

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving a Limited Waiver of the Tohono O'odham Utility Authority's
Sovereign Immunity for the Purpose of Enabling Participation in the
Amended and Restated Power Purchase Agreement with
Mesquite Power, LLC)**

RESOLUTION NO. 22-050

- 1 **WHEREAS,** **the Tohono O'odham Nation ("Nation") is a federally recognized Indian tribe,**
2 **organized pursuant to Section 16 of the Indian Reorganization Act of June 18,**
3 **1934 (48 Stat. 984; 25 U.S.C. § 476), which exercises sovereignty over both its**
4 **members, its enterprises, and its lands; and**
- 5 **WHEREAS,** **the Constitution of the Tohono O'odham Nation vests the Legislative Council with**
6 **the authority to "authorize, charter and regulate public or private corporations**
7 **and associations whether organized for profit, or for non-profit or charitable**
8 **purposes" and "to promote, protect and provide for public health, peace, morals,**
9 **education and general welfare of the Tohono O'odham Nation and its members"**
10 **(Constitution, Article VI, Section 1(e) and Section 1(c)(2)); and**
- 11 **WHEREAS,** **the Second Restated Plan of Operation of the Tohono O'odham Utility Authority**
12 **("TOUA Plan of Operation"), codified at 24 Tohono O'odham Code Chapter 1, was**
13 **adopted by Legislative Council Resolution No. 91-175; and**
- 14 **WHEREAS,** **TOUA's purposes, as stated in the TOUA Plan of Operation, include furnishing**
15 **electric services within the Tohono O'odham Nation; and**
- 16 **WHEREAS,** **TOUA does not presently generate electricity and all electricity supplied to TOUA**
17 **customers must be purchased through a purchase power agreement; and**
- 18 **WHEREAS,** **the stated powers of the TOUA Management Board include, among other powers,**
19 **the power to make "contracts or commitments necessary to the functioning of**
20 **[TOUA]," and the TOUA Plan of Operation authorizes the Management Board, in**
21 **its discretion, to submit contracts to the Legislative Council for approval or**
22 **ratification (TOUA Plan of Operation, Section 7.A.3. and Section 7.A.12.); and**
- 23 **WHEREAS,** **TOUA desires to become a party to the multi-party Amended and Restated Power**
24 **Purchase Agreement ("Agreement") with Mesquite Power, LLC ("Seller") pursuant**
25 **to which the Seller will sell and TOUA will purchase certain quantities of capacity**
26 **and energy for a set period and at set rates; and**
- 27 **WHEREAS,** **the Seller requires that all tribes and tribal parties to the Agreement agree to**
28 **irrevocably waive sovereign immunity for the purposes of: (i) any action or**
29 **arbitration arising out of or pertaining to the Agreement, (ii) enforcing**
30 **arbitration under the Agreement, and (iii) enforcing any arbitration award**

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1 rendered in an arbitration pursuant to the Agreement, as explained in Article XVI
2 of the Agreement; and

3 **WHEREAS,** the Agreement also includes a mutual indemnification agreement between the
4 Seller and TOUA in Article XIII of the Agreement; and

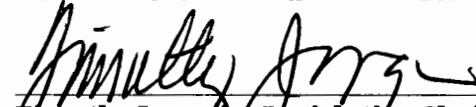
5 **WHEREAS,** the Nation's sovereign immunity extends to TOUA, a Nation's enterprise, which
6 requires an express waiver by the Legislative Council; and

7 **WHEREAS,** the Legislative Commerce Committee has reviewed the Agreement, and
8 recommends that it is in the best interests of the Nation to approve a limited
9 waiver of TOUA's sovereign immunity so that TOUA may enter into the Agreement
10 with the Seller.

11 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council approves a
12 limited waiver of sovereign immunity of the TOUA in favor of Mesquite Power, LLC
13 so that TOUA may enter into the Amended and Restated Power Purchase
14 Agreement, and such limited waiver must be consistent and in accordance with,
15 and subject to the limitations of, the provisions of the Amended and Restated
16 Power Purchase Agreement, provided that nothing in this resolution shall be
17 construed as a waiver of the Nation's sovereign immunity.

18 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 15TH
19 day of FEBRUARY, 2022 at a meeting at which a quorum was present with a vote of 3,218.0 FOR;
20 -0- AGAINST; [04] NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by,
21 Article VI, Section 1(e) and Section 1(c)(2) of the Constitution of the Tohono O'odham Nation,
22 adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy
23 Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the
24 Act of June 18, 1934 (48 Stat.984).

25
26 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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30 Timothy Joaquin, Legislative Chairman
31
32 22 day of February, 2022
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35 **ATTEST:**

36 
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38 Evonne Wilson, Legislative Secretary

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40 22 day of February, 2022
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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 22 day of February, 2022 at 4:39 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


Timothy Joaquin, Legislative Chairman

APPROVED

on the 23 day of Febry, 2022

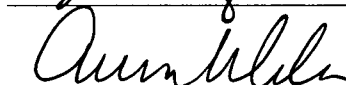
DISAPPROVED

at 2:52 o'clock, P.m.


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

Returned to the Legislative Secretary on the 23 day of

February, 2022, at 3:42 o'clock, P.m.


Evonne Wilson, Legislative Secretary

ACTION: APPROVING A LIMITED WAIVER OF THE TOHONO O'ODHAM UTILITY AUTHORITY'S SOVEREIGN IMMUNITY FOR THE PURPOSE OF ENABLING PARTICIPATION IN THE AMENDED AND RESTATED POWER PURCHASE AGREEMENT WITH MESQUITE POWER, LLC

MOVED: COUNCILWOMAN JANICE FELIX

SECOND: COUNCILWOMAN GRACE MANUEL

DATE: FEBRUARY 15, 2022

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (Ann M. Garcia)	122.8	X			
	2. LUCINDA ALLEN (Francis Homewytewa)	122.8	X		X	
SELLS 556.5	1. ARTHUR WILSON ()	278.25	X			
	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25	X		X	
SCHUK TOAK 190.5	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25	X			
	2. DELISA M. RAMON (Sharon A. Francisco)	95.25	X			
SAN XAVIER 242.6	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3	X			
	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
SAN LUCY 243.8	1. JANA MONTANA (Lorraine M. Eller)	121.9	X			
	2. ROGER MANUEL (Christina Andrews)	121.9	X		X	
PISINEMO 232.7	1. MARIETTA MARTIN ()	116.35	X			
	2. EDWARD D. MANUEL (Monica Morgan)	116.35	X			
HICKIWAN 216.6	1. LOUIS R. LOPEZ ()	108.3	X			X
	2. SANDRA D. ORTEGA <i>(Absent)</i> (Delma M. Garcia) <i>(Present)</i>	108.3	X			
GU VO 270.7	1. GRACE MANUEL ()	135.35	X			
	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
GU ACHI 278.5	1. TIMOTHY L. JOAQUIN ()	139.25	X			X
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X			
CHUKUT KUK 351.6	1. MARIKAY HENRY (Billman Lopez)	175.8	X			
	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
BABOQUIVARI 388.9	1. ALBERTA J. RAY (Frances G. Antone)	194.45	X			
	2. LEANDER MASE (Francine Schooling)	194.45	X			
TOTAL		3,218.0	3,218.0	-0-	[04]	[01]