

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Establishing Parameters for Negotiating Settlement
of Nation's Water Rights under SAWRSA
and in U.S. v. Tucson)

RESOLUTION NO. 92-089

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4 **WHEREAS,** *the representatives of the allottees holding interests in allotted*
5 *lands in the San Xavier District have asserted in settlement*
6 *negotiations, and in motions filed in U.S. v. Tucson, that the*
7 *allottees own not less than 60% of the water entitlements and*
8 *other monetary benefits related to the San Xavier District which*
9 *were granted to the Tohono O'odham Nation (the "Nation") by*
10 *the Southern Arizona Water Rights Settlement Act of 1982*
11 *("SAWRSA"); and*

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14 **WHEREAS,** *for the reasons stated in Resolution 91-304 passed on June 20,*
15 *1991, the Legislative Council asserted that all water resources and*
16 *monetary benefits under SAWRSA "are solely owned by the*
17 *Nation as a public resource of the Nation, and the management*
18 *and control thereof are rights and powers held by the Nation's*
19 *Legislative Council"; and*

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22 **WHEREAS,** *pursuant to Resolution 91-304, in January 1992 the Nation's*
23 *Attorney General filed in U.S. v. Tucson motions which seek to*
24 *set aside the Nation's dismissal and assert the Nation's ownership*
25 *of the water rights and related benefits, as well as the Nation's*
26 *jurisdiction to manage and control such resources; and*
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4 **WHEREAS,** *since November 1991 the Water Resources Committee ("WRC"),*
5 *the Attorney General and representatives of the Chairman's Office*
6 *have held 10 meetings with the allottee representatives, to which*
7 *officials of the Schuk Toak District, San Xavier District and*
8 *Cooperative Farm Association were invited; and*

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10 **WHEREAS,** *the purposes of the meetings were to seek a resolution of the*
11 *dispute with the allottees consistent with the Nation's position*
12 *taken in Resolution 91-304 and to jointly work toward an overall*
13 *settlement beneficial to the Nation, allottees and affected Districts;*
14 *and*

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17 **WHEREAS,** *beginning in February 1992, the Committee and other officials of*
18 *the Nation, representatives of the affected Districts, allottees and*
19 *Cooperative Farm, have held five meetings with officials of*
20 *Tucson, the United States and the State of Arizona which are*
21 *designed to reach a final settlement of pending SAWRSA matters*
22 *and dismissal of U.S. v. Tucson; and*

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25 **WHEREAS,** *these meetings are chaired by William Lavell, special*
26 *representative of Assistant Secretary Brown; and*
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4 **WHEREAS,** *the negotiations include a proposal, subject to SAWRSA*
5 *amendments acceptable to the parties, that the United States*
6 *would make available for lease by the Nation to the City of*
7 *Tucson all 66,000 acre-feet of SAWRSA water on or before the*
8 *SAWRSA deadline of October 12, 1992; and*

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11 **WHEREAS,** *the basic terms of the lease would enable the Nation to secure a*
12 *return of all or a portion of the leased water on reasonable notice*
13 *so the water would be available to irrigate the lands in Schuk*
14 *Toak and San Xavier when the farm projects are completed, or*
15 *for any other use which the Nation determines appropriate; and*

16
17 **WHEREAS,** *numerous other amendments to SAWRSA are the subject of*
18 *ongoing negotiations which would enhance and protect the*
19 *SAWRSA water resources; and*

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21 **WHEREAS,** *certain principles of these negotiations were established by the*
22 *Water Resources Committee at the outset to conform the*
23 *discussion to the position taken by the Nation in Resolution 91-*
24 *304, namely that the proposed amendments would not imply*
25 *ownership of the SAWRSA water rights or benefits and would not*
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4 *confer management or control of the water resources or monetary*
5 *benefits, in persons or entities other than the Nation, with the*
6 *Nation reserving its right to challenge the jurisdiction or legal*
7 *power of federal courts, the Secretary of Interior or other non-*
8 *Tribal authorities over these issues; and*

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11 **WHEREAS,** *a further premise of the negotiations was that the Nation would,*
12 *upon submission of a proposal by the San Xavier District or*
13 *Cooperative Farm Board, consider whether to consent to a*
14 *contract under Pub. L. 93-638 with the District or Board to*
15 *perform SAWRSA functions relating to the rehabilitation or*
16 *extension of the Cooperative Farm; and*

