for so long for the new economic development and the new jobs which the Nation has been prevented from creating.

. . . . . .

A FEDERAL COURT HAS CONFIRMED THAT THE NATION'S TRIBAL-STATE GAMING COMPACT ALLOWS IT TO OPERATE A GAMING FACILITY IN PHOENIX

"[N]o reasonable reading of the Compact could lead a person to conclude that it prohibited new casinos in the Phoenix area." *Gila River Indian Community et al. v. Tohono O'odham Nation*, No. 11-cv-296-DGC (Order dated May 7, 2013) at 25.

The Nation first entered into a gaming compact with the State of Arizona in 1993. The Nation's compact confirmed the Nation's right to conduct Class III gaming pursuant to IGRA, anywhere on the Nation's Indian Lands, including land acquired as part of a settlement of a land claim under IGRA's Section 20 exception to the general prohibition on gaming on after-acquired land. 1993 Tohono O'odham–State of Arizona Gaming Compact, §§ 2(s) and 3(f). This confirmation of the Nation's rights was reached after the Nation explicitly advised the State's gaming negotiators that it had the right to acquire "up to 9,880 acres of additional trust land" under the Lands Replacement Act, and that "[n]ot all of the land has been purchased yet, so there is a possibility of additional trust land to be acquired." 7/15/92 Tohono/Arizona Reps. Mtg. Tr. at 3. The State was thus fully aware of the Nation's rights to game on land to be acquired in Pima, Pinal, or Maricopa Counties under the Lands Replacement Act.

The initial terms of the 1993 tribal-state gaming compacts were set to expire in 2003. Accordingly, in 1999 the tribes began to negotiate among themselves and with the State for a new gaming compact. The resulting 2003 tribal-state gaming compacts (authorized via State Proposition 202 at A.R.S. § 5-601.02(A)) import virtually the same language as in the 1993 compacts concerning the tribes' rights to conduct Class III gaming on Indian lands:

> SECTION 3. NATURE, SIZE AND CONDUCT OF CLASS III GAMING
>
> ….
>
> (j) Location of Gaming Facility.

> (1) All Gaming Facilities shall be located on the Indian Lands of the Tribe. All Gaming Facilities of the Tribe shall be located not less than one and one-half (1½) miles apart unless the configuration of the Indian Lands of the Tribe makes this requirement impracticable. The Tribe shall notify the State Gaming Agency of the physical location of any Gaming Facility a minimum of thirty (30) days prior to commencing Gaming Activities at such location. ***Gaming Activity on lands acquired after the enactment of the Act on October 17, 1988 shall be authorized only in accordance with 25 U.S.C. § 2719***.

Tribal-State Compact, § 3; A.R.S. § 5-601.02(I)(6)(b)(iii) (emphasis added).

As recently confirmed by the federal district court for the District of Arizona in litigation brought by H.R. 1410's proponents, land acquired under the Lands Replacement Act qualifies as lands acquired as part of the settlement of a land claim under IGRA's Section 20 exception and under Section 3(j)(1) of the Compact. *Gila River Indian Community et al. v. Tohono O'odham Nation*, No. 11-cv-296-DGC (Order dated May 7, 2013) at 7. The court further held that the Compact "does not prohibit the Nation from building a new casino in the Phoenix area." *Id.* at 2.

FEDERAL AND STATE COURTS HAVE CONFIRMED THAT THE NATION'S LAND MEETS BOTH THE REQUIREMENTS OF THE GILA BEND INDIAN RESERVATION LANDS REPLACEMENT ACT AND THE INDIAN GAMING REGULATORY ACT

In July 2010, the Secretary of the Interior determined, despite lengthy arguments submitted in opposition by the City of Glendale and the Gila River Indian Community, that the Nation's land meets the requirements of the Lands Replacement Act and that the Secretary has an obligation to take the land in trust. Accordingly the Secretary issued a decision to take the land in trust in August of 2010. 75 Fed. Reg. 52,550 (Aug. 26, 2010). The Gila River Indian Community, the City of Glendale, and other plaintiffs challenged the decision in federal district court in Arizona, but both the district court and the Ninth Circuit Court of Appeals upheld the Secretary's decision. *Gila River Indian Community, et al. v. United States and Tohono O'odham Nation,* 776 F.Supp.2d 977 (D. Ariz. 2011); *aff'd*, 697 F.3d (9th Cir. 2012). The plaintiffs continue to press their appeals.

