

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Agreement with New Magma Irrigation and Drainage District for
2016 and Approving 2016 Annual Scheduling Agreement)**

RESOLUTION NO. 15-351

1 **WHEREAS, the Tohono O'odham Nation is entitled to receive a total of 66,000 acre-feet of**
2 **Central Arizona Project ("CAP") water per year; and**

3 **WHEREAS, under the Southern Arizona Water Rights Settlement Act, as amended**
4 **("SAWRSA"), Title III of Public Law 108-451, the Nation is authorized to utilize its**
5 **CAP water either on reservation or off reservation; and**

6 **WHEREAS, in 2012, 2013 and 2014 the Nation entered into Agreements with the New Magma**
7 **Irrigation and Drainage District ("NMIDD"), which is designated as a**
8 **groundwater savings facility under Arizona law, to deliver a portion of the**
9 **Nation's CAP entitlement to NMIDD as "in-lieu water"; and**

10 **WHEREAS, the 2012, 2013 and 2014 Agreements were successfully implemented and**
11 **resulted in delivery of a substantial amount of the Nation's CAP entitlement to**
12 **NMIDD and a substantial payment by NMIDD to the Nation; and**

13 **WHEREAS, such agreements require the approval of the Department of the Interior; and**

14 **WHEREAS, the Nation's attorneys have worked with Department of the Interior attorneys to**
15 **develop a standard form of groundwater savings facility agreement that can be**
16 **used by any Arizona tribe and can be used for multiple years, thereby speeding**
17 **up Department of the Interior environmental review and approval of**
18 **agreements; and**

19 **WHEREAS, the term of the Nation's proposed 2016 Agreement is until December 31, 2017,**
20 **but requires an annual decision by the Nation whether to assign any amount of**
21 **CAP water to the contract with NMIDD, which decision results in an Annual**
22 **Scheduling Agreement to be signed by both parties; and**

23 **WHEREAS, under the 2016 Agreement, in addition to the payments for the water, the Nation**
24 **will accumulate marketable long-term storage credits through the use by**
25 **NMIDD of the Nation's CAP water instead of NMIDD pumping and using**
26 **groundwater within the irrigation district itself; and**

27 **WHEREAS, in Section 11 of the Agreement, the Nation has agreed to provide a limited waiver**
28 **of sovereign immunity to allow for dispute resolution in any court of competent**
29 **jurisdiction, not to include Arizona state courts, which waiver is limited to**

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1 **declaratory and injunctive relief to enforce the Agreement but does not include**
2 **a waiver of any claims for money damages, attorney's fees, court costs or any**
3 **other costs, damages, remedy, or claims of any other kind; and**

4 **WHEREAS, the Water Resources Committee has reviewed the 2016 Agreement and the 2016**
5 **Annual Scheduling Agreement and recommends approval by the Legislative**
6 **Council.**

7 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council approves**
8 **the Agreement Between New Magma Irrigation and Drainage District and the**
9 **Tohono O'odham Nation Providing for the Delivery of Nation's CAP Water for**
10 **Water Storage at a Ground Water Savings Facility for the year 2016 which will**
11 **extend to December 31, 2017, substantially in the form attached hereto, and**
12 **authorizes the Chairman of the Nation to execute the Agreement and any**
13 **additional documentation reasonably necessary to implement the intent of the**
14 **Agreement, provided that the Nation will annually enter into an Annual**
15 **Scheduling Agreement which will assign a quantity of CAP water to the**
16 **Agreement, including the possibility of assigning no water to the Agreement.**

17 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council approves a limited**
18 **waiver of the Nation's sovereign immunity to allow disputes arising between the**
19 **parties with respect to this 2016 Agreement or the Annual Scheduling Agreement**
20 **to be resolved in any court of competent jurisdiction, not to include Arizona**
21 **state courts, and limits the waiver to declaratory and injunctive relief to enforce**
22 **the Agreement but does not waive its sovereign immunity with respect to any**
23 **claims for money damages, attorney's fees, court costs or any other costs,**
24 **damages, remedy, or claims of any other kind.**

25 **BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council approves the 2016**
26 **Annual Scheduling Agreement with the New Magma Irrigation and Drainage**
27 **District, effective as of January 1, 2016, substantially in the form attached**
28 **hereto.**

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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 15TH day of SEPTEMBER, 2015 at a meeting at which a quorum was present with a vote of 2,406.85 FOR; 614.55 AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(f) and Article XVII, Section 2 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



Timothy Joaquin, Legislative Chairman

22 day of September, 2015

ATTEST:



Evonne Wilson, Legislative Secretary

21 day of September, 2015

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 22 day of September, 2015 at 2:19 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



Timothy Joaquin, Legislative Chairman

APPROVED

on the 24 day of September, 2015

DISAPPROVED

at 10:51 o'clock, A .m.



EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 24 day of

September, 2015, at 11:18 o'clock, a.m.


Evonne Wilson, Legislative Secretary

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ACTION: APPROVING AGREEMENT WITH NEW MAGMA IRRIGATION AND DRAINAGE DISTRICT FOR 2016 AND APPROVING 2016 ANNUAL SCHEDULING AGREEMENT

MOVED: COUNCILMAN QUINTIN C. LOPEZ

SECOND: COUNCILWOMAN LUCINDA ALLEN

DATE: SEPTEMBER 15, 2015

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 367.2	1. FRANCES MIGUEL (<i>Absent</i>) (Roberta E. Harvey) (<i>Present</i>)	183.60	X			
	2. VERNON J. SMITH (<i>Absent</i>) (Gloria Zazueta) (<i>Present</i>)	183.60	X			
CHUKUT KUK 332.1	1. ETHEL GARCIA (Marlakay K. Henry)	166.05	X			
	2. BILLMAN LOPEZ (<i>Absent</i>) (Patricia Vicenti) (<i>Present</i>)	166.05		X		
GUACHI 265.0	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	132.50	X			
	2. LORETTA LEWIS ()	132.50	X			X
GU VO 250.6	1. GRACE MANUEL (Dallas Lewis)	125.3	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	125.3	X			
HICKIWAN 205.8	1. LOUIS R. LOPEZ (Shirley Molina)	102.90	X			
	2. SANDRA ORTEGA ()	102.90	X			X
PISINEMO 219.9	1. CHESTER ANTONE (<i>Absent</i>) (Tony Murrietta) (<i>Present</i>)	109.95		X		X
	2. MONICA K. MORGAN ()	109.95		X		
SAN LUCY 226.5	1. DIANA MANUEL ()	113.25	X			
	2. JANA MONTANA (Gloria Ramirez)	113.25	X			
SAN XAVIER 228.6	1. DANIEL L.A. PRESTON III (Gene Enis)	114.3		X		
	2. RACHEAL VILSON-STONER (<i>Absent</i>) (Olivia Villegas-Liston) (<i>Present</i>)	114.3		X		X
SCHUK TOAK 180.6	1. ANTHONY J. FRANCISCO JR. (Theresa Donahue)	90.3	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	90.3	X			
SELLS 513.5	1. ARTHUR WILSON (Beverly Rivas)	256.75	X			
	2. BARBARA HAVIER ()	256.75	X			
SIF OIDAK 231.6	1. LUCINDA ALLEN (Nicholas Jose)	115.80	X			
	2. MARY LOPEZ ()	115.80	X			
TOTAL		3,021.4	2,406.85	614.55	-0-	[04]