TITLE 19 - LAND

CHAPTER 5 - ESCHEAT

Legislative History: Ordinance No. 04-83, “Escheat Ordinance,” was enacted by the Papago Tribal Council on September 7, 1983 and approved by the Papago Agency Superintendent on September 14, 1983; amended by Resolution No. 182-84, as enacted by the Papago Tribal Council on August 20, 1984 and approved by the Papago Agency Superintendent on August 24, 1984.
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Statement of Purpose: An ordinance providing for the escheat, sale and disposition of treasure-trove and abandoned property.

BE IT ENACTED by the Council of the Papago Tribe of the Papago Reservation, as follows:

Section 1 Short Title

This ordinance may be cited as the Escheat Ordinance of the Papago Tribe.

Section 2 Interpretation

This ordinance shall be deemed an exercise of the police power of the Papago Tribe for the protection of the public welfare, health, peace and morals of the people of the Papago Reservation and all provisions of this ordinance shall be liberally construed for the accomplishment of this purpose.

Section 3 Definitions

In this ordinance, unless the context otherwise requires:

(A) "Holder" means any person in possession of property subject to this ordinance.

(B) "Owner" means any person having a legal or equitable interest in property subject to this ordinance, or his legal representative.

(C) "Treasurer" means the treasurer of the Papago Tribe.

Section 4 Treasure-trove

Any gold or silver in coin, plate, dust or bullion, including intangible representatives thereof, hidden or concealed for at least fifty years within the exterior boundaries of the Papago Reservation shall immediately upon discovery escheat to and vest in the Papago Tribe.

Section 5 Abandoned property

Any Indian artifact, archaeological resource or other tangible personal property embedded in the soil which is at least fifty years old and is found within the exterior boundaries of the Papago Reservation, whose owner is unknown, shall be presumed abandoned and, unless claimed by and awarded to the owner as provided in this ordinance, shall escheat to and vest in the Papago Tribe.

Section 6 Delivery of and receipt for property; relief from liability by delivery

(A) Every person holding treasure-trove property
described in section 4, or abandoned property described in section 5 shall within ten days of discovery or receipt thereof deliver it to the treasurer, together with a written report which shall include the name and address of the person making the report, a description of the property and of the date when and place where discovered or received, and the name, if known, and the last known address, if any, of the owner.

(B) The treasurer shall give the holder a receipt for property delivered pursuant to this ordinance.

(C) The delivery of property to the treasurer by any holder shall terminate any legal relationship between the holder and the owner, and shall release and discharge such holder from any and all liability to the owner, his heirs or assigns by reason of such delivery, and such delivery may be pleaded as a bar to recovery and be a conclusive defense in any suit or action brought by such owner, his heirs or assigns or any claimant against the holder by reason of such delivery.

Section 7 Periods of limitation not a bar

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this ordinance or to deliver treasure-trove or abandoned property to the treasurer.

Section 8 Sale or disposition of property by treasurer.

(A) The treasurer may sell or dispose of treasure-trove property described in Section 4 at any time after receipt thereof in accordance with the provisions of Section 13.

(B) Before the treasurer may sell or dispose of the abandoned property described in Section 4, the Treasurer shall seek a determination of ownership in accordance with the provisions of Sections 9 through 12. Upon a final determination that the property was abandoned and did escheat to and vest in the Papago Tribe, the treasurer shall sell or dispose of such property in accordance with the provisions of Section 13.

Section 9 Notice to persons appearing as owners of abandoned property.

(A) Within one hundred twenty days from the filing of the report required by Section 6, the treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of one hundred dollars or more presumed abandoned under Section 5, and shall cause notice to be published at least once in a newspaper of general circulation on the Papago Reservation.
(B) The notice shall be entitled "Notice to Persons Appearing to be Owners of Abandoned Property", and shall contain:

1. The names in alphabetical order and last known addresses, if any, of owners listed in the report.

2. A description of the property in possession of the treasurer.

3. A statement that the property is presumed to be abandoned and that if proof of claim is not presented to the treasurer within forty-five days from the date of the published notice, the abandoned property will escheat to and vest in the Papago Tribe.

(C) The treasurer is not required to give notice with respect to any item of a value of less than one hundred dollars unless he deems such notice to be in the public interest.

Section 10 Claim for abandoned property

Any person claiming an interest in any abandoned property delivered to the treasurer under this ordinance may file a claim thereto on a form prescribed by the treasurer.

Section 11 Determination of claims

(A) The treasurer shall consider any claim filed under this ordinance and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(B) If the claim is allowed, the treasurer shall deliver the property to the claimant upon receipt from the claimant of the costs of notice of publication.

