

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Affirming and Repealing Portions of Resolution No. 93-119.)

RES. NO. 95-486

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4 **WHEREAS, by Article I, Sections 1 and 2 of the Constitution of the Tohono**
5 **O'odham Nation, the members of the Nation vested in the**
6 **government of the Nation the sovereign power, authority and**
7 **jurisdiction over all lands and activities within the Nation's**
8 **boundaries; and**
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11 **WHEREAS, such power, authority and jurisdiction accordingly extend to**
12 **tribal trust, allotted, fee and other lands of any character; and**
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14 **WHEREAS, under Article IV of the Constitution, the members of the Nation**
15 **determined that the Nation's government shall consist of the**
16 **Tohono O'odham Council, office of the Chairman of the Nation**
17 **and the Tohono O'odham Judiciary; and**
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21 **WHEREAS, by Article XVI of the Constitution, the members of the Nation**
22 **determined that the unallotted lands of the Nation and all**
23 **lands acquired by the Nation after the adoption of the**
24 **Constitution, and all land held for the use of the Nation or its**
25 **members are a valuable public resource and shall be held as**
26 **national lands; and**
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WHEREAS, by Article XVI of the Constitution, the members of the Nation vested control and management of such national lands in the Legislative Council; and

WHEREAS, Article XVI of the Constitution provides that the Council may exercise its control and management of such national lands by enacting laws governing the use, assignment, permit, lease or other disposition of such lands, interests therein and the Nation's resources consistent with federal law; and

WHEREAS, the Nation has not adopted a comprehensive land use plan but has instead addressed land use issues on a case-by-case basis; and

WHEREAS, by Article XVII of the Constitution, the members of the Nation determined that all waters which originate in or flow in, into or through the Nation, or which are stored in the Nation, whether found on the surface or underground, are a valuable public resource of the Nation to be protected for the present and future use of the Nation as a whole; and

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WHEREAS, by Article XVII of the Constitution, the members of the Nation vested control and management of the Nation's water resources in the Legislative Council; and

WHEREAS, Article XVII of the Constitution describes the particular ways in which the Legislative Council may exercise its control and management of the Nation's water resources; and

WHEREAS, Article XVI, Section 4(a) of the Constitution provides that homesite assignments are within the exclusive authority of the District Councils absent consent to regulation under a national law; and

WHEREAS, the Nation has not adopted a comprehensive homesite assignment ordinance; and

WHEREAS, District Councils are desirous of regulating homesite assignments within their respective Districts; and

WHEREAS, Article XVI, Section 5 provides authority to the District Councils to lease or use for communal pastures, gardens and public purposes, lands of the Nation which are not under use, permit,

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lease or other disposition authorized by the Legislative Council and which are not under assignment by a District Council, provided that such leases must be approved by the Secretary of Interior and provided further that such leases to non-members and leases to members in excess of a reasonable acreage must be approved by the Legislative Council; and

WHEREAS, Article IX, Section 5 of the Constitution cannot be interpreted to divest the Legislative Council of the exclusive powers and authority vested in the Council by members of the Nation under Articles I, XVI and XVII of the Constitution; and

WHEREAS, the San Xavier District Council adopted a District General Plan on December 15, 1992 by its Resolution No. SXDC 12-92-06 for the purpose of regulating all development of all lands within San Xavier District, including the use of water resources; and

WHEREAS, by Resolution No. 93-119, the Nation recognized and approved the San Xavier District General Plan; and

WHEREAS, the San Xavier District General Plan imposes regulations on all

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lands within San Xavier District including allotted lands, national lands, and the Nation's water resources in excess of the authority vested by the Constitution in the District Council; and

WHEREAS, the Chukut Kuk District Council has by its District Council Resolution No. 94-10 petitioned the Nation to reevaluate Resolution No. 93-119 in accordance with the mandates of the Constitution; and

WHEREAS, the Nation's representatives and officials are bound to uphold and preserve the Constitution; and

WHEREAS, the Legislative Council is compelled to address the concerns raised by the Chukut Kuk District Council.

