

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Authorizing and Directing Petition for Intervention by the  
Nation in U.S. v. Tucson)

RES. NO. 91-304

1  
2 WHEREAS, the Southern Arizona Water Rights Settlement Act of 1982  
3 ("SAWRSA") was enacted for the purpose of settling the  
4 water rights claims of the Tohono O'odham Nation (the  
5 "Nation") within the Tucson Active Management Area and  
6 that part of the Upper Santa Cruz Basin not within such  
7 Area; and

8 WHEREAS, implementation of certain key provisions of SAWRSA is  
9 conditioned on final dismissal of the legal proceedings  
10 which had been initiated to assert the foregoing water  
11 claims in federal district court, captioned United States  
12 v. Tucson (Civ. No. 75-39-TUC-RCB, U.S.D.C. Arizona) (the  
13 "Lawsuit"); and

14 WHEREAS, failure to secure final dismissal of the Lawsuit will  
15 adversely impact the water resources available to the  
16 Nation and its members, including member allottees, the  
17 San Xavier District and the Schuk Toak District; and

18 WHEREAS, pursuant to the provisions of SAWRSA, a Motion to Dismiss  
19 was filed by the Nation in December 1988 to dismiss the  
20 Nation from the Lawsuit; and

21 WHEREAS, in December 1988 the City of Tucson filed a Motion to  
22 Dismiss the Lawsuit; and

23 WHEREAS, in February 1989, the Court issued an order dismissing the  
24 Nation as a party to the Lawsuit; and

25 WHEREAS, pursuant to SAWRSA, the United States filed a Motion to  
26 Dismiss the Lawsuit in December 1989; and

27 WHEREAS, in March 1990 eleven individual allottees (the "Allottee  
28 Representatives") filed (1) a Motion for Class Certifi-

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cation seeking recognition as representatives for a putative class of allottees within the San Xavier District of the Nation and (2) and objection to the Motion to Dismiss filed by the United States; and

WHEREAS, the Allottee Representatives, the United States and the City of Tucson, with the concurrence of the Nation, stipulated to several extensions of time for the parties to respond to the Allottee Representatives' Motion and objection; and

WHEREAS, the purpose of the extensions was to enable time for the Water Resources Committee ("WRC") and other officials of the Nation to engage in settlement negotiations with the Allottee Representatives in an effort to secure a final dismissal of the Lawsuit premised on a mutually beneficial resolution of disputes and concerns regarding SAWRSA and other water rights matters; and

WHEREAS, several meetings have been held with the Allottee Representatives to discuss the prospects for settlement; and

WHEREAS, by Resolution No. 91-180 of the Legislative Council passed on May 16, 1991, the recommendations of the WRC regarding recharge, the 9B Farm and other alternatives were adopted by the Council; and

WHEREAS, the foregoing Resolution included an authorization and direction to the WRC to implement additional technical studies regarding use of the Central Arizona Project

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("CAP") water granted under SAWRSA, to develop a proposed Water Code for the Nation, and draft amendments to SAWRSA and other recommended actions by the Nation in consultation, with the Allottee Representatives, Schuk Toak District and San Xavier District; and

WHEREAS, on or about June 3, 1991, the Allottee Representatives filed a Motion for Partial Summary Judgment in the Lawsuit; and

WHEREAS, the water and other benefits granted to the Nation under SAWRSA were in exchange for a settlement of the Nation's Winters' rights; and

WHEREAS, in their summary Judgment Motion, the Allottee Representatives seek a ruling of the Court that the allottees in San Xavier District own more than 60% of the Winters' right water within the District, and such ownership is separate and distinct from the Nation's entitlement; and

WHEREAS, SAWRSA granted to the Nation an annual entitlement of 60,000 acre feet comprised of groundwater, and CAP and reclaimed or substitute water (exclusive of small well pumping rights), in settlement of the Nation's Winters' rights within the San Xavier District; and

WHEREAS, if the Court were to grant the relief requested in the Allottee Representatives' Motion, not less than 60% of the SAWRSA entitlement related to San Xavier (36,000 acre feet) would be granted to the allottees, leaving the

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Nation with only 24,000 acre feet of the original 60,000  
acre feet granted to the Nation; and

WHEREAS, in the event of a different acre foot entitlement  
determined by judicial ruling or settlement, the Allottee  
Representatives' position is that the water ownership  
would be in the same ratio--at least 60% for the allottees  
and not more than 40% for the Nation; and

WHEREAS, Section 1 of Article XVII of the Nation's Constitution  
provides that all water within the Nation is a public  
resource owned by the Nation; and

WHEREAS, Section 2 of Article XVII of the Nation's Constitution  
provides that all water within the Nation shall be managed  
and controlled by the Legislative Council, consistent with  
federal law; and

WHEREAS, SAWRSA and other federal law are consistent with the  
Nation's ownership of all such water, and the exercise of  
control and management thereof by the Legislative Council  
(subject to whatever rights the allottees may have under  
25 U.S.C. §381 to a "just and equal distribution" for  
agricultural purposes); and

