

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving Settlement Agreement with the State of Arizona)**

**RESOLUTION NO. 17-208**

1 **WHEREAS,** the Legislative Council is vested with the power to “promote, protect, and  
2 provide for public health, peace, morals, education, and general welfare of the  
3 Tohono O'odham Nation and its members” and to “consult, negotiate and  
4 conclude agreements and contracts on behalf of the Tohono O'odham Nation  
5 with Federal, State and local governments and other Indian tribes or their  
6 departments, agencies, or political subdivisions, or with private persons or  
7 organizations on all matters within the authority of the Tohono O'odham  
8 Council” (Constitution of the Tohono O'odham Nation, Article VI, Section 1(c)(2)  
9 and 1(f)); and

10 **WHEREAS,** in 1986, the United States Congress enacted the Gila Bend Indian Reservation  
11 Lands Replacement Act as Pub. L. No. 99-503 (the “Replacement Act”), which  
12 authorized the Nation to acquire lands to replace lands damaged by the Painted  
13 Rock Dam and required the United States to hold eligible replacement lands in  
14 trust for the benefit of the Nation; and

15 **WHEREAS,** on December 4, 2002, the Nation entered into a tribal-state gaming compact with  
16 the State of Arizona (the “Compact”); and

17 **WHEREAS,** pursuant to Resolution No. 09-049, as amended by Resolution No. 09-397, the  
18 Legislative Council requested that the Secretary of the Interior acquire 134.88  
19 acres of real property (the “Settlement Property”) in trust for the benefit of the  
20 Nation under the terms of the Replacement Act; and

21 **WHEREAS,** on July 3, 2014, the United States Department of the Interior issued a decision to  
22 acquire in trust on behalf of the Nation approximately 54 acres of land within  
23 the Settlement Property and is now held in trust by the United States for the  
24 benefit of the Nation and its members, the remaining 81.34 acres continue to be  
25 pending decision by the Secretary of the Interior; and

26 **WHEREAS,** pursuant to Resolutions No. 14-318 and No. 14-565, the Settlement Property is  
27 managed and operated by the Tohono O'odham Gaming Enterprise; and

28 **WHEREAS,** pursuant to Resolution No. 15-222, the Tohono O'odham Nation brought a  
29 lawsuit against Daniel Bergin, in his official capacity as Director of the Arizona  
30 Department of Gaming (“Director Bergin”), and other defendants in the U.S.  
31 District Court for the District of Arizona, captioned *Tohono O'odham Nation v.*  
32 *Ducey*, No. 2:15-cv-01135-DGC, seeking declaratory and injunctive relief  
33 regarding Director Bergin’s actions with respect to the Nation’s Desert Diamond  
34 West Valley Resort; and

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1 **WHEREAS, Director Bergin brought counterclaims against the Nation seeking declaratory**  
2 **and injunctive relief, including rescission of the Compact in whole or in part;**  
3 **and**

4 **WHEREAS the Nation, the State of Arizona, and Director Bergin have negotiated a**  
5 ***Settlement Agreement and General and Special Release of All Claims* (the**  
6 **“Settlement Agreement”), substantially in the form attached hereto, to resolve**  
7 **the *Tohono O’odham v. Ducey* litigation and all related claims; and**

8 **WHEREAS, the Settlement Agreement provides for mutual limited waivers of sovereign**  
9 **immunity by the State of Arizona and the Nation to ensure enforceability of the**  
10 **Settlement Agreement; and**

11 **WHEREAS, the Economic Development Delegation has reviewed the Settlement Agreement**  
12 **and recommends its approval.**

13 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O’odham Legislative Council approves the**  
14 **Settlement Agreement and authorizes and directs the Nation’s Chairperson to**  
15 **enter into the Settlement Agreement in substantially the form attached hereto,**  
16 **and to take all other actions consistent with this Resolution that are necessary to**  
17 **effectuate the Settlement Agreement, provided that the Chairperson shall not**  
18 **enter the Settlement Agreement unless the Agreement to Amend the Compact is**  
19 **approved by Legislative Council resolution.**

20 **BE IT FINALLY RESOLVED that the Tohono O’odham Legislative Council grants a limited waiver**  
21 **of the defense of sovereign immunity to an Enforcement Action by the State, in**  
22 **accordance with the terms of the Settlement Agreement.**

