

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the Office of the Attorney General to Intervene on Behalf of the Tohono O'odham Nation in Litigation Concerning the Definition of Waters of the United States)

RESOLUTION NO. 23-090

1 **WHEREAS,** the Tohono O'odham Legislative Council is authorized to exercise its inherent
2 powers "by providing laws, ordinances or resolutions . . . to promote, protect and
3 provide for public health, peace, morals, education and general welfare of the
4 Tohono O'odham Nation and its members," and to "employ legal counsel for the
5 protection and advancement of the rights of the Tohono O'odham Nation."
6 (Tohono O'odham Const. art. VI, §§ 1(c)(2), 2(a)); and

7 **WHEREAS,** the Clean Water Act prohibits the discharge of pollutants, including but not
8 limited to industrial waste, sewage, and dredged or fill materials, into "navigable
9 waters" without a permit issued by the United States Army Corps of Engineers
10 ("Army Corps") or the United States Environmental Protection Agency ("EPA"). (33
11 U.S.C. §§ 404, 1311, 1344, 1345, 1362); and

12 **WHEREAS,** the Clean Water Act defines "navigable waters" as "waters of the United States."
13 (33 U.S.C. 1362(7)); and

14 **WHEREAS,** the EPA and Army Corps jointly published a Final Rule on January 18, 2023 that
15 revises the definition of "waters of the United States," that becomes effective on
16 March 20, 2023, 88 F.R. 3142 (the "Biden Rule"); and

17 **WHEREAS,** the Biden Rule includes within the definition of "waters of the United States"
18 tributaries to traditional navigable waters, territorial seas, interstate water, or
19 impoundments, where those tributaries have a significant nexus to traditional
20 navigable waters, territorial seas, and interstate waters; and

21 **WHEREAS,** the Biden Rule includes ephemeral streams as those that may have a significant
22 nexus to traditional navigable waters, territorial seas, and interstate water; and

23 **WHEREAS,** the ephemeral streams in and around the Tohono O'odham Nation (the "Nation")
24 provide a crucial source of surface water flows, including ephemeral streams in
25 the Santa Rita Mountains; and

26 **WHEREAS** the Nation, along with Earthjustice, previously and successfully litigated the
27 validity of a Trump administration-era rule that provided a restrictive definition
28 of "waters of the United States" that would have eliminated the "significant
29 nexus" test, thereby excluding ephemeral streams and certain washes in the
30 desert southwest from protection under the Clean Water Act; and

31 **WHEREAS** the Nation has been actively engaged in consultation with the Army Corps of
32 Engineers and the EPA and has provided these agencies with analysis that shows

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1 a "significant nexus" between washes on the HudBay Rosemont and Copper
2 World properties with the Santa Cruz River, a traditionally navigable water;
3 **WHEREAS,** on February 16, 2023, 24 States jointly filed a Complaint in the United States
4 District Court for the District of North Dakota Eastern Division that seeks to
5 declare the Biden Rule as invalid (3:23-cv-00032-ARS); and
6 **WHEREAS,** any order that invalidates the Biden Rule or enjoins the EPA or Army Corps from
7 using, applying, implementing, enforcing, or otherwise proceeding on the basis
8 of the Biden Rule would: (1) risk permanent damage to the chemical, physical,
9 and biological integrity of the ephemeral streams present in and around the
10 Tohono O'odham Nation; and (2) enable Hudbay Minerals Incorporated to
11 proceed with its operations at the Rosemont Copper Mine and Copper World Mine
12 without obtaining permits under the Clean Water Act;
13 **WHEREAS,** Earthjustice has asked the Nation's Office of the Attorney General if it would be
14 willing to act as co-counsel to intervene in the litigation challenging the Biden
15 Rule on behalf of the Nation (case 3:23-cv-00032-ARS);
16 **WHEREAS,** the Water Resources Committee and the Domestic Affairs Committee have
17 reviewed this Resolution and the proposed intervention of the Nation into the
18 above-referenced litigation and recommend approval.
19 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council authorizes
20 the Office of the Attorney General to intervene on the Nation's behalf and to act as
21 co-counsel with Earthjustice in 3:23-cv-00032-ARS.

22 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09TH
23 day of MARCH, 2023 at a meeting at which a quorum was present with a vote of 3,218.0 FOR; -0-
24 AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by,
25 Tohono O'odham Const. art. VI, §§ 1(c)(2), 2(a) of the Constitution of the Tohono O'odham Nation,
26 adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy
27 Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the
28 Act of June 18, 1934 (48 Stat.984).

30 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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35 Timothy Joaquin, Legislative Chairman

36 10 day of March, 2023
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1 ATTEST:

2 *Evonne Wilson*

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4 Evonne Wilson, Legislative Secretary

5
6 10 day of March, 2023

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8 Said Resolution was submitted for approval to the office of the Chairman of the Tohono
9 O'odham Nation on the 10 day of March, 2023 at 2:31 o'clock, P.m.,
10 pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
11 effective upon his approval or upon his failure to either approve or disapprove it within 48
12 hours of submittal.

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14 TOHONO O'ODHAM LEGISLATIVE COUNCIL

15 *Timothy Joaquin*

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18 Timothy Joaquin, Legislative Chairman

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23 APPROVED

on the 13th day of March, 2023

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25 DISAPPROVED

at 2:17 o'clock, P.m.

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28 *Ned Norris, Jr.*

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30 NED NORRIS, JR., CHAIRMAN
31 TOHONO O'ODHAM NATION

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35 Returned to the Legislative Secretary on the 13 day of

36 March, 2023, at 2:47 o'clock, P.m.

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38 *Evonne Wilson*

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41 Evonne Wilson, Legislative Secretary

ACTION: APPROVING AGREEMENT WITH NEW MAGMA IRRIGATION AND DRAINAGE DISTRICT FOR 2023

MOVED: COUNCILMAN DANIEL L.A. PRESTON

SECOND: COUNCILWOMAN LUCINDA ALLEN

DATE: MARCH 09, 2023

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			X
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X			
SELLS 556.5	1. ARTHUR WILSON (<i>Absent</i>) (Shelia Espino) (<i>Present</i>)	278.25	X			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 ()	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. DELMA M. GARCIA ()	108.3	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. MARIKAY 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 (<i>Absent</i>) (Francine Schooling) (<i>Present</i>)	194.45	X			
TOTAL		3,218.0	3,218.0	-0-	-0-	[02]