RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Filing of Amicus Curiae Briefs and Litigation to Enjoin
Construction of Border Walls in Organ Pipe Cactus National Monument
and the Cabeza Prieta National Wildlife Refuge)

RESOLUTION NO. 19-187

WHEREAS, the Tohono O'odham and our ancestors have from time immemorial inhabited
lands from the Gila River area in present-day Arizona south to the Sea of Cortez in
northern Mexico and the Constitution of the Tohono O'odham Nation provides,
“It shall be the policy of the Tohono O'odham Nation to seek the return to the
Tohono O'odham Nation of lands and natural resources, including minerals and
water rights, within or adjacent to the Tohono O'odham Nation, or which
originally were a part of the historic Papagueria.” (Constitution, Article XVI,
Section 9); and

WHEREAS, it is the policy of the Tohono O'odham Nation to promote “enjoyable harmony
between members of the Nation and their environment,” and to preserve “its
historic and cultural artifacts and archeological sites” as well as “preserve and
cultivate native arts, crafts and traditions” (Constitution, Article VI, Section
1(c)(8) and Article XVIII, Section 1); and

WHEREAS, the Constitution of the Tohono O'odham Nation vests the Tohono O'odham
Legislative Council with the power to consult with the Congress and federal
agencies regarding federal activities that affect the Tohono O'odham Nation, and
federal agencies are required by Executive Order No. 13175, presidential
memorandums, and departmental and agency policies to consult and
collaborate with affected Indian tribes on federal policies and actions having
substantial direct effect on tribes (Constitution, Article VI, Section 1(f) and (j));
and

WHEREAS, in 1854 the United States created an international boundary with Mexico that cuts
through Tohono O'odham lands and that forms the 62-mile southern boundary of
the Tohono O'odham Nation's main reservation; and

WHEREAS, the Nation's members are negatively impacted by illegal immigration and drug
trafficking across the international boundary, including criminal activity,
damage to the Nation's cultural resources, demands on tribal law enforcement,
illegal dumping, and environmental degradation; and

WHEREAS, the Nation's members also suffer from dangerous on-reservation roads in the
border area that continue to deteriorate due to inadequate BIA funding for repair
and maintenance, and these roads and the Nation's natural resources are further
impacted from on-road and off-road use by United States Customs and Border
Protection and other law enforcement agencies; and
WHEREAS, the Nation accordingly has approved a wide range of measures on the Nation's reservation to provide border security, including but not limited to border vehicle barriers, CBP bases, roads, Integrated Fixed Towers, and CBP checkpoints on reservation highways, while the Nation has opposed border walls and the Secretary of Homeland Security's waivers of legal requirements under section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, to construct border fencing, walls, and infrastructure; and

WHEREAS, the duty to protect Nation's lands and resources, and its sovereignty and jurisdiction, including in the Nation's dealings with the United States Customs and Border Protection ("CBP"), Immigration and Customs Enforcement ("ICE"), and other agencies within the United States Department of Homeland Security ("DHS") operating on the Nation's boundary with Mexico, is consistent with the DHS Tribal Consultation Policy in which, "[t]he United States recognizes the right of Federally-recognized Indian Tribes ("Indian Tribes") to self-government. Indian Tribes exercise inherent sovereign powers over their members and territories." DHS Tribal Consultation Policy, I.A.; and

WHEREAS, through Executive Order 13767, "Border Security and Immigration Enforcement Improvements," which directs the construction of a physical wall on the United States' southern border with Mexico, and a "Proclamation Declaring a National Emergency Concerning the Southern Border of the United States" (February 15, 2019) the President of the United States has directed the U.S. Secretary of Defense to assist and support the U.S. Secretary of Homeland Security in constructing a wall across the southern border of the United States; and

WHEREAS, the U.S. Department of Homeland Security has informed representatives of the Tohono O'odham Nation that the Department of Defense and/or the Department of Homeland Security will be constructing 30 foot and 14-foot-tall bollard-type walls with lights and other infrastructure across 63 miles of the international border adjacent to the Nation in both Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge; and

