

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Agreement Between the Tohono O'odham Nation and ASARCO
Incorporated on Groundwater Monitoring)**

RESOLUTION NO. 98-324

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4 **WHEREAS, a portion of the ASARCO Mission Mine is located on allotted lands and**
5 **tribal trust lands within San Xavier District of the Tohono O'odham**
6 **Nation leased to ASARCO by two mining leases dated August 31, 1959 and**
7 **twenty-one business leases dated May 6, 1959 ("Business Lease"),**
8 **collectively referred to as the leased mine lands; and**

9 **WHEREAS, the Tohono O'odham Nation ("Nation"), the San Xavier District**
10 **("District"), the San Xavier Allottee Association, the Bureau of Land**
11 **Management ("BLM") and the Bureau of Indian Affairs ("BIA") have**
12 **engaged in negotiations with ASARCO Incorporated ("ASARCO") over**
13 **several years to resolve disputes involving that portion of the Mission**
14 **Mine on Indian lands regarding preparation of a mine plan, bonding**
15 **levels, dumping of Pima mine tailings, and monitoring of groundwater;**
16 **and**

17 **WHEREAS, in the course of these negotiations ASARCO has agreed to perform**
18 **groundwater monitoring of the aquifer underlying the leased mine lands**
19 **and surrounding lands under the terms of an Aquifer Protection Permit**
20 **to be issued by the Arizona Department of Environmental Quality**
21 **("ADEQ") under the authority of an Intergovernmental Agreement ("IGA")**
22 **between the BLM, the BIA, and the ADEQ; and**

23
24 **WHEREAS, in order to perform such groundwater monitoring ASARCO requires**
25 **permission from the Nation to withdraw groundwater at sites agreed to**
26 **by the Nation, the District, and affected allottee landowners, utilizing**
27 **two existing wells located within the Business Lease and designated as**
28 **Well No. AM1 and Well No. AM2 and a new well to be constructed on**

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allotted land outside the Business Lease, as part of a monitoring program specified by a work plan for the development of an Aquifer Protection Permit to be issued by the ADEQ in accordance with the terms of the IGA; and

WHEREAS, it is anticipated that additional well sites will be identified in the future and that the Legislative Council will address the issue of groundwater withdrawal from additional wells when these sites are identified; and

WHEREAS, ASARCO requires the right to rehabilitate and use for monitoring purposes Well No. AM1 located on tribal trust land within the Business Lease in T.16S, R.13E, Section 28ADD; and

WHEREAS, Article VI, Section 1(i)(2), of the Constitution of the Tohono O'odham Nation gives the Tohono O'odham Legislative Council the authority and responsibility to manage, protect, preserve and regulate the use of the natural resources, including surface and ground waters, of the Tohono O'odham Nation; and

WHEREAS, Article XVII of the Constitution of the Tohono O'odham Nation provides that the Tohono O'odham Legislative Council shall have, consistent with federal law, the control and management of all waters which originate in or flow in, into or through the Tohono O'odham Nation, or which are stored in the Tohono O'odham Nation, whether found on the surface or underground, and that the Tohono O'odham Legislative Council shall have the power to determine how these waters shall be developed, used and conserved for the greatest public benefit and to enter into agreements for the beneficial use, sale, or lease or distribution of these waters; and

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3 **WHEREAS, the attached Agreement Between the Tohono O'odham Nation and**
4 **ASARCO Incorporated on Groundwater Monitoring ("Agreement") grants**
5 **the Nation's permission for ASARCO to use and rehabilitate Well No. AM1**
6 **and to withdraw groundwater from the two existing wells and one new**
7 **well under specified conditions; and**

8 **WHEREAS, the Water Resources Committee and the Natural Resources Committee**
9 **of the Legislative Council have reviewed the Agreement and recommend**
10 **that the Legislative Council approve it.**

11 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council**
12 **hereby approves the Agreement Between the Tohono O'odham Nation**
13 **and ASARCO Incorporated on Groundwater Monitoring substantially in**
14 **the form attached hereto and authorizes the Chairman of the Nation to**
15 **sign it.**

