

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing Payment of Funds in Protest to the
Central Arizona Irrigation and Drainage District
in order to Prevent Interruption of Water
Deliveries to the San Lucy Farm

RES. NO. 91-125

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3 WHEREAS, in May 1988 the Tohono O'Odham Nation purchased 3,161
4 acres of land in Pinal County (the "San Lucy Farm")
5 pursuant to the Gila Bend Indian Reservation Lands
6 Replacement Act, Public Law 99-503 (the "Act"); and

7 WHEREAS, the San Lucy Farm meets the requirements prescribed in the
8 Act for placing into trust replacement lands purchased
9 with settlement funds dispersed to the Nation under the
10 Act; and

11 WHEREAS, prior to May 1988, the Nation requested that, upon
12 acquisition of the San Lucy Farm, the Secretary of
13 Interior place the lands in trust for the Nation; and

14 WHEREAS, under Section 7(a) of the Act the Secretary of Interior
15 (the "Secretary") is required to pay all assessments "in
16 lieu of real property taxes" to the State of Arizona and
17 its political subdivisions; and

18 WHEREAS, the Central Arizona Irrigation and Drainage District (the
19 "Irrigation District") is a political subdivision of the
20 State of Arizona; and

21 WHEREAS, the Tohono O'Odham Farming Authority (the "Farm
22 Authority") erroneously paid assessments in lieu of real
23 property taxes imposed by the Irrigation District for 1988
24 and 1989 in the total amount of \$55,401.12; and

25 WHEREAS, the Irrigation District has issued to the Farm Authority
26 an assessment in lieu of real property taxes for 1990 in
27 the amount of \$218,541.; and
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3 WHEREAS, by letter to the Nation's Attorney General dated March 21,
4 1991 the Irrigation District threatened to terminate water
5 delivery to the San Lucy Farm if the assessment in lieu
6 of taxes is not paid; and

7 WHEREAS, cessation of water delivery to the San Lucy Farm would
8 have a devastating economic impact on the Farm and the
9 Nation; and

10 WHEREAS, the Nation's Attorney General filed suit in federal court
11 on behalf of the Nation against the Secretary and the
12 Irrigation District to (a) secure a determination that the
13 Secretary is liable for payment of the District's
14 assessments in lieu of taxes on the San Lucy Farm for
15 1988, 1989, 1990 and future years and (b) prevent
16 interruption of water deliveries to the San Lucy Farm for
17 failure to pay such assessments; and

18 WHEREAS, a Temporary Restraining Order was issued by the federal
19 court on April 8, 1991 enjoining the Irrigation District
20 from interrupting water deliveries to the San Lucy Farm
21 until the Nation's Application for a Preliminary
22 Injunction could be heard on April 16, 1991; and

23 WHEREAS, the Interior Department's Office of the Solicitor (Phoenix
24 Field Office) issued an opinion on April 15, 1991 (the
25 "Field Solicitor's Opinion") which concluded that the land
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is not held in trust by the United States and the United States is not responsible for the Irrigation District's assessments because the charges are not real property taxes for the purposes of the Act; and

WHEREAS, pursuant to the Solicitor's Opinion, the Acting Director of the Phoenix Area Office issued a decision (the "Decision") on April 15, 1991 (copy attached) incorporating the conclusions in the Field Solicitor's Opinion; and

WHEREAS, following receipt of the Field Solicitor's Opinion, the Attorney General filed a First Amended Complaint and Applications for a Temporary Restraining Order and Preliminary Injunction in the Federal Court seeking an injunction against the Secretary enjoining the Secretary from violating Section 7(a) of the Act which requires him to pay the assessments in lieu of real property taxes; and

WHEREAS, at the hearing on April 16, the court, upon consent of the Irrigation District, granted the Nation's request to extend the Temporary Restraining Order against the Irrigation District until 5:00 p.m. on April 18, 1991, and denied the Nation's Application for a Preliminary Injunction against the Irrigation District; and

WHEREAS, the Court set a hearing for 1:00 p.m. on April 18 on the Nation's Applications for a Temporary Restraining Order and Preliminary Injunction against the Secretary; and

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WHEREAS, the foregoing hearing has been vacated and can be
rescheduled upon the Nation's request; and

WHEREAS, the Irrigation District has renewed its stated intention
to shut off water delivery to the Farm if the 1990
assessment is not paid by 5:00 p.m. on April 18, 1991.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Tohono O'odham Legislative Council authorizes
and directs payment under protest to the Irrigation
District in the amount of \$218,541 for 1990
assessments in lieu of taxes. Such payment shall
be delivered to the Irrigation District no later
than 5:00 p.m. on April 18.
2. The foregoing amount shall be paid from the
following account: P.L. 99-503, 2011-39817. Upon
recovery of damages in the lawsuit or by settlement
with respect to the in lieu assessment, the amount
thereof shall be restored to this account up to the
sum of \$218,541.
3. The Attorney General is authorized and directed to
pursue the lawsuit against the Irrigation District
and Secretary, as well as take such other steps as
may be advisable, to recoup the payment of the
\$218,541, secure a determination that the Secretary

