

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving Agreement with New Magma Irrigation and Drainage District for 2023)**

**RESOLUTION NO. 23-089**

1 **WHEREAS,** the Constitution of the Tohono O'odham Nation provides that "[a]ll waters which  
2 originate in or flow in, into or through the Tohono O'odham Nation, or which are  
3 stored in the Tohono O'odham Nation, whether found on the surface or  
4 underground, are a valuable public resource of the Tohono O'odham Nation to be  
5 protected for the present and future use of the Tohono O'odham Nation as a  
6 whole" (Constitution, Article XVII, Section 1); and

7 **WHEREAS,** the Constitution vests the Legislative Council with the power to "consult,  
8 negotiate and conclude agreements and contracts on behalf of the Tohono  
9 O'odham Nation with Federal, State and local governments and other Indian  
10 tribes or their departments, agencies, or political subdivisions, or with private  
11 persons or organizations on all matters within the authority of the Tohono  
12 O'odham Council" (Constitution, Article VI, Section 1(f)); and

13 **WHEREAS,** under the Southern Arizona Water Rights Settlement Act, Pub. L. 97-293 (1982)  
14 (SAWRSA), as amended by the Arizona Water Settlements Act, Pub. L. 108-451  
15 (2004) (AWSA), the Tohono O'odham Nation is entitled to receive a total of 66,000  
16 acre-feet of Central Arizona Project ("CAP") water per year, and is authorized to  
17 use its CAP water either on-reservation or off-reservation; and

18 **WHEREAS,** since 2014, the Nation has contracted with the New Magma Irrigation and  
19 Drainage District ("NMIDD"), which is designated as a groundwater savings  
20 facility under Arizona law, to deliver a portion of the Nation's CAP entitlement to  
21 NMIDD as "in-lieu water"; and

22 **WHEREAS,** the Nation's arrangement with NMIDD has resulted in delivery of a substantial  
23 amount of the Nation's CAP entitlement to NMIDD in return for substantial  
24 payment by NMIDD to the Nation; and

25 **WHEREAS,** in addition to payments for the water, this arrangement has allowed the Nation to  
26 accumulate marketable long-term storage credits through the use by NMIDD of  
27 the Nation's CAP water instead of NMIDD pumping and using groundwater within  
28 the irrigation district itself; and

29 **WHEREAS,** the Nation's most recent agreement with NMIDD ended on December 31, 2022;  
30 and

31 **WHEREAS,** the Nation's attorneys and NMIDD's attorneys have negotiated additional  
32 changes to the Nation's agreement with NMIDD to provide additional flexibility to

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1                   the Nation in light of increasing drought and shortage conditions (the “2023  
2                   Agreement”); and

3 **WHEREAS,**     as with the prior agreements, the 2023 Agreement ultimately will require the  
4                   approval of the Department of the Interior as the Nation’s trustee; and

5 **WHEREAS,**     as in prior agreements, Section 11 of the 2023 Agreement provides that the Nation  
6                   will agree to a limited waiver of sovereign immunity to allow for dispute  
7                   resolution in any court of competent jurisdiction, not to include Arizona state  
8                   courts, which waiver is limited to declaratory and injunctive relief to enforce the  
9                   agreement but does not include a waiver of any claims for money damages,  
10                  attorney’s fees, court costs or any other costs, damages, or remedy of any other  
11                  kind; and

12 **WHEREAS,**     the term of the 2023 Agreement is for three years, until December 31, 2025, but  
13                  additionally requires an annual decision by the Nation whether to assign any  
14                  amount of CAP water to the contract with NMIDD, which decision results in an  
15                  Annual Scheduling Agreement to be signed by both parties; and

16 **WHEREAS,**     the Water Resources Committee has reviewed the 2023 Agreement and  
17                  recommends approval by the Legislative Council.

18 **NOW, THEREFORE, BE IT RESOLVED** by the Tohono O’odham Legislative Council that it approves  
19                  the Agreement Between New Magma Irrigation and Drainage District and the  
20                  Tohono O’odham Nation Providing for the Delivery of Nation’s CAP Water for  
21                  Water Storage at a Ground Water Savings Facility for the year 2023, which will  
22                  extend to December 31, 2025, substantially in the form attached hereto, and  
23                  authorizes the Chairman of the Nation to execute the 2023 Agreement and any  
24                  additional documentation reasonably necessary to implement the intent of the  
25                  2023 Agreement, and to seek approval by the Department of the Interior of the  
26                  2023 Agreement; provided, that the Nation will annually enter into an Annual  
27                  Scheduling Agreement which will assign a quantity of CAP water to NMIDD under  
28                  the 2023 Agreement, including the possibility of assigning no water under the  
29                  2023 Agreement.

30 **BE IT FINALLY RESOLVED** that the Tohono O’odham Legislative Council approves a limited  
31                  waiver of the Nation’s sovereign immunity to allow disputes arising between the  
32                  Nation and NMIDD with respect to this 2023 Agreement or an Annual Scheduling  
33                  Agreement established pursuant to the 2023 Agreement to be resolved in any  
34                  court of competent jurisdiction, not to include Arizona state courts, and limits

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1                   the waiver to declaratory and injunctive relief to enforce the agreement but does  
2                   not waive its sovereign immunity with respect to any claims for money damages,  
3                   attorney's fees, court costs or any other costs, damages, or remedy of any other  
4                   kind.

