

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Consenting to a Grant of Easement for Rights-of-Way across Nation's lands for the
FICO CAP Line, LLC and Freeport-McMoRan Sierrita Inc.'s Water Pipeline)

RESOLUTION NO. 19-174

1 **WHEREAS,** **"The unallotted lands of the Tohono O'odham Nation and all lands hereafter**
2 **acquired by the nation, or held for the use of the nation or its members, are a**
3 **valuable public resource and shall be held as national lands forever. Control and**
4 **management thereof are vested in the Tohono O'odham Council, which may**
5 **enact laws governing the use, assignment, permit, lease or other disposition of**
6 **lands, interests in land and resources of the nation consistent with Federal law."**
7 **(Constitution of the Tohono O'odham Nation, Article XVI, Section 1); and**
8 **WHEREAS,** **the Legislative Council has a duty "to manage, protect, preserve and regulate the**
9 **use of the property, wildlife, land, air and natural resources (including surface**
10 **and ground waters) of the Tohono O'odham Nation" and to "administer land and**
11 **other public property, and by law, ordinance or resolution . . . to prevent the sale,**
12 **disposition, lease, use or encumbrance of Tohono O'odham national lands,**
13 **interests in lands, rights-of-way, or other public resources when such sale,**
14 **disposition, lease, use or encumbrance will, in the opinion of the Tohono**
15 **O'odham Council, be injurious to the best interests of the Tohono O'odham**
16 **Nation as a whole" (Constitution, Article VI, Section 1(i)(1) and (2)); and**
17 **WHEREAS,** **FICO CAP Line, LLC ("FCAP") an affiliate of Farmers Investment Company ("FICO")**
18 **and Freeport-McMoRan Sierrita Inc. ("Sierrita") propose to construct, operate,**
19 **and maintain a 36-inch diameter water pipeline extending from a location near**
20 **the terminus of the Central Arizona Project ("CAP") and northwest of the I-19 and**
21 **Pima Mine Road intersection, within the boundaries of the San Xavier District**
22 **and entirely within the existing Arizona Department of Transportation right-of-**
23 **way for Interstate I-19 (the "Project"); and**
24 **WHEREAS,** **the Project required the participation of the U.S. Department of the Interior,**
25 **Bureau of Reclamation ("Reclamation") for the consideration of Freeport-**
26 **McMoRan's request to allow delivery of CAP water leased from the Gila River**
27 **Indian Community ("GRIC") to an existing Groundwater Savings Facility ("GSF"),**
28 **owned and operated FICO; and**
29 **WHEREAS,** **Reclamation became the lead agency responsible for the preparation of the**
30 **Environmental Assessment ("EA") which studied the proposed use of the**
31 **renewable CAP water at the GSF, including the construction and operation of a**
32 **water delivery pipeline, and its connection to the CAP system pursuant to the**
33 **National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§ 4321-4347); and**

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1 **WHEREAS,** the Project will require FCAP to secure an encroachment permit from ADOT once
2 a grant of easement for right-of-way is obtained that will allow for the
3 construction of pipeline spanning the width of ADOT's right-of-way at a distance
4 of 1,150 feet and roughly 100 feet north of Pima Mine Road via open trench, except
5 for the crossing of I-19 and its two access roads (on/off ramps), which would be
6 accomplished via horizontal and directional drilling using jack and bore
7 techniques using 56-inch diameter pipe sleeves; and

8 **WHEREAS,** FCAP has previously notified the Nation of its plans to seek a right-of-way for their
9 proposed project through meetings held with the Agricultural and Natural
10 Resources and Water Resources Committees in July and August of 2018, and have
11 completed their pre-development studies or assessments and other such federal
12 requirements in accordance with 25 CFR Part 169 Rights of Way Over Indian Land
13 ("Federal Regulations"); and

14 **WHEREAS,** FCAP is requesting the Nation to consent to a grant of easement for right-of-way
15 for their proposed water pipeline project for a 25-year term with an option for an
16 additional 25 year term to allow for the construction, operation, and
17 maintenance of the water pipeline, as well as a short-term Temporary
18 Construction Easement (TCE); and

19 **WHEREAS,** FCAP will pay compensation ("Compensation") to the Nation for the acreage in the
20 amount of \$134,839.00 in accordance with 25 C.F.R. §169.110; and

21 **WHEREAS,** the Agricultural and Natural Resources and Water Resources Committees have
22 reviewed the documents relating to the FCAP/Sierrita Pipeline Project grant of
23 easement application and recommend approval.

24 **NOW, THEREFORE, BE IT RESOLVED,** that the Tohono O'odham Legislative Council consents to
25 the issuance of a grant of easement for right-of-way by the U.S. Bureau of Indian
26 Affairs to FICO CAP Line, LLC and Freeport-McMoran Sierrita, Inc. for their
27 proposed waterline project as depicted in Attachment A.

