

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Opposing Federal Legislation that Promotes Construction of Border Wall, Waives
Laws, and Undermines Tribal Jurisdiction)**

RESOLUTION NO. 18-032

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**
3 **in northern Mexico and the Constitution of the Tohono O'odham Nation**
4 **provides, "It shall be the policy of the Tohono O'odham Nation to seek the return**
5 **to the Tohono O'odham Nation of lands and natural resources, including**
6 **minerals and water rights, within or adjacent to the Tohono O'odham Nation, or**
7 **which originally were a part of the historic Papagueria." (Constitution, Article**
8 **XVI, Section 9); and**

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

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

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

21 **WHEREAS, unlike national forests, wilderness areas, and other federal lands on the**
22 **international boundary dividing the United States and Mexico, the Nation's**
23 **reservation is not public federal land, it is reserved for the benefit of the Nation**
24 **and its members, and the Nation has a duty to ensure that tribal members'**
25 **rights and the Nation's sovereignty are protected; and**

26 **WHEREAS, the Constitution of the Tohono O'odham Nation vests the Tohono O'odham**
27 **Legislative Council with the power to consult with the Congress and federal**
28 **agencies regarding federal activities that affect the Tohono O'odham Nation,**
29 **and federal agencies are required by Executive Order No. 13175, presidential**
30 **memorandums, and departmental and agency policies to consult and**
31 **collaborate with affected Indian tribes on federal policies and actions having a**
32 **substantial direct effect on tribes (Constitution, Article VI, Section 1(f) and (j));**
33 **and**

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RESOLUTION NO. 18-032

(Opposing Federal Legislation that Promotes Construction of Border Wall, Waives Laws, and Undermines Tribal Jurisdiction)

Page 2 of 5

1 **WHEREAS,** the duty to protect Nation's lands and resources, and its sovereignty and
2 jurisdiction, including in the Nation's dealings with the United States Customs
3 and Border Protection ("CBP"), Immigration and Customs Enforcement ("ICE"),
4 and other agencies within the United States Department of Homeland Security
5 ("DHS") operating on the Nation's boundary with Mexico, is consistent with the
6 DHS Tribal Consultation Policy in which, "The United States recognizes the right
7 of Federally-recognized Indian Tribes ("Indian Tribes") to self-government.
8 Indian Tribes exercise inherent sovereign powers over their members and
9 territories." DHS Tribal Consultation Policy, I.A.; and

10 **WHEREAS,** H.R. 3548, the "Border Security for America Act of 2017," has been introduced in
11 the House of Representatives and would promote the construction of a border
12 wall on the Mexican border, waive or authorize waivers of numerous federal
13 environmental and archeological protection laws, authorize National Guard
14 deployments on federal lands, prohibit the Secretary of the Interior from
15 impeding, prohibiting or restricting the construction of a border wall, other
16 tactical infrastructure and technology, and would authorize CBP immediate
17 access to covered "Federal land" within 100 miles of the international land
18 borders of the United States; and

19 **WHEREAS,** H.R. 3548 would also amend Section 102 of the Illegal Immigration Reform and
20 Immigrant Responsibility Act of 1996 to broadly authorize the Secretary of
21 Homeland Security to "take such actions as may be necessary (including the
22 removal of obstacles to detection of illegal entrants) to construct, install, deploy,
23 operate, and maintain tactical infrastructure and technology in the vicinity of
24 the United States border to deter, impede, and detect illegal activity in high
25 traffic areas" and would amend the term "fence" to "physical barriers"; and

26 **WHEREAS,** similar provisions appear in introduced bills H.R. 4760, S. 2192, and S. 1757; and
27 **WHEREAS,** by Resolution No. 08-062 and other resolutions, the Nation has opposed the
28 waiver of federal, state and other laws under Section 102(c) of the Illegal
29 Immigration Reform and Immigrant Responsibility Act of 1996 for the
30 construction of border fencing and roads as unnecessary, destructive, and in
31 violation of the federal obligation to consult with Indian tribes on a government
32 to government basis and to respect tribal sovereignty and self-determination;
33 and

34 **WHEREAS,** while the Nation has supported border security enforcement measures,
35 including the construction of vehicle barriers, the maintenance of border fence

RESOLUTION NO. 18-032

(Opposing Federal Legislation that Promotes Construction of Border Wall, Waives Laws, and Undermines Tribal Jurisdiction)

