

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 Administration and Scheduling Agreement By and Among Southwest Public Power Agency, Inc. and Southwest Public Power Resources Group Participants in the Sempra Power Purchase Agreement)

RESOLUTION NO. 22-051

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 its members,
4 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,** in 2014, various public and tribal utilities elected to form and become members
24 of the Southwest Public Power Agency, Inc. ("SPPA"), a joint action agency
25 authorized by Arizona state law, for the purpose of giving these publicly owned,
26 not-for-profit electric utilities a mechanism to jointly manage and dispatch their
27 power resources and pursue affordable power supply opportunities for the
28 customers they serve; and

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1 **WHEREAS, SPPA manages through a formal pool all or most of its members' power resources,**
2 **and SPPA facilitates the supply of additional energy needed to meet SPPA**
3 **participants' customers' loads; and**

4 **WHEREAS, TOUA has requested and has been approved for membership in SPPA; and**

5 **WHEREAS, all participants that are approved for SPPA membership must subsequently**
6 **agree to become participants of the Amended and Restated Administration and**
7 **Scheduling Agreement By and Among Southwest Public Power Agency, Inc. and**
8 **Southwest Public Power Resources Group Participant ("Agreement"), which**
9 **requires that all tribes and tribal parties to the Agreement agree to irrevocably**
10 **waive sovereign immunity for the purposes of: (i) any action or arbitration arising**
11 **out of or pertaining to the Agreement, (ii) enforcing arbitration under the**
12 **Agreement, and (iii) enforcing any arbitration award rendered in an arbitration**
13 **pursuant to the Agreement, as explained in Section 19 of the Agreement; and**

14 **WHEREAS, the Agreement also includes a mutual indemnification agreement between SPPA**
15 **and TOUA in Section 15 of the Agreement; and**

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

18 **WHEREAS, the Legislative Commerce Committee has reviewed the Agreement, and**
19 **recommends that it is in the best interests of the Nation to approve a limited**
20 **waiver of TOUA's sovereign immunity so that TOUA may enter into the Agreement**
21 **with SPPA.**

22 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council approves a**
23 **limited waiver of sovereign immunity of the TOUA in favor of Southwest Public**
24 **Power Agency, Inc. so that TOUA may enter into the Amended and Restated**
25 **Administration and Scheduling Agreement By and Among Southwest Public**
26 **Power Agency, Inc. and Southwest Public Power Resources Group Participant,**
27 **and such limited waiver must be consistent and in accordance with, and subject**
28 **to the limitations of, the provisions of the Amended and Restated Administration**
29 **and Scheduling Agreement By and Among Southwest Public Power Agency, Inc.**
30 **and Southwest Public Power Resources Group Participant, provided that nothing**
31 **in this resolution shall be construed as a waiver of the Nation's sovereign**
32 **immunity.**

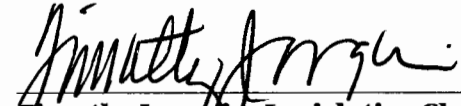
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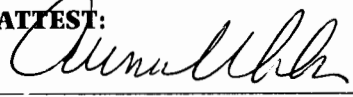
The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 15TH day of FEBRUARY, 2022 at a meeting at which a quorum was present with a vote of 3,218.0 FOR; -0- AGAINST; [04] NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by, Article VI, Section 1(e) and Section 1(c)(2) 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



Timothy Joaquin, Legislative Chairman
22 day of February, 2022

ATTEST:



Evonne Wilson, Legislative Secretary
22 day of February, 2022

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 II 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 Feb, 2022

DISAPPROVED

at 2:53 o'clock, P .m.



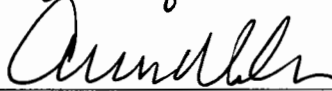
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 23 day of

July, 2022, at 3:42 o'clock, p.m.



Evonne Wilson, Legislative Secretary

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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 ADMINISTRATION AND SCHEDULING AGREEMENT BY AND AMONG SOUTHWEST PUBLIC POWER AGENCY, INC. AND SOUTHWEST PUBLIC POWER RESOURCES GROUP PARTICIPANTS IN THE SEMPRA POWER PURCHASE AGREEMENT

MOVED: COUNCILWOMAN JANICE FELIX

SECOND: COUNCILWOMAN MARLAKAY HENRY

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. Eiler)	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			
GUACHI 278.5	1. TIMOTHY L. JOAQUIN ()	139.25	X			
	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X		X	
CHUKUT KUK 351.6	1. MARLAKAY 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]