

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Calling on United States Congress to Approve Technical Amendments to Southern
Arizona Water Rights Settlement Act Amendments of 2004)

RESOLUTION NO. 07-231

1 **WHEREAS, water is a gift from I'itoi, it is a sacred resource of the O'odham to be used and**
2 **safeguarded for the benefit of present and future generations; and**

3 **WHEREAS, the Constitution of the Tohono O'odham Nation recognizes the central importance of**
4 **water to the Tohono O'odham; and**

5 **WHEREAS, "All waters which originate in or flow in, into or through the Tohono O'odham Nation,**
6 **or which are stored in the Tohono O'odham Nation, whether found on the surface or**
7 **underground, are a valuable public resource of the Tohono O'odham Nation to be**
8 **protected for the present and future use of the Tohono O'odham Nation as a whole."**
9 **(Constitution, Article XVII, Section 1); and**

10 **WHEREAS, in 1975 the United States as Indian trustee and the Papago Tribe filed the United States**
11 **v. Tucson and Papago Tribe v. Tucson lawsuits, respectively, to protect surface and**
12 **groundwater rights associated with Indian trust lands within the San Xavier District;**
13 **and**

14 **WHEREAS, although the Congress enacted the Southern Arizona Water Rights Settlement Act, P.L.**
15 **97-293 ("SAWRSA") in 1982, in part, to settle pending water rights and damage claims**
16 **made by or on behalf of the Papago Tribe, San Xavier allottees ("Allottees"), and the**
17 **United States, numerous claims remain unresolved; and**

18 **WHEREAS, in order to resolve those claims and protect the Nation's water resources, the Tohono**
19 **O'odham Legislative Council approved the introduction of amendments to the**
20 **SAWRSA in 1992 and subsequent years (Resolutions No. 92-204, 2000-438, 02-160, 02-**
21 **232, 02-366, 03-094, 04-435); and**

22 **WHEREAS, on December 10, 2004, Congress enacted the Arizona Water Settlements Act, P.L. 108-**
23 **451 (the "Act"), including Title II, the Gila River Indian Community Water Rights**
24 **Settlement Act of 2004, and Title III, the Southern Arizona Water Rights Settlement Act**
25 **Amendments ("SAWRSA Amendments"); and**

26 **WHEREAS, if made effective, the SAWRSA Amendments will (1) authorize, ratify, and confirm the**
27 **Tohono O'odham Settlement Agreement, the Tucson Agreement, the Asarco**
28 **Settlement Agreement, and the FICO Settlement Agreement, (2) authorize and direct**
29 **the Secretary of the Interior to execute and perform the Secretary's obligations under**
30 **those agreements, and (3) authorize the actions and appropriations necessary for the**

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1 **United States under the agreements and the SAWRSA Amendments; and**

2 **WHEREAS, the SAWRSA Amendments will take effect on the “enforceability date,” which is the date**

3 **the Secretary of the Interior publishes in the Federal Register a statement of findings**

4 **that numerous enforceability conditions have been met, including that “the judgment**

5 **and decree attached to the Tohono O’odham settlement agreement as exhibit 17.1 has**

6 **been approved by the State court having jurisdiction over the Gila River adjudication**

7 **proceedings, and that judgment and decree have become final and nonappealable”**

8 **(SAWRSA Amendments, Section 302(b)(5) (emphasis added)); and**

9 **WHEREAS, if the Secretary does not publish a statement of findings under Section 302 by**

10 **December 31, 2007, the SAWRSA Amendments will not take effect; and**

11 **WHEREAS, although the Nation anticipates that the Gila River adjudication court will approve the**

12 **judgment and decree attached to the Tohono O’odham Settlement Agreement before**

13 **December 31, 2007, all possible appeals to the judgment and decree may not be**

14 **exhausted by that date; and**

15 **WHEREAS, the requirement that the State court judgment and decree become “final and**

16 **nonappealable” does not appear in the Gila River Indian Community Water Rights**

17 **Settlement Act enforceability provisions, which only require trial court approval of the**

18 **relevant judgments and decrees in the Gila River adjudication proceedings and Globe**

19 **Equity decree proceedings (Act Title II, Section 207(c)(1)(G)); and**

20 **WHEREAS, Section 302(c) of the SAWRSA Amendments also incorrectly requires the Secretary to**

21 **publish findings under subsection “302(a)” instead of subsection “302(b)”;** and

22 **WHEREAS, the San Xavier District has requested the introduction of technical amendments to the**

23 **SAWRSA Amendments by Resolution No. SXDC 04-07-10; and**

24 **WHEREAS, in order to ensure that the SAWRSA Amendments become enforceable, it is in the**

25 **Nation’s best interest to seek technical amendments to Section 302 to**

26 **(1) correct the subsection 302(c) citation to the Secretary’s findings from subsection**

