

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Agreement with Queen Creek Irrigation District)**

RESOLUTION NO. 24-252

1 **WHEREAS,** the Constitution of the Tohono O'odham Nation provides that “[a]ll waters which
2 originate in or flow in, into or through the Tohono O'odham Nation, or which are
3 stored in the Tohono O'odham Nation, whether found on the surface or
4 underground, are a valuable public resource of the Tohono O'odham Nation to be
5 protected for the present and future use of the Tohono O'odham Nation as a
6 whole” (Constitution, Article XVII, Section 1); and

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

13 **WHEREAS,** under the Southern Arizona Water Rights Settlement Act, Pub. L. 97-293 (1982)
14 (SAWRSA), as amended by the Arizona Water Settlements Act, Pub. L. 108-451
15 (2004) (AWSA), the Tohono O'odham Nation is entitled to receive a total of 66,000
16 acre-feet of Central Arizona Project (“CAP”) water per year, and is authorized to
17 use its CAP water either on-reservation or off-reservation; and

18 **WHEREAS,** under AWSA and Arizona law, the Nation's CAP water may be delivered to an
19 irrigation district designated as a groundwater savings facility and thereby
20 accrue marketable long-term storage credits through the use by the irrigation
21 district of the Nation's CAP water “in-lieu” of pumping and using groundwater
22 within the irrigation district; and

23 **WHEREAS,** Queen Creek Irrigation District (“QCID”) is designated as a groundwater savings
24 facility under Arizona law, and desires to enter into an arrangement with the
25 Nation whereby QCID will pay the Nation for the delivery of a portion of its CAP
26 entitlement to QCID as “in-lieu water,” and allow the Nation to accrue any long-
27 term storage credits associated with the storage of the Nation's CAP water; and

28 **WHEREAS,** the Nation's attorneys and QCID's attorneys have negotiated an agreement to
29 memorialize this arrangement (the “Agreement”) consistent with similar
30 agreements that the Nation has entered into for the storage of its CAP water; and

31 **WHEREAS,** The Department of the Interior considers agreements such as the Agreement to
32 constitute an “exchange” of the Nation's CAP water pursuant to Section 309(c)(1)

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1 of AWSA, and such agreements require approval of the Department as the
2 Nation's trustee pursuant to AWSA Section 309(c)(4)(C); and

3 **WHEREAS,** as in prior agreements, Section 11 of the Agreement provides that the Nation will
4 agree to a limited waiver of sovereign immunity to allow for dispute resolution in
5 any court of competent jurisdiction, not to include Arizona state courts, which
6 waiver is limited to declaratory and injunctive relief to enforce the agreement but
7 does not include a waiver of any claims for money damages, attorney's fees, court
8 costs or any other costs, damages, remedy, or claims of any other kind; and

9 **WHEREAS,** the term of the Agreement will continue through December 31, 2029, but
10 additionally requires an annual decision by the Nation whether to assign any
11 amount of CAP water to the contract with QCID, which decision results in an
12 Annual Scheduling Agreement to be signed by both parties; and

13 **WHEREAS,** the Water Resources Committee has reviewed the Agreement and recommends
14 approval by the Legislative Council.

15 **NOW, THEREFORE, BE IT RESOLVED** by the Tohono O'odham Legislative Council that it approves
16 the Agreement Between Queen Creek Irrigation District and the Tohono O'odham
17 Nation Providing for the Delivery of Nation's CAP Water for Water Storage at a
18 Ground Water Savings Facility, which will continue through December 31, 2029,
19 substantially in the form attached hereto, and authorizes the Chairman of the
20 Nation to execute the Agreement and any additional documentation reasonably
21 necessary to implement the intent of the Agreement, and to seek approval by the
22 Department of the Interior of the Agreement; provided, that the Nation will
23 annually enter into an Annual Scheduling Agreement which will assign a quantity
24 of CAP water to QCID, subject to adjustment in accordance with the Agreement,
25 and including the possibility of assigning no water under the Agreement.