Having failed to convince either the Secretary, the federal district court, or the Ninth Circuit Court of Appeals that the Nation was not entitled to have its West Valley property taken into trust, the City of Glendale and the Gila River Indian Community lobbied the Arizona state legislature for

special legislation to allow the City of Glendale to annex the Nation's land -- without notice and without any of the procedural requirements usually required for annexation under Arizona law -- hoping that annexation would make the land ineligible for trust status under the Lands Replacement Act. The Nation challenged that state law, and the federal district court in Arizona ruled for the Nation. Despite the fact that the state legislation did not mention the Nation, the Lands Replacement Act, or the Nation's West Valley property by name, the Court found that the law's "clear purpose and effect would be to block [the Department of the Interior] from taking the land into trust, contrary to the express command of Congress." *Tohono O'odham Nation v. City of Glendale and State of Arizona*, No. 11-cv-279-DGC (D. Ariz.) (Order dated June 30, 2011) at 15. The City of Glendale and the State of Arizona also have appealed that decision to the Ninth Circuit and the appeal is pending.

Undaunted, the Gila River Indian Community, joined by the Salt River Pima Maricopa Indian Community and the State of Arizona's Attorney General, again brought suit in district court, this time challenging the eligibility of the Nation's West Valley property for gaming. *Gila River Indian Community et al. v. Tohono O'odham Nation*, No. 11-cv-296-DGC. Following a lengthy and voluminous discovery process, the Nation's opponents were again rebuffed by the district court, which on May 7, 2013 ruled that the Nation's West Valley land is indeed eligible for gaming under the Nation's Compact as land acquired in trust as part of a land claim settlement under IGRA. *Gila River Indian Community et al. v. Tohono O'odham Nation*, No. 11-cv-296-DGC (Order dated May 7, 2013) at 25.

Discovery in this litigation has in fact revealed that, not only was there no agreement concerning a limitation on gaming in the Phoenix area, but the seventeen Arizona tribes that negotiated the compacts rejected such a prohibition, leaving the terms of the tribal-state gaming compacts to govern this issue. As explained by witnesses who are not aligned with either side of the litigation, the concept of "no new casinos in Phoenix" was simply never a theme or a deal point in the negotiations over the gaming compacts and Proposition 202:

- W.M. Smith Dep. 32 (*Cocopah Tribe representative*) "Q. Do you recall the concept of no new casinos in Phoenix ever being broached in the negotiations? A. No."
- Clapham Dep. 35-36 (*Navajo Nation representative*) "Q. There was not a single event, to the best of your recollection, that could constitute a request for a tribe to waive its rights to build a casino in the Phoenix area? A. There were discussions about reducing the number of authorized facilities in exchange for transfer of machine rights. But I don't remember any specific request to deal with not putting another facility in Phoenix.").
- Ochoa Dep. 25 (*Yavapai Prescott Tribe representative*) "Q. So until this lawsuit came about, though, you had never heard anybody talking about how Prop 202 would permit no new casinos in the Phoenix area and only one in Tucson? A. Absolutely not. No. It wasn't discussed at the meetings I attended."

In fact, when presented with proposals by the representatives of the State and the Gila River Indian Community to include a provision in the compacts to prohibit gaming on after-acquired lands, the tribes universally rejected these proposals, allowing the compacts terms to govern.