Section 12 Judicial action upon determinations

Any person aggrieved by a decision of the treasurer or as to whose claim the treasurer has failed to act within ninety days after the filing of a claim, may commence an action in the Papago tribal courts to establish his claim. The proceedings shall be brought within ninety days after the decision of the treasurer or within one hundred and eighty days from the filing of the claim of if the treasurer fails to act.

Section 13 Sale and disposition of treasure-trove and abandoned property

(A) All treasure-trove property described in section 4 delivered to the treasurer shall within one hundred and eighty days after delivery be sold
by him on the open market for the best available price.

(B) All abandoned property described in section 5, except Indian artifacts and archaeological resources described in the Archaeological Resources Protection Act of 1979, P.L. 96-95, 14 U.S.C. §§ 470 aa et seq. and the regulations promulgated pursuant thereto, delivered to the treasurer shall be sold by him on the open market for the best available price within one hundred and eighty days after the time set in the published notice required by section 9 (B)(3) or, if a claim therefor has been filed, after a final determination of the claim in favor of the Papago Tribe.

(C) The purchaser at any sale conducted by the treasurer pursuant to this ordinance shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The treasurer shall execute all documents for and on behalf of the Papago Tribe necessary to complete the transfer of title.

(D) All abandoned Indian artifacts and archaeological resources described in the Archaeological Resources Protection Act of 1979 and the regulations promulgated pursuant thereto, delivered to the treasurer shall escheat to and vest in the Papago Tribe immediately upon expiration of the time set in the published notice required by section 9 (B)(3) or, if a claim has been filed, after a final determination of the claim in favor of the Papago Tribe. The treasurer shall arrange for the safekeeping of such artifacts and resources and may promulgate regulations and enter into agreements providing for their safekeeping, display and study by suitable tribal, educational or scientific institutions, programs, museums or universities. The ultimate disposition of such artifacts or resources shall be made by the Papago Council.

Section 14 Deposit of Funds

All funds received from the sale of treasure-trove and abandoned property under this ordinance shall be allocated and distributed as follows:

1) twenty percent thereof shall be deposited to the IIM account of the District of the Papago Reservation in which the property was discovered or found, to be expended under budgets or resolutions of the District Council duly approved by the Papago Council.

2) eighty percent thereof shall be deposited to the general account of the Papago Tribe to be expended under budgets or resolutions of the Papago Council, along with other tribal revenue, for the use and benefits of the Papago Tribe.
Section 15 Proceeding to compel delivery of property

If any person refuses to deliver property to the treasurer as required by this ordinance, he may bring action on behalf of the Papago Tribe in the Papago tribal courts or other courts of competent jurisdiction having venue to enforce such delivery.

Section 16 Violations; Jurisdiction

(A) Any person who willfully fails to render any report or perform other duties required under this ordinance shall be punished by a fine of not more than one hundred dollars.

(B) Any person who willfully refuses to deliver treasure-trove or abandoned property to the treasurer as required under this ordinance shall be punished by a fine of not more than five hundred dollars, or by imprisonment in tribal jail for not more than six months, or both.

(C) The Papago tribal courts shall have jurisdiction over all violations of this ordinance and may, in addition to the penalties prescribed in subsections A and B above, grant such other relief as is necessary and proper for the enforcement of this ordinance, including but not limited to injunctive relief against acts in violation of this ordinance.

(D) Nothing in this ordinance shall be construed to authorize or require the criminal punishment of non-Indians except to the extent allowed by any applicable present and future act of Congress or any applicable court decision and except as specifically required by the Archaeological Resources Protection Act of 1979, P.L. 96-95, 16 U.S.C. §§ 470cc and 470 gg, or by the Act of June 8, 1906, 16 U.S.C. §433.

CERTIFICATION

The foregoing Ordinance was duly enacted by the Papago Council on the 7th day of September, 1983, at a meeting at which a quorum was present with a vote of 110 for; 52 against; 281.5 not voting; and 3 absent, pursuant to the authority vested in the Papago Council by Sections 2 (c) and (e) and Section 3 (a), (b), (h) and (k) of Article V of the Constitution and By-laws of the Papago Tribe of Arizona as amended, ratified by the Papago Tribe on December 12, 1936, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), and pursuant to the Act of August 15, 1953, Public Law 277 (67 Stat. 536). This Ordinance shall be effective as of the date the Secretary of the Interior or his designee approves this Ordinance and publishes it in the Federal Register.

ATTEST:
Josiah Moore, Chairman
Secretary
ORDINANCE APPROVED this 14th day of September, 1983.

THE PAPAGO COUNCIL

Superintendent, Papago Agency
RESOLUTION OF THE PAPAGO COUNCIL
( Amending Escheat Ordinance )

WHEREAS, the Papago Council has enacted the Archaeological Resources Protection Ordinance for the protection and preservation of archaeological resources on the Papago Reservation; and

WHEREAS, Section 11 of the Archaeological Resources Protection Ordinance provides for the ownership, custody and ultimate disposition of archaeological resources excavated or removed from the Papago Reservation, and it is no further necessary or appropriate that the ownership, custody and disposition of archaeological resources be determined under the provisions of the Escheat Ordinance of the Papago Tribe, Ord. No. 04-83.

