

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Approving Comments Drafted by Earthjustice to the Proposed "Waters of the  
United States Rule" (Docket ID No. EPA-HQ-OW-2021-0602) and Authorizing the  
Nation to Join an *Amicus Brief* Opposed to Limiting the Scope of Federal  
Water Law under the Waters of the United States Rule)**

**RESOLUTION NO. 22-039**

1 **WHEREAS,** the Constitution of the Tohono O'odham Nation ("Nation") vests the Legislative  
2 Council with the power to "consult, negotiate and conclude agreements and  
3 contracts on behalf of the Tohono O'odham Nation with Federal, State and local  
4 governments and other Indian tribes or their departments, agencies, or political  
5 subdivisions, or with private persons or organizations on all matters within the  
6 authority of the Tohono O'odham Council" (Constitution, Article VI, Section 1(f));  
7 and

8 **WHEREAS,** on August 30, 2021, the U.S. District Court for the District of Arizona, citing serious  
9 legal and scientific errors, vacated the Navigable Waters Protection Rule  
10 ("Navigable Waters Rule") promulgated by the Trump Administration which cut  
11 millions of streams and wetlands out of safeguards guaranteed by the Clean  
12 Water Act, 86 Fed. Reg. 69372 (Dec. 7, 2021)("Act"); without Clean Water Act  
13 protections, industries can dump uncontrolled discharges of toxic pollution—  
14 harming drinking water supplies, recreational waters, wildlife, animals, and  
15 people; and

16 **WHEREAS,** the Trump-era rule was particularly damaging for waters throughout the West,  
17 Southwest and Great Lakes and disproportionately threatened the livelihoods  
18 and traditions of the Pascua Yaqui Tribe, Tohono O'odham Nation, Quinault  
19 Indian Nation, Menominee Indian Tribe of Wisconsin, Fond du Lac Band of Lake  
20 Superior Chippewa, and the Bad River Band of Lake Superior Chippewa; and

21 **WHEREAS,** until a new rule is finalized, the United States has returned to water protections  
22 that were in place for years starting in 1986 ("Pre-2015 Regulatory Regime); and

23 **WHEREAS,** the Biden administration has been working on revisions to the Pre-2015  
24 Regulatory Regime and on December 7, 2021 the U.S. Environmental Protection  
25 Agency and the Army Corps of Engineers (the "Agencies") published a proposed  
26 rule revising the definition of "Waters of the United States" ("Proposed Rule")  
27 under the Clean Water Act; and

28 **WHEREAS,** while the Proposed Rule appropriately reverses much of the damaging and  
29 vacated Navigable Waters Rule, renewing protections for interstate waters and  
30 withdrawing numerous other harmful exclusions, the Proposed Rule unlawfully  
31 narrows protections for tributaries and wetlands compared with the Pre-2015

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1                    **Regulatory Regime, maintains two existing unlawful exclusions, and falls short of**  
2                    **protecting our nation's waters and fulfilling the Clean Water Act's goals; and**

3 **WHEREAS, Earthjustice has drafted comments to the Proposed Rule, on behalf of the Nation**  
4                    **and other American Indian tribes, that advance the Act's statutory objective and**  
5                    **base the rule in the best available science as well as address unfulfilled promises**  
6                    **made by the Act nearly half a century since its enactment; and**

7 **WHEREAS, the Nation would like to submit these comments, which boost protections for**  
8                    **waterways, rivers, and ephemeral streams that are critical for the environment,**  
9                    **as its own comments to the Proposed Rule; and**

10 **WHEREAS, the Nation's Government Comment Guidelines requires Legislative Council**  
11                    **approval of written comments submitted on the Nation's behalf to federal, state,**  
12                    **and local governments on proposed rules, regulations, laws, and proposed**  
13                    **actions that may affect the Nation (1 Tohono O'odham Code Chapter 3, Section**  
14                    **3101); and**

15 **WHEREAS, additionally, on January 24, 2022, the U.S. Supreme Court agreed to hear the case**  
16                    **of *Sackett v. EPA*, which has asked the Supreme Court to clarify what constitutes**  
17                    **"Waters of the United States"; and**

