

**HOUSE INTERIOR APPROPRIATIONS
COMMITTEE TESTIMONY OF GOVERNOR
STEPHEN ROE LEWIS GILA RIVER INDIAN
COMMUNITY**

March 8, 2024

Chairman Simpson and Ranking Member Pingree, thank you for the opportunity to submit testimony on behalf of the Gila River Indian Community (“Community”). The Community’s testimony includes three requests: 1) funding to continue the implementation of Public Law 115-350, the Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act; 2) legislative language to clarify that a grade expansion at the Casa Blanca Community School is authorized and approved; and 3) mandatory funding for the Indian Self-Determination and Education Assistance Act’s section 105(l) lease program.

Implementation of the “Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act”

On December 21, 2018, the Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act (“Act”) was signed into law. The Act enabled the Community to obtain the full benefits of a settlement the Community reached with the United States resolving federal litigation that originated in 2006 and was resolved in 2017. Part of the 2017 settlement included, among other things, a reconciliation of the Community’s non-monetary trust assets for the alleged mismanagement of these resources by the United States.

The Act mandated surveys and publication of all federal rights-of-way on the Community’s Reservation within six (6) years of date of enactment of the law, which would be December 21, 2024. The Act also authorized the Bureau of Indian Affairs to contract for the survey of all Federal rights-of-way to the Community or a third party. The Community has contracted for the survey work and has utilized the funding allocated to date -- \$500,000 in fiscal year 2020 appropriations and \$500,000 in fiscal year 2023 appropriations – to begin survey delineation for the Community’s roadways, canals and powerlines as required under the Act.

The settlement reached with the United States acknowledged that the lack of surveys and documentation for nearly all federal rights-of-way on Reservation was detrimental to use of lands throughout the Reservation for road improvements, canal structures and to provide basic governmental services to members. Now, the Community is in its sixth year since enactment of the Act and has received only a fraction of the funding needed to complete the surveying and publication of the rights-of-way on the Reservation.

It is essential that Congress increase the level of funding for this authorized survey activity. For fiscal year 2025 alone, the Community requires \$4,997,541 to complete the rights-of-way that need to be surveyed for the Community’s roadways, canals, and electrical corridors. If appropriated, this funding would cover surveying of 223 miles of roads, 34.76 miles of canal and pipelines, and 338 miles of electrical system rights-of-way.

The Community has the capacity to conduct these surveys in a timely and efficient manner and to accomplish the work within the fiscal year 2025 appropriations cycle.

If this funding is not allocated, or only another minimal amount is allocated, it could take the Community another ten years to implement the rights-of-way survey requirements related to the litigation that originated nearly 20 years ago. Congress contemplated a six-year timeframe for implementation of the Act, but that requires adequate funding to be dedicated to implement the Settlement. The Community has the capacity to carry out this work, but the funding needs to be awarded for this portion of the Settlement to be implemented.

Request: \$4,997,541 in fiscal year 2025 appropriations to implement the rights-of-way requirements in the “Gila River Indian Community Federal Rights-of-Way, Easements, and Boundary Clarification Act” Public Law 115-350. This funding would go to the Bureau of Indian Affairs Trust-Real Estate Services program account and designated to this project.

Language Needed to Address Grade Expansion at Community’s 105(l) School

In 2021, the Community completed construction on the Casa Blanca Community School utilizing section 105(l) of the Indian Self-Determination and Education Assistance Act. Under the program the Community designed and constructed the school in coordination with the Department of the Interior (“Department”), Bureau of Indian Affairs and then entered into a lease with the Department for the cost of construction. This construction project was the second construction project that was completed as part of the innovative 105(l) pilot program the Community partnered with this Committee and the Department on to improve infrastructure construction for Indian Country.

During construction, the Community relied on the Department’s documentation identifying the school as a K-5 school, to construct a K-6 school in accordance with Interior Appropriations bill language that allows funds to be made available for an additional grade if approved by the Secretary of the Interior. The existing school, which was nearly 100 years old, was too overcrowded to house a fifth grade which only highlighted the need for a new school that would accommodate the space, academic and cultural needs of the Community’s students. Nonetheless, the Department was aware of the Community’s plans to construct a K-6 facility due to reliance on the school’s prior identification as a K-5 school.

Near the end of lease negotiations, the Community was informed from the Albuquerque Bureau of Indian Affairs office that the school was misidentified previously and was only considered a K-4 school which would limit the expansion of a grade to a K-5 school. The Casa Blanca Community School was completed in August of 2021. Since that time, the Community has worked with the Department to address lack of funding for a sixth grade at the school which is critically needed for all of the tribal students in the District, and especially the special needs students who struggle to obtain the same level of education accommodations provided by the Community. Without the sixth grade, students face the prospect of attending up to four schools prior to graduation which is disruptive to their academic studies and success.