NOW, THEREFORE, BE IT RESOLVED THAT

- 1.** Resolution No. 93-119 is amended to affirm San Xavier District Council's authority to (a) assign homesites under customary procedures of communities within the District in accordance with Article XVI, Section 4(a) of the Constitution and (b) use and lease national lands for communal pastures, and

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gardens and public purposes, in accordance with Article XVI,
Section 5.

2. Resolution No. 93-119 is repealed in all other respects on the ground that approval of the San Xavier District General Plan, other than portions relating to District powers conferred by Article XVI, Sections 4(a) and 5, constituted a constitutionally impermissible grant of authority to the District to regulate allotted lands, national lands and water resources within the Nation.

3. The San Xavier District Council is directed to amend its General Plan in accordance with this Resolution and to resubmit the amended General Plan to this Council for further consideration.

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 9TH. Day of OCTOBER 1995 at a meeting at which a quorum was present with a vote of 1,412.0 FOR; 393.0 AGAINST; 71.0 NOT VOTING; and 2 ABSENT, pursuant to the powers vested in the Council by Article I, IV, VI Section 1(i) & 2(d), Article XVI, 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).

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TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

16th day of October, 1995

ATTEST:



Frances Antone, Legislative Secretary

12th day of October, 1995

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 16th day of October, 1995 at 9:08 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



Dennis Ramon, Legislative Chairman

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APPROVED on the 18th day of October, 1995

DISAPPROVED at 8:55 o'clock, A.M.



**EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 18th day of

October, 1995, at 9:02 o'clock, A.M.



Frances Antone, Legislative Secretary

ACTION: AFFIRMING AND REPEALING PORTIONS OF RESOLUTION NO. 93-119

MOVED: COUNCILMAN JOHNSON JOSE

SECOND: COUNCILMAN KENNETH WILLIAMS

DATE: OCTOBER 9, 1995

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF Oidak 160.0	1. MARY ANN ANTONE (Nellie Miguel)	80.0	X			
	2. RITA MARTINEZ (Maxine Norris)	80.0	X			
SELLS 314.0	1. JOSEPH T. JOAQUIN (Allen W. Garcia, Jr.)	157.0	X			
	2. LUCILLE ENCINAS (Cynthia Chico)	157.0	X			
SCHUK TOAK 117.0	1. KENNETH J. ANTONE ()	58.5		X		X
	2. MARY JANE JUAN-MOORE ()	58.5		X		
SAN XAVIER 142.0	1. DENNIS RAMON ()	71.0		X		
	2. TONY BURRELL ()	71.0		X		
BABOQUIVARI 257.0	1. EDWARD KISTO (Idella Stanley)	128.5	X			
	2. FRANCES MIGUEL (Kenneth Chico, Sr.)	128.5	X			
GU ACHI 187.0	1. ALEX J. RAMON (Marian Johnson)	93.5	X			
	2. WILLARD ANITA (Louis Johnson)	93.5	X			
PISINEMO 135.0	1. JOHNSON JOSE (Roseleen Antone)	67.5	X			
	2. BARBARA SALVICIO ()	67.5	X			
SAN LUCY 105.0	1. ALBERT MANUEL, JR. ()	52.5	X			
	2. JOHN RENO (Mary Hoffman)	52.5	X			
GUVU 134.0	1. MICHAEL FLORES ()	67.0		X		X
	2. FERN SALCIDO (Larry Montana)	67.0		X		
HICKIWAN 142.0	1. LLOYD FRANCISCO ()	71.0	X			
	2. ALEX JOSE ()	71.0			X	
CHUKUT KUK 183.0	1. KENNETH WILLIAMS ()	91.5	X			
	2. DAVID GARCIA (Marvin Thomas)	91.5	X			
TOTAL		1,876.0	1,412.0	393.0	71.0	2

71.0 **PASSED VOTES