

TITLE 25 - WATER

CHAPTER 4 - IMPLEMENTATION PROVISIONS REGARDING SAWRSA

Legislative History: "Implementation Provisions Regarding SAWRSA," was enacted and codified as Tohono O'odham Code Title 25, Chapter 4 by Resolution No. 07-257, as amended by Resolution No. 07-485, and became effective December 14, 2007.

TITLE 25 – WATER

CHAPTER 4 – IMPLEMENTATION PROVISIONS REGARDING SAWRSA

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TITLE II

IMPLEMENTATION PROVISIONS REGARDING SAWRSA

Section 4101 Findings and Purpose

The Legislative Council finds that the implementation of SAWRSA is an important and vital issue to the Nation and its people and, in certain regards, has particular impact and importance to the San Xavier District, Allottees and other persons within the San Xavier Reservation. The Legislative Council finds that to implement certain provisions of the SAWRSA Amendments it is necessary and desirable to establish, by Act of the Legislative Council, certain arrangements and relationships between the Nation and the San Xavier District, and Allottees and other persons located within the San Xavier Reservation. The purpose of this Title is to establish and define these various relations and arrangements so that the implementation of the SAWRSA Amendments may be enhanced and continued.

Section 4102 Definitions

Unless specifically stated otherwise, the definitions contained in Section 3101(E) of Title I of this Code shall apply to this Title II.

Section 4103 Appropriation for San Xavier Cooperative Farm

(A) There is hereby authorized and appropriated for the purposes provided for herein, \$3,600,000 of the interest and dividends that have accrued to the trust fund initially established in § 309 of SAWRSA as reauthorized in § 315 of the SAWRSA Amendments. The Nation's Treasurer shall transfer the funds appropriated herein to the San Xavier Cooperative Association within 30 days of the Enforceability Date.

(B) This appropriation is authorized solely for the purpose of providing working capital for the San Xavier Cooperative Farm and the San Xavier Cooperative Association shall accordingly submit quarterly financial reports and a copy of its annual audit to the Tohono O'odham Legislative Council and the Treasurer of the Tohono O'odham Nation for five years after the funds are transferred to the Association.

Section 4104 Allocation of Asarco Payments for SAWRSA CAP Water

Until the total amount of \$1,500,000 has been paid, all payments made by Asarco for the delivery of in lieu SAWRSA CAP Water shall be paid to the Alvarez Groundwater Settlement Fund as set forth in Article 7 of the Asarco Settlement Agreement dated June 12, 2006 and referred to in the SAWRSA Amendments in § 309(h)(2)(C). The Alvarez Groundwater Settlement Fund shall be maintained as a segregated account of the San Xavier Allottees Association as provided for in Paragraph 7.2 of the Asarco Settlement Agreement. Upon payment by Asarco of the \$1,500,000 to the Alvarez Groundwater Settlement Fund, the Asarco payments for in lieu SAWRSA CAP Water shall thereafter be made to the Nation and to the San

Xavier District, with the Nation receiving fifty-five percent (55%) of such payments and the San Xavier District receiving forty-five percent (45%) of said payments. The Asarco payments made to the Nation shall be expended and invested in a manner consistent with the requirements and limitations applicable to the trust fund reauthorized in § 315 of the SAWRSA Amendments as specifically stated in § 315(b). The Asarco payments made to the San Xavier District shall be expended and invested in a manner consistent with the requirements and limitations set forth in § 304(f) of the SAWRSA Amendments.

Section 4105 Allocation of Asarco Long-term Storage Credits

Marketable Long-Term Storage Credits accrued to the Nation under Article 5 of the Asarco Settlement Agreement dated June 12, 2006, and referred to in the SAWRSA Amendments in § 309(h)(2)(C), shall first be applied by the Nation, at the rate of \$40 per acre foot of Marketable Long-Term Storage Credit, to repay all principal and accrued interest on any loan made by the Nation to Asarco as provided for in Article 4 of the Asarco Settlement Agreement. Upon full repayment of any loan, the Nation shall hold 60% of all Marketable Long-Term Storage Credits thereafter accruing for the benefit of the Nation. The remaining 40% of all such Marketable Long-Term Storage Credits shall be for the benefit of the San Xavier District; provided, however, the first 125,000 Acre-Feet of Marketable Long-Term Storage Credits held by the Nation for the benefit of the San Xavier District shall be allocated to the Alvarez Groundwater Settlement Fund. Marketable Long-Term Storage Credits allocated to the Alvarez Groundwater Settlement Fund shall be held by the Nation with disposition of those credits and any consideration paid therefore to be in accordance with resolutions adopted by the San Xavier District Council and of the Board of the San Xavier Allottees Association.

