

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Agreement with New Magma Irrigation and Drainage District for 2013)

RESOLUTION NO. 13-043

1 **WHEREAS, the Tohono O'odham Nation is entitled to receive a total of 66,000 acre-feet of Central**
2 **Arizona Project ("CAP") water per year; and**

3 **WHEREAS, under the Southern Arizona Water Rights Settlement Act, as amended ("SAWRSA"),**
4 **Title III of Public Law 108-451, the Nation is authorized to utilize its CAP water either**
5 **on reservation or off reservation; and**

6 **WHEREAS, in June 2012 the Nation entered into an agreement (the "2012 Agreement") with the**
7 **New Magma Irrigation and Drainage District ("NMIDD"), which is designated as a**
8 **groundwater savings facility under Arizona law, to deliver a portion of the Nation's**
9 **CAP entitlement to NMIDD as "in-lien water"; and**

10 **WHEREAS, the 2012 Agreement was successfully implemented and resulted in delivery of a**
11 **substantial amount of the Nation's CAP entitlement to NMIDD and a substantial**
12 **payment by NMIDD to the Nation; and**

13 **WHEREAS, the Water Resources Committee has recommended that the Nation enter into a**
14 **similar one year agreement with NMIDD for 2013; and**

15 **WHEREAS, the 2013 Agreement is similar to the 2012 Agreement, except for minor revisions that**
16 **update the information in the Agreement and that respond to questions raised by the**
17 **U.S. Department of the Interior in its review of the 2012 Agreement; and**

18 **WHEREAS, under both the 2012 and the 2013 Agreements, in addition to the payments for the**
19 **water, the Nation will accumulate marketable long-term storage credits through the**
20 **use by NMIDD of the Nation's CAP water instead of NMIDD pumping and using**
21 **groundwater within the irrigation district itself; and**

22 **WHEREAS, the 2013 Agreement is for a term of one year, and the Nation can decide at the end of**
23 **that year whether to continue the arrangement; and**

24 **WHEREAS, in Section 10 of the Agreement, the Nation has agreed to provide a limited waiver of**
25 **sovereign immunity to allow for dispute resolution in any court of competent**
26 **jurisdiction, not to include Arizona state courts, which waiver is limited to declaratory**
27 **and injunctive relief to enforce the Agreement but does not include a waiver of any**
28 **claims for money damages, attorney's fees, court costs or any other costs, damages,**
29 **remedy, or claims of any other kind; and**

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Page 2 of 3

1 **WHEREAS, the Water Resources and the Domestic Affairs Committees have reviewed the**
2 **Agreement and recommend approval by the Legislative Council.**

3 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby approves**
4 **the Agreement Between New Magma Irrigation and Drainage District and the Tohono**
5 **O'odham Nation Providing for the Delivery of In-lien Water for Water Storage at a**
6 **Groundwater Savings Facility for the year 2013 and hereby authorizes the Chairman**
7 **of the Nation to execute the Agreement and any additional documentation reasonably**
8 **necessary to implement the intent of the Agreement, provided that any extensions of**
9 **the Agreement beyond December 31, 2013 shall require review and approval by the**
10 **Legislative Council.**

11 **BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council hereby approves a limited**
12 **waiver of the Nation's sovereign immunity to allow disputes arising between the**
13 **parties with respect to this 2013 Agreement to be resolved in any court of competent**
14 **jurisdiction, not to include Arizona state courts, and limits the waiver to declaratory**
15 **and injunctive relief to enforce the Agreement but does not waive its sovereign**
16 **immunity with respect to any claims for money damages, attorney's fees, court costs**
17 **or any other costs, damages, remedy, or claims of any other kind.**

18 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 06TH Day**
19 **of FEBRUARY, 2013 at a meeting at which a quorum was present with a vote of 2,780.60 FOR; -0-**
20 **AGAINST; -0- NOT VOTING; and [06] ABSENT, pursuant to the powers vested in the Council by**
21 **Section 1 (f) of Article VI and Section 2 of Article XVII of the Constitution of the Tohono O'odham**
22 **Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting**
23 **Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16**
24 **of the Act of June 18, 1934 (48 Stat. 984).**

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27 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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31 **Timothy Joaquin, Legislative Chairman**

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33 11 day of February, 2013
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Page 3 of 3

1 ATTEST:

2 Evonne Wilson

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4 Evonne Wilson, Legislative Secretary

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6 11 day of February, 2013

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8 Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham
9 Nation on the 11 day of February, 2013 at 4:21 o'clock, P..M.,
10 pursuant to the provisions of Section 4 of Article VII of the Constitution and will become effective
11 upon his approval or upon his failure to either approve or disapprove it within 48 hours of
12 submittal.

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14 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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16 Timothy Joaquin
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18 Timothy Joaquin, Legislative Chairman

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23 APPROVED on the 12 day of Febry, 2013
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25 DISAPPROVED at 8:58 o'clock, A.M.

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27 Ned Norris, Jr.
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29 NED NORRIS, JR., CHAIRMAN
30 TOHONO O'ODHAM NATION

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35 Returned to the Legislative Secretary on the 12 day of
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37 February, 2013, at 9:52 o'clock, A.M.

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39 Evonne Wilson
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41 Evonne Wilson, Legislative Secretary

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ACTION: APPROVING AGREEMENT WITH NEW MAGMA IRRIGATION AND DRAINAGE DISTRICT FOR 2013

MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILMAN FREDERICK JOSE

DATE: FEBRUARY 06, 2013

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 342.0	1. FRANCES MIGUEL (<i>Absent</i>) (Roberta Harvey) (<i>Present</i>)	171.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
CHUKUT KUK 302.2	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILLMAN LOPEZ ()	151.10	X			
GU ACHI 244.9	1. TIMOTHY L. JOAQUIN ()	122.45	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45	X			
GU VO 226.7	1. GRACE MANUEL (Floyd Flores)	113.35	X			
	2. PAMELA ANGHILL ()	113.35	X			X
HICKIWAN 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			
	2. SANDRA ORTEGA ()	93.15	X			X
PISINEMO 200.7	1. CHESTER ANTONE (Tony Murrietta)	100.35	X			X
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
SAN LUCY 204.6	1. LORRAINE EILER (<i>Absent</i>) (Diana Manuel) (<i>Present</i>)	102.30	X			
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			X
SAN XAVIER 215.8	1. HILARION CAMPUS (Racheal Vilson-Stoner)	107.90	X			
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	107.90	X			
SCHUK TOAK 169.8	1. FRANCES B. STEPHENS (Anthony J. Rios)	84.90	X			
	2. FREDERICK JOSE (Phyllis Cachora)	84.90	X			
SELLS 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85	X			X
	2. MARIA ACKERMAN ()	237.85	X			
SIF OIDAK 211.9	1. NICHOLAS JOSE ()	105.95	X			
	2. MARY LOPEZ ()	105.95	X			X
TOTAL		2,780.60	2,780.60	-0-	-0-	[06]