Page 3 of 5

1 roads, the construction and operation of two forward operating bases, the
2 authorization of pre-development activities for border surveillance
3 technologies, the establishment of Customs and Border Protection checkpoints
4 on reservation highways, and the expenditure of Nation's resources for border-
5 related law enforcement measures, the Nation opposes the waiver of federal
6 environmental and archeological protection laws such as the National
7 Environmental Protection Act, Archeological Protection Act, Clean Air Act,
8 Native American Graves Protection and Repatriation Act and the construction of
9 a continuous border wall (Resolution No. 17-053); and

10 **WHEREAS,** H.R. 3548 includes certain provisions the Nation supports, such as permanently
11 authorizing the grant funding available through Operation Stonegarden,
12 providing funding for the High Intensity Drug Trafficking Area Program, and
13 requiring DHS to ensure that CBP and Immigration and Customs Enforcement
14 officers are equipped with secure two-way communications devices, supported
15 by system interoperability with tribal law enforcement; and

16 **WHEREAS,** the Domestic Affairs and Appropriations Committees recommend reaffirming
17 the Nation's position on border security and immigration enforcement on the
18 Nation pursuant to Resolution No. 17-053 and opposing provisions in federal
19 legislation such as H.R. 3548, H.R. 4760, S. 2192, and S. 1757 that would authorize
20 the waiver of federal environmental and archeological protection laws for the
21 construction of a continuous border wall.

22 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council reaffirms
23 the Nation's positions in Resolution No. 17-053 "Border Security and
24 Immigration Enforcement on the Tohono O'odham Nation" and opposes
25 provisions in federal legislation such as H.R. 3548, H.R. 4760, S. 2192, and S. 1757
26 that would authorize the waiver of federal environmental and archeological
27 protection laws for the construction of a continuous border wall and otherwise
28 undermine the Nation's jurisdiction over its lands and resources.

29 **BE IT FINALLY RESOLVED** that the Tohono O'odham Nation's official representatives are
30 authorized to present the terms of this resolution and other resolutions and
31 positions previously approved by the Tohono O'odham Legislative Council to the
32 federal government, state and local governments and other Indian tribes or
33 their departments, agencies, or political subdivisions, private persons and
34 organizations.
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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 25TH day of JANUARY, 2018 at a meeting at which a quorum was present with a vote of 3,084.6 FOR; -0- AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Article III; Article VI, Section 1(c),(f),(i),(j), and Section 2(d); Article XVI; Article XVIII of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy Joaquin

Timothy Joaquin, Legislative Chairman

26 day of January, 2018

ATTEST:

Evonne Wilson

Evonne Wilson, Legislative Secretary

26 day of January, 2018

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 26 day of January, 2018 at 10:14 o'clock, a .m., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy Joaquin

Timothy Joaquin, Legislative Chairman

APPROVED

on the 26 day of January, 2018

DISAPPROVED

at 4:13 o'clock, p .m.

Edward D. Manuel

EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

RESOLUTION NO. 18-032

(Opposing Federal Legislation that Promotes Construction of Border Wall, Waives Laws, and Undermines Tribal Jurisdiction)

Page 5 of 5

1 Returned to the Legislative Secretary on the 26 day of

2 January, 2018, at 4:37 o'clock, P.m.

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5 Yvonne Wilson

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7 **Evonne Wilson, Legislative Secretary**

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ACTION: OPPOSING FEDERAL LEGISLATION THAT PROMOTES CONSTRUCTION OF BORDER WALL, WAIVES LAWS, AND UNDERMINES TRIBAL JURISDICTION

Moved: VICE CHAIRMAN QUINTIN C. LOPEZ

SECOND: COUNCILWOMAN LUCINDA ALLEN

DATE: JANUARY 25, 2018

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 ()	263.6	X			X
	2. ADRIANNE TILLER (Idaleen Reyes)	263.6	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 ()	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 (Shirley Molina)	104.5	X			
	2. SANDRA D. ORTEGA ()	104.5	X			
GU VO 256.9	1. GRACE MANUEL ()	128.45	X			X
	2. DALLAS LEWIS (Nacho Flores)	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 Vicenti) (<i>Present</i>)	168.85	X			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 ()	186.05	X			X
TOTAL		3,084.6	3,084.6	-0-	-0-	[04]