

TITLE 19 - LAND

CHAPTER 5 - ESCHEAT

Legislative History: Ordinance No. 04-83, "Escheat Ordinance," was enacted by the Papago Tribal Council on September 7, 1983 and approved by the Papago Agency Superintendent on September 14, 1983; amended by Resolution No. 182-84, as enacted by the Papago Tribal Council on August 20, 1984 and approved by the Papago Agency Superintendent on August 24, 1984.

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ORDINANCE OF THE PAPAGO TRIBAL COUNCIL
(ESCHEAT ORDINANCE)

ORD. NO. 04-83

Statement of Purpose: An ordinance providing for the escheat, sale and disposition of treasure-trove and abandoned property.

BE IT ENACTED by the Council of the Papago Tribe of the Papago Reservation, as follows:

Section 1 Short Title

This ordinance may be cited as the Escheat Ordinance of the Papago Tribe.

Section 2 Interpretation

This ordinance shall be deemed an exercise of the police power of the Papago Tribe for the protection of the public welfare, health, peace and morals of the people of the Papago Reservation and all provisions of this ordinance shall be liberally construed for the accomplishment of this purpose.

Section 3 Definitions

In this ordinance, unless the context otherwise requires:

(A) "Holder" means any person in possession of property subject to this ordinance.

(B) "Owner" means any person having a legal or equitable interest in property subject to this ordinance, or his legal representative.

(C) "Treasurer" means the treasurer of the Papago Tribe.

Section 4 Treasure-trove

Any gold or silver in coin, plate, dust or bullion, including intangible representatives thereof, hidden or concealed for at least fifty years within the exterior boundaries of the Papago Reservation shall immediately upon discovery escheat to and vest in the Papago Tribe.

Section 5 Abandoned property

Any Indian artifact, archaeological resource or other tangible personal property embedded in the soil which is at least fifty years old and is found within the exterior boundaries of the Papago Reservation, whose owner is unknown, shall be presumed abandoned and, unless claimed by and awarded to the owner as provided in this ordinance, shall escheat to and vest in the Papago Tribe.

Section 6 Delivery of and receipt for property; relief from liability by delivery

(A) Every person holding treasure-trove property

1 described in section 4, or abandoned property
2 described in section 5 shall within ten days
3 of discovery or receipt thereof deliver it to
4 the treasurer, together with a written report
5 which shall include the name and address of the
6 person making the report, a description of the
7 property and of the date when and place where
8 discovered or received, and the name, if known,
9 and the last known address, if any, of the owner.

10 (B) The treasurer shall give the holder a receipt for
11 property delivered pursuant to this ordinance.

12 (C) The delivery of property to the treasurer by any
13 holder shall terminate any legal relationship
14 between the holder and the owner, and shall
15 release and discharge such holder from any and
16 all liability to the owner, his heirs or assigns
17 by reason of such delivery, and such delivery may
18 be pleaded as a bar to recovery and be a con-
19 clusive defense in any suit or action brought by
20 such owner, his heirs or assigns or any claimant
21 against the holder by reason of such delivery.

22 Section 7 Periods of limitation not a bar

23 The expiration of any period of time specified by
24 statute or court order, during which an action or
25 proceeding may be commenced or enforced to obtain
26 payment of a claim for money or recovery of property,
27 shall not prevent the money or property from being
28 presumed abandoned property, nor affect any duty to
file a report required by this ordinance or to deliver
treasure-trove or abandoned property to the treasurer.

Section 8 Sale or disposition of property by treasurer.

(A) The treasurer may sell or dispose of treasure-
trove property described in Section 4 at any
time after receipt thereof in accordance with
the provisions of Section 13.

(B) Before the treasurer may sell or dispose of the
abandoned property described in Section 4, the
Treasurer shall seek a determination of ownership
in accordance with the provisions of Sections 9
through 12. Upon a final determination that the
property was abandoned and did escheat to and
vest in the Papago Tribe, the treasurer shall sell
or dispose of such property in accordance with
the provisions of Section 13.

Section 9 Notice to persons appearing as owners of abandoned
property.

