

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Authorizing Storage of Unused Central Arizona Project Water and Accrual of
Marketable Long-Term Storage Credits)

RESOLUTION NO. 09-511

1 WHEREAS, "All waters which originate in or flow in, into or through the Tohono O'odham Nation,
2 or which are stored in the Tohono O'odham Nation, whether found on the surface or
3 underground, are a valuable public resource of the Tohono O'odham Nation to be
4 protected for the present and future use of the Tohono O'odham Nation as a whole."
5 (Constitution, Article XVII, Section 1); and

6 WHEREAS, on December 10, 2004 Congress enacted the Arizona Water Settlements Act, P.L. 108-
7 451 (the "Act"), including Title III, the Southern Arizona Water Rights Settlement Act
8 Amendments ("SAWRSA Amendments"); and

9 WHEREAS, the SAWRSA Amendments became effective December 14, 2007 and directs the
10 Secretary of the Interior to deliver a total of 66,000 acre feet of water from the Central
11 Arizona Project ("CAP") main aqueduct to one or more locations that are agreed to by
12 the Secretary, the operator of the CAP, and the Nation (SAWRSA Amendments Section
13 305(a)(1) and 305(a)(2)); and

14 WHEREAS, the Nation is not currently using, and is therefore not deriving a benefit from, its full
15 allocation of CAP water; and

16 WHEREAS, the unused allocation of the Nation's CAP water remains in the CAP system and
17 becomes part of the "excess pool" that is then available to other entities who do not
18 compensate the Nation for the use of such water; and

19 WHEREAS, the SAWRSA Amendments recognize the Nation's right

20 (I) to use, or authorize other persons or entities to use, any portion of the [San
21 Xavier Reservation] allocation of 35,000 acre-feet of water... outside the San
22 Xavier Reservation for any period during which there is no identified actual
23 use of the water within the San Xavier Reservation; [and]

24 (II) as a first right of use, to use the remaining acre-feet of water deliverable
25 under sections 304(a)(1) and 306(a)(1) for any purpose and duration
26 authorized by this title within or outside the Nation's Reservation

27 (SAWRSA Amendments, Section 307(a)(1)(G)(ii)(I) and (II)); and

28 WHEREAS, instead of allowing other entities to use the Nation's water without compensation, the
29 Nation may earn marketable long-term storage credits for storing a portion of the
30 unused allocation of CAP water in one or more permitted underground storage
31 facilities within Arizona (A.R.S. § 45-841.01, et seq.; SAWRSA Amendments Sections
32 309(a), 309(b)(2)(B)); and

33 WHEREAS, such credits possess significant value and the Nation possesses the exclusive right "to
34 transfer or otherwise dispose of all Marketable Long-Term Storage Credits that may

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1 **be lawfully transferred or otherwise disposed of to Persons for recovery outside the**
2 **Nation's Reservation." (25 Tohono O'odham Code Chapter 3, Section 3201(B)(3);**
3 **SAWRSA Amendments, Section 307(a)(1)(G)(ii)(III)); and**

4 **WHEREAS, to receive marketable long-term storage credits, the Nation must hold water storage**
5 **permits for facilities where it intends to store a portion of its CAP allocation or**
6 **construct permitted storage facilities for this purpose; and**

7 **WHEREAS, the Water Resources Committee has determined that the best method for accruing**
8 **marketable long-term storage credits in the near future is to store unused CAP water**
9 **at existing, permitted underground storage facilities and the Legislative Council**
10 **previously authorized the storage of a maximum of 15,000 acre feet annually**
11 **beginning in calendar year 2009 (Resolution No. 08-592); and**

12 **WHEREAS, the Water Resources Committee, Water Resources Department, and Nation's**
13 **Chairman have consulted with the San Xavier District and Schuk Toak District and**
14 **recommend that the Legislative Council authorize the storage of additional unused**
15 **CAP water beginning in calendar year 2010.**

16 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby**
17 **authorizes and directs the Nation's Chairperson and any departments at his disposal,**
18 **in consultation with affected districts, to study and make recommendations to the**
19 **Water Resources Committee on:**