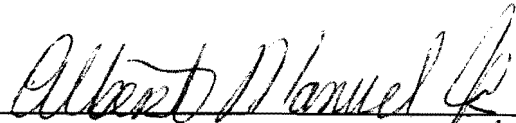
16 **BE IT FURTHER RESOLVED that the issue of groundwater withdrawal from additional**
17 **wells will be addressed when additional well sites are identified and are**
18 **presented to the Legislative Council for approval.**

19 **BE IT FURTHER RESOLVED that this Resolution and the Agreement approved herein**
20 **shall have no effect upon the legal rights or legal positions of the Nation,**
21 **the District, or the allottees of the District in any lawsuits on the issue of**
22 **ownership of water rights, and shall not be admissible as evidence on**
23 **such issue in any such lawsuit.**

24 **The foregoing Resolution was passed by the Tohono O'odham Council on the 06TH**
25 **day of AUGUST, 1998 at a meeting at which a quorum was present with a vote of 1,927,0**
26 **FOR; -0- AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in**
27 **the Council by Section 1(f) & (i)(2) of Article VI and Section 1 & 2 of Article XVII of the**
28 **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
7th day of August, 19 98


ATTEST:


Julianna Safaficio, Acting Legislative Secretary

06th day of August, 19 98.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 7th day of August, 19 98 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

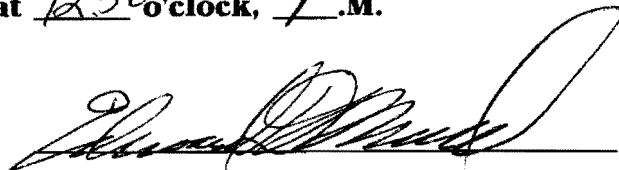

Dennis Ramon, Legislative Chairman

APPROVED

on the 11th day of August, 19 98

DISAPPROVED

at 12:50 o'clock, P.M.



EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 11th day of

August, 19 98, at 2:10 o'clock, P.M.



Julianna Saraficio, Acting Legislative Secretary

ACTION: APPROVING AGREEMENT BETWEEN THE TOHONO O'ODHAM NATION AND ASARCO INCORPORATED ON GROUNDWATER MONITORING

MOVED: COUNCILWOMAN FRANCES ANTONE

SECOND: COUNCILMAN JOHN RENO

DATE: AUGUST 04, 1998

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
CHUKUT KUK 189.0	1. DAVID GARCIA (Marvin Thomas)	94.5				X
	2. KENNETH WILLIAMS (Arnold F. Smith Sr.)	94.5				X
HICKIWAN 146.0	1. ALEX JOSE ()	73.0	X			
	2. LLOYD FRANCISCO (Susan Sam)	73.0	X			
GU VO 142.0	1. FERN SALCIDO (Larry Montana)	71.0	X			
	2. GLORIA MONTANA (Phillip Antone)	71.0	X			
SAN LUCY 114.0	1. JOHN RENO (Mary Hoffman)	57.0	X			
	2. ALBERT MANUEL, JR. (Jana Montana)	57.0	X			X
PISINEMO 139.0	1. BARBARA SALVICIO ()	69.5	X			
	2. JOHNSON JOSE ()	69.5	X			
GU ACHI 190.0	1. LOUIS JOHNSON ()	95.0	X			
	2. ALEX J. RAMON ()	95.0	X			
BABOQUIVARI 258.0	1. FRANCES MIGUEL ()	129.0	X			
	2. FRANCES G. ANTONE (Edward N. Kisto)	129.0	X			
SAN XAVIER 146.0	1. TONY BURRELL ()	73.0	X			
	2. DENNIS RAMON ()	73.0	X			
SCHUK TOAK 120.0	1. JOSEPH JUAN ()	60.0	X			
	2. AMBROSE ENCINAS ()	60.0	X			X
SELLS 322.0	1. DENNIS E. JOSE ()	161.0	X			
	2. EVELYN JUAN ()	161.0	X			
SIF OIDAK 161.0	1. RITA MARTINEZ (Maxine Norris)	80.5	X			
	2. MARY ANN ANTONE (Darlene Andrew)	80.5	X			
TOTAL		1,927.0	1,738.0	-0-	-0-	189.0 [04]

****PASSED VOTES**