

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Directing Termination of the Contract Between the Tohono O'Odham Nation
and Franzoy-Corey Engineering, Establishing a Special Account
for Such Contract Termination Activities and Directing the
Tohono O'Odham Nation -Water Projects Office to Proceed
With the Development of a Plan for the San Xavier Farm Rehabilitation
and Schuk Toak Farm Projects)**

RES. NO. 91-487

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5 **WHEREAS,** *the Southern Arizona Water Rights Settlement Act (SAWRSA) P.L.*
6 *97-293 provided for the development of farms within the Tohono*
7 *O'odham Nation; and*

8
9 **WHEREAS,** *the Nation entered into a master agreement with Franzoy-Corey*
10 *Engineers (F/C) to implement the SAWRSA farm projects through*
11 *planning, design and construction; and*

12 **WHEREAS,** *the Nation and F/C proceeded by the terms of the agreement to*
13 *implement the SAWRSA farm projects through nine (9) Authorizations*
14 *for Services as provided in the agreement; and*

15 **WHEREAS,** *in 1989 the Nation became aware that F/C had exceeded its Contract*
16 *authority by engaging in work activities not authorized by the Nation*
17 *in writing, as required by the terms of agreement; and*

18
19 **WHEREAS,** *in order to correct these problems with F/C the Nation in late 1989*
20 *directed F/C to cease the unauthorized work by means of a verbal*
21 *directive from the Chairman's Designee; and*

22
23 **WHEREAS,** *throughout calendar year 1990 and through 1991 efforts have been*
24 *on-going to resolve the dispute with F/C by means of written*
25 *ratifications of the authorizations of services, the payment of*
26 *outstanding invoices in a proper amount and mutual releases of*
27 *liability; and*
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WHEREAS, the ratifications were executed by the Nation and F/C in May of this year, but F/C has refused to execute a mutual release of liability; and

WHEREAS, late in the negotiations F/C first asserted an unquantified and unsupported claim based upon provisions of the Federal Acquisition Regulations (FAR's) and characterized by F/C as a "Stop-Work Order Claim"; and

WHEREAS, F/C's wrongful refusal to negotiate a good faith and timely resolution of the disputes and to deliver work product associated with the disputes, has caused extended delays in the implementation of SAWRSA which present the risk of material financial losses and other damages to the Nation; and

WHEREAS, the Executive Branch of the Nation, through its Water Projects Office (WPO), has recommended terminating the agreement with F/C as provided in the agreement in order to mitigate the Nation's damages by pursuing other options to implement the farm projects; and

WHEREAS, the Executive Branch recommends establishing within the Nation's Accounting Department of a Special Account entitled "Franzoy-Corey Contract Resolution Account" with special provisions for distribution of funds identified to support costs allowable under the agreement with F/C (not to exceed \$307,204.59) and comprised of the following amounts and sources.

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SOURCE	AMOUNT
a. Funds Paid by U.S.B.O.R. to the Nation	\$262,185.98
b. Funds Pending Payment by U.S.B.O.R. to the Nation	\$ 24,870.98
c. Funds from Nation's SAWRSA Trust Fund	
i. Schuk Toak-Small Reclamation Loan Application	\$ 19,050.53
ii. Previously Obligated by Resolution 439-87	\$ 1,097.10
Total	\$ 307,204.59; and

WHEREAS, *it is recommended that the Nation's Chief Financial Officer (CFO) pay out these funds only upon receipt of:*

- a. An executed Mutual Release of Liability, signed by the Nation's Chairman and F/C and**
- b. Receipt from the Director of the WPO a written report that F/C has provided all outstanding deliverables pursuant to the agreement and authorizations for services.**

WHEREAS, *it is recommended that the Director of the WPO develop, and present to the Executive, appropriate Committees and Council, within 30 days of passage of this Resolution a plan to move forward with the development of the Rehabilitation of the San Xavier Cooperative Farm and the Schuk Toak Farm by means of intergovernmental personnel*

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5 *agreements with federal agencies or in the alternative seeking to*
6 *contract with consulting firms, federal agencies or engineering and*
7 *architectural firms or through WPO staff and personnel or a*
8 *combination of these alternatives as he sees fit to most expeditiously*
9 *implement these projects; and*

10
11 **WHEREAS,** *this Resolution has been presented to and reviewed by the Water*
12 *Resources Committee of the Legislative Council and the Committee*
13 *recommends approval by the Legislative Council; and*