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19 **WHEREAS,** *on February 25, 1992, the Nation received copies of the allottee*
20 *representatives' proposed amendments to SAWRSA which, among*
21 *other things, (1) made numerous changes to SAWRSA which*
22 *would have the effect of recognizing the allottees and San Xavier*
23 *District as owners of the water rights and related benefits in San*
24 *Xavier; (2) confer legal authority on the Secretary of Interior to*
25 *resolve disputes between the Nation and the allottees or San*
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Xavier District, including the right to determine ownership of the water rights; and (3) extinguish the Nation's right under Pub. L. 93-638 to perform all SAWRSA functions of the United States within the San Xavier District and authorize direct contracts with the District for these purposes; and

WHEREAS, *at a meeting on February 28, 1992, the Water Resources Committee listed its objections to the amendments summarized in clauses (1) through (3) above and presented a proposed formula for the sharing of water lease revenues among the Nation, Schuk Toak and San Xavier Districts, and all other Districts of the Nation; and*

WHEREAS, *the foregoing objections and revenue sharing formula were committed to writing by the Water Resources Committee, shared with the negotiating parties and discussed with the Legislative Council; and*

WHEREAS, *in his capacity as Assistant Secretary Brown's representative, Mr. Lavell has requested the Legislative Council to decide whether the Nation would be willing to agree to a dispute resolution mechanism whereby the Nation would authorize the Secretary of*

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Interior to decide all disputes between the Nation and allottees regarding water right ownership or sharing of revenues derived from leasing of SAWRSA water related to the San Xavier District; and

WHEREAS, *in agreeing to this dispute resolution mechanism, the Nation would be required to waive its right to challenge the Secretary's authority to make the subject decisions and its assertion of Tribal jurisdiction over such matters, subject only to challenging any Secretarial decision as arbitrary or otherwise contrary to law (with the exception of whether the Secretary or the Nation had the legal power to make the ruling); and*

WHEREAS, *the Legislative Council deems it essential to revisit the foregoing issues to assure that clear guidelines are established for the continuing water rights negotiations; and*

WHEREAS, *the Water Resources Committee and Chairman of the Nation recommend approval of this Resolution by the Legislative Council.*

NOW, THEREFORE, BE IT RESOLVED THAT:

- 1. The Legislative Council reaffirms the position taken in Resolution 91-304 that the SAWRSA water resources and*

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related benefits are solely owned by the Tohono O'odham Nation as a public resource for the benefit of all Tribal members, and that the management and control of such resources and benefits are rights and powers held by the Nation's Legislative Council.

2. The Legislative Council will not waive its right to maintain and assert exclusive Tribal jurisdiction over any dispute involving the SAWRSA water resources or related benefits, and reserves the right to assert such position in any non-Tribal forum, including a challenge to any action which may be initiated by the Secretary of Interior to resolve such disputes.

3. The Legislative Council has managed, controlled and allocated use of the Nation's water resources in a manner which has assured the allottees of a fair use of the water and share of the benefits therefrom, including issuance, without cost to the allottees, of water permits for (a) 8,000 acre-feet of SAWRSA water to irrigate the Cooperative Farm as now designed and as it may be reasonably extended, and (b)

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***ASARCO use of the Nation's groundwater resource in San
Xavier which has resulted in the payment of millions of
dollars of royalties to the allottees.***

***4. The Legislative Council will continue to manage, control and
allocate use of the Nation's water resources consistent with
the Nation's Constitution and the rights of allottees and all
Tribal members to beneficial uses thereof for feasible projects
consistent with the criteria established by the Legislative
Council in a Water Code or other legislative guidelines.***

***5. The Water Resources Committee, Chairman of the Nation,
Attorney General and other officials of the Nation are
authorized and directed to proceed with negotiations to reach
a final resolution of SAWRSA and U.S. v. Tucson. These
officials shall be guided by the following principles of
settlement:***

