

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Opposing Proposed Revenue Allocation Plan Regulation Amendments)**

RESOLUTION NO. 08-694

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to consult with the**
2 **United States Congress and "federal agencies regarding federal activities that affect**
3 **the Tohono O'odham Nation" (Constitution of the Tohono O'odham Nation, Article VI,**
4 **Section 1(j)); and**

5 **WHEREAS, sovereign Indian tribes share a unique trust relationship with the United States of**
6 **America, which is embodied in the Constitution of the United States, numerous court**
7 **opinions, statutes, executive orders, and federal agency policies; and**

8 **WHEREAS, by its passage and implementation of the Indian Self-Determination and Education**
9 **Assistance Act (25 U.S.C. § 450 et seq.) and similar legislation, the United States of**
10 **America has recognized the need to work with Indian tribes on a government-to-**
11 **government basis and to support Indian tribal self-determination and self-**
12 **governance; and**

13 **WHEREAS, the Tohono O'odham Nation has established the Tohono O'odham Gaming Enterprise**
14 **to operate gaming facilities on the Nation and as a means of providing employment,**
15 **funding essential government services and programs, and otherwise strengthening**
16 **the Nation's power of self-determination and exercising its right to self-governance;**
17 **and**

18 **WHEREAS, under the Indian Gaming Regulatory Act ("Act"), 25 U.S.C. § 2701 et seq., net revenues**
19 **from class II or class III gaming activities conducted by an Indian tribe may be used**
20 **to make per capita payments only if (1) the tribe prepares a plan to allocate revenues**
21 **to uses authorized under the Act, (2) the plan is approved by the Secretary of the**
22 **Interior, (3) the interests of minors and other legally incompetent persons entitled**
23 **to per capita payments are protected and preserved, and (4) the per capita payments**
24 **are subject to federal taxation and members are notified of any resulting tax liability**
25 **(25 U.S.C. § 2710(b)(3)); and**

26 **WHEREAS, to date, the Nation has submitted and received approval of three revenue allocation**
27 **plans to make per capita payments in accordance with 25 U.S.C. § 2710(b)(3) and**
28 **regulations promulgated at 25 C.F.R. Part 290; and**

29 **WHEREAS, the Bureau of Indian Affairs ("BIA") has drafted amendments to 25 C.F.R. Part §290.15**

1 that would require tribes making per capita payments from gaming revenues to
2 disclose

- 3 (1) "Current tribal enrollment and projected enrollment for the next 5 years";
4 (2) "Historical and projected net gaming revenues for the next 5 years";
5 (3) "Other potential sources of tribal revenue within the next 5 years, including, but
6 not limited to" self-determination contract funds;
7 (4) "Historical and current tribal budgets and anticipated budgets for the next 5
8 years"; and
9 (5) "The tribe's written goals and standards for maintaining and achieving
10 economic health, particularly in respect to tribal government operations or
11 programs and providing for the general welfare of the tribe and its members."

12 **WHEREAS, none of this information is required under the existing 25 C.F.R. Part 290 regulations;**
13 **and**

14 **WHEREAS, the mandatory disclosure of such additional information would conflict with the**
15 **federal policy of promoting tribal self-determination and self-governance as the BIA**
16 **would be intruding into the sovereign tribal role of long-term economic planning and**
17 **could expose highly confidential tribal information to public disclosure; and**

18 **WHEREAS, more specifically, the disclosure of projected enrollment for the next 5 years is highly**
19 **speculative and serves no useful purpose. If the BIA wants tribes to consider future**
20 **needs, the regulations should require that a RAP must describe how a tribe will save**
21 **money for future needs. The BIA does not need projected enrollment data for this**
22 **purpose; and**

23 **WHEREAS, the Nation and many other tribes closely guard net gaming revenue figures as a trade**
24 **secret. Tribes should not be forced to release this information unless the BIA can**
25 **guarantee tribes in writing that the information will be protected from Freedom of**
26 **Information Act requests, will not be distributed to any other federal agency, and it**
27 **will not be released to anyone without a court order; and**

28 **WHEREAS, nor should tribes be forced to disclose "historical," current, and anticipated budgets**
29 **for the next five years. Such documents would comprise thousands of pages of past**
30 **and future budgets and require tribes to produce highly speculative and essentially**

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1 useless volumes of future budgets whose only purpose would be to satisfy a
2 paperwork requirement of the RAP. Such a requirement is a paternalistic intrusion
3 into each tribe's sovereign fiscal power to manage its resources; and

4 **WHEREAS, for these reasons, the Nation opposes the proposed regulation requirements and**
5 **calls upon the BIA to withdraw the § 290.15(c)(1-5) from the proposed revisions.**

6 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council opposes the**
7 **proposed regulation requirements and calls upon the BIA to withdraw the §**
8 **290.15(c)(1-5) from the proposed revisions.**

9 **BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that it authorizes and directs**
10 **the Chairman of the Tohono O'odham Nation to submit the Nation's comments on the**
11 **proposed amendments to 25 C.F.R. Part 290 to the appropriate federal officials and,**
12 **with the Budget and Finance Committee Chairperson, to represent the Nation's**
13 **position on BIA consultation and future meetings on the amendments.**

14 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 02ND. Day**
15 **of DECEMBER, 2008 at a meeting at which a quorum was present with a vote of 2,443.95 FOR; 90.55**
16 **AGAINST; -0- NOT VOTING; and [06] ABSENT, pursuant to the powers vested in the Council by**
17 **Section 1 (j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono**
18 **O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**
19 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**
20 **Stat. 984).**

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Verlon M. Jose, Legislative Chairman

2nd day of December, 2008

ATTEST:

31 
32 _____
33 **Lucille Lopez, Acting Legislative Secretary**

34 02 day of December, 2008.

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37 **Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham**
38 **Nation on the 2nd day of December, 2008 at 2:12 o'clock, p.M.,**
39 **pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective**
40 **upon his approval or upon his failure to either approve or disapprove it within 48 hours of**
41 **submittal.**

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Felicia Muniz for
Verlon M. Jose, Legislative Chairman

APPROVED

on the 2nd day of December, 2008

DISAPPROVED

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

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

Returned to the Legislative Secretary on the 02 day of

December, 2008, at 2:15 o'clock, P.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: OPPOSING PROPOSED REVENUE ALLOCATION PLAN REGULATION AMENDMENTS

MOVED: COUNCILMAN TIMOTHY JOAQUIN

SECOND: COUNCILWOMAN WAVALENE ROMERO

DATE: DECEMBER 02, 2008

| DISTRICT | LEGISLATIVE REPRESENTATIVES | # OF VOTES | FOR | AGAINST | NOT VOTING | ABSENT |
|----------------------|---|----------------|-----------------|--------------|------------|-------------|
| BABOQUIVARI 316.9 | 1. FRANCES MIGUEL (Roberta Harvey) | 158.45 | X | | | |
| | 2. FRANCES G. ANTONE (<i>Absent</i>) (Vernon Smith) (<i>Present</i>) | 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. RAYMOND VICTOR () | 99.60 | X | | | X |
| HICKIWAN 172.0 | 1. MICHELLE ORTEGA () | 86.00 | X | | | X |
| | 2. SANDRA ORTEGA () | 86.00 | X | | | |
| PISINEMO 182.4 | 1. CHESTER ANTONE (Tony Murrietta) | 91.20 | X | | | 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 | | | 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 | | | X |
| TOTAL | | 2,534.5 | 2,443.95 | 90.55 | -0- | [06] |

**PASSED VOTES