Section 4106 Expenditure, Investment and Conditions of § 315 Trust Fund

The Nation shall reserve within the trust fund reauthorized by § 315 of the SAWRSA Amendments, the principal amount of \$3,000,000 together with interest that accrues on said amount from the Enforceability Date to the earlier of the date upon which total expenditure of those funds have been made or ten years following the Enforceability Date. These funds, together with accrued interest, may be expended only for purposes of subjugating land within the San Xavier Reservation for purposes of making it suitable for irrigation. With respect to the remainder of the § 315 trust fund, the Nation may spend such funds, together with accrued interest, for any governmental purpose and such funds shall be invested by the Nation in accordance with such policies as the Nation may adopt; provided that the Water Resources Department shall be funded with such funds for so long as they are available. These funds shall not be deemed revenues available to fund per capita payments to members.

Section 4107 Nation's Consent to San Xavier District Being Deemed a Tribal Organization

The Nation hereby consents to the San Xavier District being deemed a Tribal Organization as defined in Section 900.6 of Title 25, Code of Federal Regulations (or any successor regulations) for purposes limited solely to contracts for: (1) the design and construction of the delivery and distribution system and the rehabilitation of the irrigation system for the Cooperative Farm; (2)

the extension of the irrigation system for the Cooperative Farm; (3) the subjugation of land to be served by the extension of the irrigation system for the Cooperative Farm; (4) the design and construction of storage facilities solely for water deliverable for use within the San Xavier Reservation; and (5) the completion by the Secretary of the Interior of a water resources study of the San Xavier Reservation and the subsequent preparation of water management plans as provided for and described in § 308(d) of the SAWRSA Amendments. This consent is subject to the Nation's reservation of its right to seek retrocession or reassumption of any or all contracts described above and recontracting under subpart P and other applicable provisions of Part 900 of Title 25, Code of Federal Regulations (or any successor regulations). Nothing in this section shall be construed to prevent the San Xavier District from requesting that the District be deemed a tribal organization for purposes of entering additional Public Law 93-638 contracts.

Section 4108 San Xavier Reservation Water Protection Program

The Nation shall forward a copy of any notice received by the Nation pursuant to A.R.S. §45-2712 to the San Xavier District within ten days of receipt of the notice by the Nation. In the event the Nation determines it will not object to the application to drill the non-exempt well set forth in the notice, the Nation shall advise the San Xavier District of that determination not later than 30 days after the date of the notice. In such an event, the San Xavier District is hereby authorized to file an objection on behalf of the Nation with respect to said application to drill a non-exempt well provided the San Xavier District pays all costs, including attorney's fees, associated with the filing of such an objection and the prosecution of such objection through the administrative or judicial procedures set forth in A.R.S. § 45-2712.

Section 4109 Management and Investment of Trust Funds

The funds in the trust fund reauthorized by § 315 of the SAWRSA Amendments shall be managed and invested at a conservative level of risk appropriate for the investment of public funds held or managed by governmental agencies.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Interim Allottee Water Rights Code)

