

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Interim Allottee Water Rights Code)

RESOLUTION NO. 07-257

- 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**
4 **of 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, the San Xavier Reservation was established by Executive Order on July 3, 1874 for the**
11 **purpose of protecting Indian lands, resources and waters of the Community of Wa:k**
12 **O'odham from non-Indian encroachment; and**
- 13 **WHEREAS, in 1891, 41,000 acres within the San Xavier Reservation were allotted in trust to**
14 **individual Indians under the General Allotment Act of 1887 (the "Dawes Act"); and**
- 15 **WHEREAS, what is now the main Tohono O'odham Reservation was established by Executive**
16 **Order of February 1, 1917 and the Act of February 21, 1931; and**
- 17 **WHEREAS, since 1937, the San Xavier District has been recognized as one of the 11 districts of the**
18 **Nation (Constitution and By-laws of the Papago Tribe, Article VI, Section 1 (1937);**
19 **Constitution of the Tohono O'odham Nation, Article IX, Section 1 (1986)); and**
- 20 **WHEREAS, in 1975 the United States as Indian trustee and the Papago Tribe filed the United**
21 **States v. Tucson and Papago Tribe v. Tucson lawsuits, respectively, to protect surface**
22 **and groundwater rights associated with Indian trust lands within the San Xavier**
23 **District; and**
- 24 **WHEREAS, although the Congress enacted the Southern Arizona Water Rights Settlement Act,**
25 **P.L. 97-293 ("SAWRSA") in 1982, in part, to settle pending water rights and damage**
26 **claims made by or on behalf of the Papago Tribe, San Xavier allottees ("Allottees"),**
27 **and the United States, numerous claims remain unresolved; and**
- 28 **WHEREAS, in order to resolve those claims and protect the Nation's water resources, the Tohono**
29 **O'odham Legislative Council approved the introduction of amendments to the**
30 **SAWRSA in 1992 and subsequent years (Resolutions No. 92-204, 2000-438, 02-160, 02-**
31 **232, 02-366, 03-094, 04-435); and**

1 **WHEREAS, on December 10, 2004, the Arizona Water Settlements Act, P.L. 108-451 (the "Act"),**
2 **including Title II, the Gila River Indian Community Water Rights Settlement Act of**
3 **2004, and Title III, the Southern Arizona Water Rights Settlement Act Amendments**
4 **("SAWRSA Amendments") was enacted; and**

5 **WHEREAS, if made effective, the SAWRSA Amendments will (1) authorize, ratify, and confirm the**
6 **Tohono O'odham Settlement Agreement, the Tucson Agreement, the Asarco**
7 **Settlement Agreement, and the FICO Settlement Agreement, (2) authorize and direct**
8 **the Secretary of the Interior to execute and perform the Secretary's obligations under**
9 **those agreements, and (3) authorize the actions and appropriations necessary for the**
10 **United States under the agreements and the SAWRSA Amendments; and**

11 **WHEREAS, the SAWRSA Amendments will take effect on the "Enforceability Date," which is the**
12 **date the Secretary of the Interior publishes in the Federal Register a statement of**
13 **findings that numerous enforceability conditions have been met, including that "the**
14 **Secretary has approved the interim allottee water rights code described in section**
15 **308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of**
16 **2004" (SAWRSA Amendments, Section 302(b)(3)); and**

17 **WHEREAS, the SAWRSA Amendments further provide that the Nation shall submit for approval**
18 **by the Secretary the code provisions implementing, with respect to Allottees,**
19 **standards for permitting, equitable distribution of water, protection of due process,**
20 **appeal rights, a limited waiver of the Nation's sovereign immunity for certain**
21 **injunctive and declaratory actions, and other matters described in Sections 308(b)**
22 **and (c) of the SAWRSA Amendments; and**

23 **WHEREAS, from 2003 to 2006, the District Water Advisory Committee distributed drafts, held**
24 **numerous public meetings, gathered public comments, and incorporated**
25 **suggestions into provisions now appearing in the Interim Allottee Water Rights Code;**
26 **and**