NOW, THEREFORE, BE IT RESOLVED by the Papago Council that the Escheat Ordinance is hereby amended as follows:

Section 5 Abandoned property

Any Indian-artifact—archaeological-resource or other tangible personal property which is embedded in the soil, other than an archaeological resource as defined in the Archaeological Resource Protection Ordinance of the Papago Tribe, and which is at least fifty years old and is found within the exterior boundaries of the Papago Reservation, whose owner is unknown, shall be presumed abandoned and, unless claimed by and awarded to the owner as provided in this ordinance, shall escheat to the vest in the Papago Tribe.

Section 13

(B) All abandoned property described in section 5 which is except—Indian-artifacts—archaeological-resources—described—in—the—Archaeological Resources—Protection—Act—of—1979—Pub.—96—95, 14 U.S.C. 470 et seq.—and—the—.regulations promulgated—pursuant—thereto, delivered to the treasurer shall be sold by him on the open market for the best available price within one hundred and eighty days after the time set in the published notice required by section 9 (B) (3) or, if a claim therefor has been filed, after a final determination of the claim in favor of the Papago Tribe.

(D) All abandoned—Indian-artifacts—archaeological resources—described—in—the—Archaeological Resources—Protection—Act—of—1979——and—the—regulations promulgated—pursuant—thereto—delivered—to—the treasurer—shall—escheat—to—and—vest—in—the—Papago Tribe—immediately—upon—expiration—of—the—time—set in the published notice—required—by—section—9(B) (3)—or—if—a—claim—has—been—filed, after a final determination of the claim in favor of the Papago Tribe—the treasurer—shall—arrange—for—the safekeeping—of—such—artifacts—archaeological resources—and may promulgate—regulations—and—enter—into—agreements—providing—for—their—safekeeping—display and study—by—suitable—tribal—educational—or...
BE IT FURTHER RESOLVED that Ordinance No. 04-83 of the Papago Tribe, as amended by this Resolution, is hereby republished as the Escheat Ordinance of the Papago Council.

The foregoing Resolution was duly enacted by the Papago Council on the 20th day of August, 1984, at a meeting at which a quorum was present with a vote of 1414.5 for; 0 against; 25.5 not voting; and 1 absent, pursuant to the authority vested in the Council by Section 2(c) and (e) and Section 3 (a), (b), (h) and (k) of Article V of the Constitution and By-laws of the Papago Tribe as amended, ratified by the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984). Said Resolution is effective as of the date of its approval by the Superintendent of the Papago Agency and is subject to review by the Secretary of Interior.

THE PAPAGO COUNCIL

[Signature]
Josiah Moore, Chairman

ATTEST:

[Signature]
Secretary

RESOLUTION APPROVED this 24th day of August, 1984.

[Signature]
Superintendent, Papago Agency
Through: Superintendent, Papago Agency

Mr. Josiah Moore

Chairman, Papago Council

Dear Mr. Moore:

We have received Papago Tribal Ordinance No. 04-83 which was enacted by the Tribal Council on September 7, 1983 and approved by the Superintendent on September 14. The Superintendent's approval is subject to Secretarial review.

Said ordinance will provide for the escheat, sale and disposition of treasure-trove and abandoned property, discovered within the exterior boundaries of the Papago Reservation.

The ordinance has been reviewed by the Field Solicitor's office and Area Office staff, and we find no legal reason to rescind the Superintendent's approval. However, Section 4, Treasure-trove and Section 5, Abandoned Property, deserve a cautionary note. In Section 4, the use of the word "dust" as a treasure-trove could apply to any natural gold or silver deposit on the reservation. There are non-Indians currently producing gold and silver from patented and unpatented mining claims and from leases within the exterior boundaries of the reservation. Non-Indians should be included in the ordinance as authorized users. We suggest that "other than naturally occurring deposits" be inserted after the word "dust" in the first sentence.

In Section 5, we have two (2) questions:

(1) Will the Tribe have professional expertise available to determine if any embedded property is at least 50 years old?

(2) Will burial sites be considered abandoned property if no one knows the identity of the individual?

We suggest this section be given further thought and, for now at least, burials as referred to in this ordinance be deleted from the abandoned property inventory.
given the above considerations and recommendations, I hereby concur with the Superintendent's September 14 approval and Ordinance No. 84-83 remains in full force and effect as of the date of the Superintendent's approval.

Sincerely,

Walter R. Mills
Asst. Area Director

Enclosure