

TITLE 24 - UTILITIES AND COMMUNICATIONS

CHAPTER 1 - TOHONO O'ODHAM UTILITY AUTHORITY

Legislative History: Resolution No. 91-175, adopting the "Second Restated Plan of the Operation for the Tohono O'odham Utility Authority," was passed by the Tohono O'odham Council on May 15, 1991, presented to the Nation's chairman on May 22, 1991, and returned unsigned on May 24, 1991 (exceeded 48-hour deadline for Nation's chairperson's signature and return).

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.

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

1
2 WHEREAS, the Legislative Council did by Resolution No. 328-90
3 approve the amendments contained in the Restated Plan of
4 Operation recommended by the Management Board of the
5 Authority; and

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

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

26 WHEREAS, the Commerce Committee of the Legislative Council has
27 reviewed the revised Section 5 which is incorporated into
28 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


For Edward D. Manuel, Legislative Chairman
22ND day of May, 1991.

ATTEST:


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

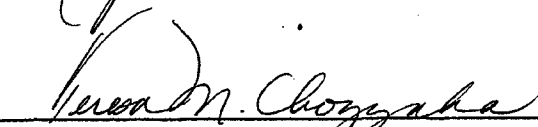
[] APPROVED) on the ___ day of _____, 19__.

[] 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, 19 91, at 4:58 o'clock, p.M.


Teresa M. Choyguha
Legislative Secretary