

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Authorizing Submission of *Amicus Curiae* Brief with the United States Supreme Court in**  
***Defenders of Wildlife et al. v. Chertoff*)**

**RESOLUTION NO. 08-184**

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to "administer land**  
2 **and other public property, and by law, ordinance or resolution . . . to manage, protect,**  
3 **preserve and regulate the use of the property, wildlife, land, air and natural resources**  
4 **(including surface and ground waters) of the Tohono O'odham Nation" and the power**  
5 **to consult "appropriate federal agencies regarding federal activities that affect the**  
6 **Tohono O'odham Nation" (Constitution of the Tohono O'odham Nation, Article VI,**  
7 **Section 1(i)(2) and 1(j)); and**

8 **WHEREAS, the Tohono O'odham Nation ("Nation") has adopted the Archaeological Resources**  
9 **Protection Ordinance, Ordinance No. 06-84, codified as Title 8, Chapter 1 of the**  
10 **Tohono O'odham Code, to protect the archaeological resources of the Nation on the**  
11 **Nation's lands; and**

12 **WHEREAS, as a sovereign government, the Nation has worked diligently with federal agencies and**  
13 **officials to enhance security and address immigration, smuggling, environmental**  
14 **damage, and other impacts along the Nation's 75-mile international border with**  
15 **Mexico; and**

16 **WHEREAS, the Secretary of the Department of Homeland Security ("DHS") is vested under Section**  
17 **102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8**  
18 **U.S.C. § 1103 note, with the power to waive all federal, state, and other laws to ensure**  
19 **construction of physical barriers and roads on the United States' border with Mexico**  
20 **to deter illegal crossings; and**

21 **WHEREAS, such waivers are not subject to judicial review except for limited constitutional claims**  
22 **that may be brought in the United States district courts and appealed only to the**  
23 **United States Supreme Court, which has discretion to grant such appeals; and**

24 **WHEREAS, building border fencing, other barriers, and roads without environmental,**  
25 **endangered species, archeological, or other protections found in such laws and**  
26 **without adequate judicial review will result in the disturbance or destruction of**  
27 **numerous tribal archeological and sacred sites, human remains, wildlife, and natural**  
28 **resources; and**

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**Page 2 of 4**

1 **WHEREAS, in recognition of these impacts, the Tohono O'odham Nation, the Inter Tribal Council**  
2 **of Arizona, and the National Congress of American Indians have supported federal**  
3 **legislation that would repeal the DHS Secretary's waiver authority (Legislative Council**  
4 **Resolution No. 08-062; ITCA Resolution 0801; NCAI Resolution # ECWS 08-001); and**

5 **WHEREAS, on October 22, 2007 the DHS announced that the Secretary would waive numerous**  
6 **laws in order to construct barriers within the San Pedro Riparian National**  
7 **Conservation Area, including in areas containing tribal archeological and sacred sites,**  
8 **as well as wildlife and natural resources significant to the O'odham; and**

9 **WHEREAS, on April 1, 2008 the DHS announced that the Secretary would issue expansive waivers**  
10 **of laws, regulations, and other legal requirements in order to construct barriers along**  
11 **55 miles of international border on the Tohono O'odham Nation and other portions**  
12 **of the border outside the Nation's reservation but still within ancestral Tohono**  
13 **O'odham lands; and**

14 **WHEREAS, the Sierra Club and Defenders of Wildlife have challenged the constitutionality of the**  
15 **Secretary's Section 102 waiver authority in an action before the United States Supreme**  
16 **Court and the Nation has been asked to join an *amicus curiae* brief arguing that the**  
17 **Secretary's waiver authority is unconstitutional and citing specific impacts on the**  
18 **Nation (*Defenders of Wildlife et al. v. Chertoff*, Docket No. 07-1180); and**

19 **WHEREAS, the sovereign government of the Tohono O'odham Nation predates the establishment**  
20 **of the United States and the international border, and is constitutionally vested with**  
21 **the continuing responsibility to "[p]reserve important historic, cultural and natural**  
22 **aspects of Tohono O'odham national heritage" regardless whether such lands are**  
23 **within the Nation's current reservation (Constitution, Article XVIII, Section 2(d)); and**

