

# **SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT (SAWRSA) & LONG-TERM STORAGE CREDITS**

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# INTRODUCTION TO SAWRSA (SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT)


- SAWRSA History

In February 1975, the Federal Government, on behalf of the Papago Tribe/TON filed the U.S. vs. Tucson lawsuit against the City of Tucson, ASARCO, Farmers Investment Co. (FICO), et al. The U.S. claimed that these entities had depleted the San Xavier water supply by increased pumping and wanted the entities to stop pumping from the San Xavier aquifer.

- In March 1975, the Tribe, Rosanna Carlyle, and John Lewis, on behalf of the San Xavier allotment owners, filed a separate lawsuit against the same defendants with the same claims. In December 1975, the two lawsuits were combined into one. From 1975 – 1982, the defendants, the Tribe/TON, and allottees representatives then negotiated to resolve the lawsuit with federal legislation – the 1982 Southern Arizona Water Settlement Act (SAWRSA) passed by the U.S. Congress.



## • SAWRSA History (cont.)

- The San Xavier Allottees' water rights were included in the lawsuit, as federal law required “just and equitable distribution” of water for the allotments. SAWRSA required that the allottees accept the settlement and dismiss the lawsuit. Allottee representatives opposed the dismissal.
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  - Eastern Schuk Toak District was included since it was within the boundary of the Active Management Area (AMA), one of the MAs established by the 1980 Arizona Groundwater Management Act. Tucson and the other defendants wanted to settle all water claims in TAMA within SAWARSA.
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- Some interesting facts about SAWRSA and allocation of CAP Water to San Xavier and Schuk Toak Districts:
  - The San Xavier allottees saw a need to amend the 1982 SAWRSA for the purposes of controlling water use, increasing benefits, and for other purposes. Negotiations among the Nation, allottees, and defendants resulted in the 2004 SAWARSA Amendments.
  - San Xavier- 50,000 AFY to San Xavier, of which 35,000 AFY is the “first right of beneficial use” for San Xavier District and allottees. San Xavier Cooperative Farm uses 8,000 AFY; 16,000 AFY to Schuk Toak,
  - 2018 CAP Order for use San Xavier ordered 7,150 AFY; to be used at the San Xavier Cooperative Farm; Schuk Toak ordered 12,800 AFY for use at Schuk Toak farms
  - Unused/Remaining CAP Water Allocation – The Tohono O’odham Legislative Council (TOLC) decided to store unused water in order to earn long-term storage credits for water under Arizona State Law (TOLC Resolution #09-511). Tohono O’odham Nation requested and received support from the San Xavier District Council (SXDC Resolution #2000-438)
  - 2018 CAP Orders for Storing Unused Water Allocation for San Xavier water, 32,850 AFY; for Schuk Toak water, 3,200 AFY



- Some interesting facts about SAWRSA and allocation of CAP Water to San Xavier and Schuk Toak Districts:

- In 2011, the TOLC Water Resource Committee Proposal for Revenue Sharing for Selling Credits
    - For the sale of SX-CAP water credits, 50% to TON, 50% to SX District
    - Schuk Toak CAP water credits, 100% to TON
    - This proposal was postponed and never presented again.
  - In 2019 the TOLC Water Resource Committee proposed to the TOLC to hire a water credit marketing firm to sell the credits. This was approved
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# CHRONOLOGICAL LTWS CREDITS RESOLUTIONS AND CORRESPONDENT.

- On June 1, 2020, Councilwoman Lucinda Allen, Chairperson Water Resources Committee sent an email to San Xavier District's Chairman Austin Nunez stating that *“The Water Resources Committee has thoroughly reviewed the proposal and consulted with the Nation’s attorneys, and we do not believe that the proposal should be pursued further at this time...the Committee is also concerned that the revenues the District proposes to share could be needed by the Nation in the near future if problems with the Cooperative Fund are not addressed by the U.S. Government.”*



<b>SODC 19-131</b>	<b>Resolution 19-372</b>	<b>ST 09-14-19-084</b>	<b>Resolution 20-044</b>	<b>Resolution 20-119</b>	<b>Resolution 20-393</b>
July 13, 2019	Sept. 12, 2019	Sept. 14, 2019	February 6, 2020	May 1, 2020	Nov. 23, 2020
<i>Supporting San Xavier District's request to the Tohono O'odham Nation Legislative Council to approve a revenue sharing agreement on SAWSRA Long Term Storage Credit Income</i>	<i>Approving Tohono O'odham Nation Long-Term Storage Credit Marketing Plan</i>	<i>Supporting the San Xavier District's request that the Tohono O'odham Nation work with the districts to determine an equitable and proper allocation of SAWSRA CAP Water Recharge Long-Term Storage Credits</i>	<i>Approving a Purchase and Sale Agreement for Long Term Storage Credits Between the Tohono O'odham Nation and the Arizona Water Banking Authority</i>	<i>Approving a Purchase and Sale Agreement for Long Term Storage Credits Between the Tohono O'odham Nation and the Central Arizona Water Conservation District</i>	<i>Approving a Purchase and Sale Agreement for Long Term Storage Credits Between the Tohono O'odham Nation and Vihrea Development LLC</i>

