

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing the U.S. Army Corps of Engineers (Corps)
and the U.S. Department of the Interior, Bureau of
Indian Affairs (BIA) to Issue a Right-of-Way and
to Repair and Maintain the Levee Ring Around
the Historical Cemetery at San Lucy District, Arizona)**

RESOLUTION NO. 94-168

**WHEREAS, pursuant to 25 CFR Part 169.3 prior written consent of
the Tohono O'Odham Nation Legislative Council is
required for any grant of right-of-way over and across
any tribal land; and**

**WHEREAS, the Tohono O'Odham Legislative Council is authorized
pursuant to the Constitution of the Tohono O'Odham
Nation, Article VI, Section 1(i) to administer land and
other public property and prevent rights-of-way
injurious to the best interests of the Tohono O'Odham
Nation as a whole, and Article VI, section 2(d) to manage,
lease or otherwise deal with land and interests in lands
of the Nation, subject to approval by the Secretary of
Interior; and**

**WHEREAS, certain court documents (Declaration of Taking, Civil
No. 3586-PHX, February 1961; Lis Pendens, 3586-PHX,
March 23, 1961; and Judgment, Civil No. 3586-PHX,
January 29, 1965) stipulate that:**

- a. Indian graveyard structures situated on Tract No.
C-314-E-3, existing as of the date of taking, are**

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reserved to the Tohono O'Odham Nation, San
Lucy District, and its successors, including all
such rights and privileges including burial rights
without interfering with or abridging the Corp'
flowage easement.

b. As to Tract No. C-314-E-3, a perpetual and
assignable easement and right of way, exists to
locate, construct, operate, maintain, repair and
remove a dike for the protection of an Indian
cemetery against inundation by water of the Gila
River resulting from the operation of the Painted
Rock Dam and Reservoir in, upon over and
across the land described as Tract No. C-314-E-3,
subject to existing burial rights in said Indian
cemetery; and

**WHEREAS, according to certain Corps documents (Design
Memorandum No. 2, Real Estate for Painted Rock
Reservoir, October 1954; Appraisal Report 1954;
Operation and Maintenance Manual for Painted Rock**

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**Reservoir, July 1963), the Corps. has a long term
obligation to maintain the cemetery levee ring; and**

**WHEREAS, the 1993 Flood event at Painted Rock inundated the
historical San Lucy District Indian cemetery, damaged
the integrity of said levee, and washed away certain
segments of the original access road; and**

**WHEREAS, on July 22, 1993, the San Lucy District of the Tohono
O'Odham Nation, documented certain
determinations jointly made between the District and
Corps personnel concerning flood damage and
rehabilitation of the District's historical cemetery,
wherein, the District Chairperson agreed to assign
District staff to the repair project and complete the
project in a spirit of partnership and collaboration; and**

**WHEREAS, a circular from Commissioner McFarland of the U.S.
Department of Interior General Land Office, 3 Land
Decision 371 (May 31, 1884), directed General Land Office
officers to ascertain whether any lands in their
jurisdiction are occupied by Indian inhabitants, and the**

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**locality of their possession and improvements as near as
may be and to allow no entries of filing upon any such
lands; and**

**WHEREAS, in order to make repairs both immediately and in the
future, to the levee and to acquire a perpetual easement
to the cemetery site for future operation and
maintenance of the levee ring, the Corps staked out a
proposed new access road, determined certain areas
need for long term repair and maintenance of the levee
and identified construction areas. (See legal description
incorporated herein as Exhibit A and proposed plan and
profile incorporated herein as Exhibit B); and**

**WHEREAS the Tohono O'Odham Legislative Council has determined
that granting the Corps a right-of-way for the purposes
described herein would be in the best interests of the
Nation as a whole; and**

**WHEREAS, the Nation is aware of a purported conveyance of land
which includes the area of right-of-way, approximately
30 feet directly surrounding what has been called in the**

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documents the toe of the levee, by approval of a
"Correction Quit Claim Deed" as referenced in Papago
Tribal Council Resolution Number 1456, on May 6, 1966,
for the purpose of correcting a Quit Claim Deed dated
March 27, 1961; and

WHEREAS, nothing in this Resolution is intended, nor should it be
construed to (1) waive any claim the Nation may have
that the purported conveyance under the Correction
Quit Claim Deed is invalid and of no legal force and
effect or (2) waive, cede or otherwise relinquish any
interest the Nation may have in the land purportedly
conveyed described in Exhibit A attached, and located in
section 23 surrounding the exterior toe of the levee.

