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Mr. Michael Marinelli, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Supplement to
AOR 1999-32

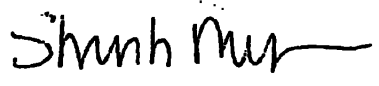
Re: Draft AO 1999-32

Dear Mr. Marinelli:

Pursuant to our telephone conversation last week, I am sending you the following materials on behalf of the Tohono O'odham Nation: Constitution of the Tohono O'odham Nation (there are no bylaws), Tohono O'odham Legislative Council Resolution No. 91-175 adopting the Second Restated Plan of Operation of the Tohono O'odham Utility Authority ("TOUA") and TOUA's Second Restated Plan of Operation.

Mark Curry, the Nation's Deputy Attorney General, will be sending me some additional information this week. I will forward it to you as soon as I receive it. Thank you for assistance. Don't hesitate to contact me if you have any questions.

Sincerely,



Shanti A. Nayak

CONSTITUTION OF THE TOHONO O'ODHAM NATION

PREAMBLE

We, the members of the Tohono O'odham Nation, formerly known as the Papago Tribe, do ordain and establish this constitution for the people of this nation, in order to affirm our sovereign powers of self-government, to preserve, protect and build upon our unique and distinctive culture and traditions, to conserve our common resources, to establish a responsive form of government, to provide for the free expression of our people, to promote the rights, education and welfare of the present and future generations of our people and to show our gratitude to I'itoi our Maker. This constitution when duly adopted and approved shall supersede the Constitution and Bylaws of the Papago Tribe, Arizona, as amended, ratified by the adult Indians of the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937.

ARTICLE I - JURISDICTION

Section 1. The sovereign powers, authority and jurisdiction of the Tohono O'odham Nation and of its government shall extend to all lands within the boundaries of the Tohono O'odham Nation established by Executive Orders: December 12, 1882, modified June 17, 1909 (Gila Bend); July 1, 1874 (San Xavier); February 1, 1917, the Act of February 21, 1931 (Sells); the Act of September 10, 1978, (Florence); and to such other lands as may have been or may hereafter be added thereto by purchase, gift, Act of Congress or otherwise.

Section 2. The sovereign powers, authority and jurisdiction of the Tohono O'odham Nation and its government shall extend to all persons and activities carried on within the boundaries of the Tohono O'odham Nation consistent with federal law.

Section 3. The sovereign powers, authority and jurisdiction of the Tohono O'odham Nation and its government over members of the Tohono O'odham Nation shall extend beyond the geographical boundaries of the Tohono O'odham Nation.

ARTICLE II - MEMBERSHIP

Section 1. The membership of the Tohono O'odham Nation shall consist of the following:

- (a) All Indians whose names appear on the official census rolls of the Sells and Gila Bend Reservations as of January 1, 1937, and of the San Xavier Reservation as of January 1, 1940, provided that additions and changes may be made to said rolls by the Tohono O'odham Council, subject to the approval of the Secretary of the Interior.
- (b) All children born to resident members.

Section 2. The council shall have the power to adopt into membership anyone who is one-half (1/2) degree or more of Papago-Tohono O'odham Indian blood.

Section 3. Membership in the Tohono O'odham Nation and all rights deriving therefrom shall be lost or relinquished if a person is or becomes enrolled as a member in another Indian nation, tribe, community or band, provided such person shall first be given an opportunity to relinquish membership in such other nation, tribe, community or band.

ARTICLE III - RIGHTS OF MEMBERS

Section 1. All political power is inherent in the people. The government of the Tohono O'odham Nation derives its powers from the consent of the governed and is established to protect and maintain their individual rights. It shall not deny to any member of the Tohono O'odham Nation the equal protection of its laws or deprive any member of liberty or property without due process of law.

Section 2. All members of the Tohono O'odham Nation shall have the freedom of worship, speech, press and assembly.

Section 3. All members of the Tohono O'odham Nation shall be given equal opportunity to participate in the economic resources and activities of the Tohono O'odham Nation.

Section 4. The listing of the foregoing rights shall not be construed as denying or abridging other fundamental rights of the people guaranteed by Title II of the Indian Civil Rights Act of April 1, 1968 (82 Stat. 77).

ARTICLE IV - FORM OF GOVERNMENT

The government of the Tohono O'odham Nation shall be composed of three independent branches: the LEGISLATIVE, consisting of the Tohono O'odham Council; the EXECUTIVE, consisting of the office of Chairman of the Tohono O'odham Nation; and the JUDICIAL, consisting of the Tohono O'odham Judiciary.

ARTICLE V - LEGISLATIVE BRANCH

Section 1. All legislative powers of the Tohono O'odham Nation shall be vested in the Tohono O'odham Council, which shall consist of two representatives, or their alternates, elected from each of the districts of the Tohono O'odham Nation.

Section 2. Each district shall be entitled to as many votes on the Tohono O'odham Council (divided by ten) as there are members of the Tohono O'odham Nation residing in the district. Such votes may be cast by either or both of the district representatives, or their alternates, who are present and voting. In the event the two representatives of a district, or their alternates, should

divide their votes, each shall be entitled to vote one-half (1/2) of the votes their particular district is entitled to cast. A majority of the votes cast shall govern the action of the Tohono O'odham Council.

Section 3. No business shall be transacted by the Tohono O'odham Council unless a quorum is present. A quorum shall exist when the representatives, or their alternates, present are entitled to cast a majority of the total votes which all representatives would be entitled to cast.

Section 4. The Tohono O'odham Council shall elect from among its own membership a chairman and vice-chairman. The chairman, or in his absence, the vice-chairman shall preside at all meetings of the council, shall perform all duties of a chairman and exercise any authority delegated to him by the council. He shall be entitled to cast his vote as the representative of his district on any question before the council.

Section 5. The Tohono O'odham Council shall select from outside of its own membership a secretary and such other officers as may be necessary. They shall serve until replaced by the council.

Section 6. Voting on any law, ordinance or resolution, in all council meetings, shall be by roll call vote and each vote shall be recorded by the secretary.

ARTICLE VI - POWERS OF THE TOHONO O'ODHAM COUNCIL

Section 1. The Tohono O'odham Council shall have all of the legislative powers vested in the Tohono O'odham Nation and shall, in accordance with established customs of the Tohono O'odham Nation and subject to the express limitations contained in this constitution and the laws of the United States, have the power:

- (a) To establish rules and procedures to regulate all meetings of the Tohono O'odham Council, standing committees, boards and special committees.
- (b) To provide for, appoint, or provide for the appointment of, and prescribe the duties and powers of committees, boards, officers and agents; to establish and regulate subordinate organizations for business purposes; provided that no such committee, board, officer, agent or organization shall exercise powers of the Tohono O'odham Council unless they are expressly delegated by the Tohono O'odham Council.
- (c) To exercise the inherent powers of the Tohono O'odham Nation by providing laws, ordinances or resolutions:
 - (1) to govern the conduct of members of the Tohono O'odham Nation and other persons within its jurisdiction;

- (2) to promote, protect and provide for public health, peace, morals, education and general welfare of the Tohono O'odham Nation and its members;
 - (3) to regulate the domestic affairs of members of the Tohono O'odham Nation and to provide for the appointment of guardians or custodians for minors and incapacitated persons.
 - (4) to regulate the use and disposition of private property within its territory insofar as such use and disposition may affect the welfare of the Tohono O'odham Nation at large;
 - (5) to regulate inheritance of personal property and interests in lands other than allotments consistent with federal law;
 - (6) to provide for the maintenance of law and order and the administration of justice; to establish law enforcement agencies; to enact criminal and civil laws governing the conduct of any person within the Tohono O'odham Nation consistent with federal law;
 - (7) to provide for removal or exclusion from the Tohono O'odham Nation of non-members whose presence may be injurious to the peace, health or welfare of the Tohono O'odham;
 - (8) to preserve and cultivate native arts, crafts and traditions.
- (d) To exercise the following fiscal powers:
- (1) to prevent the use, disposition or encumbrance of fiscal assets of the Tohono O'odham Nation.
 - (2) to manage any funds within the exclusive control of the Tohono O'odham Nation, including proceeds derived from lands and resources of the Tohono O'odham Nation, and to appropriate these funds for the benefit of the nation and its members. All expenditures of these funds shall be pursuant to appropriations or budgets authorized under resolutions or in accordance with ordinances of the Tohono O'odham Council, and the amounts so expended shall be a matter of public record to members of the nation and authorized persons at all reasonable times.
 - (3) to adopt, approve and amend annual budgets and to authorize the expenditure of funds in accordance with these budgets;