The Department is supportive of the Community seeking legislative action to address this issue and has provided confirmation to Appropriations staff and the Community that the budgetary impact to make this change would be minimal (under \$370,000). Language to address the issue has been included in the President’s budget to address limitations on expansion of grades for any school

beyond the grade structure in place or approve by the Secretary of the Interior at each school as of October 1, 1995 – nearly 30 years ago. The language would be revised as follows:

“No funds available to the Bureau of Indian Education shall be used to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau of Indian Education school systems as of October, 1 1995, except that the Secretary of the Interior may waive this prohibition to support expansion of up to one additional grade when the Secretary determines such waiver is needed to support accomplishment of the mission of the Bureau of Indian Education, or more than one grade to expand the elementary grade structure for Bureau-funded schools with a K-2 **or K-4** grade structure on October 1, 1996.

This language would alleviate the specific issue at the Casa Blanca Community School which has already been constructed as a K-6 school, while also allowing the Bureau of Indian Education school to determine expansion needs across the school and dormitory system. The need for this restriction was in place long before alternative construction mechanisms, like the 105(l) program became available which provides a vehicle for construction of new school and infrastructure facilities, with an indefinite appropriations payback mechanism.

Request: Include waiver language in the fiscal year 2025 Interior Appropriations bill to allow expansion of more than one grade for a school that was K-2 or K-4 as of October 1, 1995.

Mandatory Funding for the Indian Self-Determination and Education Assistance Act, Section 105(l) Lease Program

The Indian Self-Determination Education and Assistance Act (“ISDEAA”), at 25 U.S.C. § 5324(l) mandates that the Secretary of the Interior or Health and Human Services enter into a lease, commonly referred to as a “105(l) lease”, with a Tribe or Tribal organization for a facility used for the administration and delivery of ISDEAA services and further mandates that the Secretary reasonably compensate the Tribe for the use of the facility.¹

The Indian Health Service (“IHS”) has been entering into 105(l) leases with Tribes for a number of years while Interior only recently began receiving applications to enter into 105(l) leases with Tribes. In partnership with this Committee and the Department, the Community was the first tribe to enter into a lease with the Department through a pilot program to construct the Gila Crossing Community School in 2019.

¹ The statutory language specifically provides:

(1) Upon the request of an Indian tribe or tribal organization, the Secretary *shall* enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this chapter.

(2) The Secretary *shall* compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable. (emphasis added)

Since that time, the Community has continued its construction program to update tribal governmental buildings that faced decades of overcrowding and inadequate facilities to carry out our basic governmental functions for education, law enforcement and public safety. And, like many other tribes across Indian Country, we have entered into 105(l) leases on our existing facilities. The program has grown significantly since its inception and with a large number of tribes entering into leases with the Department of the Interior.

This Committee has continued to support the program by recognizing the mandatory nature of the program and providing for indefinite funding for the program. However, as the program continues to grow it runs the risk of limiting this Committee's ability to provide adequate funding for other programs at the Department that carry out the treaty and trust obligations of the federal government.

The Community appreciates the efforts and support of Congress in funding the first pilot project to show how the 105(l)-lease program can benefit not only the Community but all of Indian Country. And we appreciate the continued leadership of the Committee to reclassify the program to indefinite appropriations which authorizes payments for the 105(l)-lease program to be appropriated in "such sums as may be necessary" on an annual basis. For fiscal year 2025, the President's budget included a recommendation of continued indefinite appropriations along with appropriate funding for federal salaries, administration, and oversight activities to carry out the lease program.

The Community supports appropriations in this amount but continues to feel strongly that the next step is to make funding for the 105(l)-lease program mandatory, which was also included in the President's budget. The Community's request is supported broadly across Indian Country. In July of 2023, 21 tribal organizations sent a letter to Senate and House Appropriations Chairs to express support for mandatory funding for the 105(l) program for both Indian Health Service and the Department, along with staff funding increases. Those organizations included the National Congress of American Indians, National Indian Health Board, United South and Eastern Tribes, Inter Tribal Association of Arizona, Rocky Mountain Tribal Leaders Council, Northwest Portland Area Indian Health Board, among others.

The 105(l)-lease program has been a remarkably successful program that is just beginning to realize its potential. The program encompasses the intent of the Indian Self-Determination and Education Assistance Act and provides much needed tribal infrastructure funding in a way that does not require appropriators to choose one tribe over another for much needed construction and maintenance funding. The program will continue to grow and benefit all self-governance tribes so bringing the appropriations funding in line with the mandatory language in the statute is the next stage in development for this successful partnership between Indian Country and this Committee.

Request: Classification change for Section 105(l) funding from indefinite appropriations to mandatory appropriations in keeping with the mandatory language included in the Indian Self-Determination and Education Assistance Act for fiscal year 2025.

Conclusion: The Gila River Indian Community looks forward to working with this Committee on the priorities set forth in this written testimony and respectfully requests each of these priorities be included in the Fiscal Year 2025 House Interior Appropriations bill.