

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Asarco Mission Mine Settlement Agreement and the Related Limited
Waiver of Sovereign Immunity)**

RESOLUTION NO. 08-095

1 **WHEREAS, in 1959 ASARCO Incorporated entered into mining leases with the Bureau of Indian**
2 **Affairs and related business leases with certain allottees on lands within San Xavier**
3 **Reservation, and continues to operate the Mission Mine on these leases under the**
4 **name of ASARCO LLC ("Asarco"); and**

5 **WHEREAS, since approximately 1988 disputes have arisen between Asarco and the Tohono**
6 **O'odham Nation ("Nation"), San Xavier District ("District"), the landowner allottees,**
7 **the Bureau of Indian Affairs and the Bureau of Land Management regarding submittal**
8 **of a mine plan of operations and a reclamation plan which could be approved by the**
9 **Bureau of Land Management; and**

10 **WHEREAS, on August 9, 2005 Asarco filed a voluntary chapter 11 petition for relief under the**
11 **Bankruptcy Code in the United States Bankruptcy Court for the Southern District of**
12 **Texas, Corpus Christi Division; and**

13 **WHEREAS, in July 2006 the United States filed proofs of claim in the bankruptcy case on behalf of**
14 **the Department of the Interior and the landowners including the Nation and the**
15 **allottees, and the District and the San Xavier Allottees Association separately filed**
16 **their own proofs of claim; and**

17 **WHEREAS, beginning in 2006 Asarco and the Nation, the District, and the Allottees Association**
18 **entered into negotiations on a reclamation plan that would be substituted for a mine**
19 **plan of operations and would be approvable by the Bankruptcy Court as part of a plan**
20 **of reorganization; and**

21 **WHEREAS, the negotiating parties have reached agreement on a Settlement Agreement Mission**
22 **Mine Leases (the "Settlement Agreement") which includes a reclamation plan**
23 **acceptable to the Nation, the District, the Allottees Association and the United States,**
24 **and Asarco has requested a limited waiver of the Nation's and the District's sovereign**
25 **immunity to allow for enforcement and interpretation of the settlement agreement**
26 **in court; and**

27 **WHEREAS, the San Xavier District Council in District Council Resolution No. 02-08-06 has**
28 **recommended that the Nation grant the limited waiver of sovereign immunity to allow**

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1 any party to enforce the Settlement Agreement in Bankruptcy Court or, if the
2 Bankruptcy Court rules that it does not have jurisdiction, in the United States District
3 Court for the District of Arizona; and

4 WHEREAS, the Natnral Resources Committee has reviewed the Settlement Agreement and the
5 requested limited waiver of sovereign immunity and recommends that the Settlement
6 Agreement and the limited waiver of sovereign immunity be presented to the full
7 Legislative Council for decision.

8 NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:

- 9 1. Approves the Settlement Agreement substantially in the form attached hereto and
10 authorizes and directs the Chairman of the Nation to execute it and any related
11 docnments reasonably necessary to implement the Settlement Agreement.
- 12 2. Grants a waiver of the Nation's and the District's sovereign immunity as specified
13 in Paragraph 11 of the Settlement Agreement, which waiver is limited solely to
14 actions to enforce or interpret the Settlement Agreement in Bankruptcy Court or
15 the Federal District Court for the District of Arizona, which waiver shall be limited
16 solely to declaratory and injunctive relief and shall not include money damages,
17 attorney fees, court costs or any other costs, damages, or remedy of any other kind.
18 This waiver shall terminate at the time that all performance obligations of the
19 parties under the Settlement Agreement are satisfied.

20 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 26TH Day
21 of FEBRUARY, 2008 at a meeting at which a quorum was present with a vote of 1,416.0 FOR; 937.4
22 AGAINST; 181.1 NOT VOTING; and [07] ABSENT, pursuant to the powers vested in the Council by
23 Section 1 (f) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono
24 O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -
25 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48
26 Stat. 984).

27 TOHONO O'ODHAM LEGISLATIVE COUNCIL

28
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30 
31 Verlon M. Jose, Legislative Chairman

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33 26 day of February, 2008
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ATTEST:

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

26 day of February, 2008.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 26 day of February, 2008 at 4:49 o'clock, P.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

Verlon M. Jose
Verlon M. Jose, Legislative Chairman

APPROVED

on the 27 day of February, 2008

DISAPPROVED

at 12:31 o'clock, P.M.

Ned Norris, Jr.
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 27th day of

February, 2008, at 12:35 o'clock, P.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: APPROVING ASARCO MISSION MINE SETTLEMENT AGREEMENT AND THE RELATED LIMITED WAIVER OF SOVEREIGN IMMUNITY

MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILWOMAN PHYLLIS CACHORA

DATE: FEBRUARY 26, 2008

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQIVARI 316.9	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	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		X
GU VO 199.2	1. GRACE MANUEL ()	99.60	X			
	2. MICHAEL FLORES ()	99.60	X			X
HICKIWAN 172.0	1. MICHELLE ORTEGA ()	86.00	X			
	2. SANDRA ORTEGA ()	86.00	X			X
PISINEMO 182.4	1. CHESTER ANTONE ()	91.20	X			X
	2. GERALD FAYUANT ()	91.20	X			
SAN LUCY 181.1	1. LORRAINE EILER ()	90.55			X	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			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		X
SIF OIDAK 194.4	1. WAVALENE ROMERO ()	97.20	X			
	2. MARY LOPEZ ()	97.20	X			
TOTAL		2,534.5	1,416.0	937.4	181.1	[07]

**PASSED VOTES