- (4) to levy duties, fees, taxes and assessments on any person, corporation or association residing or doing business within the Tohono O'odham Nation; and for such purposes to establish assessment, tax, fee or duty districts or zones;
- (5) to borrow money for public purposes and to secure the repayment thereof;
- (6) to issue revenue bonds payable solely from lease, rental or purchase price installments to finance the cost of acquiring, constructing, reconstructing and improving industrial, manufacturing, commercial and residential facilities, including pollution control facilities, utilities and other appurtenances thereto, for lease or sale, all for the purpose of stimulating industrial, manufacturing, commercial and residential development within the boundaries of the Tohono O'odham Nation.
- (e) To authorize, charter and regulate public or private corporations and associations whether organized for profit, or for non-profit or charitable purposes.
- (f) To consult, negotiate and conclude agreements and contracts on behalf of the Tohono O'odham Nation with Federal, State and local governments and other Indian tribes or their departments, agencies, or political subdivisions, or with private persons or organizations on all matters within the authority of the Tohono O'odham Council.
- (g) To enact laws and ordinances for conducting and regulating elections.
- (h) To enact laws and ordinances governing the enrollment and adoption of members and the relinquishment and loss of membership consistent with Article II of this constitution.
- (i) To administer land and other public property, and by law, ordinance or resolution:
 - (1) to prevent the sale, disposition, lease, use or encumbrance of Tohono O'odham national lands, interests in lands, rights-of-way, or other public resources when such sale, disposition, lease, use or encumbrance will, in the opinion of the Tohono O'odham Council, be injurious to the best interests of the Tohono O'odham Nation as a whole;

- (2) to manage, protect, preserve and regulate the use of the property, wildlife, land, air and natural resources (including surface and ground waters) of the Tohono O'odham Nation;
 - (3) to purchase or otherwise acquire property;
 - (4) to acquire property for public purposes by power of eminent domain, consistent with federal law, paying just compensation therefor;
 - (5) to transfer or convey assets to the Tohono O'odham Nation.
- (j) To consult with the Congress of the United States and appropriate federal agencies regarding federal activities that affect the Tohono O'odham Nation and all federal appropriation estimates and projects for the benefit of the Tohono O'odham Nation before such estimates and projects are submitted to Congress and other federal agencies;
- (k) To advise and make recommendations to the Secretary of the Interior concerning the appointment or removal of federal employees assigned to duties with the Tohono O'odham Nation;
- (l) To enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers.

Section 2. In addition to the foregoing powers, the Tohono O'odham Council shall, in accordance with the established customs of the Tohono O'odham Nation and subject to the express limitations contained in this constitution or applicable federal law, have the following powers, which powers shall be subject to approval by the Secretary of the Interior or his authorized representative, but only to the extent and for so long as such approval is expressly required by federal statutes:

- (a) To employ legal counsel for the protection and advancement of the rights of the Tohono O'odham Nation; the choice of counsel and the fixing of fees are subject to approval by the Secretary of the Interior so long as such approval is required by federal law.
- (b) To manage and make expenditures for national purposes from any funds which are held in trust by the Federal Government and which, by appropriation of Congress or otherwise, have become available for use by the Tohono O'odham Nation.
- (c) To make and enforce laws and ordinances covering the right of the Tohono O'odham Nation to levy taxes and license fees on traders licensed by the Bureau of Indian Affairs.

- (d) To manage and lease or otherwise deal with lands, or interests in land, and resources of the Tohono O'odham Nation, including the use, permit or lease of lands for mining purposes (including oil and gas), and the use, permit, lease, sale or disposition of other resources (including surface and ground waters).

Section 3. The Tohono O'odham Council may exercise such further powers as may in the future be delegated to the Tohono O'odham Nation by the Secretary of the Interior, or by any other duly authorized official or agency of the United States Government.

ARTICLE VII - EXECUTIVE BRANCH

Section 1. The executive power of the Tohono O'odham Nation shall be vested in the office of the Chairman of the Tohono O'odham Nation. The chairman together with the vice chairman shall be elected at large by a majority of votes cast by all qualified voters for a term of four years.

Section 2. The chairman shall be the chief executive officer of the Tohono O'odham Nation and shall exercise the following powers, subject to all express limitations contained in this constitution:

- (a) To oversee the administration and management of the government in accordance with an administrative plan adopted by the Tohono O'odham Council.
- (b) To have veto power over enactments of the Tohono O'odham Council as provided in section 5 of this article.
- (c) To oversee the implementation of all laws, ordinances, resolutions and rules made by the Tohono O'odham Council.
- (d) To exercise all other powers delegated to him by the Tohono O'odham Council.
- (e) With the approval of the Tohono O'odham Council, to appoint the treasurer, and other officers and heads of all governmental departments, who shall serve until replaced at the request of the chairman.
- (f) To act as the official representative of the Tohono O'odham Nation.
- (g) To communicate to the Tohono O'odham Council the condition of the Tohono O'odham Nation and recommend such matters as he shall deem expedient.
- (h) To call the Tohono O'odham Council into special session.

Section 3. The vice chairman shall assist the chairman when requested to do so, and in the absence of the chairman, shall have the powers and be subject to the responsibilities of the chairman.

Section 4. The chairman and vice chairman shall receive for their services a compensation to be established by the Tohono O'odham Council, which shall not be diminished during their continuance in office.

Section 5. Every law, ordinance, resolution or separate appropriation item passed by the Tohono O'odham Council shall be presented to the chairman for his approval before it becomes effective. If he approves, he shall sign it. But if he disapproves, he shall return it to the Tohono O'odham Council within forty-eight (48) hours, with his objections. If after consideration, it again passes the council by a majority of two-thirds (2/3) of the votes cast, it shall become law and he shall sign it notwithstanding his objections.

ARTICLE VIII - JUDICIAL BRANCH

Section 1. The judicial power of the Tohono O'odham Nation shall be vested in the Tohono O'odham Judiciary, which shall consist of the Tohono O'odham Courts and such inferior courts as the Tohono O'odham Council may from time to time ordain and establish.

Section 2. The judicial power of the Tohono O'odham Judiciary shall extend to all cases and matters in law and equity arising under this constitution, the laws and ordinances of or applicable to the Tohono O'odham Nation, and the customs of the Tohono O'odham Nation.

Section 3. The Tohono O'odham Courts shall be courts of record and shall consist of at least six (6) judges appointed by the Tohono O'odham Council. The courts shall be open for the transaction of business, except on non-judicial days. In the determination of causes, all decisions of the courts shall be in writing, and the grounds of the decision shall be stated.

Section 4. Within sixty (60) days after the effective date of this constitution, the Tohono O'odham Council shall appoint at least six (6) judges of the Tohono O'odham Courts, as follows: Two (2) judges for terms of two (2) years, two (2) for terms of four (4) years, and two (2) for terms of six (6) years. Thereafter their terms shall be six (6) years and staggered so that approximately one-third (1/3) of the judges shall be appointed every other year.

