

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Accepting U.S. Environmental Protection Agency's Invitation to Consult on Advance Notice
of Proposed Rulemaking Concerning the Navajo Generating Station and Impacts on the
Nation's Water Resources)

RESOLUTION NO. 09-644

1 **WHEREAS, sovereign Indian tribes share a unique trust relationship with the United States of**
2 **America, which is embodied in the Constitution of the United States, numerous court**
3 **opinions, statutes, executive orders, and federal agency policies; and**

4 **WHEREAS, the United States Congress has recognized the federal government's "trust**
5 **responsibilities to protect Indian water rights" and the United States Department of**
6 **the Interior has expressly acknowledged its trust responsibility concerning tribal**
7 **water resources (Western Water Policy Review Act of 1992, Pub. L. 102-575, title XXX,**
8 **§ 3002(9), reprinted at 43 U.S.C. § 371; 55 Fed. Reg. 9223 (1990)); and**

9 **WHEREAS, the Bureau of Reclamation within the Department of the Interior has likewise**
10 **acknowledged its role as a trustee for tribal water resources and has pledged to**
11 **protect tribal assets (Indian Policy of the Bureau of Reclamation, February 25, 1998);**
12 **and**

13 **WHEREAS, after many years of negotiations with federal, state, and private parties, the Tohono**
14 **O'odham Nation agreed to settle substantial water rights and other claims in**
15 **accordance with the terms of Pub. L. 108-451, the Arizona Water Settlements Act, Title**
16 **III, the Southern Arizona Water Rights Settlement Act Amendments ("SAWRSA**
17 **Amendments"); and**

18 **WHEREAS, under the SAWRSA Amendments, the Nation has an annual entitlement of 66,000 acre-**
19 **feet of Central Arizona Project water (SAWRSA Amendments, Sections 304(a) and**
20 **306(a)); and**

21 **WHEREAS, the SAWRSA Amendments require that the United States "pay to the Central Arizona**
22 **Project operating agency the fixed operation, maintenance, and replacement charges**
23 **associated with the delivery of the Nation's Central Arizona Project water" from the**
24 **Lower Colorado River Basin Development Fund (SAWRSA Amendments, Section**
25 **309(g)(6) and Section 107(a)(2)(A)); and**

26 **WHEREAS, the United States is also obligated to pay the variable operating costs, including the**
27 **cost of electricity to run the pumps which operate the Central Arizona Project, from**
28 **the Cooperative Fund originally established and funded by the Southern Arizona**
29 **Water Rights Settlement Act of 1982 and reauthorized by Section 310 of the SAWRSA**
30 **Amendments (SAWRSA Amendments, Section 310 (b)(1)(A)); and**

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1 **WHEREAS, the United States Environmental Protection Agency ("EPA") has published an Advanced**
2 **Notice of Proposed Rulemaking ("ANPR") concerning proposed air pollution controls**
3 **for Navajo Generating Station ("NGS") (74 Fed. Reg. 44313; August 28, 2009 ("NGS**
4 **Rulemaking"))); and**

5 **WHEREAS, the NGS is a coal-fired power plant on the Navajo Nation that generates electricity to**
6 **power CAP water, and revenues derived from excess NGS power sales support the**
7 **Lower Colorado River Basin Development Fund, which pays for the fixed operation,**
8 **maintenance, and replacement costs associated with deliveries of the Nation's CAP**
9 **entitlement; and**

10 **WHEREAS, the NGS and associated coal mining operations provide substantial revenues to the**
11 **Navajo Nation and Hopi Tribe, and provide jobs to tribal members; and**

12 **WHEREAS, on November 25, 2009 the Office of the Governor of Arizona coordinated a meeting**
13 **between certain Arizona tribes and Bureau of Reclamation, the Salt River Project, the**
14 **Central Arizona Water Conservation District, and other water and power interests in**
15 **the State of Arizona to discuss the NGS Rulemaking; and**

16 **WHEREAS, several entities who made presentations at the November 25, 2009 stakeholders**
17 **meeting argued that the proposed pollution controls for NGS will negatively affect**
18 **Arizona Indian tribes in a number of ways, including by dramatically increasing the**
19 **cost of delivering CAP water and reducing revenues to the Lower Colorado River Basin**
20 **Development Fund; and**

21 **WHEREAS, the cost and availability of electricity from NGS will impact the variable power costs**
22 **associated with the delivery of the Nation's CAP entitlement and therefore also impact**
23 **the SAWRSA Cooperative Fund; and**

24 **WHEREAS, the EPA, Navajo Nation, and Hopi Tribe were not invited to the stakeholders meeting**
25 **and meeting participants had not previously consulted with the Nation regarding the**
26 **NGS Rulemaking; and**

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1 **WHEREAS, federal departments and agencies are mandated by Executive Order 13175,**
2 **“Consultation and Coordination with Indian Tribal Governments” (“Consultation**
3 **Order”) to consult with tribes when formulating and implementing policies or taking**
4 **other actions that have a substantial direct effect on any Indian tribe (Executive Order**
5 **13175 (November 6, 2000)); and**

6 **WHEREAS, the Consultation Order and additional executive orders and memoranda require that**
7 **all Executive Branch agencies ensure that there is “meaningful” and “timely” tribal**
8 **input when formulating or implementing policies that have tribal implications; and**

9 **WHEREAS, President Obama recently reaffirmed the federal government’s commitment “to**
10 **regular and meaningful consultation and collaboration with tribal officials in policy**
11 **decisions that have tribal implications including, as an initial step, through complete**
12 **and consistent implementation of Executive Order 13175” (74 Fed. Reg. 57881 (Nov. 5,**
13 **2009) (“Tribal Consultation Memorandum”)); and**