RESOLUTION NO. 07-257

- 1 **WHEREAS, water is a gift from I'toi, it is a sacred resource of the O'odham to be used and**
2 **safeguarded for the benefit of present and future generations; and**
- 3 **WHEREAS, the Constitution of the Tohono O'odham Nation recognizes the central importance**
4 **of water to the Tohono O'odham; and**
- 5 **WHEREAS, "All waters which originate in or flow in, into or through the Tohono O'odham Nation,**
6 **or which are stored in the Tohono O'odham Nation, whether found on the surface or**
7 **underground, are a valuable public resource of the Tohono O'odham Nation to be**
8 **protected for the present and future use of the Tohono O'odham Nation as a whole."**
9 **(Constitution, Article XVII, Section 1); and**
- 10 **WHEREAS, the San Xavier Reservation was established by Executive Order on July 3, 1874 for the**
11 **purpose of protecting Indian lands, resources and waters of the Community of Wa:k**
12 **O'odham from non-Indian encroachment; and**
- 13 **WHEREAS, in 1891, 41,000 acres within the San Xavier Reservation were allotted in trust to**
14 **individual Indians under the General Allotment Act of 1887 (the "Dawes Act"); and**
- 15 **WHEREAS, what is now the main Tohono O'odham Reservation was established by Executive**
16 **Order of February 1, 1917 and the Act of February 21, 1931; and**
- 17 **WHEREAS, since 1937, the San Xavier District has been recognized as one of the 11 districts of the**
18 **Nation (Constitution and By-laws of the Papago Tribe, Article VI, Section 1 (1937);**
19 **Constitution of the Tohono O'odham Nation, Article IX, Section 1 (1986)); and**
- 20 **WHEREAS, in 1975 the United States as Indian trustee and the Papago Tribe filed the United**
21 **States v. Tucson and Papago Tribe v. Tucson lawsuits, respectively, to protect surface**
22 **and groundwater rights associated with Indian trust lands within the San Xavier**
23 **District; and**
- 24 **WHEREAS, although the Congress enacted the Southern Arizona Water Rights Settlement Act,**
25 **P.L. 97-293 ("SAWRSA") in 1982, in part, to settle pending water rights and damage**
26 **claims made by or on behalf of the Papago Tribe, San Xavier allottees ("Allottees"),**
27 **and the United States, numerous claims remain unresolved; and**
- 28 **WHEREAS, in order to resolve those claims and protect the Nation's water resources, the Tohono**
29 **O'odham Legislative Council approved the introduction of amendments to the**
30 **SAWRSA in 1992 and subsequent years (Resolutions No. 92-204, 2000-438, 02-160, 02-**
31 **232, 02-366, 03-094, 04-435); and**

RESOLUTION NO. 07-257

(Enacting Interim Allottee Water Rights Code)

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1 **WHEREAS, on December 10, 2004, the Arizona Water Settlements Act, P.L. 108-451 (the "Act"),**
2 **including Title II, the Gila River Indian Community Water Rights Settlement Act of**
3 **2004, and Title III, the Southern Arizona Water Rights Settlement Act Amendments**
4 **("SAWRSA Amendments") was enacted; and**

5 **WHEREAS, if made effective, the SAWRSA Amendments will (1) authorize, ratify, and confirm the**
6 **Tohono O'odham Settlement Agreement, the Tucson Agreement, the Asarco**
7 **Settlement Agreement, and the FICO Settlement Agreement, (2) authorize and direct**
8 **the Secretary of the Interior to execute and perform the Secretary's obligations under**
9 **those agreements, and (3) authorize the actions and appropriations necessary for the**
10 **United States under the agreements and the SAWRSA Amendments; and**

11 **WHEREAS, the SAWRSA Amendments will take effect on the "Enforceability Date," which is the**
12 **date the Secretary of the Interior publishes in the Federal Register a statement of**
13 **findings that numerous enforceability conditions have been met, including that "the**
14 **Secretary has approved the interim allottee water rights code described in section**
15 **308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of**
16 **2004" (SAWRSA Amendments, Section 302(b)(3)); and**

17 **WHEREAS, the SAWRSA Amendments further provide that the Nation shall submit for approval**
18 **by the Secretary the code provisions implementing, with respect to Allottees,**
19 **standards for permitting, equitable distribution of water, protection of due process,**
20 **appeal rights, a limited waiver of the Nation's sovereign immunity for certain**
21 **injunctive and declaratory actions, and other matters described in Sections 308(b)**
22 **and (c) of the SAWRSA Amendments; and**

23 **WHEREAS, from 2003 to 2006, the District Water Advisory Committee distributed drafts, held**
24 **numerous public meetings, gathered public comments, and incorporated**
25 **suggestions into provisions now appearing in the Interim Allottee Water Rights Code;**
26 **and**

27 **WHEREAS, the San Xavier Allottees Association has likewise provided Allottees with quarterly**
28 **updates, solicited questions, briefed Allottees at the Association's annual meetings,**
29 **made door-to-door visits, distributed newsletters, and made PowerPoint**
30 **presentations on progress toward completing a tribal code mandated by the SAWRSA**
31 **Amendments; and**

32 **WHEREAS, from 2006 to the present, the Legislative Water Resources Committee, with assistance**
33 **from the District Water Advisory Committee, has held dozens of meetings with**

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representatives of the San Xavier District, San Xavier Allottees Association, San Xavier Cooperative Association, and with the San Xavier parties' attorneys, and has drafted the Interim Allottee Water Rights Code that satisfies the requirements of the SAWRSA Amendments; and

WHEREAS, the Water Resources Committee has held public hearings in the San Xavier District and in Sells and has reviewed the resulting comments and incorporated those it deemed appropriate into the Interim Allottee Water Rights Code dated May 8, 2007; and

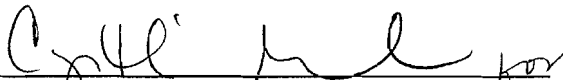
WHEREAS, in order to realize the benefits available in the SAWRSA Amendments, it is in the Nation's best interest to enact the Interim Allottee Water Rights Code and submit it to the Secretary of the Interior for approval; provided that, if the Secretary provides a written notification to the Nation identifying provisions of the code that do not conform to Section 308(b) of the SAWRSA Amendments or other applicable federal laws, the Nation will have the opportunity to revise the code in accordance with the Secretary's recommendations (SAWRSA Amendments, Section 308(c)).