Section 5. The judges of the Tohono O'odham Courts shall select a chief judge from among their number, who shall be the chief administrative officer of the Tohono O'odham Judiciary and shall serve in that capacity for a term of two (2) years.

Section 6. The chief judge shall each year designate one or more of the judges of the Tohono O'odham Courts as judge(s) of the children's court, who shall preside over the children's court, a division of the Tohono O'odham Courts.

Section 7. The appellate power of the Tohono O'odham Nation shall be vested in the court of appeals, which shall have jurisdiction to hear all appeals from the Tohono O'odham Courts. Decisions of the court of appeals on all matters within its appellate jurisdiction shall be final.

Section 8. The court of appeals shall consist of three (3) judges of the Tohono O'odham Courts designated by the chief judge, none of whom shall have presided at the trial of the case appealed.

Section 9. The judges of the Tohono O'odham Courts shall receive for their services a compensation to be established by the Tohono O'odham Council, which shall not be diminished during their continuance in office.

Section 10. The Tohono O'odham Judiciary shall have the power to:

- (a) Interpret, construe and apply the laws of, or applicable to, the Tohono O'odham Nation.
- (b) Declare the laws of the Tohono O'odham Nation void if such laws are not in agreement with this constitution.
- (c) Issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and writs of habeas corpus to any part of the Tohono O'odham Nation upon petition by, or on behalf of, any person held in actual custody.
- (d) Establish court procedures for the Tohono O'odham Judiciary.

ARTICLE IX - DISTRICT COUNCIL ORGANIZATION

Section 1. The Tohono O'odham Nation consists of eleven (11) districts: BABOQUIVARI, CHUKUT KUK, GU ACHI, GU VO, HICKIWAN, PISINEMO, SCHUK TOAK, SAN XAVIER, SAN LUCY (Gila Bend), SELLS and SIF Oidak.

Section 2. The Tohono O'odham Council may by ordinance change the foregoing number and boundaries of districts.

Section 3. Each district shall have a governing body known as the district council, which shall consist of at least five (5) representatives, or their alternates, elected either from the district at large, or from communities consisting of villages or groups of villages within the district and recognized or established as separate voting constituencies pursuant to an ordinance of the Tohono O'odham Council, and of a chairman and vice chairman elected from the district at large.

Section 4. Each district council shall select from within or without its own elected membership a secretary and treasurer who shall serve until replaced by the district council.

Section 5. Each district shall govern itself in matters of local concern, except that in any matter involving more than one district in which there is a dispute, the Tohono O'odham Council shall decide the matter.

Section 6. Each district council shall submit copies of its minutes to the office of the secretary of the Tohono O'odham Council within ten (10) days after formal approval thereof.

Section 7. No district council shall expend district funds except pursuant to budgets authorized under resolutions of the district council and approved by the Tohono O'odham Council. The management of these funds shall be only by a treasurer or other authorized officer of the district council who has furnished a surety bond satisfactory to the treasurer of the Tohono O'odham Nation, and all expenditures of these funds shall be by checks signed by such treasurer or other authorized officer and the chairman or vice chairman of the district council.

ARTICLE X - ELECTIONS

Section 1. All members of the Tohono O'odham Nation who have reached the age of eighteen (18) years prior to the election date shall have the right to vote, provided they comply with any and all ordinances regulating elections authorized by this constitution.

Section 2. General elections shall be held every other year at a date set in an election ordinance to be enacted by the Tohono O'odham Council, provided, however, that the council is authorized to extend on a one-time basis the terms of office of its members to permit tribal elections to coincide with federal elections.

Section 3. No person holding an elective public office of the Tohono O'odham Nation shall hold any other elective office of the Tohono O'odham Nation.

Section 4. A candidate for the office of chairman of the Tohono O'odham Nation or of chairman of the district council must, at least sixty (60) days prior to the general election, file a declaration of candidacy which shall contain the name of the candidate he has selected to run with him for the office of vice chairman, and shall bear the signatures of both candidates and the signatures of one hundred (100) or more registered voters if the declaration of candidacy is for the office of chairman of the Tohono O'odham Nation, or of twenty-five (25) or more registered voters if the declaration of candidacy is for the office of chairman of the district council.

Section 5. If there are more than two (2) sets of candidates for the offices of chairman and vice chairman of the Tohono O'odham Nation or of chairman and vice chairman of the district council, there shall be a primary election for such offices and the two (2) sets of candidates receiving the greatest number of votes shall stand for election in the general election.

Section 6. The candidates for the offices of representative or alternate to the Tohono O'odham Council or the district council receiving the greatest number of votes from their respective constituencies shall be elected representatives to such council and the candidates receiving the next greatest number of votes shall be elected as alternates.

Section 7. The Tohono O'odham Council shall enact an election ordinance which shall prescribe rules for the apportionment of representatives to each district council when elections of such representatives are from communities within the district and not from the district at large, and for the setting and holding of primary elections for the offices of chairman and vice chairman of the Tohono O'odham Council and of the district council, and which shall prescribe the qualifications of candidates, the registration requirements for voting and such other rules and procedures necessary to the orderly conduct of elections, including but not limited to procedures for validation of petitions and the settlement of any and all election disputes. The decision of the Tohono O'odham Council in all election matters, including the eligibility and qualifications of candidates, shall be final.

ARTICLE XI - TENURE OF OFFICE

Section 1. The terms of office of all elected officers of the Tohono O'odham Nation shall be four (4) years, unless extended by the Tohono O'odham Council for the necessary time to cover a postponed election as provided in Section 2 of Article X, and they shall hold their offices until their successors have been certified and seated.

Section 2. The terms of office of representatives and alternates to the Tohono O'odham Council and the district council shall be staggered so that half or approximately half their seats shall be open for election at each biennial election.

Section 3. Upon adoption of this constitution, the chairman and vice chairman of the Papago Council shall assume the offices of chairman and vice chairman of the Tohono O'odham Nation, and all other elected public officers of the Tohono O'odham Nation shall continue in office for the remainder of their respective terms.

ARTICLE XII - ABSENCES AND VACANCIES

Section 1. If a representative to the Tohono O'odham Council or the district council is unable to attend a meeting, the alternate of the representative shall attend.

Section 2. If a vacancy should occur in the office of an elected public officer of the Tohono O'odham Nation by reason of death, resignation or legal incapacity, the office shall be filled as follows:

- (a) If the vacancy is in the office of the chairman of the Tohono O'odham Nation, the vice chairman shall immediately succeed to the office of the chairman and the vice chairman's office shall be vacant.
- (b) If the vacancy is in the offices of both the chairman and the vice chairman of the Tohono O'odham Nation, the chairman of the Tohono O'odham Council shall act as temporary chairman of the Tohono O'odham Nation and shall, within ten (10) days of the vacancy, call a special meeting of the Tohono O'odham Council to appoint a chairman and vice chairman from within the Tohono O'odham Nation who shall hold their offices for the unexpired terms of their predecessors.
- (c) If the vacancy is in the office of a representative to the Tohono O'odham Council or the district council, the alternate of that representative shall immediately succeed to the office of the representative and the council of the district or of the community from which they are elected shall appoint an alternate who shall hold office for the unexpired term of his or her predecessor.
- (d) If the vacancy is in the office of the chairman of the district council, the vice chairman shall immediately succeed to the office of chairman and the vice chairman's office shall be vacant.
- (e) If the vacancy is in the offices of both the chairman and vice chairman of the district council, the secretary of the district council shall act as temporary chairman and shall, within ten (10) days of the vacancy, call a special meeting of the district council to appoint a chairman and vice chairman within the district who shall hold their offices for the unexpired terms of their predecessors.