(A) Within one hundred twenty days from the filing
of the report required by Section 6, the
treasurer shall mail a notice to each person
having an address listed therein who appears
to be entitled to property of the value of one
hundred dollars or more presumed abandoned under
Section 5, and shall cause notice to be published
at least once in a newspaper of general circu-
lation on the Papago Reservation.

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(B) The notice shall be entitled "Notice to Persons Appearing to be Owners of Abandoned Property", and shall contain:

- 1. The names in alphabetical order and last known addresses, if any, of owners listed in the report.
- 2. A description of the property in possession of the treasurer.
- 3. A statement that the property is presumed to be abandoned and that if proof of claim is not presented to the treasurer within forty-five days from the date of the published notice, the abandoned property will escheat to and vest in the Papago Tribe.

(C) The treasurer is not required to give notice with respect to any item of a value of less than one hundred dollars unless he deems such notice to be in the public interest.

Section 10 Claim for abandoned property

Any person claiming an interest in any abandoned property delivered to the treasurer under this ordinance may file a claim thereto on a form prescribed by the treasurer.

Section 11 Determination of claims

(A) The treasurer shall consider any claim filed under this ordinance and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(B) If the claim is allowed, the treasurer shall deliver the property to the claimant upon receipt from the claimant of the costs of notice of publication.

Section 12 Judicial action upon determinations

Any person aggrieved by a decision of the treasurer or as to whose claim the treasurer has failed to act within ninety days after the filing of a claim, may commence an action in the Papago tribal courts to establish his claim. The proceedings shall be brought within ninety days after the decision of the treasurer or within one hundred and eighty days from the filing of the claim of if the treasurer fails to act.

Section 13 Sale and disposition of treasure-trove and abandoned property

(A) All treasure-trove property described in section 4 delivered to the treasurer shall within one hundred and eighty days after delivery be sold

1 by him on the open market for the best
2 available price.

3 (B) All abandoned property described in section 5,
4 except Indian artifacts and archaeological
5 resources described in the Archaeological
6 Resources Protection Act of 1979, P.L. 96-95,
7 14 U.S.C. §§ 470 aa et seq. and the regulations
8 promulgated pursuant thereto, delivered to the
9 treasurer shall be sold by him on the open market
10 for the best available price within one hundred
11 and eighty days after the time set in the published
12 notice required by section 9 (B) (3) or, if a claim
13 therefor has been filed, after a final deter-
14 mination of the claim in favor of the Papago Tribe.

15 (C) The purchaser at any sale conducted by the treas-
16 urer pursuant to this ordinance shall receive
17 title to the property purchased, free from all
18 claims of the owner or prior holder thereof and
19 of all persons claiming through or under them.
20 The treasurer shall execute all documents for and
21 on behalf of the Papago Tribe necessary to complete
22 the transfer of title.

23 (D) All abandoned Indian artifacts and archaeological
24 resources described in the Archaeological Res-
25 sources Protection Act of 1979 and the regulations
26 promulgated pursuant thereto, delivered to the
27 treasurer shall escheat to and vest in the Papago
28 Tribe immediately upon expiration of the time set
in the published notice required by section 9 (B)
(3) or, if a claim has been filed, after a final
determination of the claim in favor of the Papago
Tribe. The treasurer shall arrange for the
safekeeping of such artifacts and resources and
may promulate regulations and enter into agree-
ments providing for their safekeeping, display
and study by suitable tribal, educational or
scientific institutions, programs, museums or
universities. The ultimate disposition of such
artifacts or resources shall be made by the Papago
Council.

20 Section 14 Deposit of Funds

21 All funds received from the sale of treasure-trove
22 and abandoned property under this ordinance shall
be allocated and distributed as follows:

- 23 1) twenty percent thereof shall be deposited to
24 the IIM account of the District of the Papago
25 Reservation in which the property was discovered
or found, to be expended under budgets or reso-
26 lutions of the District Council duly approved
27 by the Papago Council.
- 28 2) eighty percent thereof shall be deposited to
the general account of the Papago Tribe to be
expended under budgets or resolutions of the
Papago Council, along with other tribal revenue,
for the use and benefits of the Papago Tribe.

1 Section 15 Proceeding to compel delivery of property

2 If any person refuses to deliver property to the
3 treasurer as required by this ordinance, he may
4 bring action on behalf of the Papago Tribe in the
5 Papago tribal courts or other courts of competent
6 jurisdiction having venue to enforce such delivery.