What is more, discovery has revealed that representatives of the Gila River Indian Community, the Salt River Pima Maricopa Indian Community, and the State each were aware of the Nation's rights to conduct gaming on Lands Replacement Act lands, and had expressed no objection to the Nation's rights. As noted above, negotiation sessions during the 1993 gaming compact negotiations revealed that the Nation explicitly informed the State about its rights under the Act and its ability to acquire new land in Pima, Pinal, and Maricopa Counties. Later, during the mid-1990s, a representative of the Nation similarly informed the former president of the Salt River Pima-Maricopa Indian Community (and key 2002 compact negotiator) of the Lands Replacement Act and the Nation's right to conduct gaming on land acquired under the Lands Replacement Act And in 2001, one of the Gila River Indian Community's compact negotiators was presented with a copy of a tribal council resolution from the Nation describing the Nation's rights under the Lands Replacement Act.

In short, the litigation and all related court decisions have fully supported the Department of the Interior's decision to acquire in trust the Nation's West Valley land under the Lands Replacement Act, as well as the Nation's right to conduct gaming on that land under IGRA and its tribal-state gaming compact, and have rejected the claims of the proponents of H.R. 1410.

ENACTMENT OF H.R. 1410 EXPOSES THE UNITED STATES TO NEW LIABILITIES

H.R. 1410 deprives the Nation of rights it has under its land and water rights settlement act, IGRA and its tribal-state gaming compact -- rights that have been confirmed by the courts. Interference with these rights will have real consequences for the United States and ordinary taxpayers in terms of creating substantial liability for the breach of contract, takings claims, and water rights claims that the Nation will have against the United States for breaching the settlement agreement entered into under the Lands Replacement Act. Accordingly, there is no question that enactment of H.R. 1410 effectively will put American taxpayers in the position of subsidizing the monopoly achieved by the Gila River Indian Community and the Salt River Indian Community.

ENACTMENT OF H.R. 1410 WILL CAUSE REAL HARM TO THE TOHONO O'ODHAM NATION

In addition to the injustice of changing the law enacted to compensate the Nation and on which the Nation has relied in acquiring land for gaming-related economic development, the enactment of H.R. 1410 would have a devastating effect on the Tohono O'odham Nation and its people. More than 32 percent of the Nation's households have annual incomes less than $10,000,

over 46 percent of the Nation's families live below the poverty line, and there is a greater than 21% unemployment rate among Tribal members on the reservation. The Nation has devoted an enormous amount of time and financial resources to its West Valley project in reliance on existing federal law; if H.R. 1410 is enacted, all the effort and resources the Nation has invested to reduce its dependence on federal monies and to become self-sufficient, as Congress intended in the Lands Replacement Act, would be wasted.

H.R. 1410 WILL CAUSE REAL HARM TO THE WEST VALLEY – IT IS JOB-KILLER LEGISLATION

Enactment of H.R. 1410 would kill off 9,000 new construction and operation jobs for the West Valley, as well as countless thousands of other jobs that would result from new local spending generated by both the resort and the people who work there. If Congress takes affirmative action to prevent this non-taxpayer funded economic stimulus from becoming a reality, Congress effectively withholds these thousands of jobs from West Valley residents.

CONCLUSION

Mr. Chairman and Subcommittee members, I thank you again for giving me an opportunity to speak to this Subcommittee on this legislation. In sum, I must reiterate that enactment of H.R. 1410 would break the United States' promise, as that promise was set forth in a contract and in settlement legislation, to compensate the Nation for the destruction of the Gila Bend Indian Reservation. Enactment of H.R. 1410 also would interfere with the express contract terms to which the Nation and the State of Arizona agreed when we entered into our tribal-state gaming compact. And enactment of H.R. 1410 flies in the face of several federal court decisions which have resolved, in the Nation's favor, the allegations that have been wrongly made against the Nation.

But it is not just the Nation that will be adversely affected by enactment of H.R. 1410. This legislation will prevent the creation of 9,000 new jobs for the West Valley area. Enactment of H.R. 1410 will also create new breach of contract, takings claims, and water rights claims against the United States, thereby exposing American taxpayers to unnecessary financial risk. And finally, enactment of H.R. 1410 would add yet another black mark to the United States' long history of breaking its promises to Native Americans. This Subcommittee should uphold the United States' promise to the Nation, reject H.R. 1410, and let the ongoing litigation run its course.

I thank you for your time today, and I would be happy to answer any questions you may have.