ARTICLE XIII - REMOVAL AND RECALL

Section 1. Any representative of the Tohono O'odham Council, elected officer, or judge of the Tohono O'odham Nation who, during the term for which he is elected or appointed, is convicted of any felony or crime involving dishonesty, in any court of competent jurisdiction, shall automatically forfeit his office effective on the date of his initial conviction in court. Any representative of the Tohono O'odham Council, elected officer or judge of the Tohono O'odham Nation found guilty of a misdemeanor involving moral turpitude, gross neglect of duty, malfeasance in office, or misconduct reflecting on the dignity and integrity of the tribal government shall be removed from office by majority vote of the Tohono O'odham Council. Before any vote for removal is taken, the representative, officer or judge shall be given a written statement of the charges against him or her at least ten (10) days before the meeting of the council called to consider the removal action.

The accused representative, officer or judge shall be given an opportunity to answer any and all charges at the designated council meeting. No representative or officer shall preside over the meeting at which his removal is being considered. The decision of the Tohono O'odham Council shall be final.

Section 2. The eligible voters of the Tohono O'odham Nation shall have the right to recall any representative, or elected officer by filing a petition with the secretary of the Tohono O'odham Council signed by at least thirty percent (30%) of the eligible voters. Upon receipt of a valid petition, it shall be the duty of the Tohono O'odham Council to call a special election within forty (40) days of the receipt of the petition upon the question of recall of any representative or officer named in the petition. No representative or elected officer may be recalled unless a majority of the eligible voters vote in favor of the recall and unless at least thirty percent (30%) of the eligible voters vote in the election.

Section 3. The Tohono O'odham Council shall enact such ordinances as are necessary to implement removal and recall elections consistent with this article. The ordinance shall also prescribe when an office subject to removal or recall has been vacated and who shall fill such office consistent with Article XII.

ARTICLE XIV - REFERENDUM

The Tohono O'odham Council shall, either at the direction of the Council itself, or upon receipt of a petition signed by not less than three hundred registered voters of the Tohono O'odham Nation, submit any enacted or proposed ordinance, resolution or other national legislation to a referendum of the registered voters. The council shall call a referendum within ninety (90) days from the date of the receipt of a valid petition, and shall prescribe the manner in which it is to be conducted. The decision of a majority of the voters voting in a referendum shall be binding on the council.

ARTICLE XV - INITIATIVE

The members of the Tohono O'odham Nation reserve the power to independently propose ordinances, resolutions or other legislation affecting the Tohono O'odham Nation. Any proposed initiative measure shall be presented to the council accompanied by a petition signed by not less than three hundred (300) registered voters of the Tohono O'odham Nation. Upon receipt of the petition, the council shall either adopt the initiative measure by a majority vote without alteration, or call a special election for the purpose of allowing the members of the Tohono O'odham Nation to vote on the initiative measure. The election shall be held within ninety (90) days from the date a valid petition is presented and shall be conducted in the manner prescribed by the council. The decision of a majority of the voters in such an election shall be binding on the council.

ARTICLE XVI - LAND POLICY

Section 1. The unallotted lands of the Tohono O'odham Nation and all lands hereafter acquired by the nation, or held for the use of the nation or its members, are a valuable public resource and shall be held as national lands forever. Control and management thereof are vested in the Tohono O'odham Council, which may enact laws governing the use, assignment, permit, lease or other disposition of lands, interests in land and resources of the nation consistent with Federal law.

Section 2. All allotted lands, including heirship lands, and all improvements thereon shall continue to be held by their present owners under existing laws.

Section 3. Inasmuch as the lands of the Tohono O'odham Nation are held in common, district boundaries shall not prevent any member of the nation from going into any district to live or beneficially use the lands in accordance with the customary procedures of the district.

Section 4. Lands of the Tohono O'odham Nation may be assigned to members of the nation in accordance with the following provisions:

- (a) Assignments of homesites for beneficial use and occupancy shall be made by the district councils under the customary procedures of their respective communities, or in accordance with ordinances enacted by the Tohono O'odham Council and approved by the district councils.
- (b) Every member of the Tohono O'odham Nation who is the head of a family that does not own any land under allotment, or who agrees to transfer such land, including interests in land in heirship status, to the Tohono O'odham Nation, shall be entitled to receive a homesite assignment if land is available.
- (c) Any member of the Tohono O'odham Nation who owns an allotment of land or any share in heirship land or any deeded land may, with the approval of the Secretary of the Interior, voluntarily transfer interests in such land to the Tohono O'odham Nation and receive therefor an assignment to the same land or to land of equal value.

Section 5. Lands of the Tohono O'odham Nation which are not under use, permit, lease or other disposition authorized by the Tohono O'odham Council, and which are not under assignment made by a district council, may be used for communal pastures and gardens by the various districts, or for public purposes of any sort. Such lands may be leased by the district council consistent with federal law and one-half (1/2) of the proceeds of such leases shall accrue to the Tohono O'odham Council and one-half (1/2) to the district council; provided that such leases are subject to approval by the Secretary of the Interior and all leases

to nonmembers, and leases to members in excess of a reasonable acreage, shall be subject to the approval of the Tohono O'odham Council.

Section 6. To the extent consistent with federal law, all individual developments on lands of the Tohono O'odham Nation, such as water developments, farms and homes, shall be held as personal property and shall be subject to disposal in accordance with the customary procedures of the district council or in accordance with ordinances enacted by the Tohono O'odham Council and approved by the district council.

Section 7. The right to continued use and occupancy of buildings and grounds for religious and educational purposes, which were in use for these purposes by any church or missionary organization on January 1, 1936, is hereby confirmed; provided that the buildings and grounds shall, in the discretion of the Tohono O'odham Council, revert to the Tohono O'odham Nation when no longer used for such religious or educational purposes by such church or missionary organization.

Section 8. It shall be the policy of the Tohono O'odham Nation to encourage owners of allotted lands not to devise, sell or give such lands to any person who is not a member of the Tohono O'odham Nation without giving the Tohono O'odham Nation an opportunity to purchase such lands.

Section 9. It shall be the policy of the Tohono O'odham Nation to seek the return to the Tohono O'odham Nation of lands and natural resources, including minerals and water rights, within or adjacent to the Tohono O'odham Nation, or which originally were a part of the historic Papagueria.

Section 10. In order to carry out the foregoing policies, it shall be the continuing responsibility of the Tohono O'odham Council each year to designate a certain percentage of the proceeds derived from natural resources of the Tohono O'odham Nation and, consistent with other essential considerations of Tohono O'odham national policy, to allocate and invest the designated proceeds for the purpose of acquiring such lands, natural resources, minerals and water rights.

ARTICLE XVII - WATER POLICY

Section 1. All waters which originate in or flow in, into or through the Tohono O'odham Nation, or which are stored in the Tohono O'odham Nation, whether found on the surface or underground, are a valuable public resource of the Tohono O'odham Nation to be protected for the present and future use of the Tohono O'odham Nation as a whole.

Section 2. The Tohono O'odham Council shall have, consistent with federal law, the control and management of these waters and shall have the power to:

- (a) Determine how these waters shall be developed, used and conserved for the greatest public benefit.

- (b) Enter into agreements, compacts or other contracts for the beneficial use, sale, or lease or distribution of these waters.
- (c) Regulate all water use within the Tohono O'odham Nation through a system of non-perpetual permits and to maintain a registry of such permits.
- (d) Establish a water commission or board which shall, subject to the direction of the council, have general supervision of these waters and of the licensing, measurement, use and distribution thereof.

ARTICLE XVIII - ENVIRONMENTAL POLICY

Section 1. It shall be the policy of the Tohono O'odham Nation to encourage productive and enjoyable harmony between members of the nation and their environment; to promote efforts which will preserve and protect the natural and cultural environment of the Tohono O'odham Nation, including its lands, air, water, flora and fauna, its ecological systems, and natural resources, and its historic and cultural artifacts and archeological sites; and to create and maintain conditions under which members of the nation and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of members of the Tohono O'odham Nation.

