

TITLE 25 - WATER

CHAPTER 5 - WATER POLLUTION

Legislative History: Resolution No. 01-244, "Establishing Powers in the Tohono O'odham Nation to Restrain Water Pollution," became effective May 22, 2001.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Establishing Powers in the Tohono O'odham Nation to Restrain Water Pollution)

RESOLUTION NO. 91-244

1 WHEREAS, the Tohono O'odham Nation has submitted a grant application to the United States
2 Environmental Protection Agency for a Clean Water Act Section 106 grant for water
3 quality planning and management; and

4 WHEREAS, the federal Clean Water Act requires that Section 106 grant recipients, both States
5 and Indian Nations, have explicit authority to take action in court to restrain persons
6 causing water pollution; and

7 WHEREAS, the Tohono O'odham Constitution declares that all waters which originate in or flow
8 in, into or through the Tohono O'odham Nation, or which are stored in the Tohono
9 O'odham Nation, whether found on the surface or underground, are a valuable public
10 resource of the Tohono O'odham Nation to be protected for the present and future
11 use of the Tohono O'odham Nation as a whole; and

12 WHEREAS, the Tohono O'odham Nation has the inherent sovereign authority to control and
13 manage the use of the waters of the Nation subject to the Tohono O'odham
14 Constitution and the laws of the Nation; and

15 WHEREAS, the Tohono O'odham Nation wishes to eliminate all polluting discharges to the waters
16 of the Nation which present an imminent and substantial endangerment to the
17 health and welfare of persons and the natural environment; and

18 WHEREAS, it is necessary to protect the water supply of the Tohono O'odham Nation for
19 consumption and other domestic purposes; and

20 WHEREAS, this Resolution is being enacted at this time as an interim measure to maintain the
21 quality of the waters of the Tohono O'odham Nation until such time as the Tohono
22 O'odham Nation can enact a Water Code to comprehensively regulate the water
23 quality and the discharge of pollutants within the Tohono O'odham Nation; and

24 WHEREAS, the Water Resources Committee has reviewed this Resolution and recommends
25 approval by the Legislative Council.

26 NOW, THEREFORE, BE IT RESOLVED as follows:

- 27 1. Prohibited Discharges. No person shall discharge any pollutant into the waters
28 of the Nation which causes an imminent and substantial endangerment to the
29 health and welfare of persons or the natural environment.

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2. **Civil Penalty.** Any person discharging any pollutant into the waters of the Nation which causes an imminent and substantial endangerment to the health and welfare of persons shall pay a civil fine in an amount not to exceed Twenty Five Thousand Dollars (\$25,000) for each day in which the violation occurs. The civil fine required by this section shall be imposed by any court of competent jurisdiction in accordance with this Resolution. Any fines collected shall be deposited in the Nation's Environmental Trust Fund.

3. **Clean up and Abatement.** Any person that discharges any pollutant into the waters of the Nation which causes an imminent and substantial endangerment to the health and welfare of persons shall immediately, but in any case not less than twenty-four (24) hours from the time of the discharge, notify the Chairman of the discharge and shall fully disclose to the Chairman any and all information regarding the discharge, including but not limited to the type of pollutant discharged, and any other information required by the Chairman. Any person who discharges any pollutant into the waters of the Nation shall be liable for all costs associated with or necessary to clean up, abate, or remove the pollutants from the waters of the Nation and restore the quality of the waters of the Nation to their condition as they existed immediately prior to the discharge.

4. **Court Action and Injunctions.** Upon the failure of any person to comply with any of the provisions of this Resolution, the Chairman, by and through the Office of the Attorney General, shall petition a court of competent jurisdiction for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, and to levy such fines in accordance with this Resolution, as the facts may warrant.

5. **Definitions.** The following words used in this Resolution have the following meanings:

- A. "Chairman" means the Chairman of the Tohono O'odham Nation.
- B. "Imminent and substantial endangerment to the health and welfare of persons and the natural environment" means the discharge of pollution that

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has the potential to degrade the waters of the Nation to levels which are not in compliance with the federal National Primary Drinking Water Standards set by the Safe Drinking Water Act, 42 U.S.C. §300f-300j-26, and its regulations, 40 CFR Part 141.

C. "Lands of the Nation" means all lands within the territorial jurisdiction of the Nation, whether or not the Nation has an ownership interest in the land, including but not limited to tribal trust land, allotted land, patented land, homesteads, leased land, and rights of way. Included within the territorial jurisdiction of the Nation are the lands established by the following Executive Orders: December 12, 1882, modified by June 17, 1909 (Gila Bend); July 1, 1874 (San Xavier); February 1, 1917 (Sells); and the following Acts of Congress: the Act of February 21, 1931 (Sells); the Act of September 10, 1978 (Florence); and such other lands as may have been or may hereafter be added thereto by purchase, gift, Act of Congress or otherwise.

D. "Nation" means the Tohono O'odham Nation, a federally recognized Indian tribe, organized under a constitution adopted by the 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. 987, 25 U.S.C. § 476).

E. "Person" means any individual, trust, firm, association, partnership, Indian nation, corporation or business chartered by an Indian nation, State or county or municipal government or any of their departments, commissions or political subdivisions, the United States or any department, agency or instrumentality of the United States, interstate body, industry, public or private corporation, any legal entity or private enterprise, and includes members and non-members of the Nation.

F. "Pollutant" means any substance which will degrade the quality of the waters of the Nation.

G. "Quality of the water or waters" means any chemical, physical, biological, bacteriological, radiological, or other property of water which affects its use.

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H. "Waters of the Nation" means all waters which originate in or flow in, into or through the lands of the Nation, or which are stored on the lands of the Nation, whether found on the surface or underground.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11th Day of MAY, 2001 at a meeting at which a quorum was present with a vote of 2,037,4 FOR; -0- AGAINST; -0- NOT VOTING; and 128,1 [04] ABSENT, pursuant to the powers vested in the Council by Section 1 (i)(2) of Article VI and Section 2 of Article XVII 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


Dennis Ramon, Legislative Chairman

22nd day of May, 20 01

ATTEST:


Julianna Saraficio, Acting Legislative Secretary

11th day of May, 20 01

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 22nd day of May, 20 01 at 2:40 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

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(Establishing Powers in the Tohono O'odham Nation to Restrain Water Pollution)

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APPROVED on the _____ day of _____, 20____

DISAPPROVED at _____ o'clock, ____M.

EXCEEDED 48 HOURS

EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 24 day of

May, 2001, at 4:41 o'clock, P.M.

Julianna Saraficio, Acting Legislative Secretary