

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Opposing Recodification of Title 25 of the United States Code and Modification of Federal Indian Policy in the Absence of Tribal Consultation or Adequate Legal Review)

RESOLUTION NO. 02-557

1 **WHEREAS, sovereign Indian tribes, including the Tohono O'odham Nation, share a unique trust**
2 **relationship with the United States of America, which is embodied in the Constitution**
3 **of the United States, numerous court opinions, executive orders, federal agency**
4 **policies and in Federal Indian law statutes codified in Title 25 of the United States**
5 **Code ("Title 25"); and**

6 **WHEREAS, on June 20, 2002, the Department of the Interior, Office of Indian Trust Transition**
7 **("OITT"), notified Indian tribes that the OITT had completed a review of Title 25 in its**
8 **entirety "in an effort to address out-dated or conflicting statutes"; and**

9 **WHEREAS, the stated purpose of this review was to identify provisions requiring revision or**
10 **repeal as "contrary to current Federal Indian policies"; and**

11 **WHEREAS, the OITT review resulted in a proposal to repeal or revise literally approximately two**
12 **hundred and eighty Title 25 provisions, which would result in sweeping changes to**
13 **more than two hundred years of federal statutes; and**

14 **WHEREAS, despite the OITT position that the recodification proposal is limited to revising or**
15 **repealing "archaic" or "conflicting" provisions, in reality the proposal would make**
16 **numerous substantive changes, and would therefore amount to a recodification of**
17 **Title 25 and a restatement of Federal Indian law and policy; and**

18 **WHEREAS, the proposal would, for example (1) revise the 1994 American Indian Trust**
19 **Management Reform Act that is now pending amendment in the Senate and (2) repeal**
20 **the "Non-Intercourse Act" (25 U.S.C. §177), a cornerstone a Federal Indian passed by**
21 **the 1st Congress, which defines the federal role in approving the alienation of Indian**
22 **lands to the exclusion of the states; and**

23 **WHEREAS, despite the scope of the proposed recodification, the proposal was drafted by a non-**
24 **attorney, raising serious doubts whether the full ramifications of the proposal has yet**
25 **been assessed by the OITT; and**

26 **WHEREAS, in addition to the lack of legal review within the OITT, the Solicitor's Office neither**
27 **drafted nor fully reviewed the proposal; and**

28 **WHEREAS, by its passage and implementation of the Indian Self-Determination and Education**
29 **Assistance Act (25 U.S.C. § 450 et seq.) and similar legislation, the United States**
30 **Congress has expressed a policy of working with Indian tribes on a government-to-**

RESOLUTION NO. 02-557

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Page 2 of 4

1 government basis and supporting Indian tribal self-determination and self-
2 governance; and

3 **WHEREAS, the Executive Branch has likewise recognized the need for a Federal Indian policy**
4 **that includes Indian tribes in all decisions affecting their peoples and destinies; and**

5 **WHEREAS, beginning with the Reagan consultation memorandum in 1984 and culminating in**
6 **Executive Order 13175, "Consultation and Coordination with Indian Tribal**
7 **Governments" ("Consultation Order"), Executive Branch agencies are expressly**
8 **required to work with tribes when developing and proposing legislative comments**
9 **or legislation that has a substantial direct effect on any Indian tribe; and**

10 **WHEREAS, the Consultation Order and earlier executive orders and memoranda further require**
11 **that all Executive agencies ensure that there is "meaningful" and "timely" tribal input**
12 **when developing such legislation; and**

13 **WHEREAS, in violation of the Consultation Order and the principles of self-determination,**
14 **Indian tribes had no role in developing the recodification proposal and are only now**
15 **being permitted an inadequate opportunity to review and comment on a major**
16 **legislative proposal that the OITT intends to present to the Congress in February**
17 **2003; and**

18 **WHEREAS, given the sheer magnitude of the OITT recodification proposal, tribes and their legal**
19 **counselors would require a period of time at least equal to the two years the DOI**
20 **committed to developing the proposal in order to conduct a thorough legal review**
21 **and analysis; and**

22 **WHEREAS, Indian tribes question why the recodification proposal is being sponsored by the**
23 **OITT, whose mission and current role is unclear, and not by the Bureau of Indian**
24 **Affairs, which is the primary entity within the DOI responsible for working with**
25 **Indian tribes; and**

26 **WHEREAS, given the OITT's role in the now-withdrawn Bureau of Indian Trust Asset Management**
27 **restructuring proposal, tribes also question whether the OITT recodification is**
28 **designed to fundamentally restructure the federal-tribal trust relationship itself; and**

29 **WHEREAS, Indian tribes cannot support a proposal with such potentially dramatic**
30 **consequences without being fully included in its development.**

31 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council**
32 **hereby opposes the OITT Title 25 recodification proposal and urges it be withdrawn**

RESOLUTION NO. 02-557

(Opposing Recodification of Title 25 of the United States Code and Modification of Federal Indian Policy in the Absence of Tribal Consultation or Adequate Legal Review)

Page 3 of 4

1 for (1) lack of legal review by the Department of the Interior, (2) inadequate
2 opportunity for Indian tribes to conduct a thorough legal review, (3) exclusion of
3 Indian tribes in its development, (4) lack of meaningful and timely consultation.

