

RESOLUTION OF THE PAPAGO TRIBAL COUNCIL  
(H.R. 5118 - Water and Litigation)

RES. NO. 72-82

1 WHEREAS, non-Indian surface water diversion and/or groundwater pumping  
2 near or bordering the San Xavier Reservation, portions of the Garcia  
3 Strip and the Vaya Strip of the Schuk Toak District, the Chuichu  
4 area of the Sif Oidak District and the Gila Bend Reservation has  
5 resulted in the lowering of groundwater tables, the compaction and  
6 periodic flooding of land and the deterioration of water quality,  
7 all in derogation and to the detriment of the rights of the Papago  
8 Tribe and its members; and

9 WHEREAS, the United States and the Papago Tribe and certain allotment owners,  
10 in their own right and on behalf of the Papago Tribe and individual  
11 allottees of the San Xavier District, filed suit in 1975 in the  
12 United States District Court for the District of Arizona (respectively  
13 Cause N. CIV 75-39 and CIV 75-51) seeking, among other remedies, a  
14 declaration of their rights in and to the use of surface and ground-  
15 waters; damages resulting from the use of surface and groundwater  
16 in derogation of their rights; and injunctive relief to prohibit  
17 withdrawals of surface and groundwaters of the Upper Santa Cruz Basin;  
18 and

19 WHEREAS, the Papago Council did appoint a Water Commission made up, among  
20 others, of members residing within the San Xavier, the Schuk Toak,  
21 the Sif Oidak, and the San Lucy Districts, in order to review and  
22 study all available materials and data relative to the water basins  
23 on, near or under their respective Districts, and to negotiate and  
24 develop a legislative settlement of the water rights claims of their  
25 respective districts in said basins, and to conduct public hearings  
26 in the Districts; and

27 WHEREAS, on the 14th day of February, 1980, the Papago Tribal Council passed  
28 Resolution No. 10-80, wherein it authorized and approved the nego-  
29 tiation and development of a legislative settlement of the water right  
30 claims of the Papago Tribe and its members in the water basins on,  
31 near or under the San Lucy District, San Xavier District, Garcia Strip  
32 and Vaya Strip of the Schuk Toak District, and the Chuichu area of

1 the Sif Oidak District by means of a congressional bill to be enacted  
2 into Public Law of the United States which would provide the terms  
3 and conditions of the settlement and would establish the method and  
4 means of implementing the settlement, and delegated to the Water  
5 Commission and the Chairman of the Papago Council full authority to  
6 negotiate and develop such legislative settlement; and

7 WHEREAS, on December 3, 1981, Congressman Udall introduced a bill in the U. S.  
8 House of Representatives, H.R. 5118, and Senators Goldwater and  
9 DeConcini subsequently introduced a corresponding bill in the Senate,  
10 S. 2114, which were processed through the appropriate committees and  
11 passed by both Houses and sent to the President of the United States  
12 for enactment into law; and

13 WHEREAS, during the legislative process the proposed legislative settlement  
14 of the water right claims of the Chuichu area of the Sif Oidak District  
15 and of the San Lucy District were eliminated from both bills with  
16 assurances from members of the congressional delegation that a sub-  
17 sequent bill would be introduced within this or the next session of  
18 Congress which would resolve the water problems of these two Districts;  
19 and

20 WHEREAS, on June 1, 1982, President Reagan vetoed H.R. 5118, stating that the  
21 Federal Government did not participate in the negotiations, that the  
22 Federal cost of the bill was too high, and that the local residents of  
23 Southern Arizona should pay this cost, which veto sent a message to  
24 all Indian tribes that the Reagan Administration does not recognize  
25 any liability in the Federal government, as Trustees of Indian waters,  
26 for its past failure to protect such waters, or recognize a duty to  
27 protect such waters in the future; and

28 WHEREAS, President Reagan has indicated in his veto that the negotiated  
29 settlement contained in H.R. 5118 should be re-negotiated with the  
30 participation of a Federal negotiator appointed by the President;  
31 and

32



1 WHEREAS, it is the firm position of the Papago Tribe that the negotiated  
2 settlement contained in H.R. 5118 should be re-negotiated with the  
3 participation of a Federal negotiator appointed by the President; and

4 WHEREAS, unless a prompt out-of-court settlement can be reached and Federal  
5 legislation is passed to guarantee and implement such settlement,  
6 litigation must be instituted prior to the expiration of time set by  
7 Federal statute or the Papago Tribe, the San Lucy District and Sif  
8 Oidak District may lose the legal right to claim past damages for  
9 non-Indian surface water diversion and for groundwater pumping near  
10 and bordering the Gila Bend Reservation and the Chuichu area of the  
11 Sif Oidak District, and for damages resulting from the construction  
12 of Painted Rock Dam which has caused the periodic flooding of the  
13 Gila Bend Reservation; and

14 WHEREAS, unless Arizona's congressional delegation and/or other congressional  
15 supporters of H.R. 5118 take legislative steps to override the  
16 President's veto or other available legislative options that would  
17 result in the enactment of H.R. 5118, the litigation pending in  
18 Federal court will be pursued actively to its final conclusion; and