24 **WHEREAS, the Tohono O'odham Nation is therefore uniquely and significantly impacted by the**  
25 **Secretary's waivers and, as an amicus, will provide information that is relevant and**  
26 **has not already been brought to the attention of the Supreme Court; and**

27 **WHEREAS, it is in the Nation's best interest to join an *amicus curiae* brief in *Defenders of Wildlife***  
28 ***et al. v. Chertoff*.**

29 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it hereby**  
30 **directs the Office of the Attorney General in coordination with the Legislative**

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Page 3 of 4

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Attorney's Office to assist in drafting and submitting with other amici an *amicus curiae* brief in *Defenders of Wildlife et al. v. Chertoff*; provided that the Nation's portion of the brief shall reflect the Nation's existing positions.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10<sup>TH</sup> Day of APRIL, 2008 at a meeting at which a quorum was present with a vote of 2,534.5 FOR; -0- AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Section 1 (i)(2) and (j) of Article VI 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

10 day of April, 2008

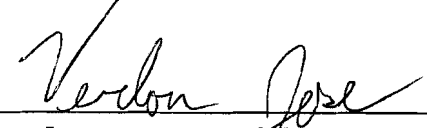
ATTEST:

  
Lucille Lopez, Acting Legislative Secretary

10 day of April, 2008.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 10 day of April, 2008 at 2:07 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, Legislative Chairman

APPROVED

on the 10 day of April, 2008

DISAPPROVED

at 2:16 o'clock, P.M.

  
NED NORRIS, JR., CHAIRMAN  
TOHONO O'ODHAM NATION

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**Page 4 of 4**

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Returned to the Legislative Secretary on the 10 day of

April, 2008, at 2:18 o'clock, P.M.

  
Lucille Lopez, Acting Legislative Secretary

**ACTION:** AUTHORIZING SUBMISSION OF *AMICUS CURIAE* BRIEF WITH THE UNITED STATES SUPREME COURT IN *DEFENDERS OF WILDLIFE ET AL. V. CHERTOFF*

**MOVED:** COUNCILMAN TIMOTHY JOAQUIN

**SECOND:** COUNCILWOMAN EVELYN JUAN MANUEL

**DATE:** APRIL 10, 2008

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>BABOQUIVARI</b> 316.9	1. FRANCES MIGUEL (Roberta Harvey)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			
<b>CHUKUT KUK</b> 264.8	1. ETHEL GARCIA ( )	132.40	X			
	2. VERLON M. JOSE ( )	132.40	X			
<b>GU ACHI</b> 227.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95	X			
	2. CYNTHIA E. MANUEL ( )	113.95	X			
<b>GU VO</b> 199.2	1. GRACE MANUEL ( )	99.60	X			
	2. MICHAEL FLORES ( )	99.60	X			X
<b>HICKIWAN</b> 172.0	1. MICHELLE ORTEGA ( )	86.00	X			X
	2. SANDRA ORTEGA ( )	86.00	X			
<b>PISINEMO</b> 182.4	1. CHESTER ANTONE ( )	91.20	X			
	2. GERALD FAYUANT ( )	91.20	X			X
<b>SAN LUCY</b> 181.1	1. LORRAINE EILER ( )	90.55	X			
	2. GLORIA RAMIREZ ( )	90.55	X			
<b>SAN XAVIER</b> 196.5	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			X
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			
<b>SCHUK TOAK</b> 154.6	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			
<b>SELLS</b> 444.7	1. KIMBERLY LISTO ( )	222.35	X			
	2. EVELYN B. JUAN MANUEL ( )	222.35	X			
<b>SIF OIDAK</b> 194.4	1. WAVALENE ROMERO ( )	97.20	X			
	2. MARY LOPEZ ( )	97.20	X			
<b>TOTAL</b>		<b>2,534.5</b>	<b>2,534.5</b>	<b>-0-</b>	<b>-0-</b>	<b>[04]</b>

\*\*PASSED VOTES