WHEREAS, the WRC has recommended that the Council authorize the  
actions specified below with respect to the Lawsuit and  
related matters.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Attorney General of the Nation is authorized and  
directed to make appropriate application to the Federal

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District Court for intervention by the Nation in the Lawsuit for purposes of responding to (a) the Motions to Dismiss filed by the United States and the City of Tucson, (b) the Motion for Class Certification filed by the Allottee Representatives, (c) the Allottee Representatives' Motion for Partial Summary Judgment and (d) all other Motions or matters now pending or later presented for party response. The Attorney General shall take the foregoing actions within a time period which best protects the legal interests of the Nation; provided that, consistent with this direction, the Attorney General is specifically authorized to defer making formal application to the Court for intervention by the Nation during any period of time for which the Allottee Representatives, United States and the City of Tucson have stipulated to an extension of time to respond to pending Motions and other matters, and which enables adequate time for the Nation to seek intervention and fully participate in the proceedings.

2. In connection with the foregoing actions, the Attorney General is authorized and directed to assert the legal position of the Nation that all water rights under SAWRSA, and the water entitlements and other benefits granted in settlement therefor, are solely owned by the Nation as a public resource of the Nation, and the

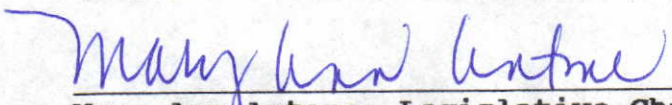
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management and control thereof are rights and powers held by the Nation's Legislative Council.

3. In further implementation of Resolution No. 91-180, the WRC is authorized and directed, in conjunction with the Chairman of the Nation, to develop a timetable for concluding the tasks outlined in such Resolution which shall include consultation with the Allottee Representatives, officials of the San Xavier and Schuk Toak Districts, responsible officials of the United States Government, the City of Tucson and other persons or entities with a substantial legal interest in the subject matter. These actions shall be taken with due consideration given to whatever special rights allottees may have to the beneficial use of the Nation's water, taking into account that the Nation owns the water and controls its use as a valuable resource for all the Nation's members.

The foregoing Resolution was passed by the Tohono O'odham Council on the 20th day of June, 1991 at a meeting at which a quorum was present with a vote of 1,397.0 for; 127.0 against; 199.5 not voting; 01 absent, pursuant to the powers vested in the Council by 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

  
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Mary Ann Antone, Legislative Chairwoman

24th day of June, 1991.

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ATTEST:

Teresa M. Choyguha  
Teresa M. Choyguha, Legislative Secretary  
24<sup>th</sup> day of June, 1991.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 25<sup>th</sup> day of June, 1991, at 8:12 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

Mary Ann Antone  
Mary Ann Antone, Legislative Chairwoman

[  ] APPROVED ) on the 25<sup>th</sup> day of June, 1991,  
[  ] DISAPPROVED ) at 3:28 o'clock, P.M.

Josiah Moore  
for JOSIAH MOORE, Chairman  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 26<sup>th</sup> day of June, 1991, at 8:21 o'clock, A.M.

Gwendolyn Allen for  
Teresa M. Choyguha  
Legislative Secretary

MOVED: COUNCILMAN JOHN RENOSUBJECT: AUTHORIZING AND DIRECTING PETITION FOR INTER-SECOND: COUNCILWOMAN JOANN FRANCISCOVENTION BY THE NATION IN U.S. v. TUCSONDATE: JUNE 20, 1991

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 229.0	1. Earl A. Francisco (Kenneth Chico)	114.5	X			
	2. Frances Miquel (Joann Garcia)	114.5	X			
CHUKUT KUK 163.0	1. Kenneth Williams (Harriet Toro)	81.5	X			
	2. Alberta Lopez (Berdella Jose)	81.5	X			
GU ACHI 166.0	1. Alex Ramon (Fernando Joaquin)	83.0	X			
	2. Willard Anita (Jonas Robles)	83.0			X	
GU VO 114.0	1. Virgil Lewis (Michael Flores)	57.0	X			
	2. Emilio Lewis (Anthony Flores)	57.0			X	
HICKIWAN 125.0	1. Lloyd Francisco (Billy C. Manuel)	62.5	X			
	** 2. Manuel Osequeda, Jr. ( )	62.5	X			
PISINEMO 119.0	1. Johnson Jose ( )	59.5	X			
	2. Chester Antone (Fernando Valentine)	59.5			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. Joanne C. Preston (Carmelita Mattias)	63.5		X		
	2. Eugene Enis, Sr. (Michael R. Rios)	63.5		X		X
SCHUK TOAK 107.0	1. Joann Francisco (David Valenzuela, Sr)	53.5	X			
	2. Frances Francisco (Joseph Juan)	53.5	X			
SELLS 310.0	1. Joseph T. Joaquin (Larry Garcia)	155.0	X			
	2. Andrew Patricio (Lucille Encinas)	155.0	X			
SIF OIDAK 158.0	1. Mary Ann Antone (Nina Jose)	79.0	X			
	2. Willard Juan, Sr. (Delbert Thomas)	79.0	X			
	TOTAL	1,724.0	1,397.5	127.0	199.5	01

\*\*PASSED VOTES