APPENDIX: Background on the Flooding and Destruction of the Gila Bend Indian Reservation and the Lands Replacement Act

The Tohono O'odham Nation has approximately 30,000 members. Our reservation lands are located in central and southern Arizona in three counties – Maricopa County, Pinal County, and Pima County. Historically, the Nation's lands included four separate areas, one of which was known as the Gila Bend Indian Reservation. Originally comprising 22,400 acres located on the Gila River near the town of Gila Bend in Maricopa County, the Gila Bend Indian Reservation was created for the Nation in 1883. Then known as the Papago, the Nation's Gila Bend Indian Reservation residents lived along the banks of the Gila River for centuries; extensive ruins located on the reservation date to about 500 A.D.

The sad and shameful history of the United States' treatment of the Gila Bend Indian Reservation and its members is well documented in the House Report accompanying the Lands Replacement Act, H.R. Rep. 99-851 (September 19, 1986). In 1909, by Executive Order, the United States cut the Gila Bend reservation nearly in half and deprived the Nation's members of access to much of their fertile agricultural lands in the Gila River basin. *Id.* at 4. Despite these setbacks, the Nation's members persevered, maintaining, in the words of a 1949 Department of the Interior report, a "precarious livelihood from subsistence farming, small cattle enterprises, woodcutting, and increasingly from seasonal off-reservation employment at low wages." *Id.* The Department's report, the "Papago Development Program," recommended the development of irrigated agriculture for the Nation's members, including 1200 acres for the Nations' Gila Bend Reservation. *Id.* Instead of seeing these plans come to fruition, the Secretary of the Interior signed a letter to the U.S. Corps of Engineers expressing no objection to the Corps' proposal to construct the Painted Rock Dam on the Gila River to provide flood protection for nearby non-Indian agricultural operations. The Secretary's letter failed to make any mention of the Gila Bend Reservation or the dam's potential effect on the reservation. *Id.* Less than a year following the forgotten Papago Development Program report, Congress enacted the Flood Control Act, Pub. L. 81-516, 64 Stat. 176 (1950), authorizing the construction of the Painted Rock dam. *Id.* As Congress and the Department of the Interior later recognized, the Flood Control Act of 1950 *did not* authorize the flooding or condemnation of the Nation's lands.

Nevertheless, in the 1950s, the U.S. Army Corps of Engineers began construction of the Painted Rock Dam ten miles downstream from the Gila Bend Indian Reservation. Construction was completed in 1960. Despite the Bureau of Indian Affairs' and the Corps' repeated promises that periodic flooding caused by the dam would not harm the Nation's agricultural use of its reservation lands, and despite a 1963 U.S. Geological Survey report asserting that the long range effects of flooding would be "unimportant," the Gila Bend Indian Reservation sustained almost continual flooding throughout the late 1970s and early 1980s. *Id*, at 5. Most of the Nation's members living there had to be relocated to a small 40-acre village known as San Lucy. *Id.* The flooding caused pronounced economic hardship, destroying a 750-acre tribally owned and operated farm that had

been developed at tribal expense, and rendering the remaining acreage unusable for economic development. *Id.* at 5-6.

In 1982, pursuant to the Southern Arizona Water Rights Settlement Act (SAWRSA), Pub. L. No. 97-293, 97 Stat. 1274, Congress instructed the Secretary of the Interior to conduct studies to determine which of the Nation's lands had been rendered unusable for agriculture. Congress also authorized the Secretary, with the consent of the Nation, to exchange public domain lands for those reservation lands that had been ruined. H.R. Rep. No. 99-851 at 6. A study of the reservation lands carried out in 1983 under SAWRSA determined that the flooding had rendered almost the entire Gila Bend Indian Reservation, nearly 10,000 acres, unusable for either agriculture or livestock grazing purposes. *Id.* A later 1986 study to identify replacement lands within a 100-mile radius of the reservation concluded that *none* of the sites identified were suitable replacement lands, from either a lands and water resources or a socio-economic standpoint. *Id.*

The destruction of nearly 10,000 acres of the Nation's lands gave rise to a number of land and water rights claims against the United States. The House Report accompanying the Lands Replacement Act detailed some of these claims:

> The tribe has pursued a legislative remedy to its urgent dilemma at Gila Bend rather than litigation on a variety of potential legal claims against the United States. Such actions could include claims for the taking of tribal trust lands by condemnation without express authority from Congress; for payment of unjust compensation for the flowage easement; for damages to their land and water resources resulting from construction of both Painted Rock Dam and Gillespie Dam and other dams upstream; and for breach of trust for failure to prosecute claims against third parties for damages to their land and water resources.

