

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Transferring Financial Management Functions and Control of Funds of the  
Schuk Toak District to the Tohono O'odham Nation)**

**RESOLUTION NO. 21-024**

1 **WHEREAS,** the Constitution of the Tohono O'odham Nation vests the Legislative Council with  
2 the fiscal powers to "manage any funds within the exclusive control of the Tohono  
3 O'odham Nation . . . and to appropriate these funds for the benefit of the nation  
4 and its members" (Constitution, Article VI, Section 1(d)(2)); and

5 **WHEREAS,** pursuant to Article IX, Section 7 of the Constitution of the Tohono O'odham  
6 Nation,

7 No district council shall expend district funds except pursuant to budgets  
8 authorized under resolutions of the district council and approved by the  
9 Tohono O'odham Council. The management of these funds shall be only by  
10 a treasurer or other authorized officer of the district council who has  
11 furnished a surety bond satisfactory to the treasurer of the Tohono  
12 O'odham Nation, and all expenditures of these funds shall be by checks  
13 signed by such treasurer or other authorized officer and the chairman or  
14 vice chairman of the district council.

15 ; and

16 **WHEREAS,** the Legislative Council is also vested with substantial control over the Nation's 11  
17 local district governments and over district finances; the districts "are  
18 organizations of fairly limited power and authority which may act only under the  
19 supervision of the Tohono O'odham Council" and which may not expend district  
20 funds without a budget authorized by district council resolution and approved by  
21 the Legislative Council; *Juan v. Juan*, 2 TOR3d 62 (Trial Ct., Jan. 27, 2000) appeal  
22 dismissed, 3 TOR3d 1 (Jan. 4, 2005); Constitution, Article IX, Section 7; and

23 **WHEREAS,** the Tohono O'odham Judicial Court has recognized that even after distributing  
24 funds to a district, the Nation has an ongoing fiduciary obligation to ensure that  
25 district funds are expended under valid authority; *Angela Ortiz and Frances Ruiz*  
26 *v. Charlene Montana, et al; consolidated with Tohono O'odham Nation v. Gu-Vo*  
27 *Governing Council*, 3 TOR3d 34 (Ct.App., Aug. 24, 2011); and

28 **WHEREAS,** Section 1304 of 26 Tohono O'odham Code Chapter 1 provides that annually, on  
29 August 1, the District Allocation shall be apportioned to the separate District  
30 accounts in accordance with the allocation formula established by the Legislative  
31 Council and made available for expenditure subject to:

32 (A) budgets approved in accordance with Article VI, Section 1(d)(2) of the  
33 Nation's Constitution and Section 302 of the Gaming Ordinance;

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- (B) actual expenditures which have been budgeted for, and expended in compliance with, Article IX, Section 7 of the Nation's Constitution and Section 302 of the Gaming Ordinance;**
- (C) an annual audit of each District's books of accounts and activities for compliance with the requirements of this Article, the Nation's Constitution and Section 302 of the Gaming Ordinance, as more fully identified below; and**
- (D) the establishment and maintenance of a system of internal controls, a *[sic]* more fully identified below.**

**; and**

**WHEREAS,** pursuant to the Gaming Ordinance, the Tohono O'odham Nation-State of Arizona Gaming Compact, and the Indian Gaming Regulatory Act, the Nation must ensure that net gaming revenues, including revenues allocated to districts, are used exclusively to fund government operations or programs or for another of the specific purposes authorized by law (Gaming Ordinance, Section 302; Compact, Section 16(d); 25 U.S.C. Section 2710(b)(2)(B)); and

**WHEREAS,** by Resolution No. 06-215, the Legislative Council transferred the financial management function of the Schuk Toak District, and control of all Schuk Toak District funds, to the Tohono O'odham Nation; authorized and directed the Nation's Accounting Department and Office of the Chairwoman to open accounts necessary to manage the District's finances and to provide technical assistance to the Schuk Toak District in order to comply with the financial policies, procedures, and laws of the Nation; and

