

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Adopting Conforming Amendments to Interim Allottee Water Rights Code)

RESOLUTION NO. 07-485

- 1 **WHEREAS, water is a gift from I'toi, 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, the San Xavier Reservation was established by Executive Order on July 1, 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 States**
21 **v. Tucson and Papago Tribe v. Tucson lawsuits, respectively, to protect surface and**
22 **groundwater rights associated with Indian trust lands within the San Xavier District;**
23 **and**
- 24 **WHEREAS, although the Congress enacted the Southern Arizona Water Rights Settlement Act, P.L.**
25 **97-293 ("SAWRSA") in 1982, in part, to settle pending water rights and damage claims**
26 **made by or on behalf of the Papago Tribe, San Xavier allottees ("Allottees"), and the**
27 **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-**

1 **232, 02-366, 03-094, 04-435); and**

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

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

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

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

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

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1 **WHEREAS, from 2006 to the present, the Legislative Water Resources Committee, with assistance**
2 **from the District Water Advisory Committee, has held dozens of meetings with**
3 **representatives of the San Xavier District, San Xavier Allottees Association, San Xavier**
4 **Cooperative Association, and with the San Xavier parties' attorneys, and has drafted**
5 **the Interim Allottee Water Rights Code that satisfies the requirements of the SAWRSA**
6 **Amendments; and**

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

10 **WHEREAS, on May 9, 2007, the Legislative Council adopted the Interim Allottee Water Rights Code**
11 **by Resolution No. 07-257; and**

12 **WHEREAS, the SAWRSA Amendments require that the Allottee Water Rights Code be submitted to**
13 **the Secretary of the Interior for approval; provided that, if the Secretary provides a**
14 **written notification to the Nation identifying provisions of the code that do not**
15 **conform to Section 308(b) of the SAWRSA Amendments or other applicable federal**
16 **laws, the Nation will have the opportunity to revise the code in accordance with the**
17 **Secretary's recommendations (SAWRSA Amendments, Section 308(c)); and**

18 **WHEREAS, based on input from and discussions with the United States Department of the**
19 **Interior, the Water Resources Committee recommends that the Council adopt**
20 **amendments to Title I of the Interim Allottee Water Rights Code to ensure that it**
21 **conforms with the SAWRSA Amendments and will be approved by the Secretary of the**
22 **Interior.**

23 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby amends**
24 **the Interim Allottee Water Rights Code adopted by Resolution No. 07-257 in**
25 **accordance with the attached Interim Allottee Water Rights Code dated July 23, 2007,**
26 **which shall become effective on the Enforceability Date as Tohono O'odham Code Title**
27 **25, Chapters 3 and 4.**

28 **BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council authorizes and directs the**
29 **Nation's Chairperson and Water Resources Committee to submit the provisions of the**
30 **Interim Allottee Water Rights Code dated July 23, 2007 that require federal review to**
31 **the Secretary of the Interior for approval.**
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1 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 25TH. Day**
2 **of JULY, 2007 at a meeting at which a quorum was present with a vote of 1,861.9 FOR; 222.35**
3 **AGAINST; 450.25 NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by**
4 **Section 1 (i) & 1(j) of Article VI and Article XVII of the Constitution of the Tohono O'Odham Nation,**
5 **adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy**
6 **Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act**
7 **of June 18, 1934 (48 Stat. 984).**

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9 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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

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14 26 day of July, 2007

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17 **ATTEST:**

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21 **Lucille Lopez, Acting Legislative Secretary**

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23 25 day of July, 2007.

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25 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham**
26 **Nation on the 26th day of July, 2007 at 3:52 o'clock, P.M.,**
27 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective**
28 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**
29 **submittal.**

30 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

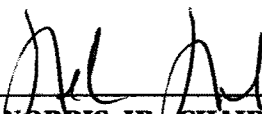
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33 **Verlon M. Jose, Legislative Chairman**

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38 **APPROVED**

on the 30 day of July, 2007

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40 **DISAPPROVED**

at 11:30 o'clock, A.M.

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44 **NED NORRIS, JR., CHAIRMAN**
45 **TOHONO O'ODHAM NATION**

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Returned to the Legislative Secretary on the 30 day of

July, 2007, at 11:50 o'clock, A.M.



Lucille Lopez, Acting Legislative Secretary

ACTION: ADOPTING CONFORMING AMENDMENTS TO INTERIM ALLOTTEE WATER RIGHTS CODE

MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILWOMAN PHYLLIS CACHORA

DATE: JULY 25, 2007

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 316.9	1. FRANCES MIGUEL (<i>Absent</i>) (Roberta Harvey) (<i>Present</i>)	158.45	X			
	2. FRANCES G. ANTONE ()	158.45	X			X
CHUKUT KUK 264.8	1. ETHEL GARCIA ()	132.40	X			
	2. VERLON M. JOSE ()	132.40	X			
GU ACHI 227.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95			X	
	2. CYNTHIA E. MANUEL ()	113.95			X	
GU VO 199.2	1. GRACE MANUEL ()	99.60	X			
	2. MICHAEL FLORES ()	99.60	X			
HICKIWAN 172.0	1. MICHELLE ORTEGA ()	86.00	X			
	2. SANDRA ORTEGA ()	86.00	X			
PISINEMO 182.4	1. CHESTER ANTONE ()	91.20	X			
	2. GERALD FAYUANT ()	91.20	X			
SAN LUCY 181.1	1. LORRAINE EILER ()	90.55	X			
	2. GLORIA RAMIREZ ()	90.55	X			
SAN XAVIER 196.5	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			
SCHUK TOAK 154.6	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			
SELLS 444.7	1. KIMBERLY LISTO ()	222.35			X	
	2. EVELYN B. JUAN MANUEL ()	222.35		X		
SIF OIDAK 194.4	1. WAVALENE ROMERO ()	97.20	X			
	2. MARY LOPEZ ()	97.20	X			
TOTAL		2,534.5	1,861.9	222.35	450.25	[01]

**PASSED VOTES