Section 2. In order to carry out the foregoing policy, it shall be the continuing responsibility of the Tohono O'odham Council to use all practical means, consistent with other essential considerations of Tohono O'odham national policy, to improve and coordinate its plans, functions, programs and resources to the end that the Tohono O'odham Nation may:

- (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) Assure for all members safe, healthful, productive and esthetically and culturally pleasing surroundings;
- (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable and unintended consequences;
- (d) Preserve important historic, cultural and natural aspects of Tohono O'odham national heritage, and maintain, wherever possible, an environment which supports diversity and a variety of individual choice;
- (e) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

ARTICLE XIX - SUPREMACY OF CONSTITUTION

Section 1. Any existing resolutions, ordinances or other legislation heretofore enacted by the Papago Tribe shall remain in full force and effect to the extent that they are consistent with this constitution.

Section 2. The provisions of this constitution are mandatory unless by express words they are declared to be otherwise.

ARTICLE XX - SEVERABILITY

If any provisions of this constitution, or the applicability thereof, be held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions which can be given effect without the invalid provisions, and to this end, the provisions of the constitution are declared to be severable.

ARTICLE XXI - REPEAL

The Constitution and Bylaws of the Papago Tribe, as amended, ratified by the adult Indians of the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, is hereby repealed and superseded by this constitution.

ARTICLE XXII - AMENDMENTS

Section 1. Any rights and powers heretofore vested in the Tohono O'odham Nation, but not expressly referred to in this constitution, shall not be abridged by this constitution, but may be exercised by the members of the Tohono O'odham Nation through the adoption of appropriate constitutional amendments.

Section 2. This constitution may be amended by a majority vote of the registered voters of the Tohono O'odham Nation voting in an election called for that purpose by the Secretary of the Interior provided that at least thirty percent (30%) of those duly registered to vote shall vote in such an election; but no amendment shall become effective ~~unless it has been approved by the Secretary of the Interior~~. It shall be the duty of the Secretary of the Interior to call an election for any proposed amendment at the request of the Tohono O'odham Council or upon receipt of a petition signed by at least one-third of the registered voters of the Tohono O'odham Nation.

ARTICLE XXIII - ADOPTION

This constitution, when adopted by a majority vote of the qualified voters of the Tohono O'odham Nation, voting at an election called for that purpose by the Secretary of the Interior in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior ~~for his approval~~ and, if approved, shall be effective from the time of such approval.

ARTICLE XXIV - CERTIFICATE OF RESULTS OF ELECTIONS

Pursuant to an order issued August 26, 1985, by John W. Fritz
 Deputy Assistant Secretary - Indian Affairs (Operations), the foregoing
 Constitution of the Tohono O'odham Nation was submitted for adoption to the
 qualified voters of the nation and was on January 18, 1986, duly adopted/
 rejected by a vote of 1,236, for, and 944 against, in an election in which
 at least thirty percent (30%) of the 3,336 entitled to vote, cast their
 (number)
 ballots in accordance with Section 16 of the Indian Reorganization Act of
 June 18, 1934 (48 Stat. 984) as amended by the Act of June 15, 1935
 (49 Stat. 378) and May 1, 1936 (49 Stat. 1250).

Gullie Garcia
 Election Board Member

James Barber
 Chairman, Election Board

Rosemary Gony
 Election Board Member

William Lavin
 Election Board Member

Daniel Lopez
 Election Board Member

Paul H. Smith Sr.
 Election Board Member

ARTICLE XXV - APPROVAL

I, Ronald L. Esquerre, Deputy Assistant Secretary -
 Indian Affairs (Operations) by virtue of the authority granted to the Secretary
 of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and
 delegated to me by 209 D.M. 8.3, do hereby approve the Constitution of the
 Tohono O'odham Nation. It is effective as of this date; provided that
 nothing in this approval shall be construed as authorizing any action under
 this document that would be contrary to Federal law.

Ronald L. Esquerre
 Acting Deputy Assistant Secretary -
 Indian Affairs (Operations)

Washington, D.C.

Date: MAR 6 1986

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Adopting Second Restated Plan of Operation for the
Tohono O'Odham Utility Authority)

RES. NO. 91-175

1
2 WHEREAS, the Papago Council, predecessor of the Tohono O'odham
3 Legislative Council, did on May 8, 1970, by Resolution No.
4 8-70, adopt a Plan of Operation for the Papago Tribal
5 Utility Authority ("Authority") and did thereby create and
6 establish the legal existence of the Authority; and

7 WHEREAS, since the creation of the Authority, the Legislative
8 Council has on occasion amended the original Plan of
9 Operation in order, inter alia, to increase its borrowing
10 power, to change its fiscal year, and to expand its
11 authority to provide telephone and cellular radio
12 services; and

13 WHEREAS, in order to meet the requirements of the new Constitution
14 of the Tohono O'Odham Nation and to facilitate the
15 management and operation of the Authority, the Management
16 Board of the Authority did recommend certain amendments
17 to the Plan of Operation which were incorporated into a
18 Restated Plan of Operation and which, inter alia, (1)
19 would change the name of the Authority from Papago Tribal
20 Utility Authority to Tohono O'Odham Utility Authority, (2)
21 would grant to the Authority a general franchise or permit
22 to use the lands and rights-of-way of the Tohono O'Odham
23 Nation for utility purposes, (3) would alter the method
24 by which the directors of the Management Board are
25 appointed, and (4) would add certain fiscal and audit
26 control provisions to the Plan of Operation, paralleling
27 those recommended by the REA, the Authority's principal
28 lender; and

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WHEREAS, the Legislative Council did by Resolution No. 328-90 approve the amendments contained in the Restated Plan of Operation recommended by the Management Board of the Authority; and

WHEREAS, the Legislative Council did subsequently, by Resolution No. 447-90, express the concern that the general franchise or permit to use the unallotted lands of the Nation or the utility rights-of-way belonging to the Nation, granted to the Authority by Section 5 of the Restated Plan of Operation, were too broad; and

WHEREAS, the Management Board of the Authority has submitted a revised Section 5 which is incorporated into the attached Second Restated Plan of Operation and which will require the Authority to submit for prior review and approval of the Legislative Council and of each affected District Council any proposed utility easement - other than for individual lines defined in 24 C.F.R. §169.22 - on, over, under or across the unallotted lands of the Nation, and will further require the Authority to comply with all federal laws, with the laws of the Nation, and with any applicable District land use plan, both in its use of any easement on, over, under or across the unallotted lands of the Nation, and of any right-of-way belonging to the Nation; and

WHEREAS, the Commerce Committee of the Legislative Council has reviewed the revised Section 5 which is incorporated into the attached Second Restated Plan of Operation and has

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recommended approval thereof.

NOW, THEREFORE, BE IT RESOLVED by the Legislative Council that it does hereby approve the revisions to Section 5 contained in the attached Second Restated Plan of Operation, and does hereby adopt the Second Restated Plan of Operation for the Tohono O'odham Utility Authority, formerly known as the Papago Tribal Utility Authority.

The foregoing Resolution was passed by the Tohono O'odham Council on the 15th day of May, 1991 at a meeting at which a quorum was present with a vote of 1,088.0 for; 522.0 against; -0- not voting; 114.0 [6] absent, pursuant to the powers vested in the Council by Section 1(b)(c)(e) & (i) and Section 2(d) of Article VI 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

[Signature]
For Edward D. Manuel, Legislative Chairman
22nd day of May, 1991.

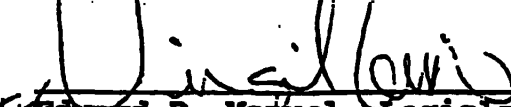
ATTEST:

[Signature]
Teresa M. Choyguha, Legislative Secretary
22nd day of May, 1991.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 22nd day of May, 1991, at 11:25 o'clock, A.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.