21-205	21-010	22-172	22-173	23-017
April 6 <sup>th</sup> , 2021	January 11 <sup>th</sup> , 2022	May 11 <sup>th</sup> , 2022	May 11 <sup>th</sup> , 2022	January 11 <sup>th</sup> , 2023
Approving a Purchase and Sale Agreement for Long Term Storage Credits between the Tohono O'odham Nation and Vihrea Development LLC	Approving Addendum No. 1 to the Tohono O'odham Nation Long-Term Storage Credit Marketing Plan	Approving a Purchase and Sale Agreement for Long Term Storage Credits Between the Tohono O'odham Nation and the Central Arizona Water Conservation District	Approving a Purchase and Sale Agreement for Long Term Storage Credits Between the Tohono O'odham Nation and Vihrea Development LLC	Approving a Purchase and Sale Agreement for Long Term Storage Credits Between the Tohono O'odham Nation and Vilder Water Company Inc. ("Vilder")



# THE NATION SHARES THE PROCEEDS OF LAND LEASES, RIGHT-OF-WAY, MINING, & GAMING WITH HOST DISTRICTS

- Nation shares income from land leases, rights-of-way, mining, and gaming with the host districts, usually on a 50/50 basis
  - Was decided this way from 1986 TO the Constitution and various enactments of the TOLC (Tohono O’odham Legislative Council)
- A. Land Leases will be split 50/50 in proceeds, the authority is given by...
  - Title 19, Chap. 3, Art. 1 of the TOC provides that “general lease proceeds” be divided with the first \$9,000 to the host district and the balance divided 50/50 between Nation and said District
- B. Mining 50/50 split
  - Title 19, Chap. 3, Art. 2 of TOC
    - Mining/business leases will divide 50/50 of the proceeds
    - Mineral Extractions – 55% to Nation, 3% to host district, & 42% to be held for the remaining 11 districts until given out by TOLC
    - Sec. 1 (C): mining sand/gravel goes 100% to the host district
    - Sec. 1(D): mining clay, topsoil, stone, and misc. rock will be 55% for the nation and 45% for the host district
    - Sec 1(E): sale of water for mining purposes will be 55% to the Nation and 45% to the host district
- C. For Gaming – SXD receives 15% of earnings from gaming at the Nation’s two casinos on SXD

# SAWRSA CAP SETTLEMENT WATER SHOULD BENEFIT SAN XAVIER AND SCHUK TOAK DISTRICTS.

- Long-term storage credits are earned by recharging SAWRSA CAP water with the SXD and Schuk Toak
  - SAWRSA settlement water and its benefits should belong to those communities whose water rights were settled, and whose water rights claims were waived in order to get the SAWRSA CAP settlement water
- SAWRSA gives the Nation the right to receive/control SAWRSA CAP Water
  - Subject to San Xavier's "first right of beneficial use" on the SXD of 35,000 AFY
    - Nation argues that if there is SAWRSA CAP water that is not being used in SX or in ST then it should be able to use the excess water to generate more money

# CONCLUSION

- SAWRSA CAP Settlement Water should benefit SAN XAVIER, & SCHUK TOAK Districts.
- Long-term storage credits are earned by recharging SAWRSA CAP water with the SXD and Schuk Toak
- SAWRSA settlement water and its benefits should belong to those communities whose water rights were settled, and whose water rights claims were waived in order to get the SAWRSA CAP settlement water.
- SAWRSA gives the Nation the right to receive/control SAWRSA CAP Water, Subject to San Xavier's "first right of beneficial use" on the SXD of 35,000 AFY.
- Nation argues that if there is SAWRSA CAP water that is not being used in SX or in ST then it should be able to use the excess water to generate more money.



# • Questions & Answers

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# REFERENCES

- *Constitution of the Tohono O'odham Nation, March 6, 1986, Article I, Section 2.*
- *SAWRSA Section 307(a)(1)(G)(ii) states that the Nation subject to section 309(b)(2)*
- *Schuk Toak was included in the settlement in the United States v. Tucson*
- *RESOLUTION OF THE SCHUK TOAK DISTRICT (Supporting the San Xavier District's request that the Tohono O'odham Nation work with the districts determine an equitable and proper allocation of SAWRSA CAP Water Recharge Long-Term Storage Credits) **Resolution No.: ST-09--14-19-084***
- *RESOLUTION OF THE SIF-OIDAK DISTRICT COUNCIL OF THE TOHONO O'ODHAM NATION (Supporting San Xavier District's request to the Tohono O'odham Legislative Council to approve a revenue-sharing agreement on SAWRSA Long Term Storage Credit Income) **RESOLUTION NO. SODC 19-131***
- *TITLE 25 – WATER. CHAPTER 1 – STORAGE CREDIT REVENUE FORMULA. ARTICLE 1 – REVENUE GENERATED BY SALE OR OTHER DISPOSITION OF LONG-TERM STORAGE CREDITS*
- *WATER RESOURCES RESEARCH, VOL. 45, W05417, doi:10.1029/2008WR007130, 2009*