



Written by [Joe Wolverton, II, J.D.](#) on May 4, 2012

## Government Is Keeping Tombstone, Ariz., From Accessing Drinking Water

Tombstone, Arizona, once dubbed "[The Town Too Tough To Die](#)," may finally have met its match in the Obama Administration.

According to a lawsuit filed against the United States Department of Agriculture, Secretary of Agriculture Tom Vilsack, and the USDA Forest Service by the Arizona-based Goldwater Institute, the Forest Service is endangering the town's supply of safe drinking water and ability to fight fires by cutting off the famous city's access to the mountain springs that has provided the desert town with water since the 1880s.



In [documents filed with the United States District Court in Tucson](#), the Goldwater Institute on behalf of the Town of Tombstone accuses the federal government of "enforcing fealty to an arbitrary, capricious and unlawful interpretation of federal law [[the Wilderness Act](#)] by requiring Tombstone to use hand tools and suggesting using horses to restore its water supply."

The problem began after the [Monument Fire in 2011](#) ravaged the Huachuca Mountains home to the pipelines that carry the town's water down from the source in the Miller Canyon Wilderness Area.

In July of that year, rains were so heavy that enormous boulders ("some the size of Volkswagens") careered down the mountains destroying the waterlines (some segments are reportedly buried beneath 12 feet of mud) and choking reservoirs, effectively leaving Tombstone high and dry.

So devastating was the effect of the storms that [Arizona Governor Jan Brewer declared a state of emergency](#) specifically including Tombstone within the emergency zone. Later, the state legislature appropriated funds to help the town restore its water supply infrastructure damaged by the deluge.

In the months since the record-breaking storms, the federal government has thrown up one roadblock after another blocking Tombstone's attempts to send machinery up the mountain to repair the pipes and clear the debris that is threatening the lives and safety of its nearly 1,600 residents.

So aggressive have been the Obama Administration's efforts to impede Tombstone officials from accessing the affected area that plaintiffs in the case aver that the Forest Service has demanded that nothing more sophisticated than a wheelbarrow and hand tools be used by workers hired by the city to haul away the car-sized boulders.

Citing provisions of the Wilderness Act forbidding the use of heavy machinery, the USDA Forest Service is making unreasonable demands on the town of Tombstone and is daily multiplying the risks of irrevocable harm the government's opposition is posing to residents.

The Obama Administration's obstinacy is even more inexplicable in light of the fact that the water rights granted to Tombstone by the previous title owners predate the enactment of the Wilderness Act by about 80 years.



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Why is the Forest Service determined to destroy Tombstone? The fact that there is no discernible answer to that question is perhaps the most perplexing aspect of the federal government's posture in this case.

Despite the filing by the Goldwater Institute of a Freedom of Information Act request for relevant documents, the Forest Service has refused to comply with the request unless the Goldwater Institute pays nearly \$80,000. The Forest Service demands the payment of the exorbitant fee because it argues that the Institute has "a commercial interest" in the information sought in the petition thus disqualifying it for a non-profit fee waiver.

What does the Obama Administration have to hide? Why would they take such an inveterate stance against a town with no other agenda than the repair of critical water supply lines?

Could it be that the government is protecting some sort of endangered species? Is the saving of some animal's natural habitat more important to the government than saving the lives of hundreds of Arizonans who are being deprived of the life-giving liquid?

If the feds have their way these important questions will go unanswered unless the Goldwater Institute pays the \$80,000. Hence the lawsuit.

Fortunately, there are few groups as equipped to pursue this legal remedy as the [Goldwater Institute](#). Founded in 1988 and named for the late Arizona Senator Barry Goldwater, the duly registered 501(c)(3) organization believes "in the power of the states to restore America to the founding principles that made it a beacon of opportunity, prosperity, and freedom." To that end, the Institute researches and develops programs that aid states in protecting their sovereignty through the application of constitutional principles of liberty.

In its suit against the Forest Service, the Goldwater Institute is representing the City of Tombstone and is asserting the town's right to repair the pipelines and reservoirs by invoking the Tenth Amendment reservation to the states (and by association any subdivision thereof) of all powers not specifically granted by the Constitution to the national government.

The Tenth Amendment reads:

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.*

Accordingly, the Goldwater complaint points out that the Constitution does not grant to the federal government the authority to prevent a town from "using and enjoying their property in order to fulfill the essential functions of protecting public health and safety." Particularly, it should be mentioned when the federal government adamantly (and illegally) refuses to disclose its purpose in taking preposterous position that it may place a deadly choke hold around a city's water supply.

In an [article chronicling the affair](#) published on its website, the Goldwater Institute summarizes its principal argument against the Forest Service:

The 10th Amendment protects states and their subdivisions from federal regulations that impede their ability to fulfill essential health and safety functions. Just as the federal government cannot regulate the States, it cannot regulate political subdivisions of the States, like the City of Tombstone. And despite what power it may claim, the Forest Service certainly has no power to regulate Tombstone to death.

[Hugh Holub](#), the late water rights expert and Arizona resident, expressed his learned opinion of the



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relationship between rapine rights and the federal government's usurpation of public land in this way: "Though the water may originate on National Forest lands, Bureau of Land Management lands, and other federally managed lands, the rights to that water belongs to the farms and ranches and cities." Apparently, lawyers for the Obama Administration disagree.

As relief, the plaintiffs are asking Judge Frank Zapata to immediately enjoin the defendants from interfering with Tombstone's efforts to conduct the necessary repairs to the water supply infrastructure (including the use of all necessary heavy machinery) and that he issue an order requiring the appropriate agencies of the federal government "to immediately issue the necessary or modified permits under its emergency jurisdiction without unreasonable restrictions...."

Otherwise, as Nick Dranias, the Goldwater Institute's constitutional policy director, explains, "If there is a reason for the Forest Service to threaten the lives and properties of Tombstone residents, the federal government should tell us what it is."

*Photo: Allen Street in Tombstone*



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