7 Section 16 Violations; Jurisdiction

- 8 (A) Any person who wilfully fails to render any
9 report or perform other duties required under
10 this ordinance shall be punished by a fine of not
11 more than one hundred dollars.
- 12 (B) Any person who wilfully refuses to deliver
13 treasure-trove or abandoned property to the
14 treasurer as required under this ordinance shall
15 be punished by a fine of not more than five hundred
16 dollars, or by imprisonment in tribal jail for not
17 more than six months, or both.
- 18 (C) The Papago tribal courts shall have jurisdiction
19 over all violations of this ordinance and may,
20 in addition to the penalties prescribed in sub-
21 sections A and B above, grant such other relief
22 as is necessary and proper for the enforcement
23 of this ordinance, including but not limited to
24 injunctive relief against acts in violation of
25 this ordinance.
- 26 (D) Nothing in this ordinance shall be construed to
27 authorize or require the criminal punishment of
28 non-Indians except to the extent allowed by any
applicable present and future act of Congress
or any applicable court decision and except as
specifically required by the Archaeological
Resources Protection Act of 1979, P.L. 96-95,
16 U.S.C. §§ 470cc and 470 gg, or by the Act
of June 8, 1906, 16 U.S.C. §433.

C E R T I F I C A T I O N

20 The foregoing Ordinance was duly enacted by the Papago Council
21 on the 7th day of September, 1983, at a meeting at which a
22 quorum was present with a vote of 1106.0 for; 52.5 against;
23 281.5 not voting; and 3 absent, pursuant to the authority
24 vested in the Papago Council by Sections 2 (c) and (e) and Section
25 3 (a), (b), (h) and (k) of Article V of the Constitution and By-
26 laws of the Papago Tribe of Arizona as amended, ratified by the
27 Papago Tribe on December 12, 1936, pursuant to Section 16 of the
28 Act of June 18, 1934 (48 Stat. 984), and pursuant to the Act of
August 15, 1953, Public Law 277 (67 Stat. 536). This Ordinance
shall be effective as of the date the Secretary of the Interior or
his designee approves this Ordinance and publishes it in the
Federal Register.

THE PAPAGO COUNCIL

ATTEST:

Ada L. Jone
Secretary

Josiah Moore
Chairman

ORDINANCE APPROVED this 14 day of Sept, 1983.

Curtis E. Nordwall
Superintendent, Papago Agency

RESOLUTION OF THE PAPAGO COUNCIL
(Amending Escheat Ordinance)

RES. NO. 182-84

1 WHEREAS, the Papago Council has enacted the Archaeological
2 Resources Protection Ordinance for the protection
3 and preservation of archaeological resources on the
Papago Reservation; and

4 WHEREAS, Section 11 of the Archaeological Resources Protection
5 Ordinance provides for the ownership, custody and
6 ultimate disposition of archaeological resources
7 excavated or removed from the Papago Reservation,
8 and it is no further necessary or appropriate that
the ownership, custody and disposition of archaeo-
logical resources be determined under the provisions
of the Escheat Ordinance of the Papago Tribe, Ord.
No. 04-83.

9 NOW, THEREFORE, BE IT RESOLVED by the Papago Council that the
Escheat Ordinance is hereby amended as follows:

10 Section 5 Abandoned property

11 Any ~~Indian artifact, archaeological resource or~~
12 other tangible personal property which is embedded
13 in the soil, other than an archaeological resource
14 as defined in the Archaeological Resource Protection
15 Ordinance of the Papago Tribe, and which is at least
16 fifty years old and is found within the exterior
boundaries of the Papago Reservation, whose owner is
unknown, shall be presumed abandoned and, unless
claimed by and awarded to the owner as provided in
this ordinance, shall escheat to the vest in the
Papago Tribe.

17 Section 13

18 (B) All abandoned property described in section 5
19 which is ~~except Indian artifacts and archaeo-~~
20 ~~logical resources described in the Archaeological~~
21 ~~Resources Protection Act of 1979, P.B. 96-95,~~
22 ~~14-U.S.C. §§ 470 aa et seq. and the regulations~~
23 ~~promulgated pursuant thereto, delivered to the~~
24 ~~treasurer shall be sold by him on the open market~~
for the best available price within one hundred
and eighty days after the time set in the pub-
lished notice required by section 9(B) (3) or, if
a claim therefor has been filed, after a final
determination of the claim in favor of the Papago
Tribe.