**WHEREAS,** by Resolution No. 09-205, the Legislative Council returned fiscal management and control of the Schuk Toak District finances to the District after the Nation's Treasurer certified in writing to the Nation's chairperson and Legislative Council that the District's financial policies and procedures for internal controls were fully implemented, that the District's books of accounts and activities were audited by the independent certified public accountant retained by the Nation as required by 26 Tohono O'odham Code Section 1305, and that the District had otherwise complied with the requirements of the Nation's Constitution and laws; and

**WHEREAS,** in the course of budget reviews with the Schuk Toak District, the Schuk Toak District informed the Legislative Council of previous district expenditures authorized by Schuk Toak District Council resolutions that were not presented for approval to the Legislative Council in violation of the Constitution of the

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1                   Tohono O'odham Nation and the Schuk Toak District Financial Accounting  
2                   Management Manual; and  
3 **WHEREAS,**       some of the Schuk Toak District Council resolutions authorizing expenditure of  
4                   district funds without Legislative Council approval date back to 2010, almost  
5                   immediately after the return of financial management and control to the Schuk  
6                   Toak District from the Nation; and  
7 **WHEREAS,**       the Nation has an ongoing fiduciary duty to ensure that "[n]o district council shall  
8                   expend district funds except pursuant to budgets authorized under resolutions  
9                   of the district council and *approved by the Tohono O'odham Council. . .*"  
10                  (emphasis added, Constitution, Article IX, Section 7); and  
11 **WHEREAS,**       the Legislative Council has reviewed and considered allegations that the Schuk  
12                  Toak District Council's expenditures of district funds without Legislative Council  
13                  approval violated the Constitution of the Tohono O'odham Nation and the  
14                  Nation's laws; and  
15 **WHEREAS,**       the Budget and Finance Committee recommends that the Nation assume control  
16                  and management of the Schuk Toak District's finances and accounts.  
17 **NOW, THEREFORE, BE IT RESOLVED** that, notwithstanding 26 Tohono O'odham Code Chapter 1  
18                  or any other Nation's law or resolution to the contrary, the Tohono O'odham  
19                  Legislative Council:  
20                  1.       revokes the Schuk Toak District's authority granted pursuant to  
21                  Resolution No. 20-333 to expend funds in accordance with the FY 2021  
22                  Schuk Toak District Budget or any other Legislative Council approved  
23                  budget;  
24                  2.       transfers all financial management functions of the Schuk Toak District,  
25                  control of all Schuk Toak District funds and accounts, and authority to  
26                  expend district funds in accordance with the FY 2021 Schuk Toak District  
27                  Budget and other Legislative Council approved budgets and amendments  
28                  to the Tohono O'odham Nation; and  
29                  3.       authorizes and directs the Nation's Accounting Office and Treasurer's  
30                  Office to open any accounts necessary to manage the Schuk Toak District's  
31                  finances and to provide technical assistance to the Schuk Toak District in  
32                  order to comply with the Constitution of the Tohono O'odham Nation, all  
33                  applicable laws, financial policies, and procedures.  
34 **BE IT FURTHER RESOLVED** that the Tohono O'odham Legislative Council authorizes the  
35                  Nation's chairperson, the Nation's Attorney General, and any Nation's Executive  
36                  Branch official or employee whom the Nation's chairperson designates in writing

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("Nation's chairperson's designee") to communicate directly with the financial institutions at which the Schuk Toak District has financial accounts, including but not limited to operating and investment accounts, and to obtain control of such accounts as well as financial statements and records regarding such investments and operating accounts.


**BE IT FURTHER RESOLVED** by the Tohono O'odham Legislative Council that, notwithstanding 26 Tohono O'odham Code Chapter 1 or any other Nation's law or resolution to the contrary, if the Schuk Toak District does not transfer control of the Schuk Toak District's funds and financial management functions to the Nation, no further distributions or allocations of gaming revenue, mining royalties, or other funds shall be made available for expenditure to the Schuk Toak District until the Nation's Treasurer certifies in writing that control of all Schuk Toak District funds have been transferred to the Nation.