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

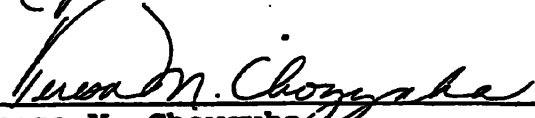

Edward D. Manuel, Legislative Chairman

[] APPROVED) on the ____ day of _____, 19__.
[] DISAPPROVED) at _____ o'clock, ____M.

EXCEEDED 48 HOURS

ANGELO J. JOAQUIN, SR., Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 24th day of
May, 1991, at 4:58 o'clock, P.M.


Teresa M. Choyguha
Legislative Secretary

TOHONO O'ODHAM UTILITY AUTHORITY
SECOND RESTATED PLAN OF OPERATION

Section 1: Name, Location and Place of Business

- A. **Name.** The name of the Authority shall be Tohono O'odham Utility Authority, formerly known as Papago Tribal Utility Authority.
- B. **Location.** The principal place of business and the office of the Authority shall be at Sells, Arizona, and the post office address of the principal office is P.O. Box 816, Sells, Arizona 85634.
- C. **Place of business.** The Authority may also have offices at such other places as the Management Board may from time to time authorize.

Section 2: Seal

The seal of the Authority is described as follows:

Seal shall be in the form of a circle and shall bear the full name, "TOHONO O'ODHAM UTILITY AUTHORITY" and the word "ARIZONA" and the figure "1970."

Section 3: Duration

The duration of the Authority is perpetual.

Section 4: Purposes

- A. **General.** The purposes for which the Authority is organized are as follows:
1. To plan for, provide and furnish utility services to all areas within the Tohono O'odham Nation, where such services are determined to be feasible and economic.
 2. To promote the use of utility services where available in order to improve the health and welfare of the residents of the Tohono O'odham Nation.
 3. To acquire, construct, operate, maintain, promote and expand utility systems furnishing electric, gas, water, sewer and telephone services within the Tohono O'odham Nation.

4. To initiate, acquire, operate, maintain, promote and provide, alone or in conjunction with others, cellular radio services and facilities both within and beyond the boundaries of the Tohono O'odham Nation.
 5. To provide utility service to the Tohono O'odham at the lowest possible cost consistent with prudent fiscal responsibility.
 6. To use the revenues of the Authority for the following purposes, which are listed below in the order of the priority of use:
 - a. To pay the costs of operations and maintenance.
 - b. To amortize the loans of the Authority.
 - c. To fund an adequate Renewal and Replacement fund.
 - d. To educate the Tohono O'odham in the proper, efficient and economical use of all utilities.
 - e. To accelerate the retirement of long term debt.
 - f. To provide a fair return to the Nation on its investment.
- B. Ancillary. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein above set forth, and to do all things incidental thereto or connected therewith, which are not forbidden by law, this Plan of Operation for the Authority or the Constitution of the Tohono O'odham Nation.

Section 5: Easement Franchises and Grants of Use

- A. Easement Franchises. The authority shall have, and is hereby granted, subject to any prior valid existing right or adverse claim, the franchise, right, permit, easement and privilege of placing, erecting, constructing, repairing, removing, replacing, maintaining, using and operating public utility systems, lines and facilities for the furnishing of electric, gas, water, sewer, telephone and cellular radio services, and necessary or useful adjuncts thereto, whether laid thereon or therein, together with the right of ingress and egress when necessary for such purposes, on, over, under and across unallotted lands of the Tohono O'odham Nation which are useful or convenient for the construction, maintenance, operation and repair of such utility systems, lines or facilities, provided, that in placing, erecting or constructing any new lines or facilities the Authority shall comply (a) with all applicable

federal laws and the laws of the Tohono O'odham Nation and (b) with the provisions of any applicable land use plan adopted by a District Council which was duly approved by the Tohono O'odham Council and, provided further, that before placing, erecting or constructing any new transmission or distribution lines or facilities (excluding service lines as defined in 25 C.F.R § 169.22) on, over, under or across unallotted lands of the Nation, the Authority shall first obtain (a) the prior review and approval of the Tohono O'odham Legislative Council and (b) the prior written consent of the District Council of the District in which such lands are located, which consent shall not be unreasonably withheld. The Authority shall furnish to the Superintendent of the Sells Indian Agency copies of plats or maps delineating the utility systems, lines and facilities located on, over, under and across such lands in sufficient detail and number to permit recording in the Southwest Title Plant of the Bureau of Indian Affairs, Albuquerque, New Mexico.

- B. **Grant of Easement Use.** The Authority shall have, and is hereby granted, subject to all applicable federal laws and the laws of the Tohono O'odham Nation, as the agent or permittee of the Tohono O'odham Nation, the right to use any franchise, right, permit, privilege, easement or right of way standing in the name of or granted to the Nation in connection with the construction, maintenance, operation or repair of public utility systems, lines or facilities furnishing electric, gas, water, sewer, telephone or cellular radio services.

Section 6: Control of Operations

It is intended that control and operation of the Authority shall be patterned as closely as is feasible on the lines of a chartered public service corporation of similar magnitude with a Management Board comparable to a Board of Directors of such a corporation.

Section 7: Management Board; Purpose; Duties and Powers

- A. **Direction of purpose and exercise of powers by Management Board.** Subject to applicable laws and regulations of the Tohono O'odham Nation or the United States, the Management Board shall direct the purposes and exercise the following powers and duties:
1. The Management Board of the Authority is delegated authority and responsibility for the management and operation of the Authority.
 2. The Management Board is authorized to direct the operations to accomplish the purposes set forth in Section 4

above and to exercise the powers set forth in subsection B below without previous authorization or subsequent approval and all parties dealing with the Authority shall have the right to rely upon any action taken by the Management Board pursuant to such authorization.

3. The Management Board shall exercise full power and shall be responsible for the custody and management, operation, inventory and maintenance of all utilities and facilities; the planning, construction and operating of all new facilities; and for the taking of any and all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.
4. The Management Board shall function in much the same capacity as an elected Board of Directors of a chartered public service corporation, and shall be responsible for making investment decisions, subject to the limitations contained herein or in any advance of funds; for the establishment and maintenance of effective operating policies; the selection of management personnel; and for continuous supervision of performance.
5. The Management Board shall exercise its authorized powers in the best interests of the Tohono O'odham Nation, within the limits of responsible business judgment and with the stipulation that it shall not incur contract obligations in excess of the ability of the Authority to make payment on due date.
6. It shall select from its own membership a Chairman of the Board and other officers; and it shall adopt such rules as it may determine necessary for the orderly conduct of its business.
7. Copies of the minutes of each meeting of the Board shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior.
8. Members shall be reimbursed for expenses incurred in attending meetings and performing directorship duties and the Board may, at its discretion, set a reasonable fee to be paid to its members on a per-meeting-attended or other basis. Any such fee may be changed from time to time as conditions dictate.