19 WHEREAS, the Papago Tribe, the San Xavier District and the Schuk Toak District  
20 have on numerous occasions, but to no avail, requested the Federal  
21 government, as Trustee of the water of the San Xavier Reservation,  
22 and the Schuk Toak District file litigation to protect their rights  
23 in and to the groundwater of the Altar-Avra Water Basin; and

24 WHEREAS, it is imperative that the San Xavier District, the Schuk Toak District  
25 and the Papago Tribe take steps necessary to the preparation and  
26 filing of litigation to protect their rights in and to the ground-  
27 water of the Altar-Avra Water Basin and for past and future damages.

28 NOW, THEREFORE, the Papago Tribal Council does hereby resolve as follows:

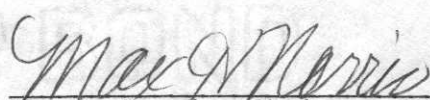
- 29 1. That the Papago Tribe will not re-negotiate the settlement  
30 contained in H.R. 5118 which the Papago Tribe negotiated  
31 in good faith and with Federal participation.  
32 2. That the Congressional delegation take all steps possible  
to override the President's veto or other available  
legislative options that would result in the enactment  
of H.R. 5118.

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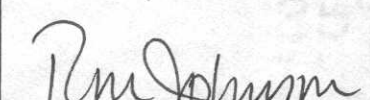
3. That the Papago Tribe continues to request that the Federal Government, as Trustees of Papago water and land, file litigation for damages and for the protection of the Tribe's and Districts' right in and to the waters located on, near or under the Gila Bend Reservation, the Chuichu area of the Sif Oidak District, the Garcia Strip and Vaya Strip of the Schuk Toak District and that portion of the San Xavier District that overlies the Altar-Avra Water Basin.
4. That the Tribal Attorneys are hereby authorized to prepare and file the necessary litigation, with or without the Federal Government's participation, prior to the expiration of time set by Federal Statute.
5. That the Chairman, Treasurer, and the Budget and Finance Committee, together with the Tribal Attorneys, develop a litigation budget and the recommended source of funding this budget and report back to the Council at its next scheduled meeting.

The foregoing Resolution was duly enacted by the Papago Council on the 14th day of June, 1982, at a meeting at whcih a quorum was present with a vote of 756.0 for; 54.0 against; 338.0 not voting; and 0 absent, pursuant to the authority vested in the Papago Council by Section 2 (a), (d), and (m) of Article V of the Constitution and By-Laws of the Papago Tribe as amended, ratified by the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984). Said Resolution is not subject to review by the Secretary of Interior and is effective as of the date of its enactment by the Papago Council.

THE PAPAGO COUNCIL

  
Max H. Norris, Chairman

ATTEST:

  
Rose Johnson, Secretary



Moved: John B. Narcho

RESOLUTION- H.R. 5118-Water and

Second: Rosemary Lopez

Litigation

Date: 06-14-82

Resolution  
or  
Ordinance # 72-82

Districts	Representatives	No of Votes	For	Against	Not Voting	Absent
BABOQUIVARI 175	1. Edward N. Kisto (Joann Garcia) 2. Kenneth Chico, Sr. (Donald Harvey)	87.5 87.5			X X	
CHUKUT KUK 117	1. Rosemary Lopez ( 2. Harriet Toro (Lawrence Jose)	58.5 58.5	X X			
GU ACHI 123	1. Angelo J. Joaquin, Sr. (Joseph Pete Ramon) 2. Cipriano Manuel (Fernando Joaquin)	61.5 61.5	X X			
GU VO 54	1. Cross Antone (Juan Joe Cipriano) 2. Alvin Virgil Lewis (Henry F. Manuel)	27.0 27.0		X X		
HICKIWAN 79	1. Henry A. Ramon (James Angea) 2. Delma Garcia (Archie Pilone)	39.5 39.5			X X	
PISINEMO 82	1. Lamando Francisco (Herman Lopez) 2. Johnson Jose (Frank Garcia)	41.0 41.0	X X			
SAN LUCY 44	1. Max P. Jose (Garfield Lenzo) 2. Albert Gomez (Jeannie Morris)	22.0 22.0	X X			
SAN XAVIER 107	1. John B. Narcho (Simon Mamake) 2. John Lewis (Carmelita Mattias)	53.5 53.5	X X			
SCHUK TOAK 83	1. Alex Juan (Francisco Jose, Jr.) 2. Jo Ann Francisco (Priscilla G. Domingo)	41.5 41.5	X X			
SELLS 168	1. Andrew M. Patricio (Larry Garcia) 2. Fred Stevens (Dennis Jose)	84.0 84.0			X	
SIF OIDAK 116	1. Elliot Lewis (Eugene Jose) 2. Nicklos Jose (Alice Norris)	58.0 58.0	X X			
TOTALS		1148.0	756	54	338	0