26 **BE IT FINALLY RESOLVED** that the Tohono O'odham Legislative Council approves a limited
27 waiver of the Nation's sovereign immunity to allow disputes arising between the
28 Nation and QCID with respect to this Agreement or an Annual Scheduling
29 Agreement established pursuant to the Agreement to be resolved in any court of
30 competent jurisdiction, not to include Arizona state courts, and limits the waiver
31 to declaratory and injunctive relief to enforce the agreement but does not waive
32 its sovereign immunity with respect to any claims for money damages, attorney's
33 fees, court costs or any other costs, damages, remedy, or claims of any other kind.
34

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 08TH day of AUGUST 2024 at a meeting at which a quorum was present with a vote of 2,123.0 FOR; 582.3 AGAINST; 558.0 [02] NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by Article XVII, Section 1 and Article VI, Section 1(b) and Section 1(f) 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

Wavalene M. Saunders
Wavalene M. Saunders, Legislative Chairwoman

12th day of August, 2024

ATTEST:

Evonne Wilson
Evonne Wilson, Legislative Secretary

12 day of August, 2024

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 12th day of August, 2024 at 11:32 o'clock, a.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

Wavalene M. Saunders
Wavalene M. Saunders, Legislative Chairwoman

APPROVED

on the 14 day of August, 2024

DISAPPROVED

at 11:07 o'clock, a.m.

Verlon M. Jose
VERLON M. JOSE, CHAIRMAN
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 14 day of
August, 2024, at 11:35 o'clock, 11 .m.

Deanna Franzer per:
Evonne Wilson, Legislative Secretary

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ACTION: APPROVING AGREEMENT WITH QUEEN CREEK IRRIGATION DISTRICT

MOVED: COUNCILWOMAN LUCINDA ALLEN

SECOND: COUNCILMAN DANIEL L.A. PRESTON III

DATE: AUGUST 08, 2024

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 394.2	1. LEANDER MASE (Francine Schooling) 2. JESSE NAVARRO (Alberta J. Ray)	197.1 197.1	X X			X
CHUKUT KUK 354.7	1. VIVIAN JUAN-SAUNDERS (Cornelius Antone) 2. MARLAKAY HENRY ()	177.35 177.35	X	X		
GU ACHI 282.7	1. VICTORIA HOBBS (Tonya L. Joaquin) 2. JEROME F. JOAQUIN ()	141.35 141.35		X X		
GU VO 276.0	1. DALLAS LEWIS () 2. LESLIE LUNA ()	138.0 138.0	X X			X
HICKIWAN 220.5	1. DELMA M. GARCIA () 2. LOUIS R. LOPEZ (Loretta A. Ortega)	110.25 110.25	X X			X
PISINEMO 236.2	1. EDWARD D. MANUEL (Monica Morgan) 2. PAMELA J. BENAVIDEZ (Nora J. Ruclas)	118.1 118.1	X X			X
SAN LUCY 257.6	1. ROGER MANUEL (Christina Andrews) 2. GLORIA M. RAMIREZ (<i>Absent</i>) (Lorraine M. Eiler) (<i>Present</i>)	128.8 128.8	X X			
SAN XAVIER 244.5	1. JANICE FELIX () 2. DANIEL L.A. PRESTON III ()	122.25 122.25	X	X		
SCHUK TOAK 191.8	1. DELISA M. RAMON (Sharon A. Francisco) 2. THEORIA CAMPILLO (Rebecca Ann Valentine)	95.9 95.9	X X			
SELLS 558.0	1. EVELYN JUAN MANUEL (Arvada Liston) 2. JANET B. ELEANDO ()	279.0 279.0			X X	
SIF OIDAK 247.1	1. LUCINDA ALLEN (Francis Homewytewa) 2. WAVALENE M. SAUNDERS (Mary Lopez)	123.55 123.55	X X			
	TOTAL	3,263.30	2,123.0	582.3	558.0 [02]	[04]