9. The Chairman of the Board shall make a formal report to the Chairman of the Tohono O'odham Nation and to the Tohono O'odham Council not less often than annually and in such report shall include a summary of the budget which the Management Board has approved for the coming fiscal year.
 10. The Management Board shall establish purchasing policies and procedures, giving usual and essential latitude to the General Manager and his delegated employees, but establishing limitations on amounts which may be expended without specific approval of the Board.
 11. No contract or other transaction between the Authority and any one of the members of the Management Board, or between the Authority, and any corporation, partnership, firm or other legal entity in which one or more of the Management Board has an interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of the Director or Directors in such corporation, firm or other legal entity is fully disclosed to the Board and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Management Board who are not so interested.
 12. The Management Board, in its discretion, may submit any such contract or act for approval or ratification at any regularly called or noticed meeting of the Tohono O'odham Council; and any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.
 13. The Management Board shall submit any contract or act wherein a public officer or employee of the Tohono O'odham Nation may have an interest, directly or indirectly, in the matter or transaction to any regularly called or noticed meeting of the Tohono O'odham Council for approval. Any contract or act that shall be approved or ratified by the vote of the majority of the Council shall be valid and binding upon the parties.
- B. Enumerated powers.** Subject to approval by the Tohono O'odham Council where required and to all applicable laws and regulations of the Tohono O'odham Nation and the United States, and solely in furtherance of the limited purposes set forth in Section 4 above, the Management Board shall have the following powers:
1. **Facilities.** The Management Board shall exercise full authority and shall be responsible for the custody,

management and operation of all utility property and facilities, including easements and rights-of-way granted therefor, owned and operated by the Tohono O'odham Nation, including such expansions and enlargements thereof as shall be authorized; for the planning, construction and operation of additional utility facilities, including the negotiation and execution of engineering and construction contracts; and for taking of any and all usual, necessary and convenient actions incident thereto.

2. **Capacity to act.** To have the capacity to act and direct the officers of the Authority to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in Section 4 above, and such as are not repugnant to laws and regulations applicable to the Authority.
3. **To appoint officers and agents.** To elect or appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the Board may be needed from time to time, and to define their duties and fix their compensation. The Management Board, at Authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the Authority.
4. **To act as agent.** To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the Authority.
5. **To deal in real property.** To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the sale, lease, or mortgage of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in Section 4 above, except as prohibited by law. Title to all such real property shall be taken in the name of the Tohono O'odham Nation and title to all trust or restricted real property shall be and remain in its trust or restricted status.
6. **To deal in personal property, generally.** To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in, and dispose of, either alone or in conjunction with others, personal property and interests therein, and commodities of every kind, character and description necessary or incidental to the purposes set

forth in Section 4 above.

7. To deal in inventions, copyrights, and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), to hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, provided that title of all such acquisitions shall be taken in the name of the Tohono O'odham Nation.
 8. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority, to the extent that such guaranty is made in pursuance of the purposes set forth in Section 4 above, provided, that no such guaranty shall be made without the prior written approval of the Tohono O'odham Council if the current aggregate indebtedness of the Authority, including such guaranty, shall exceed the sum of twenty-five million dollars (\$25,000,000.00).
 9. Depository. To designate and approve all depositories used for the deposit of funds of the Authority.
 10. To make contracts. To enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth in Section 4 above, including the negotiation of contracts subject to R.S. §2103, 25 U.S.C. §81 (1964), which shall, as therein provided, become effective only upon the approval of the Secretary of the Interior.
 11. To approve budgets. To give initial approval to annual Authority budgets, and to take final approval action with reference to the use of funds under the exclusive control of the Authority for operating and capital addition purposes.
- C. Ancillary powers. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Authority is organized.
- D. No construction of powers as purposes. The powers enumerated herein shall not be construed as purposes but the Authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purposes set forth in Section 4 above.

Section 8: Indemnification of Officers, Employees and Members of the Management Board

The Authority shall indemnify any officer, employee or member of the Management Board or former officer, employee or member of the Management Board of the Authority, or any person who may have served at its request as an officer, employee or member of the Management Board, against reasonable expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being, or having been such officer, employee or member of the Management Board except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, or except in relation to matters in which such employee was acting beyond the scope of his employment. The Authority shall also reimburse to any officer, employee or member of the Management Board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Management Board, other than Directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Tohono O'odham Nation that such settlement be made and that such officer, employee or member of the Management Board was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or member of the Management Board may be entitled to receive.

Section 9: Membership on Board; Qualification; Term of Office

- A. **Number.** The Management Board shall consist of seven persons, all of whom shall be appointed by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham Council.
- B. **Qualification.** The members of the Management Board shall be called Directors, and shall have the following qualifications:
1. Three of the Directors shall be members of the Tohono O'odham Nation who have sufficient education and experience to qualify them for learning utility business, practices and procedures, to participate in Management Board meetings and functions, and to make sound judgments.
 2. Four Directors shall be persons having not less than ten years experience in business management of substantial character, and at least three of such persons shall have had such experience in the management and operation of a utility business.

3. No employee of the Bureau of Indian Affairs or member of the Tohono O'odham Council shall be a member of the Board.
- C. **Term of office.** Directors shall be appointed for the following terms of office and shall hold office until the qualification and selection of their successors:
1. The initial Management Board shall be appointed for a period of one year or until their successors have been appointed and qualified.
 2. Beginning the second year, the Directors shall be appointed in three groups, the first group of three to serve one year, the second group of two to serve for two years, and the third group of two to serve for three years. Thereafter, all terms shall be for three years, starting on the first day of July of the year of their respective appointments. Directors shall be eligible for reappointment. They shall hold their offices until their successors have been appointed and qualified or until their death, resignation or removal in the manner provided herein.

Section 10: Removal

Any member of the Management Board may be removed by the Chairman of the Tohono O'odham Nation after a majority of the Management Board recommends such removal where, in the Board's best judgment, the best interests of the Authority shall be served by such removal.

Section 11: Resignation and Vacancies

Any member of the Management Board may resign at any time by giving written notice to the Chairman and Secretary of the Board and to the Chairman of the Tohono O'odham Nation. Resignations shall become effective at the time specified in said notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Director who fails to attend three consecutive properly called and noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board meetings properly noticed in any calendar year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his directorship. The Chairman of the Nation shall be so notified and the Director shall be reappointed or replaced as set forth in this Section. Any vacancy on the Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term by the Chairman of the Tohono O'odham Nation with the approval of the Tohono O'odham

Council.

Section 12: Meetings of the Board

- A. **Annual meeting.** The annual meeting of the Management Board shall be held each year in the month of July at such time and place as the Board shall fix.
- B. **Regular meetings.** The Management Board shall meet at least quarterly upon notice fixing the time and place.
- C. **Special meetings.** Special meetings of the Board may be held upon notice given by the Chairman, or Secretary, or by any three members of the Board, at such time and place as the Board shall direct or as shall be fixed by the notice.
- D. **Notice.**
 - 1. Notice of all meetings of the Board, stating the time and place, shall be given in writing by letter, telegram or radiogram properly addressed to each member according to the latest available Authority records, not later than five days nor more than thirty days immediately preceding the meeting, excluding the day of the meeting.
 - 2. Notice may be waived in writing signed by the member or members entitled to such notices, whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a meeting shall constitute a waiver of notice.
- E. **Quorum.** Five members of the Management Board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board.

Section 13: Executive Committee

- A. **Designation of committee.** The Management Board, by resolution duly adopted, may designate four members of the Board, two of whom shall be members of the Tohono O'odham Nation, to constitute an Executive Committee. The designation of such Executive Committee and the delegation of the authority herein granted, shall not operate to relieve the Management Board or members thereof of any responsibility imposed upon it or them by law or this Plan of Operation. No member of the Executive Committee shall continue to be a member thereof after he ceases to be a member of the Management Board. The Management Board shall have the power at any time to increase the number of members of the Executive Committee, to fill vacancies

thereon, to change any member thereof, and to change the functions or to terminate the existence thereof.

- B. Powers of the Executive Committee.** During the intervals between meetings of the Management Board, and subject to such limitations as may be required by resolution of the Management Board, the Executive Committee shall have and may exercise such authority as may be delegated by the Board.

All minutes of meetings of the Executive Committee shall be submitted to the next succeeding meeting of the Management Board for approval, but failure to submit the same or to receive the approval thereof shall not invalidate any completed or uncompleted action taken by the Authority upon authorization of the Executive Committee prior to the time at which the same was submitted as above provided.