18 **WHEREAS, the Nation would like to join an *amicus* brief opposed to limiting the scope of**  
19                    **federal water law under the "Waters of the United States" rule; and**

20 **WHEREAS, the Nation's Water Resources, Agricultural and Natural Resources, and Cultural**  
21                    **Preservation Committees have reviewed and recommend submitting**  
22                    **Earthjustice's comments to the Proposed Rule on behalf of the Nation and**  
23                    **authorizing the Nation to join an *amicus brief* opposed to a narrow definition for**  
24                    **the "Waters of the United States."**

25 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council approves and**  
26                    **authorizes:**

- 27                    **1. submitting Earthjustice's comments to the Proposed Rule on behalf of the**  
28                    **Nation; and**  
29                    **2. joining an *amicus* brief opposed to limiting the scope of federal water law**  
30                    **under the "Waters of the United States" rule.**

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1 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 02<sup>ND</sup>  
2 day of FEBRUARY, 2022 at a meeting at which a quorum was present with a vote of 3,218.0 FOR;  
3 -0- AGAINST-0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by,  
4 Article VI, Section 1(f) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono  
5 O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -  
6 Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934  
7 (48 Stat.984).  
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10 TOHONO O'ODHAM LEGISLATIVE COUNCIL

11   
12 Timothy Joaquin, Legislative Chairman  
13  
14 4 day of February, 2022  
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18 ATTEST:

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21 Evonne Wilson, Legislative Secretary  
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23 3 day of February, 2022  
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26 Said Resolution was submitted for approval to the office of the Chairman of the Tohono  
27 O'odham Nation on the 4 day of February, 2022 at 11:56 o'clock, a .m.,  
28 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become  
29 effective upon his approval or upon his failure to either approve or disapprove it within 48  
30 hours of submittal.  
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32 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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34 Timothy Joaquin, Legislative Chairman  
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40  APPROVED

on the 4 day of February, 2022

41  
42  DISAPPROVED

at 12:00 o'clock, P .m.

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46 NED NORRIS, JR., CHAIRMAN  
47 TOHONO O'ODHAM NATION  
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Returned to the Legislative Secretary on the 4 day of  
January, 2022, at 12:08 o'clock, P.m.

  
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**Evonne Wilson, Legislative Secretary**

**ACTION:** APPROVING COMMENTS DRAFTED BY EARTHJUSTICE TO THE PROPOSED "WATERS OF THE UNITED STATES RULE" (DOCKET ID NO. EPA-HQ-OW-2021-0602) AND AUTHORIZING THE NATION TO JOIN AN *AMICUS BRIEF* OPPOSED TO LIMITING THE SCOPE OF FEDERAL WATER LAW UNDER THE WATERS OF THE UNITED STATES RULE

**Moved:** COUNCILMAN DANIEL L.A. PRESTON III

**SECOND:** COUNCILWOMAN JANICE FELIX

**DATE:** FEBRUARY 02, 2022

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDA 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X			
SELLS 556.5	1. ARTHUR WILSON ( )	278.25	X			
	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25	X			
SCHUK TOAK 190.5	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25	X			
	2. DELISA M. RAMON (Sharon A. Francisco)	95.25	X			
SAN XAVIER 242.6	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3	X			
	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eiler)	121.9	X			
	2. ROGER MANUEL (Christina Andrews)	121.9	X			
PISINEMO 232.7	1. MARIETTA MARTIN ( )	116.35	X			
	2. EDWARD D. MANUEL (Monica Morgan)	116.35	X			
HICKIWAN 216.6	1. LOUIS R. LOPEZ ( )	108.3	X			
	2. SANDRA D. ORTEGA ( <i>Absent</i> ) (Delma M. Garcia) ( <i>Present</i> )	108.3	X			X
GU VO 270.7	1. GRACE MANUEL ( )	135.35	X			
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ( )	139.25	X			
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X			
CHUKUT KUK 351.6	1. MARLAKAY HENRY (Billman Lopez)	175.8	X			
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Frances G. Antone)	194.45	X			
	2. LEANDER MASE (Francine Schooling)	194.45	X			
<b>TOTAL</b>		<b>3,218.0</b>	<b>3,218.0</b>	<b>-0-</b>	<b>-0-</b>	<b>[01]</b>