PAUL A. GOSAR, D.D.S.
FOURTH DISTRICT, ARIZONA

504 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2315

122 N. CORTEZ STREET, SUITE #104
PRESCOTT, AZ 86301
(928) 445-1683

270 E. HUNT HIGHWAY, SUITE #12
SAN TAN VALLEY, AZ 85143
(480) 882-2697

220 N. 4TH STREET
KINGMAN, AZ 86401
(928) 445-1683

WWW.GOSAR.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515-0301

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEES
VICE CHAIRMAN, ENERGY POLICY, HEALTH CARE AND ENTITLEMENTS
NATIONAL SECURITY
ECONOMIC GROWTH, JOB CREATION, AND REGULATORY AFFAIRS

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEES
ENERGY AND MINERALS
INDIAN AND ALASKA NATIVE AFFAIRS
WATER AND POWER

March 24, 2014

The Honorable Rob Bishop
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Bishop:

I am submitting the following information into the Congressional Record in order to supplement the record on H.R. 308, the Keep the Promise Act. My letter here explains the details and the attached exhibits contain the evidence obtained from underlying litigation discovery.

The opponents of this bill falsely claim that the Tohono O'odham Nation (Tohono O'odham, TO or the Nation) "won" in court relative to TO's less-than-honest dealings with other tribes and the State of Arizona. Indeed, one Member of the House publicly stated that the bill circumvents a court ruling.

This sentiment is factually wrong and morally indefensible. The TO "won" nothing on the merits. Rather, the case was dismissed on the draconian doctrine of sovereign immunity. In other words, the court ruled that the tribe cannot be sued in court because ... It can't be sued in court. That circular logic is pretty much the extent of the victory. The merits of the case were never addressed, and that is why Congress' oversight in these matters is so important.

Recently, the Supreme Court affirmed in *Michigan v. Bay Mills Indian Community* that only Congress, not the courts, has the authority to override sovereign immunity exemptions without an explicit waiver from a tribe.

Court litigation was filed against the Tohono O'odham Nation after it announced its intention to acquire lands in trust for an off-reservation casino on a parcel of land in Glendale, Arizona. Trust lands have a unique legal status effectively akin to reservation land with the appurtenances of sovereign immunity and self-determination. Trust lands are not subject to state controls on gaming.

When TO duplicity was discovered, and its plan to open a casino in Glendale by surreptitiously buying land through a straw man purchaser as "trust" land was revealed, the State of Arizona sought a remedy in 2011 to prevent the Tohono O'odham from gaming on the parcel. The State alleged that Tohono O'odham "had a secret plan at the time it was negotiating the Compact to build a gaming facility in the Phoenix metropolitan area" despite "its contrary representations" to

the State of Arizona and public." [See: *State of Ariz. et al. v. Tohono O'odham Nation*, No. 11-0096 (D. Ariz. filed Feb. 14, 2011)]. These "representations induced the State to enter into the Compact, and the State would not have signed the Compact had it known of the Nation's plans." The State also alleged that Tohono O'odham "materially and fraudulently misrepresented that it had no plans . . . to open a gaming facility in the Phoenix metropolitan area," and that the "State's assent to the Compact was induced by the Nation's misrepresentations and intentional failures to disclose material facts."

By way of background, in January 2000, Arizona tribes, including Tohono O'odham, signed an Agreement in Principle to establish a "cooperative relationship among themselves as to gaming matters and compact renegotiation." Negotiations between the tribes and the State Governor's negotiation team-lasted two years until the winter of 2002. From the beginning of those negotiations, then-Governor Hull maintained that her primary objective was reaching a model compact that would prevent the construction of additional casinos beyond those that existed at the time. She was particularly insistent on this point with regard to the Tucson and Phoenix areas but later relented and agreed to Tohono O'odham maintaining the right to build one additional casino in the Tucson area as long as TO agreed to the Compact and not to build another casino in the Phoenix metropolitan area.

As it turned out, discovery in *State of Arizona v. Tohono O'odham* revealed that the TO Nation was secretly looking to purchase land in the Phoenix metropolitan area during the last 18 months of the compact negotiations and during the entire referendum process when the tribes were actively seeking support from Arizona voters on the basis that the model compact would not permit additional casinos in the Phoenix area. Evidence of these secret plans were primarily obtained from Vi-ikam Doag Industries (VDI), a Tohono O'odham chartered and owned corporation. Below are quotations from meeting transcripts and minutes:

- 5/18/01: VDI meeting notes including a description of a presentation delivered by Mark Curry, Tohono O'odham's lead negotiator in compact negotiations. The notes reflect "107th Avenue-Stadium," "gaming compact-unsure what will happen," "put in a shell company-need to keep it quiet especially when negotiations of compact at stake"

- 6/26/01: VDI meeting with Tohono O'odham's San Lucy District Council. "We are also looking at another project . . . based on discussions we had and continue to have about a casino on the west end of Phoenix. And part of that discussion that we've had was that – we didn't want to publicize that because of the confidentiality in terms of that issue . . . . Now, in the meeting we had last summer—with the task force and Jim had met with the casino people in their—in their environment. And the understanding is that it is a good opportunity again depending on what happens with the big compact. . . You have a situation with a confidentiality issue. And that's how we're holding it, as confidential, because we don't want, you know, people to know we are seriously considering this. Because if you do, I'm sure that there's going to be a lot of resistance from, you know, the general public." p. 25:5-20.

- 8/26/01: San Lucy District Meeting: "[Male Voice]—but that is why the Buckeye property has been identified as a casino-feasible area. And that's really why we focused on that. There—

there is some county islands closer in to Phoenix that we have looked at." p. 24:10-15.