***(a) The proposed terms of settlement shall be subject to
approval by the Legislative Council.***

(b) No amendment to SAWRSA or other settlement term

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4 shall be acceptable if it implicitly or expressly can be
5 interpreted to (i) confer ownership of the SAWRSA water
6 resources or benefits in persons or entities other than the
7 Nation; (ii) grant or authorize to persons or entities other
8 than the Nation jurisdiction over water resource
9 management, control or use, including resource revenue
10 sharing; and (iii) without Legislative Council consent,
11 authorize persons or entities other than the Nation to enter
12 into Pub. L. 93-638 or other contracts, or receive
13 governmental grants or financial assistance, with respect to
14 activities within the Nation. In the event the San Xavier
15 District or the Cooperative Farm Association wishes to secure
16 Council consideration of any proposal for contracting Pub.
17 L. 93-638 functions related to the rehabilitation or extension
18 of the Cooperative Farm, the proposal shall (A) be submitted
19 to the Water Resources and Budget & Finance Committees
20 for review and recommendation and (B) demonstrate the
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4 *applicant's ability to comply with all eligibility criteria for*
5 *such contracting, or reasonable means for assuring*
6 *compliance.*

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8 *(c) Negotiations shall proceed with any combination of*
9 *parties deemed conducive to arrive at a settlement which*
10 *protects and enhances the Nation's water resources.*

11
12 *(d) Negotiations regarding a revenue sharing formula for*
13 *water lease proceeds shall be guided by the principles that (i)*
14 *the sharing of revenues shall be between the Nation and all*
15 *Districts, consistent with the requirements of the Nation's*
16 *Constitution and any other applicable laws; (ii) no share of*
17 *the lease revenues shall be allocated directly to the allottees;*
18 *(iii) allottee sharing in the lease revenues shall be*
19 *accomplished through allocation decisions of the San Xavier*
20 *District with respect to its share, and such District shall be*
21 *responsible to fairly allocate the allottee share to all allottees*
22 *who hold interests in San Xavier allotments, whether or not*
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they are residents or members of San Xavier District; and (iv)
the proposed revenue sharing formula shall be subject to
approval of the Legislative Council.

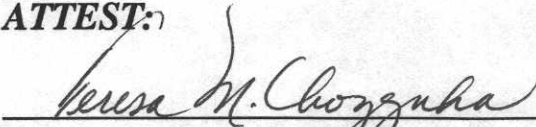
The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 11TH day of MARCH, 1992 at a meeting at which a quorum was present with a vote of 1,518.0 FOR; 127.0 AGAINST; 79.0 NOT VOTING; and 04 ABSENT, pursuant to the powers vested in the Council by Section 1 (d)(2), (f), & (i)(1) of Article VI and 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


Mary Ann Antone, Legislative Chairwoman

12th day of March, 1992

ATTEST:


Teresa M. Choyguha, Legislative Secretary

12th day of March, 1992.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 12th day of March, 1992, at 5:02 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.

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Joanne C. Preston
for **Mary Ann Antone, Legislative Chairwoman**

APPROVED on the 12th day of March, 1992

DISAPPROVED) at 5:03 o'clock, P.M.

Josiah Moore
JOSIAH MOORE, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 12th day of March,

1992, at 5:19 o'clock, P.M.

Teresa M. Choyguha
Teresa M. Choyguha, Legislative Secretary

MOVED: COUNCILMAN JOHN RENOSUBJECT: ESTABLISHING PARAMETERS FOR NEGOTIATINGSECOND: COUNCILWOMAN FRANCES MIGUELSETTLEMENT OF NATION'S WATER RIGHTS UNDERDATE: MARCH 11, 1992SAWRSA AND IN U.S. v. TUCSON

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
CHUKUT KUK 163.0	1. Kenneth Williams (Harriet Toro)	81.5	X			
	2. Alberta M. Lopez (Berdella Jose)	81.5	X			
HICKIWAN 125.0	1. Lloyd Francisco (Billy C. Manuel)	62.5	X			
	2. Manuel Osequeda, Jr. ()	62.5	X			
GU VO 114.0	1. Michael Flores	57.0	X			X
	2. Emilio Lewis (Anthony Flores)	57.0	X			
SAN LUCY 106.0	1. Albert Manuel, Jr. (Max P. Jose)	53.0	X			
	2. John Reno ()	53.0	X			
PISINEMO 119.0	1. Johnson Jose ()	59.5	X			X
	2. Chester Antone (Fernando Valentine)	59.5	X			
GU ACHI 166.0	1. Alex Ramon (Fernando Joaquin)	83.0	X			
	2. Willard Anita ()	83.0	X			X
BABOQUIVARI 229.0	1. Earl A. Francisco (Kenneth Chico, Sr.)	114.5	X			
	2. Frances Miguel ()	114.5	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	1,518.0	127.0	79.0	04

**PASSED VOTES