

**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.*

**TITLE 25 – WATER**  
**CHAPTER 5 – WATER QUALITY**

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**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.

- 1           2. **Civil Penalty.** Any person discharging any pollutant into the waters of the Nation  
2           which causes an imminent and substantial endangerment to the health and  
3           welfare of persons shall pay a civil fine in an amount not to exceed Twenty Five  
4           Thousand Dollars (\$25,000) for each day in which the violation occurs. The civil  
5           fine required by this section shall be imposed by any court of competent  
6           jurisdiction in accordance with this Resolution. Any fines collected shall be  
7           deposited in the Nation's Environmental Trust Fund.
- 8           3. **Clean up and Abatement.** Any person that discharges any pollutant into the  
9           waters of the Nation which causes an imminent and substantial endangerment  
10          to the health and welfare of persons shall immediately, but in any case not less  
11          than twenty-four (24) hours from the time of the discharge, notify the Chairman  
12          of the discharge and shall fully disclose to the Chairman any and all information  
13          regarding the discharge, including but not limited to the type of pollutant  
14          discharged, and any other information required by the Chairman. Any person  
15          who discharges any pollutant into the waters of the Nation shall be liable for all  
16          costs associated with or necessary to clean up, abate, or remove the pollutants  
17          from the waters of the Nation and restore the quality of the waters of the Nation  
18          to their condition as they existed immediately prior to the discharge.
- 19          4. **Court Action and Injunctions.** Upon the failure of any person to comply with any  
20          of the provisions of this Resolution, the Chairman, by and through the Office of  
21          the Attorney General, shall petition a court of competent jurisdiction for the  
22          issuance of an injunction requiring such person to comply therewith. In any such  
23          suit, the court shall have jurisdiction to grant a prohibitory or mandatory  
24          injunction, either preliminary or permanent, and to levy such fines in accordance  
25          with this Resolution, as the facts may warrant.
- 26          5. **Definitions.** The following words used in this Resolution have the following  
27          meanings:
- 28           A. "Chairman" means the Chairman of the Tohono O'odham Nation.  
29           B. "Imminent and substantial endangerment to the health and welfare of  
30           persons and the natural environment" means the discharge of pollution that

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

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

15                  D. "Nation" means the Tohono O'odham Nation, a federally recognized Indian  
16                  tribe, organized under a constitution adopted by the Nation on January 18,  
17                  1986 and approved by the Acting Deputy Assistant Secretary-Indian Affairs  
18                  (Operations) on March 6, 1986 pursuant to section 16 of the Act of June 18, 1934  
19                  (48 Stat. 987, 25 U.S.C. § 476).

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

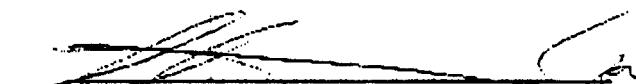
27                  F. "Pollutant" means any substance which will degrade the quality of the waters  
28                  of the Nation.

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

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

4  
5                   The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 11<sup>TH</sup>, Day  
6                   of MAY, 2001 at a meeting at which a quorum was present with a vote of 2,037 FOR; -0 AGAINST;  
7                   -0 NOT VOTING; and 123,1 [04] ABSENT, pursuant to the powers vested in the Council by Section  
8                   I (1)(2) of Article VI and Section 2 of Article XVII of the Constitution of the Tohono O'Odham Nation,  
9                   adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy  
10                  Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act  
11                  of June 18, 1934 (48 Stat. 984).

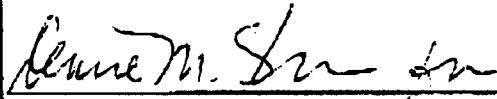
## TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

11<sup>th</sup> day of May, 2001

ATTEST:



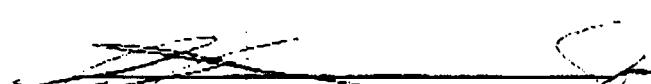
Julianne Saraficio

26 Julianne Saraficio, Acting Legislative Secretary

11<sup>th</sup> day of May, 2001

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 11<sup>th</sup> day of May, 2001 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

**RESOLUTION NO. 01-244**

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

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1     APPROVED

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

2     DISAPPROVED

at \_\_\_\_\_ o'clock, \_\_\_\_ .M.

5                    EXCEEDED 48 HOURS

7                    

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 EDWARD D. MANUEL, Chairman  
8                    TOHONO O'ODHAM NATION

14                  Returned to the Legislative Secretary on the 24 day of

15                  May, 2001, at 4:41 o'clock, P.M.  
16                  Julianne Saraflio

20                  Julianne Saraflio, Acting Legislative Secretary