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby enacts the Interim Allottee Water Rights Code dated May 8, 2007, which shall become effective on the Enforceability Date, as Tohono O'odham Code Title 25, Chapters 3 and 4.

BE IT FINALLY RESOLVED that the Tohono O'odham Legislative Council authorizes and directs the Nation's Chairperson and Water Resources Committee to submit the Interim Allottee Water Rights Code to the Secretary of the Interior for approval.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09TH Day of MAY, 2007 at a meeting at which a quorum was present with a vote of 1,461.8 FOR; 768.5 AGAINST; 210.5 NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Section 1 (f) and (j) of Article VI and Sections I and II 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


Verlon M. Jose, Legislative Chairman
14 day of May, 2007

1 ATTEST:
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4 *Lucille Lopez*
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6 Lucille Lopez, Acting Legislative Secretary

7
8 09 day of May, 2007.
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10 Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono
11 O'Odham Nation on the 14 day of May, 2007 at 2:50 o'clock,
12 P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become
13 effective upon her approval or upon her failure to either approve or disapprove it within 48 hours
14 of submittal.
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16 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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18 *Verlon M. Jose* for
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20 Verlon M. Jose, Legislative Chairman
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24 APPROVED on the 15 day of May, 2007
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26 DISAPPROVED at 11:40 o'clock, A.M.
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29 *Vivian Juan-Saunders*
30 Vivian Juan-Saunders, Chairwoman
31 Tohono O'Odham Nation
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36 Returned to the Legislative Secretary on the 15 day of

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38 May, 2007, at 12:05 o'clock, P.M.

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40 *Lucille Lopez*
41 Lucille Lopez, Acting Legislative Secretary
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ACTION: ENACTING INTERIM ALLOTTEE WATER RIGHTS CODE

MOVED: COUNCILWOMAN OLIVIA VILLEGAS-LISTON

SECOND: COUNCILMAN GERALD FAYUANT

DATE: MAY 09, 2007

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 310.8	1. FRANCES MIGUEL (Vernon J. Smith)	155.40	X			
	2. FRANCES G. ANTONE (Lucilda J. Valenzuela (Norris))	155.40	X			
CHUKUT KUK 258.7	1. ETHEL GARCIA ()	129.35	X			
	2. VERLON M. JOSE (David Garcia)	129.35	X			
GU ACHI 221.6	1. TIMOTHY L. JOAQUIN (Jonas Robles)	110.80		X		
	2. CYNTHIA E. MANUEL** (Louis L. Johnson)	110.80		X		
GU VO 193.1	1. RAYMOND VICTOR** ()	96.55	X			
	2. MICHAEL FLORES (Grace Manuel)	96.55	X			
HICKIWAN 167.4	1. SHIRLEY SANTOS-MOLINA ()	83.70		X		
	2. SANDRA ORTEGA ()	83.70		X		X
PISINEMO 171.8	1. BARBARA SALVICIO ()	85.90	X			
	2. GERALD FAYUANT ()	85.90	X			
SAN LUCY 169.0	1. LORRAINE EILER** ()	84.50		X		
	2. GLORIA RAMIREZ ()	84.50		X		
SAN XAVIER 193.8	1. FELICIA NUÑEZ ()	96.90	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	96.90	X			
SCHUK TOAK 146.9	1. FRANCES B. CONDE ()	73.45	X			
	2. PHYLLIS JUAN ()	73.45	X			
SELLS 421.0	1. MARLENE SARAFICIO-JUAN ()	210.50			X	
	2. EVELYN B. JUAN MANUEL (Kimberly Listo)	210.50		X		
SIF OIDAK 186.7	1. WAVALENE ROMERO (Isidro Lopez)	93.35	X			X
	2. DARLENE ANDREW (Rita Wilson)	93.35	X			
TOTAL		2,440.80	1,461.8	768.5	210.5	[02]

**PASSED VOTES