28 **BE IT FURTHER RESOLVED** that the compensation due to the Nation from FICO CAP Line, LLC,
29 and Freeport-McMoRan Sierrita, Inc., for the grant of easement for right-of-way
30 shall be remitted to the Nation's treasurer and distributed by the treasurer, 50%
31 to the Nation and 50% to the San Xavier District.

32 **BE IT FURTHER RESOLVED** that the Tohono O'odham Legislative Council requests that the
33 Superintendent of the BIA, Papago Agency grant the right-of-way and any
34 necessary temporary construction easements that may be needed by FICO CAP
35 Line, LLC and Freeport-McMoRan Sierrita, Inc. to complete the Project.
36

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BE IT FINALLY RESOLVED that, pursuant to 25 C.F.R. §169.110, the Legislative Council:

- (1) finds that the compensation agreed to for the grant of easement for right-of-way in the total amount of \$134,839.00 for the term of 25 years is satisfactory to the Tohono O'odham Nation;**
- (2) waives valuation by the Bureau of Indian Affairs; and**
- (3) determines that accepting the agreed-upon compensation and waiving valuation is in the Nation's best interest.**

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 22ND day of MAY, 2019 at a meeting at which a quorum was present with a vote of 2,239.55 FOR; 845.05 AGAINST; -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(i)(1) and (2), Article XV I, Section 1 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).

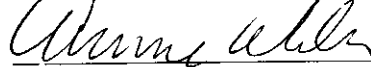
TOHONO O'ODHAM LEGISLATIVE COUNCIL



Timothy Joaquin, Legislative Chairman

23 day of May, 2019

ATTEST:



Evonne Wilson, Legislative Secretary

23 day of May, 2019

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 23 day of May, 2019 at 4:04 o'clock, P .m., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Timothy Joaquin, Legislative Chairman

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APPROVED

on the 24 day of May, 2019

DISAPPROVED

at 3:54 o'clock, P.m.



EDWARD D. MANUEL, CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 24 day of

May, 2019, at 4:20 o'clock, P.m.



Evonne Wilson, Legislative Secretary

ACTION: CONSENTING TO A GRANT OF EASEMENT FOR RIGHTS-OF-WAY ACROSS NATION'S LANDS FOR THE FICO CAP LINE, LLC AND FREEPORT-MCMORAN SIERRITA INC.'S WATER PIPELINE

Moved: COUNCILWOMAN MONICA K. MORGAN

Second: COUNCILMAN BILLMAN LOPEZ

DATE: MAY 22, 2019

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 235.8	1. MARY LOPEZ ()	117.9	X			
	2. LUCINDA ALLEN (<i>Absent</i>) (Yolonda Garcia) (<i>Present</i>)	117.9	X			
SELLS 527.2	1. ARTHUR WILSON (Evelyn Juan Manuel)	263.6		X		
	2. ADRIANNE TILLER ()	263.6	X			
SCHUK TOAK 185.7	1. ANTHONY J. FRANCISCO JR. (Teresa F. Donahue)	92.85	X			
	2. QUINTIN C. LOPEZ (Agnes V. Joaquin)	92.85	X			
SAN XAVIER 232.3	1. DANIEL L.A. PRESTON III (<i>Absent</i>) (Felicia Nunez) (<i>Present</i>)	116.15	X			X
	2. JANICE FELIX (Adam Andrews)	116.15	X			
SAN LUCY 231.1	1. JANA MONTANA (Diana Manuel)	115.55	X			
	2. GLORIA RAMIREZ (Lorraine Eiler)	115.55		X		
PISINEMO 225.9	1. CHESTER ANTONE (Caroline D. Garcia)	112.95	X			
	2. MONICA K. MORGAN ()	112.95	X			
HICKIWAN 209.0	1. LOUIS R. LOPEZ (<i>Absent</i>) (Shirley Molina) (<i>Present</i>)	104.5		X		
	2. SANDRA D. ORTEGA ()	104.5		X		X
GU VO 256.9	1. GRACE MANUEL ()	128.45		X		
	2. DALLAS LEWIS (<i>Absent</i>) (Nacho Flores) (<i>Present</i>)	128.45		X		X
GU ACHI 270.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	135.45	X			
	2. LORETTA LEWIS (Victoria Hobbs)	135.45	X			
CHUKUT KUK 337.7	1. BILLMAN LOPEZ (Patricia Antone)	168.85	X			
	2. VIVIAN JUAN-SAUNDERS (<i>Absent</i>) (Juanita Homer) (<i>Present</i>)	168.85	X			
BABOQUIVARI 372.1	1. FRANCES MIGUEL (Roberta E. Harvey)	186.05	X			
	2. LEANDER MASE (Francine Schooling)	186.05	X			
TOTAL		3,084.6	2,239.55	845.05	-0-	[03]