WHEREAS, the Secretary of the Department of Homeland Security has issued waivers pursuant to Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, to allow construction of the border wall projects in Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge to proceed without complying with the National Environmental Policy Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act and other legal requirements; and
RESOLUTION NO. 19-187
(Authorizing the Filing of Amicus Curiae Briefs and Litigation to Enjoin Construction of Border Walls in Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge)

WHEREAS, Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge are traditional lands of the Tohono O'odham that contain numerous cultural, historical, archaeological and other resources of significance to the Nation that would be adversely impacted by construction of the proposed fencing projects; and

WHEREAS, two lawsuits seeking to declare the president's executive order and emergency declaration unlawful and enjoin construction of projects pursuant to those actions are currently pending in the United States District Court for the Northern District of California, Sierra Club v. Trump and State of California v. Trump, and

WHEREAS, 20 T.O.C. Chapter 1, Section 3.C. vests the Nation's attorney general with authority to recommend outside legal counsel "to the Legislative Council, and upon the Council's approval of such recommendation, to oversee the process of selecting such counsel and to prepare and approve the contract with such counsel." and

WHEREAS, the Cultural Preservation, Domestic Affairs, and Agricultural and Natural Resources Committees recommend authorizing the filing of amicus curiae briefs on behalf of the Nation in State of California v. Trump and/or Sierra Club v. Trump and authorizing litigation to be commenced, if necessary, to enjoin construction of the proposed border wall projects in Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council opposes the planned construction of border walls and related infrastructure through Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge by the U.S. Department of Defense and the U.S. Department of Homeland Security and specifically opposes the use of waivers by the U.S. Secretary of Homeland Security to avoid compliance with laws and legal requirements in connection with the proposed projects.

BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council authorizes the Nation's attorney general, with the prior approval of at least three members of the Border Security Delegation established in Resolution No. 17-155, to take any of the following actions to protect the Nation's interests in relation to the wall projects:

(1) File amicus curiae briefs on behalf of the Nation in State of California v. Trump, Sierra Club v. Trump, or related cases;

(2) Intervene in and represent the Nation as a plaintiff in State of California v. Trump and/or Sierra Club v. Trump, and
RESOLUTION NO. 19-187
(Authorizing the Filing of Amicus Curiae Briefs and Litigation to Enjoin Construction of Border Walls in Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge)
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(3) Commence and represent the Nation in litigation to enjoin construction of the proposed border wall projects.

(4) As necessary, recommend outside legal counsel to the Legislative Council, and upon the Council's approval of such recommendation, to oversee the process of selecting such counsel and to prepare and approve as to form the contract with such counsel subject to final contract approval by Legislative Council resolution.

BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that the Border Security Delegation will update the Legislative Council monthly about the actions taken pursuant to this resolution.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 24th day of MAY, 2019 at a meeting at which a quorum was present with a vote of 3,084.6 FOR; -0- AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Article III; Article VI, Section 1(c)(i) and (j); Article XVI; and Article XVIII 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

29 day of May, 2019

ATTEST:

Evonne Wilson, Legislative Secretary

29 day of May, 2019

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 29 day of May, 2019 at 12:39 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
RESOLUTION NO. 19-187
(Authorizing the Filing of Amicus Curiae Briefs and Litigation to Enjoin Construction of Border Walls in Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge)

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[ ] APPROVED [X] DISAPPROVED

on the _____ day of __________, 2019
at ______ o’clock, _______.

EDWARD D. MANUEL, CHAIRMAN
TOHONO O’ODHAM NATION

Returned to the Legislative Secretary on the _____ day of
______, 2019, at ______ o’clock, _______.

Evonne Wilson, Legislative Secretary
## Resolution No. 19-187

**Action:** Authorizing the filing of Amicus Curiae Briefs and Litigation to Enjoin Construction of Border Walls in Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge

**Moved:** Vice Chairman Quintin C. Lopez

**Second:** Councilwoman Mary Lopez

**Date:** May 24, 2019

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**Total** | 3,084.6 | 3,084.6 | -0- | -0- | [02]