**BE IT FINALLY RESOLVED** by the Tohono O'odham Legislative Council that the actions taken in accordance with this resolution shall be reported to the Budget and Finance Committee monthly and upon the Committee's request and reported to the Legislative Council upon the Council's request.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11<sup>TH</sup> day of JANUARY, 2021 at a meeting at which a quorum was present with a vote of 2,439.6 FOR; 189.0 AGAINST; 547.1[4] NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(d)(2) and (d)(3); Article VII, Section 2(c) and 2(d), Article IX, Section 7 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  
13 day of January, 2021

**ATTEST:**  
  
\_\_\_\_\_  
Evonne Wilson, Legislative Secretary  
11<sup>th</sup> day of January, 2021

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 13 day of January, 2021 at 3:04 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 C. Joaquin for  
**Timothy Joaquin, Legislative Chairman**

APPROVED

on the 15 day of January, 2021  
at 11:47 o'clock, A.m.

DISAPPROVED

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

Returned to the Legislative Secretary on the 15 day of

January, 2021, at 12:11 o'clock, P.m.

Evonne Wilson for  
**Evonne Wilson, Legislative Secretary**

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**ACTION: TRANSFERRING FINANCIAL MANAGEMENT FUNCTIONS AND CONTROL OF FUNDS OF THE SCHUK TOAK DISTRICT TO THE TOHONO O'ODHAM NATION**

**MOVED: COUNCILWOMAN JANICE FELIX**

**SECOND: COUNCILWOMAN MARLAKAY HENRY**

**DATE: JANUARY 11, 2021**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 384.8	1. LEANDER MASE (Francine Schooling)	192.40	X			
	2. ALBERTA J. RAY (Frances G. Antone)	192.40	X			
CHUKUT KUK 347.5	1. VIVIAN JUAN-SAUNDERS (Juanita Homer)	173.75	X			
	2. MARLAKAY HENRY (Billman Lopez)	173.75	X			
GUACHI 279.3	1. VICTORIA HOBBS ( )	139.65	X			
	2. TIMOTHY L. JOAQUIN <i>(Absent)</i> (Louis L. Johnson) <i>(Present)</i>	139.65	X			
GU VO 264.5	1. DALLAS LEWIS (Nacho Flores)	132.25	X			
	2. GRACE MANUEL ( )	132.25	X			
HICKIWAN 213.8	1. SANDRA D. ORTEGA ( )	106.90	X			X
	2. LOUIS R. LOPEZ (Delma M. Garcia)	106.90	X			
PISINEMO 230.7	1. MONICA K. MORGAN ( )	115.35	X			
	2. MARIETTA MARTIN ( )	115.35	X			
SAN LUCY 235.6	1. GLORIA RAMIREZ ( )	117.80	X		X	
	2. JANA MONTANA (Lorraine M. Eller)	117.80	X			
SAN XAVIER 238.9	1. JANICE FELIX (Adam Andrews)	119.45	X			
	2. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	119.45	X			
SCHUK TOAK 189.0	1. QUINTIN C. LOPEZ (Agnes V. Joaquin)	94.50		X		
	2. TERESA F. DONAHUE (Alberta Espinoza)	94.50		X		
SELLS 547.1	1. EVELYN JUAN MANUEL ( )	273.55			X	
	2. ARTHUR WILSON ( )	273.55			X	
SIF OIDAK 244.5	1. LUCINDA ALLEN (Yolonda Garcia)	122.25	X			
	2. MARY LOPEZ (Ann M. Garcia)	122.25	X		X	
<b>TOTAL</b>		<b>3,175.7</b>	<b>2,439.6</b>	<b>189.0</b>	<b>547.1</b> [04]	<b>[01]</b>