14 **WHEREAS,** *the Chairman of the Nation is requested to assist in these matters to*
15 *the best of his abilities to ensure the timely development of the farm*
16 *projects.*

17
18 **NOW, THEREFORE, BE IT RESOLVED THAT:**

19 *1. That the Chairman of the Nation, in consultation with the Water*
20 *Resources Committee, the Attorney General and the Water*
21 *Projects Office Director and such other staff as the Chairman*
22 *deems appropriate and necessary take the following steps to*
23 *terminate the agreement between the Nation and Franzoy-Corey*
24 *Engineering.*

25
26 *a. Prepare and transmit to Franzoy Corey Engineering a letter*
27 *which terminates the agreement under any and all grounds*
28 *available to the Nation, as well as setting forth any claims*

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which the Nation has against F/C under the agreement. Said letter to be transmitted within 10 working days after passage of this resolution.

b. Direct that the Chief Financial Officer of the Nation establish a Special Account entitled the "Franzoy-Corey Contract Resolution Account" with Special Provisions that the CFO shall distribute the funds in that account to Franzoy-Corey Engineering only when the CFO receives the following documents:

i. Executed Mutual Release of Liability signed by the Chairman of the Nation and Franzoy-Corey Engineering and approved by the Attorney General; and

ii. A written report from the Director of the Nation's Water Project's Office (WPO) that all deliverables under the agreement and authorizations for services with Franzoy--Corey have been received and reviewed and are acceptable to the WPO Director.

c. Assure that the Account shall include a total of not more than \$307,204.59 and be comprised of funds received by the

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Nation from the U.S.B.O.R. for approved invoices subject to dispute and the SAWRSA trust funds of the Nation appropriated for this purpose.

d. To take any and all steps necessary and appropriate to carry out this Resolution.

BE IT FURTHER RESOLVED that the Director of the WPO is authorized to develop, and to present to the Executive, appropriate Committees and Council, a plan within 30 days for implementation of the SAWRSA farm projects through intergovernmental personnel agreements with federal agencies and/or contracts with consulting firms, federal agencies and engineering and architectural firms, or through WPO Staff and personnel or by a combination of these alternatives.

BE IT FINALLY RESOLVED that Funds are hereby appropriated in the amount of \$19,050.53 from the interest and dividends on the SAWRSA Trust Fund to be placed in the Franzoy-Corey Contract Resolution Account for activities engaged in by F/C in the development of the Schuk Toak Small Reclamation Loan Application.

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 22ND. day of OCTOBER, 1991 at a meeting at which a quorum was present with a vote of 1,724.0 FOR; -0- AGAINST; -0- NOT VOTING; and 01 ABSENT, pursuant to the powers vested in the Council by Section 1 (d) & (f) of Article VI 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).

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Mary Ann Antone
Mary Ann Antone, Legislative Chairwoman

23rd day of October, 1991

ATTEST:

Teresa M. Choyguha
Teresa M. Choyguha, Legislative Secretary

23rd day of October, 1991.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 23rd day of October, 1991, at 1:43 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

Mary Ann Antone
Mary Ann Antone, Legislative Chairwoman

APPROVED on the 25 day of October, 1991

DISAPPROVED) at 8:20 o'clock, A.M.

Josiah Moore
JOSIAH MOORE, Chairman
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 25th day of October
19 91, at 9:14 o'clock, A.M.

Yucinda Allen for:
Teresa M. Choyguha, Legislative Secretary

MOVED: COUNCILMAN VIRGIL LEWISSUBJECT: DIRECTING TERMINATION OF CONTRACT BETWEEN/SECOND: COUNCILWOMAN FRANCES MIGUELT.O.N. & FRANZOY-COREY ENGINEERING, ESTABLISH. SPEC.DATE: OCTOBER 22, 1991ACCT FOR CONTRCT . . .

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 229.0	1. Earl A. Francisco (Kenneth Chico Sr.)	114.5	X			
	2. Frances Miguel ()	114.5	X			
CHUKUT KUK 163.0	1. Kenneth Williams (Harriet Toro)	81.5	X			
	2. Alberta M. Lopez (Berdella Jose)	81.5	X			
GU ACHI 166.0	1. Alex Ramon (Fernando Joaquin)	83.0	X			
	2. Willard Anita ()	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			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			
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	1,724.0	-0-	-0-	01

**PASSED VOTES