23 **The foregoing Resolution was passed by the Tohono O’odham Legislative Council on the 15<sup>TH</sup>**  
24 **day of MAY, 2017 at a meeting at which a quorum was present with a vote of 3,021.4 FOR; -0-**  
25 **AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by**  
26 **Article VI, Section 1(c)(2) and 1(f) of the Constitution of the Tohono O’odham Nation, adopted**  
27 **by the Tohono O’odham Nation on January 18, 1986; and approved by the Acting Deputy**  
28 **Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the**  
29 **Act of June 18, 1934 (48 Stat.984).**

30  
31 **TOHONO O’ODHAM LEGISLATIVE COUNCIL**

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34  
35 **Timothy Joaquin, Legislative Chairman**

36  
37 15 day of May, 2017

1 ATTEST:

2 *Evonne Wilson*  
3  
4 Evonne Wilson, Legislative Secretary

5 15 day of May, 2017

8 Said Resolution was submitted for approval to the office of the Chairman of the Tohono  
9 O'odham Nation on the 15 day of May, 2017 at 3:21 o'clock, P.m.,  
10 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become  
11 effective upon his approval or upon his failure to either approve or disapprove it within 48  
12 hours of submittal.

13 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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16 *Timothy Joaquin*  
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18 Timothy Joaquin, Legislative Chairman

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24  APPROVED

on the 15 day of May, 2017

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26  DISAPPROVED

at 5:13 o'clock, P.m.

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28 *Edward D. Manuel*  
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30 EDWARD D. MANUEL, CHAIRMAN  
31 TOHONO O'ODHAM NATION

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36 Returned to the Legislative Secretary on the 14 day of

37 May, 2017, at 8:45 o'clock, A.m.

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39 *Evonne Wilson*  
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41 Evonne Wilson, Legislative Secretary

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ACTION: APPROVING SETTLEMENT AGREEMENT WITH THE STATE OF ARIZONA

MOVED: COUNCILWOMAN ETHEL GARCIA

SECOND: COUNCILWOMAN FRANCES MIGUEL

DATE: MAY 15, 2017

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 367.2	1. FRANCES MIGUEL (Roberta E. Harvey)	183.60	X			
	2. VERNON J. SMITH (Gloria Zazueta)	183.60	X			X
CHUKUT KUK 332.1	1. ETHEL GARCIA (Marla Kay Henry)	166.05	X			
	2. BILLMAN LOPEZ (Patricia Vicenti)	166.05	X			
GU ACHI 265.0	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	132.50	X			
	2. LORETTA LEWIS ( )	132.50	X			
GU VO 250.6	1. GRACE MANUEL (Dallas Lewis)	125.30	X			
	2. PAMELA ANGHILL ( <i>Absent</i> ) (Jeffery Antone, Sr.) ( <i>Present</i> )	125.30	X			
HICKIWAN 205.8	1. LOUIS R. LOPEZ (Shirley Molina)	102.90	X			
	2. SANDRA ORTEGA ( )	102.90	X			
PISINEMO 219.9	1. CHESTER ANTONE ( <i>Absent</i> ) (Caroline D. Garcia) ( <i>Present</i> )	109.95	X			
	2. MONICA K. MORGAN ( )	109.95	X			
SAN LUCY 226.5	1. DIANA MANUEL (Lorraine Eller)	113.25	X			X
	2. JANA MONTANA (Gloria Ramirez)	113.25	X			
SAN XAVIER 228.6	1. DANIEL L.A. PRESTON III (Felicia Nunez)	114.30	X			
	2. RACHEAL VILSON-STONER (Olivia Villegas-Liston)	114.30	X			
SCHUK TOAK 180.6	1. ANTHONY J. FRANCISCO JR. (Teresa F. Donahue)	90.30	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	90.30	X			
SELLS 513.5	1. ARTHUR WILSON (Beverly Rivas)	256.75	X			
	2. BARBARA HAVIER (Idaleen Reyes)	256.75	X			
SIF OIDAK 231.6	1. LUCINDA ALLEN ( )	115.80	X			
	2. MARY LOPEZ ( )	115.80	X			
TOTAL		3,021.4	3,021.4	-0-	-0-	[01]