

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Filing of Amicus Curiae Briefs and Litigation to Enjoin
Construction of Border Walls in Organ Pipe Cactus National Monument
and the Cabeza Prieta National Wildlife Refuge)**

RESOLUTION NO. 19-187

1 **WHEREAS,** the Tohono O'odham and our ancestors have from time immemorial inhabited
2 lands from the Gila River area in present-day Arizona south to the Sea of Cortez in
3 northern Mexico and the Constitution of the Tohono O'odham Nation provides,
4 "It shall be the policy of the Tohono O'odham Nation to seek the return to the
5 Tohono O'odham Nation of lands and natural resources, including minerals and
6 water rights, within or adjacent to the Tohono O'odham Nation, or which
7 originally were a part of the historic Papagueria." (Constitution, Article XVI,
8 Section 9); and

9 **WHEREAS,** it is the policy of the Tohono O'odham Nation to promote "enjoyable harmony
10 between members of the [N]ation and their environment," and to preserve "its
11 historic and cultural artifacts and archeological sites" as well as "preserve and
12 cultivate native arts, crafts and traditions" (Constitution, Article VI, Section
13 1(c)(8) and Article XVIII, Section 1); and

14 **WHEREAS,** the Constitution of the Tohono O'odham Nation vests the Tohono O'odham
15 Legislative Council with the power to consult with the Congress and federal
16 agencies regarding federal activities that affect the Tohono O'odham Nation, and
17 federal agencies are required by Executive Order No. 13175, presidential
18 memorandums, and departmental and agency policies to consult and
19 collaborate with affected Indian tribes on federal policies and actions having
20 substantial direct effect on tribes (Constitution, Article VI, Section 1(f) and (j));
21 and

22 **WHEREAS,** in 1854 the United States created an international boundary with Mexico that cuts
23 through Tohono O'odham lands and that forms the 62-mile southern boundary of
24 the Tohono O'odham Nation's main reservation; and

25 **WHEREAS,** the Nation's members are negatively impacted by illegal immigration and drug
26 trafficking across the international boundary, including criminal activity,
27 damage to the Nation's cultural resources, demands on tribal law enforcement,
28 illegal dumping, and environmental degradation; and

29 **WHEREAS,** the Nation's members also suffer from dangerous on-reservation roads in the
30 border area that continue to deteriorate due to inadequate BIA funding for repair
31 and maintenance, and these roads and the Nation's natural resources are further
32 impacted from on-road and off-road use by United States Customs and Border
33 Protection and other law enforcement agencies; and

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1 **WHEREAS,** the Nation accordingly has approved a wide range of measures on the Nation's
2 reservation to provide border security, including but not limited to border
3 vehicle barriers, CBP bases, roads, Integrated Fixed Towers, and CBP checkpoints
4 on reservation highways, while the Nation has opposed border walls and the
5 Secretary of Homeland Security's waivers of legal requirements under section
6 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of
7 1996, as amended, to construct border fencing, walls, and infrastructure; and
8 **WHEREAS,** the duty to protect Nation's lands and resources, and its sovereignty and
9 jurisdiction, including in the Nation's dealings with the United States Customs
10 and Border Protection ("CBP"), Immigration and Customs Enforcement ("ICE"),
11 and other agencies within the United States Department of Homeland Security
12 ("DHS") operating on the Nation's boundary with Mexico, is consistent with the
13 DHS Tribal Consultation Policy in which, "[t]he United States recognizes the right
14 of Federally-recognized Indian Tribes ("Indian Tribes") to self-government.
15 Indian Tribes exercise inherent sovereign powers over their members and
16 territories." DHS Tribal Consultation Policy, I.A.; and
17 **WHEREAS,** through Executive Order 13767, "Border Security and Immigration Enforcement
18 Improvements," which directs the construction of a physical wall on the United
19 States' southern border with Mexico, and a "Proclamation Declaring a National
20 Emergency Concerning the Southern Border of the United States" (February 15,
21 2019) the President of the United States has directed the U.S. Secretary of Defense
22 to assist and support the U.S. Secretary of Homeland Security in constructing a
23 wall across the southern border of the United States; and
24 **WHEREAS,** the U.S. Department of Homeland Security has informed representatives of the
25 Tohono O'odham Nation that the Department of Defense and/or the Department
26 of Homeland Security will be constructing 30 foot and 14-foot-tall bollard-type
27 walls with lights and other infrastructure across 63 miles of the international
28 border adjacent to the Nation in both Organ Pipe Cactus National Monument and
29 the Cabeza Prieta National Wildlife Refuge; and
30 **WHEREAS,** the Secretary of the Department of Homeland Security has issued waivers
31 pursuant to Section 102(c) of the Illegal Immigration Reform and Immigrant
32 Responsibility Act of 1996, as amended, to allow construction of the border wall
33 projects in Organ Pipe Cactus National Monument and the Cabeza Prieta National
34 Wildlife Refuge to proceed without complying with the National Environmental
35 Policy Act, the National Historic Preservation Act, the Native American Graves
36 Protection and Repatriation Act and other legal requirements; and

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1 **WHEREAS,** Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife
2 Refuge are traditional lands of the Tohono O’odham that contain numerous
3 cultural, historical, archaeological and other resources of significance to the
4 Nation that would be adversely impacted by construction of the proposed fencing
5 projects; and

6 **WHEREAS,** two lawsuits seeking to declare the president’s executive order and emergency
7 declaration unlawful and enjoin construction of projects pursuant to those
8 actions are currently pending in the United States District Court for the Northern
9 District of California, *Sierra Club v. Trump* and *State of California v. Trump*; and

10 **WHEREAS,** 20 T.O.C. Chapter 1, Section 3.C. vests the Nation’s attorney general with authority
11 to recommend outside legal counsel “to the Legislative Council, and upon the
12 Council’s approval of such recommendation, to oversee the process of selecting
13 such counsel and to prepare and approve the contract with such counsel.” and

14 **WHEREAS,** the Cultural Preservation, Domestic Affairs, and Agricultural and Natural
15 Resources Committees recommend authorizing the filing of amicus curiae briefs
16 on behalf of the Nation in *State of California v. Trump* and/or *Sierra Club v. Trump*
17 and authorizing litigation to be commenced, if necessary, to enjoin construction
18 of the proposed border wall projects in Organ Pipe Cactus National Monument
19 and the Cabeza Prieta National Wildlife Refuge.