25 (D) ~~All abandoned Indian artifacts and archaeological~~
26 ~~resources described in the Archaeological Res-~~
27 ~~ources Protection Act of 1979 and the regulations~~
28 ~~promulgated pursuant thereto, delivered to the~~
29 ~~treasurer shall escheat to and vest in the Papago~~
30 ~~Tribe immediately upon expiration of the time set~~
31 ~~in the published notice required by section 9(B)~~
32 ~~(3) or, if a claim has been filed, after a final~~
~~determination of the claim in favor of the Papago~~
~~Tribe. The treasurer shall arrange for the~~
~~safekeeping of such artifacts and resources and~~
~~may promulgate regulations and enter into agree-~~
~~ments providing for their safekeeping, display~~
~~and study by suitable tribal, educational or~~

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~~scientific-institutions, programs, museums or
universities. The ultimate disposition of such
artifacts or resources shall be made by the
Papago Council.~~

BE IT FURTHER RESOLVED that Ordinance No. 04-83 of the Papago
Tribe, as amended by this Resolution, is hereby
republished as the Escheat Ordinance of the Papago
Council.

The foregoing Resolution was duly enacted by the Papago Council
on the 20th day of August, 1984, at a meeting at which a
quorum was present with a vote of 1414.5 for; -0- against;
25.5 not voting; and 1 absent, pursuant to the author-
ity vested in the Council by Section 2(c) and (e) and Section 3
(a), (b), (h) and (k) Of Article V of the Constitution and By-laws
of the Papago Tribe as amended, ratified by the Papago Tribe on
December 12, 1936, and approved by the Secretary of the Interior
on January 6, 1937, pursuant to Section 16 of the Act of June 18,
1934, (48 Stat. 984). Said Resolution is effective as of the
date of its approval by the Superintendent of the Papago Agency
and is subject to review by the Secretary of Interior.

THE PAPAGO COUNCIL

Josiah L. Moore
JOSIAH MOORE, Chairman

ATTEST:

Barbara J. Johnson
Secretary

RESOLUTION APPROVED this 24th day of August, 1984.

John Ross
Acting Superintendent, Papago Agency





United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P.O. Box 7007
Phoenix, Arizona 85011

IN REPLY REFER TO:
Tribal Operations
(602) 241-2314
FTS 261-2314

NOV 22 1983

Through: Superintendent, Papago Agency.

Mr. Josiah Moore

Chairman, Papago Council

Dear Mr. Moore:

We have received Papago Tribal Ordinance No. 04-83 which was enacted by the Tribal Council on September 7, 1983 and approved by the Superintendent on September 14. The Superintendent's approval is subject to Secretarial review.

Said ordinance will provide for the escheat, sale and disposition of treasure-trove and abandoned property, discovered within the exterior boundaries of the Papago Reservation.

The ordinance has been reviewed by the Field Solicitor's office and Area Office staff, and we find no legal reason to rescind the Superintendent's approval. However, Section 4, Treasure-trove and Section 5, Abandoned Property, deserve a cautionary note. In Section 4, the use of the word "dust" as a treasure-trove could apply to any natural gold or silver deposit on the reservation. There are non-Indians currently producing gold and silver from patented and unpatented mining claims and from leases within the exterior boundaries of the reservation. Non-Indians should be included in the ordinance as authorized users. We suggest that "other than naturally occurring deposits" be inserted after the word "dust" in the first sentence.

In Section 5, we have two (2) questions:

- (1) Will the Tribe have professional expertise available to determine if any embedded property is at least 50 years old?
- (2) Will burial sites be considered abandoned property if no one knows the identity of the individual?

We suggest this section be given further thought and, for now at least, burials as referred to in this ordinance be deleted from the abandoned property inventory.

Given the above considerations and recommendations, I hereby concur with the Superintendent's September 14 approval and Ordinance No. 04-83 remains in full force and effect as of the date of the Superintendent's approval.

Sincerely,

Walter A. Mills

Asst. Area Director

Enclosure