- C. Procedure, meetings.** A Chairman of the Executive Committee shall be elected by the Management Board from among the members of the Executive Committee and shall preside at meetings of the Executive Committee and perform all duties incident to the office of the Chairman of the Executive Committee, and such other duties as, from time to time, may be assigned to him by the Management Board or the Executive Committee. The Secretary of the Authority shall keep a record of the acts of the Executive Committee and its proceedings. In the absence of the Secretary, the Chairman of the Management Board shall designate a person to act in said capacity.
- D. No individual authority.** The members of the Executive Committee shall act only as a committee, and the individual members shall have no power as individuals.
- E. Notice.** Notices of all meetings of the Executive Committee shall be given by the Chairman, the Secretary, or any member thereof, in the manner provided in Section 12D, and may be waived as therein provided.
- F. Quorum.** The presence of not less than three members shall be necessary to constitute a quorum for the transaction of business and the act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Committee.

Section 14: Officers: Powers and Duties

The principal officers of the Authority shall consist of the following:

- A. Chairman.** The Chairman of the Management Board and Chairman of the Executive Committee, which positions may be, but need

not be, held by the same person, shall be members of the Management Board. The Chairman shall:

1. preside at all meetings of the Board at which he is present;
2. sign, with the Secretary, any instruments which have been authorized by the Board to be executed on behalf of the Authority, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Plan of Operation to some other officer or agent of the Authority, or shall be required by law to be otherwise signed or executed; and
3. in general, perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board from time to time.

B. **Secretary.** The Secretary may, but need not be, a member of the Management Board or of the Executive Committee. The Secretary shall be responsible for:

1. keeping the minutes of the meetings of the Management Board and the Executive Committee in books provided for that purpose;
2. seeing that all notices are duly given in accordance with the provisions of this Plan of Operation;
3. the safekeeping of the books and records and the seal of the Authority, and affixing the seal of the Authority to all documents, the execution of which on behalf of the Authority under its seal is duly authorized in accordance with the provisions of this Plan of Operation;
4. keeping on file at all times a complete copy of this Plan of Operation of the Authority containing all amendments thereto; and
5. in general, performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.

C. **Treasurer.** The Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. The Treasurer shall be responsible for:

1. custody of all funds and securities of the Authority;
2. the receipt of and issuance of receipts for all monies due and payable to the Authority, and for the deposit of all such monies in the name of the Authority in such bank

or banks as shall be selected in accordance with the provisions of this Plan of Operation; and

3. in general, performing all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board.
- D. **Other officers.** In the discretion of the Management Board, there may be a Vice Chairman of the Board, Assistant Secretary, and Assistant Treasurer. Any two of these positions may be held by the same person. A Vice Chairman shall be a member of the Management Board and may, but need not, be a member of the Executive Committee. An Assistant Secretary or Assistant Treasurer may, but need not be, a member of the Management Board or of the Executive Committee. If a Vice Chairman is elected he shall, in the absence of the Chairman or in the event of his inability or refusal to act, perform the duties of the Chairman, and when so acting shall have all the powers and be subject to all the restrictions upon the Chairman. Such officers shall perform such duties as from time to time may be assigned to them by the Board.
- E. **General Manager.** The General Manager shall not be a member of the Management Board. He shall be the principal operating executive of the Authority and shall have direction of all parts of actual operations. He shall be responsible to the Board as a principal operating executive of a public service corporation normally would be. He shall render reports to the Board and perform all other functions and duties specified for the General Manager in Section 19 below.

Section 15: Election; Term of Office; Qualification

The officers, with the exception of the General Manager, shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have qualified. Each officer shall hold office until his successor is chosen and qualified, or until his death, or until he shall have resigned, or shall have been removed in the manner provided herein.

Section 16: Removal

Any officer or agent elected or appointed by the Management Board may be removed by the Board whenever, in its judgment, the best interest of the Authority will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed, provided, however, the General Manager may be

removed only pursuant to any approved contract provisions.

Section 17: Resignations; Vacancies

Any officer may resign at any time by giving written notice to the Management Board, or to the Chairman, or Secretary. Such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

Section 18: Other Officers and Agents

The Management Board may appoint such other officers and agents as it deems necessary or expedient, and may determine the duties of them, as well as the terms of their holding office.

Section 19: General Manager; Functions; Duties

- A. The General Manager shall be employed under a written employment contract and shall be responsible to the Management Board.
- B. The function of a General Manager shall be analogous to that of the president of a public service corporation. He shall, among other things, execute the general policies formulated by the Management Board and organize the operation of the Authority into departments, each with its own specific duties and responsibilities.
- C. He shall exercise his best judgment in the determination of the ways and means by which general policy set forth by the Management Board is to be effectuated.
- D. He shall be the active, operating executive of the Authority and shall prepare plans and annual budgets; and make suggestions as to policies and any proposals for improvements.
- E. He shall have the full authority and control over all employees of the Authority and shall be responsible for all department heads or other executives carrying out their assignments.
- F. He shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets and to policies and procedures approved by the Management Board relating to standards, programs inspection, cost control, employee relations and in-

service training.

- G. He shall render regular reports to the Board and perform all other functions and duties specified in the Plan of Operation for the General Manager.
- H. He shall be furnished with ample transportation and shall be reimbursed for any personal expenses he may incur in carrying out his responsibilities.
- I. The General Manager shall employ competent department heads for the usual functional responsibilities for each department.

Section 20: Financial Transactions; Miscellaneous

- A. **Contracts.** Except as otherwise provided in this Plan of Operation, the Management Board may authorize any officer or officers, or any agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority, and such authority may be general or confined to specified instances.
- B. **Checks; drafts; etc.** All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers, agent or agents, or employee or employees of the Authority and in such manner as shall from time to time be determined by resolution of the Management Board.
- C. **Deposits.** All funds, except petty cash, of the Authority shall be deposited from time to time to the credit of the Authority in such bank or banks as the Management Board may select.
- D. **Accounting.** A modern accounting system shall be established and installed by a reputable consulting firm in conformity with accounting principles generally accepted in the utility operation field. The accounting system shall insure the availability of information as may be necessary to comply with all applicable regulatory requirements.
- E. **Records; inspection; audits.** The books, records and property of the Authority, including current financial and operating statements, shall be kept on file in the office of the Authority and shall be available for inspection at all reasonable times by authorized representatives of the Tohono O'odham Nation and, upon notice to the Chairman of the Tohono O'odham Nation, by representatives of the Secretary of the Interior. The accounts and records of the Authority shall be audited by an independent Certified Public Accountant at the

close of each fiscal year. The results of such audit shall be included in the reports by the Chairman of the Management Board to the Chairman of the Tohono O'odham Nation and the Tohono O'odham Council required by subsection 7A (9) above.

- F. **Fiscal year.** The fiscal year of the Authority shall be the same as the fiscal year of the Tohono O'odham Nation.
- G. **Insurance.** Insurance, including liability insurance, adequate and sufficient to protect the interests of the Authority and the Tohono O'odham Nation from losses by fire or other disaster shall be carried on all property of the Authority.
- H. **Policies; rules and regulations.** The Management Board shall have the power to make and adopt such policies, rules and regulations, not inconsistent with law and this Plan of Operation, as it may deem advisable for the management of the business and affairs of the Authority..

Section 21: Rates and Charges

- A. The Management Board shall adopt all rates and charges for utility services which, when adopted, shall become effective at such time as the Board shall determine. Upon a petition being filed by five percent (5%) of the affected customers, the Authority shall, after giving such notice as the Board may determine to be adequate, hold a formal public hearing to review such rates and charges.
- B. Procedures shall be established by the Tohono O'odham Council to provide for appeals of rate decisions following a public hearing by the Authority to an impartial review board composed of specialists on utility rates.
- C. The Management Board may, in its sole discretion, negotiate with large users of a particular utility service for special rates and charges, provided, however, that such negotiated rates shall be demonstrated to be fair and equitable to all other customers or users of the services of the Authority.