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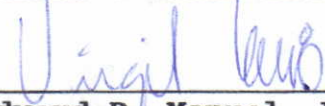
is mandated to place the San Lucy Farm in trust and is liable for payment of the assessments in past and future years, and obtain such additional relief as is requested in the First Amended Complaint or as may be appropriate.

4. The Tohono O'odham Legislative Council hereby expresses its outrage regarding the continuing refusal of the Secretary to place the San Lucy Farm in trust and pay the assessments in lieu of real property taxes, as mandated by the Act.

5. The Tohono O'odham Legislative Council hereby directs that upon receipt of the well lease payments from the Irrigation District through June 30, 1991, said payments shall be used to replenish the Nation's Account No. P.L. 99-503, 2011-39817.

The foregoing Resolution was passed by the Tohono O'odham Council on the 17th day of April, at a meeting at which a quorum was present with a vote of 1,102.5 for; 445.0 against; 176.5 not voting; 03 absent, pursuant to the powers vested in the Council by Section 1(d) of Article VI, Section 1 of Article XVI and Section 2 of Article XVII 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



Edward D. Manuel, Legislative Chairman

17th day of April, 1991.

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ATTEST:

Teresa M. Choyguha
Teresa M. Choyguha, Legislative Secretary

17 day of April, 19 91.

Said Resolution was submitted for approval to the office of the
Chairman of the Tohono O'odham Nation on the 17th day of
April, 19 91, at 4:55 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

Edward D. Manuel
Edward D. Manuel, Legislative Chairman

[] APPROVED) on the 18 day of April, 19 91.
[] DISAPPROVED) at 1:45 o'clock, P.M.

Angelo J. Joaquin, Sr.
ANGELO J. JOAQUIN, SR., Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 18th day of
April, 19 91, at 5:14 o'clock, P.M.

Teresa M. Choyguha
Teresa M. Choyguha
Legislative Secretary

MOVED: COUNCILMAN ALBERT MANUEL, JR.SUBJECT: AUTHORIZING PAYMENT OF FUNDS IN PROTEST TO THESECOND: COUNCILMAN EUGENE ENISCENTRAL AZ. IRRIGATION AND DRAINAGE DIST. IN ORDER TODATE: APRIL 17, 1991PREVENT INTERRUPTION OF WATER DELIVERIES TO SL FARMS

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 229.0	1. Earl A. Francisco (Kenneth Chico)	114.5	X			
	2. Joann Garcia (Frances Miquel)	114.5	X			
CHUKOT KUK 163.0	1. Rosita Ruiz (Rosemary Lopez)	81.5	X			
	2. Kenneth Williams (Harriet Toro)	81.5	X			
GU ACHI 166.0	1. Percy Lopez ()	83.0		X		X
	2. Alex Ramon (Fernando Joaquin)	83.0		X		
GU VO 114.0	1. Cross Antone (Juan Joe Cipriano)	57.0			X	
	2. Virgil Lewis (Michael Flores)	57.0			X	
HICKIWAN 125.0	1. Lloyd Francisco (Billy C. Manuel)	62.5	X			
	2. Lenora Montana ()	62.5			X	
PISINEMO 119.0	1. Johnson Jose ()	59.5		X		
	2. Edward Manuel (Alex Antone)	59.5		X		X
SAN LUCY 106.0	1. Albert Manuel, Jr. (Max P. Jose)	53.0	X			
	2. John Reno ()	53.0		X		
SAN XAVIER 127.0	1. Eugene Enis, Sr. (Michael Rios)	63.5	X			
	2. Joanne C. Preston (Carmelita Mattias)	63.5	X			
SCHUK TOAK 107.0	1. JoAnn Francisco (David Valenzuela, Sr)	53.5		X		X
	2. Joseph Juan (Frances Francisco)	53.5		X		
SELLS 310.0	1. Joseph T. Joaquin (Larry Garcia)	155.0	X			
	2. Andrew Patricio (Daniel Lopez)	155.0	X			
SIF OIDAK 158.0	1. Mary Ann Antone (Nina Jose)	79.0	X			
	2. Willard Juan, Sr. (Melissa Gregorio)	79.0	X			
TOTAL		1,724.0	1,102.5	445.0	176.5	03

**PASSED VOTES