H.R. Rep. No 99-851 at 7. Congress also recognized that the Nation's water rights claims to the surface and underground flow of the Gila River comprised a significant component of these claims that could amount to more than 30,000 acre-feet with an 1882 priority date, and that damage claims against the United States and third parties could be in excess of $100,000,000 (in 1986 dollars). *Id.* at 6-7. Indeed, the following year, the United States filed a claim in the Gila River Stream Adjudication on behalf of the Nation and its destroyed Gila Bend Indian Reservation for nearly 36,000 acre-feet of water. *See Statement of Claimant United States on Behalf of the Gila Bend Indian Reservation, Tohono O'odham Nation*, No. 39-35090 (January 20, 1987).

The United States was unable to redress the harm to the Nation by providing replacement lands for agriculture. So, in 1986, more than a quarter century after the dam was built, Congress created an alternative settlement mechanism to address the wrong done to our people and to settle our claims against the federal government. That was the origin of the Gila Bend Indian Reservation Lands Replacement Act.

The House Committee considering enactment of the Lands Replacement Act concluded that the Nation had a reservation "which for all practical purposes cannot be used to provide any kind of sustaining economy. Significant opportunities for employment or economic development in the town of Gila Bend … simply do not exist." H.R. Rep. No. 99-851 at 7. As a result, Congress explicitly directed the Secretary of the Interior in the Lands Replacement Act to accept into trust the same number of acres that had been taken from us, and explicitly contemplated that the lands would be for non-agricultural development. Congress specifically stated in the Act that the intent was to "facilitate replacement of reservation lands with *lands suitable for sustained economic use which is not principally farming."* P.L. 99-503, sec. 2(4); *see also* H.R. Rep. No. 99-851 at 9.

The Lands Replacement Act provides funds for land acquisition, and if certain requirements are met, it directs the Secretary to accept into trust up to 9,880 acres of replacement land within the three counties (Pima, Pinal, and Maricopa) in which our other reservation lands are located. P.L. 99-503, sec. 6(c) and (d). The lands may not be incorporated into any city or town. Also, the lands must consist of no more than three areas of contiguous tracts, including one area contiguous to San Lucy Village, unless the Secretary waives this requirement. P.L. 99-503, sec. 6(d). If these statutory requirements are met, then, at the request of the Nation, the Secretary of the Interior must accept the lands in trust and the lands thereafter will be "deemed to be a Federal Indian Reservation *for all purposes*." P.L. 99-503, sec. 6(d).

Section 4(a) of the Lands Replacement Act required the Secretary to pay the Nation $30 million in three installments of $10 million if the Nation agreed to assign to the United States "all right, title and interest" to 9,880 acres of its land within the Gila Bend Indian Reservation. The Act also required the Nation to execute a waiver and release of "any and all claims of water rights or injuries to land or water rights with respect to all lands of the Gila Bend Indian Reservation from time immemorial to the date of the execution by the Nation" of that waiver. P.L. 99-503, sec. 9(a). In October 1987, less than a year after enactment of the Lands Replacement Act, the Nation executed an Agreement that contained this waiver and release, as well as the Nation's assignment of all right, title, and interest to the Gila Bend Indian Reservation.

In short, Congress: (i) enacted the Lands Replacement Act to compensate the Nation fairly for the nearly 10,000 acres of its lands that were lost due to the flooding caused by the Painted Rock Dam, and to allow the Nation to acquire replacement lands for economic development purposes that were not principally farming; and (ii) required in exchange that the Nation transfer property and rights to the United States and release the Nation's claims against the United States, both of which the Nation did years ago.