- 20 **(1) The feasibility and potential benefits of constructing and operating**
21 **underground storage facilities on the Nation that will allow the Nation to**
22 **accumulate marketable long-term storage credits.**
23 **(2) The feasibility and potential benefits of other storage opportunities off the**
24 **Nation.**
25 **(3) A draft plan for future storage and the marketing of credits.**

26 **BE IT FURTHER RESOLVED that the Tohono O'odham Legislative Council:**

- 27 **(1) Authorizes and directs the Nation's Chairperson, in consultation with the Water**
28 **Resources Committee and Office of Attorney General, and the Water Resources**
29 **Department, to apply to the Arizona Department of Water Resources for water**
30 **storage permits on behalf of and in the name of the Tohono O'odham Nation for**
31 **underground storage facilities; to apply for consents to store at those facilities**
32 **and to annually store at one or more permitted underground storage facilities**
33 **unused CAP water to which the Nation is entitled; and to enter storage**
34 **agreements for that purpose.**
35 **(2) Subject to a duly approved budget, authorizes the Nation's Chairperson to pay**
36 **water storage permit application fees and other storage-related fees from the**

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SAWRSA Trust Fund.

(3) Authorizes the Nation's Chairperson to execute the water storage permit application, to direct the delivery of CAP water to such storage facilities, and to take any additional actions necessary to accrue marketable long-term storage credits and otherwise carry out the intent of this resolution.

BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that this resolution shall supercede and replace the provisions of Resolution No. 08-592.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 17TH Day of SEPTEMBER, 2009 at a meeting at which a quorum was present with a vote of 1,971.4 FOR; -0- AGAINST; 624.1 [03] NOT VOTING; and [06] ABSENT, pursuant to the powers vested in the Council by Article XVII and Section 1 (f) and (j) 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



Verlon M. Jose, Legislative Chairman

23 day of September, 2009

ATTEST:

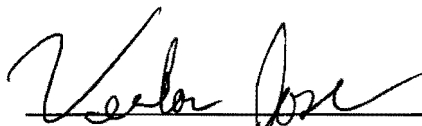


Evonne Wilson, Legislative Secretary

17 day of September, 2009.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 23 day of September, 2009 at 11:24 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



Verlon M. Jose, Legislative Chairman

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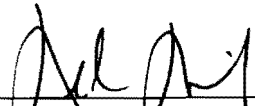
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APPROVED

on the 23 day of September, 2009

DISAPPROVED

at 8:30 o'clock, P.M.



NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 23 day of

September, 2009, at 2:49 o'clock, P.M.



Evonne Wilson, Legislative Secretary

ACTION: AUTHORIZING STORAGE OF UNUSED CENTRAL ARIZONA PROJECT WATER AND ACCRUAL OF MARKETABLE LONG-TERM STORAGE CREDITS

MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILWOMAN PAMELA ANGHILL

DATE: SEPTEMBER 17, 2009

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35	X			X
	2. MARY LOPEZ ()	99.35	X			
SELLS 449.6	1. KIMBERLY LISTO ()	224.80			X	
	2. EVELYN B. JUAN MANUEL ()	224.80			X	
SCHUK TOAK 159.0	1. FRANCES B. CONDE (Fredrick Jose)	79.50	X			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			X
	2. PAMELA ANGHILL (Angela Ortiz)	103.15	X			
GU ACHI 230.1	1. TIMOTHY L. JOAQUIN ()	115.05	X			
	2. CYNTHIA E. MANUEL ()	115.05	X			X
CHUKUT KUK 277.0	1. ETHEL GARCIA (<i>Absent</i>) (Sara Mae Williams) (<i>Present</i>)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			
BABOQUIVARI 324.0	1. FRANCES MIGUEL (Roberta Harvey)	162.0	X			X
	2. FRANCES G. ANTONE ()	162.0	X			
TOTAL		2,595.50	1,971.4	-0-	624.1 [03]	[06]