· 8/22/02: VDI meeting transcript discussing the West Phoenix casino project, whether Governor Hull's successor would also opposed additional Phoenix area casinos, and the importance is confidentiality ahead of the vote on Proposition 202. "Max: Because if that's going to be the position of the State, they don't want any more casinos around the Phoenix area, then they're going to fight it, whoever the new governor is, (inaudible), if he's going to go along—he or she go along with Jane Hull regarding taking a position. Jim: Which is why we really want to wait until the initiative passes before its gets out." TON0116093-94.

· 9/19/02: VDI meeting transcript discussing a possible leak of information related to the West Phoenix project. "Jim: So there is some type of information going out or a leak or—they didn't Jonathan and Mark [two in-house Tohono O'odham attorneys] didn't seem too concerned, is what they had got it wasn't up at the governor's level or at the negotiating level . . . but it's still a concern out there, especially prior to the propositions coming up for election . . . . . So, we just need to be careful about, you know, things getting out and spoiling it." p. 14:18-15:6.

· 10/25/02: VDI meeting transcript discussing the upcoming Prop 202 vote. "Male Voice: We are . . . a week and a half, two weeks away from the vote. And that's going to clarify a lot also on what we can do. And, you know, assuming that it is 202 that passes, then, you know, we'll proceed in how we need to make that project develop." p. 2:7-3:24.

This evidence, attached hereto, establishes the fraudulent intent by the TO to deceive the state, the public and other tribes. Proposition 202, which authorized the existing tribal-state compacts, was approved by voters on November 5, 2002, less than two weeks after VDI discussed waiting for voter approval before moving forward with the West Phoenix casino plans.
In addition to the above, additional transcripts underscore the same double-dealing after the vote:

· 2/10/03: VDI meeting transcript discussing VDI's meetings with the Tohono O'odham Gaming Authority. "And I think that's coming about because the agreement has been signed, the compact has been signed, and so there are no more real concerns that might jeopardize our chances on this discussion. So I think they're ready to move forward." p. 3:2-4:5.

· 2/23/03: VDI meeting transcript discussing the Glendale plan. "Through 99-503 [Gila Bend Act] we could have a casino built, it allows it, but politically we might have problems. If we decide to, we need to put it in escrow and it needs to be kept confidential for the time being." p. 17:22-18:14

· 2/23/03: VDI meeting transcript discussing potential political problems with the proposal. "Male Voice: I just hope that . . . in terms of the political (inaudible) that's going to be coming (inaudible), that some of the metro tribes over there don't come back and jump on us too. . . . Male Voice: Might Gila River and Salt River indicate that it's a violation of the 202 (inaudible) metro area? Male Voice: Well, that's what I said in terms of political impact, is that even—even those metro tribes, particularly those three that are right there, might—might say something. But that's a big question mark. That's all." p. 48:21-50:23.

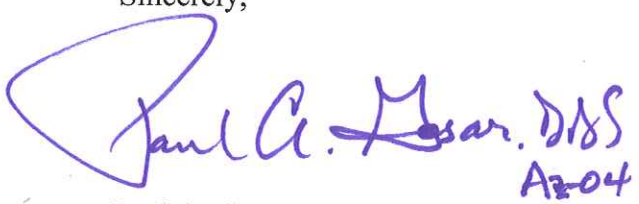
In March 2013, Tohono O'odham created Rainer Resources, Inc. and incorporated the company in Delaware as an attempt to keep the land purchase confidential. Rainer Resources then purchased the Glendale parcel in August 2013. Rainer Resources and Tohono O'odham kept their plan secret until April 2009, when the Nation submitted its fee-to-trust application to the Department of the Interior and finally disclosed its scheme to its sister tribes.

These statements were uncovered during discovery in *State of Arizona v. Tohono O'odham* and revealed the depth of Tohono O'odham's conscious effort to mislead and defraud voters, as well as its State and tribal partners. Unfortunately, the U.S. District Court dismissed the State of Arizona's fraud and misrepresentation claims not on the merits, but because Tohono O'odham refused to waive its sovereign immunity from suit. With regard to the State of Arizona's "promissory estoppel" claim, which alleged that Tohono O'odham made false promises that induced the parties to enter into the compact to their disadvantage thus creating an enforceable promise, the court found on May 7, 2013, that the evidence supported the claim but that Tohono O'odham's sovereign immunity nevertheless barred its review of those allegations. Although Congress, through IGRA, waived tribal sovereign immunity for claims arising from executed compacts, the court determined Congress had not done so with regard to actions that preceded a compact's execution such as those that gave rise to the fraud, misrepresentation, and promissory estoppel claims in *State of Arizona v. Tohono O'odham*. The legal conclusion is dubious as it promotes fraud and sharp dealings long since rejected in modern commerce and illegal in many contexts.

H.R 308, the Keep the Promise Act, is narrowly crafted to address those claims that are shielded by Tohono O'odham's assertion of sovereign immunity. The District Court's rulings demonstrate that Congress is the only institution that can hold Tohono O'odham accountable for fraud, misrepresentation and broken promises.

I believe it is important for the truth to be known. The tribe acted immorally and covertly against its fellow tribes, the State and the general public. This incident and breach of trust has proven that TO cannot be trusted in the future relative to business dealings, tribal matters and commercial relations. I urge Congress to resolve this issue and reaffirm its authority by providing proper oversight of commerce amongst tribes. It is also my hope that lawmakers will take this unethical violation into account when considering future appropriations for this tribe as well as the importance of passage of H.R. 308.

Sincerely,



Paul A. Gosar, D.D.S
Member of Congress