5   The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 09<sup>TH</sup>  
6   day of MARCH, 2023 at a meeting at which a quorum was present with a vote of 2,661.5 FOR; 556.5  
7   AGAINST; ~~0~~ NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by,  
8   Article XVII, Section 1 and Article VI, Section 1(b) and Section 1(f) of the Constitution of the  
9   Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and  
10  approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6,  
11  1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat.984).

14                   TOHONO O'ODHAM LEGISLATIVE COUNCIL

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18                   Timothy Joaquin, Legislative Chairman

19  
20                   10 day of March, 2023

23   **ATTEST:**

24                   

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26                   Evonne Wilson, Legislative Secretary

27  
28                   10 day of March, 2023

30   Said Resolution was submitted for approval to the office of the Chairman of the Tohono  
31   O'odham Nation on the 10 day of March, 2023 at 2:31 o'clock, P.m.,  
32   pursuant to the provisions of Section 5 of Article VII of the Constitution and will become  
33   effective upon his approval or upon his failure to either approve or disapprove it within 48  
34   hours of submittal.

36                   TOHONO O'ODHAM LEGISLATIVE COUNCIL

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40                   Timothy Joaquin, Legislative Chairman

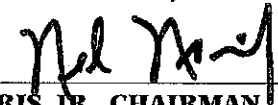
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1  **APPROVED** on the 13<sup>th</sup> day of March, 2023

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3  **DISAPPROVED** at 2:16 o'clock, P.m.

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8 **NED NORRIS, JR., CHAIRMAN**  
9 **TOHONO O'ODHAM NATION**

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13 **Returned to the Legislative Secretary on the 13 day of**  
14 March, 2023, at 2:47 o'clock, P.m.

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19 **Evonne Wilson, Legislative Secretary**

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ACTION: APPROVING AGREEMENT WITH NEW MAGMA IRRIGATION AND DRAINAGE DISTRICT FOR 2023

MOVED: COUNCILWOMAN LUCINDA ALLEN

SECOND: COUNCILWOMAN GRACE MANUEL

DATE: MARCH 09, 2023

| DISTRICT             | LEGISLATIVE REPRESENTATIVES  | # OF VOTES | FOR     | AGAINST | NOT VOTING | ABSENT |
|----------------------|--|------------|---------|---------|------------|--------|
| SIF OIDAK<br>245.6   | 1. MARY LOPEZ<br>(Ann M. Garcia)   | 122.8      | X       |         |            |        |
|                      | 2. LUCINDA ALLEN<br>(Francis Homewytewa)                                     | 122.8      | X       |         |            |        |
| SELLS<br>556.5       | 1. ARTHUR WILSON ( <i>Absent</i> )<br>(Shelia Espino) ( <i>Present</i> )     | 278.25     |         | X       |            | X      |
|                      | 2. EVELYN JUAN MANUEL<br>(Arvada Liston)                                     | 278.25     |         | X       |            |        |
| SCHUK TOAK<br>190.5  | 1. TERESA F. DONAHUE<br>(Alberta Espinoza)                                   | 95.25      | X       |         |            |        |
|                      | 2. DELISA M. RAMON<br>(Sharon A. Francisco)                                  | 95.25      | X       |         |            |        |
| SAN XAVIER<br>242.6  | 1. DANIEL L.A. PRESTON III<br>(Racheal Vilson-Stoner)                        | 121.3      | X       |         |            |        |
|                      | 2. JANICE FELIX<br>( )   | 121.3      | X       |         |            |        |
| SAN LUCY<br>243.8    | 1. JANA MONTANA<br>(Lorraine M. Eiler)                                       | 121.9      | X       |         |            |        |
|                      | 2. ROGER MANUEL<br>(Christina Andrews)                                       | 121.9      | X       |         |            |        |
| PISINEMO<br>232.7    | 1. MARIETTA MARTIN<br>( )  | 116.35     | X       |         |            |        |
|                      | 2. EDWARD D. MANUEL<br>(Monica Morgan)                                       | 116.35     | X       |         |            |        |
| HICKIWAN<br>216.6    | 1. LOUIS R. LOPEZ<br>( )   | 108.3      | X       |         |            |        |
|                      | 2. DELMA M. GARCIA<br>( )  | 108.3      | X       |         |            | X      |
| GU VO<br>270.7       | 1. GRACE MANUEL<br>( )   | 135.35     | X       |         |            |        |
|                      | 2. CYNTHIA SAAVEDRA<br>(Dallas Lewis)  | 135.35     | X       |         |            |        |
| GU ACHI<br>278.5     | 1. TIMOTHY L. JOAQUIN<br>( )   | 139.25     | X       |         |            |        |
|                      | 2. VICTORIA HOBBS<br>(Tonya L. Joaquin)                                      | 139.25     | X       |         |            |        |
| CHUKUT KUK<br>351.6  | 1. MARLAKAY HENRY<br>(Billman Lopez)   | 175.8      | X       |         |            |        |
|                      | 2. VIVIAN JUAN-SAUNDERS<br>(Cornelius Antone)                                | 175.8      | X       |         |            |        |
| BABOQUIVARI<br>388.9 | 1. ALBERTA J. RAY<br>(Frances G. Antone)                                     | 194.45     | X       |         |            |        |
|                      | 2. LEANDER MASE ( <i>Absent</i> )<br>(Francine Schooling) ( <i>Present</i> ) | 194.45     | X       |         |            |        |
|                      | TOTAL  | 3,218.0    | 2,661.5 | 556.5   | -0-        | [02]   |