27 **WHEREAS, the San Xavier Allottees Association has likewise provided Allottees with quarterly**
28 **updates, solicited questions, briefed Allottees at the Association's annual meetings,**
29 **made door-to-door visits, distributed newsletters, and made PowerPoint**
30 **presentations on progress toward completing a tribal code mandated by the SAWRSA**
31 **Amendments; and**

32 **WHEREAS, from 2006 to the present, the Legislative Water Resources Committee, with assistance**
33 **from the District Water Advisory Committee, has held dozens of meetings with**

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representatives of the San Xavier District, San Xavier Allottees Association, San Xavier Cooperative Association, and with the San Xavier parties' attorneys, and has drafted the Interim Allottee Water Rights Code that satisfies the requirements of the SAWRSA Amendments; and

WHEREAS, the Water Resources Committee has held public hearings in the San Xavier District and in Sells and has reviewed the resulting comments and incorporated those it deemed appropriate into the Interim Allottee Water Rights Code dated May 8, 2007; and


WHEREAS, in order to realize the benefits available in the SAWRSA Amendments, it is in the Nation's best interest to enact the Interim Allottee Water Rights Code and submit it to the Secretary of the Interior for approval; provided that, if the Secretary provides a written notification to the Nation identifying provisions of the code that do not conform to Section 308(b) of the SAWRSA Amendments or other applicable federal laws, the Nation will have the opportunity to revise the code in accordance with the Secretary's recommendations (SAWRSA Amendments, Section 308(c)).

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby enacts the Interim Allottee Water Rights Code dated May 8, 2007, which shall become effective on the Enforceability Date, as Tohono O'odham Code Title 25, Chapters 3 and 4.

BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council authorizes and directs the Nation's Chairperson and Water Resources Committee to submit the Interim Allottee Water Rights Code to the Secretary of the Interior for approval.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09TH Day of MAY, 2007 at a meeting at which a quorum was present with a vote of 1,461.8 FOR; 768.5 AGAINST; 210.5 NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Section 1 (f) and (j) of Article VI and Sections I and II of Article XVII 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


Verlon M. Jose, Legislative Chairman

14 day of May, 2007

1 ATTEST:
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4 Lucille Lopez
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6 Lucille Lopez, Acting Legislative Secretary

7 09 day of May, 2007.
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10 Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono
11 O'Odham Nation on the 14 day of May, 2007 at 2:50 o'clock,
12 P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
13 effective upon her approval or upon her failure to either approve or disapprove it within 48 hours
14 of submittal.
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16 TOHONO O'ODHAM LEGISLATIVE COUNCIL

17 Verlon M. Jose
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20 Verlon M. Jose, Legislative Chairman
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24 APPROVED

on the 15 day of May, 2007

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26 DISAPPROVED

at 11:40 o'clock, A.M.

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29 Vivian Juan-Saunders
30 VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
31 TOHONO O'ODHAM NATION
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36 Returned to the Legislative Secretary on the 15 day of

37 May, 2007, at 12:05 o'clock, P.M.

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39 Lucille Lopez
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41 Lucille Lopez, Acting Legislative Secretary
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ACTION: ENACTING INTERIM ALLOTTEE WATER RIGHTS CODE

MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILMAN GERALD FAYUANT

DATE: MAY 09, 2007

| DISTRICT | LEGISLATIVE REPRESENTATIVES | # OF VOTES | FOR | AGAINST | NOT VOTING | ABSENT |
|----------------------|--|-----------------|----------------|--------------|--------------|-------------|
| BABOQUIVARI 310.8 | 1. FRANCES MIGUEL (Vernon J. Smith) | 155.40 | X | | | |
| | 2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris)) | 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 | | | |
| HICKIWAN 167.4 | 1. SHIRLEY SANTOS-MOLINA () | 83.70 | | X | | |
| | 2. SANDRA ORTEGA () | 83.70 | | X | | 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 | | | |
| | 2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez) | 96.90 | X | | | |
| SCHUK TOAK 146.9 | 1. FRANCES B. CONDE () | 73.45 | 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 | | |
| 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 | 1,461.8 | 768.5 | 210.5 | [02] |

**PASSED VOTES