14 **WHEREAS, EPA Region 9 has adopted an “Approach to Consultation with Tribal Governments**
15 **Regarding Non-Enforcement Related Matters,” which describes consultation “as**
16 **including a meaningful and timely government-to-government dialogue with elected**
17 **or duly-appointed officials of tribal governments or authorized intertribal**
18 **organizations”; and**

19 **WHEREAS, the Inter Tribal Council of Arizona, by Resolution 0709, has urged the EPA to extend the**
20 **period for tribes to comment on the NGS Rulemaking and has also called upon EPA**
21 **Region 9 to consult with Arizona Indian tribes, the Bureau of Land Management,**
22 **Bureau of Indian Affairs, and Bureau of Reclamation; and**

23 **WHEREAS, in a November 13, 2009 letter the EPA Region 9 Acting Administrator invited the**
24 **Tohono O’odham Nation to consult and to comment on the NGS Rulemaking and**
25 **extended the period for submission of tribal comments to December 28, 2009, only six**
26 **weeks after the consultation letter was sent to the Nation and other affected tribes;**
27 **and**

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1 ATTEST:

2 *Amnellhi*
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4 Evonne Wilson, Legislative Secretary

5
6 10 day of December, 2009.

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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 10 day of December, 2009 at 5:00 o'clock, p. .M.,
10 pursuant to the provisions of Section 5 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

15
16 *Verlon Jose*
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18 Verlon M. Jose, Legislative Chairman

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23 APPROVED

on the 11th day of December, 2009

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25 DISAPPROVED

at 8:25 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 11 day of

36 December, 2009, at 8:26 o'clock, a. .M.

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38 *Amnellhi*
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40 Evonne Wilson, Legislative Secretary

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1 **WHEREAS, the Navajo Generating Station ANPR will have a substantial direct effect on the Nation**
2 **and other Arizona Indian tribes and, in accordance with the federal government's**
3 **trust obligation to tribes, the Consultation Order, the Tribal Consultation**
4 **Memorandum, and EPA policies, all affected tribes are entitled to a meaningful and**
5 **timely opportunity to consult on the Navajo Generating Station ANPR; and**

6 **WHEREAS, because the Navajo Generating Station ANPR raises highly complex environmental,**
7 **technological, economic, and policy issues that will require extensive analysis, the**
8 **Nation will need additional time beyond the December 28, 2009 deadline to consult**
9 **with the EPA in a meaningful and timely way and to submit its resulting comments.**

10 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby**

- 11 **(1) designates the Nation's Chairperson and Legislative Water Resources**
12 **Committee as the officials vested with authority to consult with and submit**
13 **written comments to the EPA concerning Navajo Generating Station ANPR; and**
14 **(2) urges the EPA to extend the tribal comment deadline on the Navajo Generating**
15 **Station ANPR to March 1, 2010 in order to provide the Nation and other affected**
16 **tribes with a "meaningful" and "timely" opportunity to consult on the Navajo**
17 **Generating Station ANPR.**

18 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10TH. Day**
19 **of DECEMBER, 2009 at a meeting at which a quorum was present with a vote of 2,408.40 FOR; -0-**
20 **AGAINST; 01 NOT VOTING; and 187.10[02] ABSENT, pursuant to the powers vested in the Council by**
21 **Article VI, Section 1 (j) of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono**
22 **O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary -**
23 **Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48**
24 **Stat. 984).**

25
26 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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28 
29 _____
30 **Verlon M. Jose, Legislative Chairman**

31
32 10 day of December, 2009

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ACTION: ACCEPTING U.S. ENVIRONMENTAL PROTECTION AGENCY'S INVITATION TO CONSULT ON ADVANCE NOTICE OF PROPOSED RULEMAKING CONCERNING THE NAVAJO GENERATING STATION AND IMPACTS ON THE NATION'S WATER RESOURCES

MOVED: COUNCILWOMAN WAVALENE ROMERO

SECOND: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

DATE: DECEMBER 10, 2009

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35	X			
	2. MARY LOPEZ ()	99.35	X			
SELLS 449.6	1. KIMBERLY LISTO ()	224.80	X			
	2. EVELYN B. JUAN MANUEL ()	224.80	X		X	
SCHUK TOAK 159.0	1. FRANCES B. CONDE (Fredrick Jose)	79.50	X			
	2. LINDA PARLEY (Agnes Joaquin)	79.50	X			
SAN XAVIER 204.7	1. FELICIA NUÑEZ ()	102.35	X			
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	102.35	X			
SAN LUCY 187.1	1. LORRAINE EILER (Charlotte Cadavas)	93.55				X
	2. GLORIA RAMIREZ ()	93.55				X
PISINEMO 184.5	1. CHESTER ANTONE (Tony Murrietta)	92.25	X			
	2. EDWARD MANUEL (Gerald Fayuant)	92.25	X			
HICKIWAN 174.5	1. MICHELLE ORTEGA ()	87.25	X			
	2. SANDRA ORTEGA ()	87.25	X			
GU VO 206.3	1. GRACE MANUEL ()	103.15	X			
	2. PAMELA ANGHILL (Angela Ortiz)	103.15	X			
GU ACHI 230.1	1. TIMOTHY L. JOAQUIN ()	115.05	X			
	2. CYNTHIA E. MANUEL (Louis J. Johnson)	115.05	X			
CHUKUT KUK 277.0	1. ETHEL GARCIA (Sara Mae Williams)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			
BABOQIVARI 324.0	1. FRANCES MIGUEL (Roberta Harvey)	162.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	162.0	X			
TOTAL		2,595.50	2,408.40	-0-	[01]	187.10 [02]