20 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O’odham Legislative Council opposes the
21 planned construction of border walls and related infrastructure through Organ
22 Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge
23 by the U.S. Department of Defense and the U.S. Department of Homeland Security
24 and specifically opposes the use of waivers by the U.S. Secretary of Homeland
25 Security to avoid compliance with laws and legal requirements in connection
26 with the proposed projects.

27 **BE IT FURTHER RESOLVED** that the Tohono O’odham Legislative Council authorizes the
28 Nation’s attorney general, with the prior approval of at least three members of
29 the Border Security Delegation established in Resolution No. 17-155, to take any
30 of the following actions to protect the Nation’s interests in relation to the wall
31 projects;

- 32 (1) File amicus curiae briefs on behalf of the Nation in *State of California v.*
33 *Trump*, *Sierra Club v. Trump*, or related cases;
- 34 (2) Intervene in and represent the Nation as a plaintiff in *State of California v.*
35 *Trump* and/or *Sierra Club v. Trump*; and

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1 (3) Commence and represent the Nation in litigation to enjoin construction
2 of the proposed border wall projects.

3 (4) As necessary, recommend outside legal counsel to the Legislative Council,
4 and upon the Council's approval of such recommendation, to oversee the
5 process of selecting such counsel and to prepare and approve as to form
6 the contract with such counsel subject to final contract approval by
7 Legislative Council resolution.

8 **BE IT FINALLY RESOLVED** by the Tohono O'odham Legislative Council that the Border Security
9 Delegation will update the Legislative Council monthly about the actions taken
10 pursuant to this resolution.

11 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 24TH
12 day of MAY, 2019 at a meeting at which a quorum was present with a vote of 3,084.6 FOR; -0-
13 AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by
14 Article III; Article VI, Section 1(c)(f)(i) and (j); Article XVI; and Article XVIII of the Constitution of
15 the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and
16 approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6,
17 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.984).

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19 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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21 
22 Timothy Joaquin, Legislative Chairman

23
24 29 day of May, 2019

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29 ATTEST:

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32 Evonne Wilson, Legislative Secretary

33
34 29 day of May, 2019

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36 Said Resolution was submitted for approval to the office of the Chairman of the Tohono
37 O'odham Nation on the 29 day of May, 2019 at 7:25³⁴ o'clock, p.m.,
38 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
39 effective upon his approval or upon his failure to either approve or disapprove it within 48
40 hours of submittal.

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42 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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45 Timothy Joaquin, Legislative Chairman

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APPROVED

on the 30 day of May, 2019

DISAPPROVED

at 5:10 o'clock, P.m.


EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 3 day of

June, 2019, at 8:25 o'clock, a.m.


Evonne Wilson, Legislative Secretary

ACTION: AUTHORIZING THE FILING OF AMICUS CURIAE BRIEFS AND LITIGATION TO ENJOIN CONSTRUCTION OF BORDER WALLS IN ORGAN PIPE CACTUS NATIONAL MONUMENT AND THE CABEZA PRIETA NATIONAL WILDLIFE REFUGE

Moved: VICE CHAIRMAN QUINTIN C. LOPEZ

Second: COUNCILWOMAN MARY LOPEZ

DATE: MAY 24, 2019

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 235.8	1. MARY LOPEZ ()	117.9	X			
	2. LUCINDA ALLEN (Yolonda Garcia)	117.9	X			
SELLS 527.2	1. ARTHUR WILSON (Evelyn Juan Manuel)	263.6	X			
	2. ADRIANNE TILLER ()	263.6	X			X
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. (Teresa F. Donahue)	92.85	X			
	2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85	X			
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (Felicia Nunez)	116.15	X			
	2. JANICE FELIX (Adam Andrews)	116.15	X			
SAN LUCY 231.1	1. JANA MONTANA (Diana Manuel)	115.55	X			
	2. GLORIA RAMIREZ (Lorraine Eiler)	115.55	X			
PISINEMO 225.9	1. CHESTER ANTONE (Caroline D. Garcia)	112.95	X			
	2. MONICA K. MORGAN ()	112.95	X			
HICKIWAN 209.0	1. LOUIS R. LOPEZ (<i>Absent</i>) (Shirley Molina) (<i>Present</i>)	104.5	X			X
	2. SANDRA D. ORTEGA ()	104.5	X			
GU VO 256.9	1. GRACE MANUEL ()	128.45	X			
	2. DALLAS LEWIS (<i>Absent</i>) (Nacho Flores) (<i>Present</i>)	128.45	X			
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	135.45	X			
	2. LORETTA LEWIS (Victoria Hobbs)	135.45	X			
CHUKUT KUK 337.7	1. BILLMAN LOPEZ (<i>Absent</i>) (Patricia Antone) (<i>Present</i>)	168.85	X			
	2. VIVIAN JUAN-SAUNDERS (Juanita Homer)	168.85	X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL (Roberta E. Harvey)	186.05	X			
	2. LEANDER MASE (Francine Schooling)	186.05	X			
TOTAL		3,084.6	3,084.6	-0-	-0-	[02]