27 **“302(a)” to “302(b)” and**

28 **(2) delete the requirement for a final and nonappealable order from subsection**

29 **302(b)(5) in order to conform that subsection with subsection 207(c)(1)(G) of Title II of**

30 **the Act.**

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1 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council**
2 **calls upon the United States Congress to amend the Arizona Water Settlements Act of**
3 **2004, P. L. 108-451, Title III, the Southern Arizona Water Rights Settlement Act**
4 **Amendments of 2004 to**

5 **(1) correct the subsection 302(c) citation to the Secretary's findings from subsection**
6 **"302(a)" to "302(b)" and**

7 **(2) remove the requirement for a final and nonappealable order from subsection**
8 **302(b)(5) by deleting the following language from that subsection: ", and that**
9 **judgment and decree have become final and nonappealable".**

10 **BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council authorizes and**
11 **directs the Nation's Chairperson and Water Resources Committee, with the assistance**
12 **of counsel, as requested, to work with the Arizona delegation to the United States**
13 **Congress and other parties to enact the technical amendments to the SAWRSA**
14 **Amendments identified in this resolution.**

15 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 24TH Day**
16 **of APRIL, 2007 at a meeting at which a quorum was present with a vote of 850.2 FOR; 798.0 AGAINST;**
17 **193.1 NOT VOTING; and 599.5 [11] ABSENT, pursuant to the powers vested in the Council by**
18 **Section 1(f) and 1(j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the**
19 **Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
20 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
21 **18, 1934 (48 Stat. 984).**

22 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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26 **Verlon M Jose, Legislative Chairman**

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28 27 day of April, 2007

29 **ATTEST:**

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33 **Lucille Lopez, Acting Legislative Secretary**

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35 24 day of April, 2007.
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1 Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono
2 O'Odham Nation on the 27 day of April, 2007 at 1:46 o'clock,
3 P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
4 effective upon her approval or upon her failure to either approve or disapprove it within 48 hours
5 of submittal.

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7 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

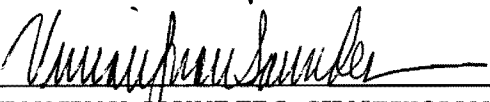
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12 **Verlon M. Jose, Legislative Chairman**

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15 **APPROVED**

on the 27 day of April, 2007

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17 **DISAPPROVED**

at 9:52 o'clock, P.M.

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22 **VIVIAN JUAN-SAUNDERS, CHAIRWOMAN**
23 **TOHONO O'ODHAM NATION**

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26 Returned to the Legislative Secretary on the 30 day of

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28 April, 2007, at 9:54 o'clock, A.M.

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32 **Lucille Lopez, Acting Legislative Secretary**

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ACTION: CALLING ON UNITED STATES CONGRESS TO APPROVE TECHNICAL AMENDMENTS TO SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT AMENDMENTS OF 2004

Moved: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILWOMAN DARLENE ANDREW

DATE: APRIL 24, 2007

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (<i>Absent</i>) (Vernon J. Smith) (<i>Present</i>)	155.40	X			
	2. FRANCES G. ANTONE (<i>Absent</i>) (Lucilda J. Valenzuela (Norris)) (<i>Present</i>)	155.40		X		
CHUKUT KUK 258.7	1. ETHEL GARCIA ()	129.35				X
	2. VERLON M. JOSE (David Garcia)	129.35				X
GU ACHI 221.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	110.80		X		
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	110.80		X		
GU VO 193.1	1. RAYMOND VICTOR ()	96.55			X	
	2. MICHAEL FLORES (Grace Manuel)	96.55			X	X
HICKIWAN 167.4	1. SHIRLEY SANTOS-MOLINA ()	83.70	X			
	2. SANDRA ORTEGA ** ()	83.70	X			
PISINEMO 171.8	1. BARBARA SALVICIO ()	85.90				X
	2. GERALD FAYUANT ()	85.90				X
SAN LUCY 169.0	1. LORRAINE EILER ()	84.50				X
	2. GLORIA RAMIREZ ()	84.50				X
SAN XAVIER 193.8	1. FELICIA NUÑEZ ()	96.90	X			X
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	96.90	X			
SCHUK TOAK 146.9	1. FRANCES B. CONDE ()	73.45	X			X
	2. PHYLLIS JUAN ()	73.45	X			
SELLS 421.0	1. MARLENE SARAFICIO-JUAN ()	210.50		X		
	2. EVELYN B. JUAN MANUEL (Kimberly Listo)	210.50		X		X
SIF OIDAK 186.7	1. WAVALENE ROMERO (Isidro Lopez)	93.35	X			X
	2. DARLENE ANDREW (Rita Wilson)	93.35	X			
TOTAL		2,440.80	850.2	798.0	193.1	599.5 [11]

**PASSED VOTES