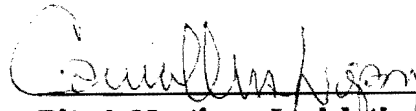
4 **BE IT FURTHER RESOLVED** that, if the proposal is not withdrawn, the Tohono O'odham
5 Legislative Council hereby urges the members of the United States Congress to reject
6 the recodification proposal in its entirety.

7 **BE IT FURTHER RESOLVED** that the Chairman of the Tohono O'odham Nation is hereby
8 authorized to execute and forward letters to Secretary Norton, Assistant Secretary
9 McCaleb, OITT Director Swimmer, the Native American Rights Fund, members of the
10 Arizona delegation to the United States Congress, the Senate and House Native
11 American Caucuses, and the Senate Select Committee on Indian Affairs (1) expressing
12 the Nation's position and (2) urging that the Congress reject the recodification
13 proposal.

14 **BE IT FINALLY RESOLVED** that the Legislative Council authorizes and directs its
15 delegation to the 2002 Annual Session of the National Congress of American Indians
16 ("NCAI") to submit this resolution to NCAI for its approval.

17 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 08TH. Day
18 of NOVEMBER, 2002 at a meeting at which a quorum was present with a vote of 2,075.5 FOR; -0-
19 AGAINST; -0- NOT VOTING; and 342.0[09] ABSENT, pursuant to the powers vested in the Council by
20 Section 1 (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono
21 O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -
22 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48
23 Stat. 984).

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25 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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28 **Rita A. Martinez, Legislative Chairwoman**

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31 3rd day of November, 20 02

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33 **ATTEST:**

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37 **Julianna Saraficio, Acting Legislative Secretary**

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39 08 day of Nov, 20 02.

RESOLUTION NO. 02-557

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Page 4 of 4

1 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham
2 Nation on the 8th day of November, 20 02 at 5:35 o'clock, P.M.,
3 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective
4 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
5 submittal.

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7 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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10 Rita A. Martinez, Legislative Chairwoman

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14 APPROVED

on the 8th day of November, 20 02

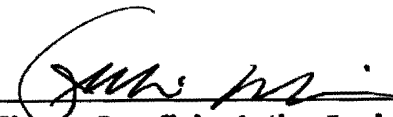
15
16 DISAPPROVED

at 5:29 o'clock, P.M.

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20 EDWARD D. MANUEL, Chairman
21 TOHONO O'ODHAM NATION

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25 Returned to the Legislative Secretary on the 08 day of

26 November, 20 02, at 5:35 o'clock, P.M.

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31 Julianna Saraficio, Acting Legislative Secretary

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ACTION: OPPOSING RECODIFICATION OF TITLE 25 OF THE UNITED STATES CODE AND MODIFICATION OF FEDERAL INDIAN POLICY IN THE ABSENCE OF TRIBAL CONSULTATION OR ADEQUATE LEGAL REVIEW

Moved: COUNCILWOMAN EVELYN JUAN

SECOND: COUNCILMAN AMBROSE ENCINAS

DATE: NOVEMBER 08, 2002

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 317.7	1. FRANCES MIGUEL ()	158.85	X			X
	2. FRANCES G. ANTONE (Lucilda Norris-Valenzuela)	158.85	X			
CHUKUT KUK 248.1	1. KENNETH WILLIAMS (Juanita Homer)	124.05	X			X
	2. DAVID GARCIA (Mary Audrey Juan)	124.05	X			
GU ACHI 230.7	1. CAMILLUS LOPEZ ()	115.35	X			
	2. JEROME JOAQUIN ()	115.35	X			
GU VO 188.3	1. FERN SALCIDO ()	94.15	X			
	2. EMILIO LEWIS (Michael Flores)	94.15	X			
HICKIWAN 167.3	1. SHIRLEY MOLINA ()	83.65				X
	2. SANDRA ORTEGA ()	83.65				X
PISINEMO 174.7	1. BARBARA SALVICIO (Alex Antone)	87.35				X
	2. PATRICIA CRUZ (Johnson Jose)	87.35				X
SAN LUCY 160.7	1. ALBERT MANUEL, JR. (John W. Lawson, Sr.)	80.35	X			X
	2. GLORIA RAMIREZ ()	80.35	X			
SAN XAVIER 184.7	1. FELICIA NUÑEZ ()	92.35	X			
	2. DENNIS RAMON ()	92.35	X			X
SCHUK TOAK 144.5	1. MARY FLORES ()	72.25	X			X
	2. AMBROSE ENCINAS (Frances B. Conde(Francisco))	72.25	X			
SELLS 416.1	1. DENNIS E. JOSE ()	208.05	X			
	2. EVELYN JUAN ()	208.05	X			
SIF OIDAK 184.7	1. ISIDRO LOPEZ ()	92.35	X			
	2. RITA MARTINEZ (Nicholas Jose)	92.35	X			
TOTAL		2,417.5	2,075.5	-0-	-0-	342.0 [09]

****PASSED VOTES**