NOW, THEREFORE, BE IT RESOLVED by the Tohono O'Odham
Legislative Council that:

- 1. The BIA is requested to provide and grant of right-of-way over and across tribal land described in Exhibit A and B attached and incorporated herefor, at such time that the Corps has met all requirements in 25**

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**CFR Parts 169 and 170, provisions of the Nation's laws
and ordinances and other BIA guidance for the
purposes stated herein.**

**2. That the BIA is requested to approve immediately,
provided the Corps is in compliance with all relevant
and applicable regulations, a right of entry for the
purposes of immediate repairs to the dike and to
make necessary preparations for such repairs.**

**3. The Tohono O'Odham Nation may consider
recommending to the Secretary of the Interior, or his
authorized representative waiver of any
consideration, fees and or damages incident to the
grant of the right-of-way upon review of the Corps'
appraisal, and a determination by the Nation that the
payment of fair value for the easement would be
offset by improvements or other benefits to the
Tohono O'Odham Nation.**

**4. The Chairperson of the San Lucy District of the
Tohono O'Odham Nation shall designate a person**

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who will coordinate this project with the BIA and Corps; such written designation shall be made within five days from the date of approval of this resolution.

5. The Tohono O'Odham Nation hereby endorses the Corps plan and description incorporated as Exhibits A and B and as modified enlarging the construction easement around the perimeter of Papago Tribal Cemetery, as described in the index to contract drawings as presented to the Legislative Council during the presentation this date.

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 6TH day of MAY, 1994 at a meeting at which a quorum was present with a vote of 1,763.0 FOR; -0- AGAINST; -0- NOT VOTING; and 05 ABSENT, pursuant to the powers vested in the Council by Section 1(i and 2(d)) 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).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Alex J. Ramon
for **Alex J. Ramon, Legislative Chairman**

9 day of May, 1994

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ATTEST:

Teresa M. Choyguha
Teresa M. Choyguha, Legislative Secretary

09th day of May, 1994.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 9 day of May, 1994 at 4:25 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

Earl A. Ramon
for **Alex J. Ramon, Legislative Chairman**

APPROVED on the 10 day of May, 1994

DISAPPROVED at 3:21 o'clock, P..M.

Sylvester Listo
SYLVESTER LISTO, Chairman
TOHONO O'ODHAM NATION

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**Returned to the Legislative Secretary on the 10th day of
May, 1994, at 3:52 o'clock, P.M.**

Quinda Allen for:
Teresa M. Choyguha, Legislative Secretary

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ACTION: AUTHORIZING THE U.S. ARMY CORPS. OF ENGINEERS (CORPS) AND THE U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS (BIA) TO ISSUE A RIGHT-OF-WAY AND TO REPAIR AND MAINTAIN THE LEVEE RING AROUND THE HISTORICAL CEMETERY AT SAN LUCY DISTRICT, ARIZONA

Moved: COUNCILMAN JOHN RENO

SECOND: COUNCILMAN WILLARD JUAN, SR.

DATE: MAY 06, 1994

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 151.0	1. WILLARD JUAN, SR. (Delbert Thomas)	75.5	X			
	2. MARY ANN ANTONE (Nellie Miguel)	75.5	X			X
SELLS 290.0	1. ANDREW M. PATRICIO (Lucille Encinas)	145.0	X			
	2. JOSEPH T. JOAQUIN (Allen W. Garcia, Jr.)	145.0	X			X
SCHUK TOAK 113.0	1. FRANCES FRANCISCO ()	56.5	X			
	2. KENNETH J. ANTONE ()	56.5	X			X
SAN XAVIER 135.0	1. EUGENE ENIS, SR. ()	67.5	X			
	2. DENNIS RAMON ()	67.5	X			
BABOQUIVARI 230.0	1. FRANCES MIGUEL ()	115.0	X			X
	2. EARL A. FRANCISCO ()	115.0	X			
GU ACHI 180.0	1. WILLARD ANITA ()	90.0	X			
	2. ALEX J. RAMON (Marian Johnson)	90.0	X			
PISINEMO 128.0	1. CHESTER ANTONE (Fernando Valentine)	64.0	X			
	2. JOHNSON M. JOSE (Roseleen Antone)	64.0	X			
SAN LUCY 98.0	1. JOHN RENO ()	49.0	X			
	2. ALBERT MANUEL, JR. (Ernestine Marquez)	49.0	X			
GU VO 124.0	1. EMILIO LEWIS ()	62.0	X			
	2. MICHAEL FLORES (Fern Salcido)	62.0	X			
HICKIWAN 136.0	1. MANUEL OSEQUEDA, JR. ()	68.0	X			
	2. LLOYD FRANCISCO ()	68.0	X			
CHUKUT KUK 178.0	1. ALBERTA M. LOPEZ (Berdella Jose)	89.0	X			
	2. KENNETH WILLIAMS ()	89.0	X			X
TOTAL		1,763.0	1,763.0	-0-	-0-	05

****PASSED VOTES**