

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Opposing Central Arizona Project Pipeline Project RENEWS Connection on the  
Tohono O'odham Nation for the Benefit of Rosemont Copper Pending Consultation  
with Federal Agencies and Project Proponents and Compliance with all  
Environmental and Other Requirements)**

**RESOLUTION NO. 16-532**

1 **WHEREAS,** the Tohono O'odham Nation is a federally recognized Indian tribe whose  
2 "sovereign powers, authority and jurisdiction . . . shall extend to all lands within  
3 the boundaries of the Tohono O'odham Nation," including the Nation's San Xavier  
4 Reservation, and to "all persons and activities carried on within the boundaries  
5 of the Tohono O'odham Nation consistent with federal law." (Constitution of the  
6 Tohono O'odham Nation, Article I, Sections 1 and 2); and

7 **WHEREAS,** the Tohono O'odham Legislative Council is the Nation's governing body vested  
8 with "control and management" of the Nation's lands and the power to  
9 administer land to prevent the "use or encumbrance of Tohono O'odham  
10 national lands, interests in lands, rights-of-way, or other public resources when  
11 such sale, disposition, lease, use or encumbrance will, in the opinion of the  
12 Tohono O'odham Council, be injurious to the best interests of the Tohono  
13 O'odham Nation as a whole" (Constitution, Article XVI, Section 1 and Article VI,  
14 Section 1(i)(1)); and

15 **WHEREAS,** federal law and regulation, including 25 U.S.C. §§ 323-326 and 25 C.F.R. Part 169,  
16 require the approval of the relevant "tribe"-in the case of the Nation, approval by  
17 Legislative Council resolution-to grant a right-of-way across tribal lands; and

18 **WHEREAS,** by Resolution No. 335-89, the Legislative Council consented to a grant of easement  
19 and right-of-way across a portion of the Nation's San Xavier Reservation for the  
20 United States Bureau of Reclamation to install a Central Arizona Project ("CAP")  
21 pipeline to serve on-reservation farms and to continue to the Reservation's  
22 southern boundary; and

23 **WHEREAS,** the grant of easement and right-of-way did not require the approval or consent of  
24 the San Xavier District Council, which as one of 11 local governing bodies on the  
25 Nation is a "subordinate governmental unit" of the Nation and is an organization  
26 of "fairly limited power and authority which may act only under the supervision  
27 of the Tohono O'odham Council." *Juan v. Juan*, 2 TOR3d 62 (Trial Ct., Jan. 27, 2000)  
28 appeal dismissed, *Juan v. Juan*, 3 TOR3d 1 (T.O.App.Ct. Jan. 4, 2005); and

29 **WHEREAS,** while the Bureau of Reclamation has granted to the Central Arizona Water  
30 Conservation District ("CAWCD") use of the Bureau's rights-of-way for the  
31 operation of the CAP, the United States has retained title to the CAP, and CAWCD  
32 is not authorized to make any substantial change to the pipeline or issue or grant  
33 land use rights without the Bureau's written consent; and

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1 **WHEREAS,** presidential executive orders and memorandums, the Bureau of Reclamation's  
2 **Guidelines for Consulting with Indian Tribal Governments, and federal laws and**  
3 **regulations including the National Environmental Policy Act of 1969 (83 Stat. 852)**  
4 **and 40 CFR Part 1500 mandate that as a federal agency the Bureau engage in**  
5 **meaningful and timely consultation with an affected Indian tribe in formulating**  
6 **policies or taking actions that have substantial direct effects on the tribe, Indian**  
7 **trust assets, or the relationship between the federal government and the tribe**  
8 **(Executive Order 13175, Section 1(a), Executive Memorandum of November 5,**  
9 **2009, Bureau of Reclamation's September 21, 2012 Protocol Guidelines:**  
10 **Consulting with Indian Tribal Governments, 40 CFR 1501.2(d)(2)); and**

11 **WHEREAS,** the Bureau of Reclamation accordingly has a continuing legal obligation to the  
12 **Nation for the use of trust lands and Indian trust assets within the Bureau's CAP**  
13 **right-of-way on the Nation's San Xavier Reservation and a duty to consult with the**  
14 **Nation on a government-to-government basis concerning such uses; and**

15 **WHEREAS,** the Tohono O'odham Nation has consistently and actively opposed the proposed  
16 **open pit Rosemont Copper Mine that would significantly impact, destroy, or alter**  
17 **sacred springs, cultural and archeological sites containing numerous Archaic,**  
18 **Hohokam, and O'odham funerary objects, sacred objects, and other**  
19 **archeological and cultural items, and permanently damage the cultural and**  
20 **natural landscapes on ancestral O'odham lands in Ce:wi Duag (the Santa Rita**  
21 **Mountains) southeast of the Nation's San Xavier Reservation (Resolutions No. 09-**  
22 **569, No. 11-550, and No. 11-594); and**

23 **WHEREAS,** a subsidiary of Rosemont Copper Company's parent corporation is funding and  
24 **constructing an off-reservation extension of the CAP pipeline ("Project RENEWS")**  
25 **with a connection south of the San Xavier Reservation to deliver water for**  
26 **Rosemont and other users, and in July 2010 the Bureau of Reclamation issued a**  
27 **Final Environmental Assessment for the Project; and**

28 **WHEREAS,** Rosemont's partners are now proposing to construct a connection on the Nation's  
29 **San Xavier Reservation within the right-of-way previously granted to the Bureau**  
30 **of Reclamation; and**

31 **WHEREAS,** the on-reservation connection was not part of the Final Environmental  
32 **Assessment for Project RENEWS, and the Bureau of Reclamation Subcontract**  
33 **with CAWCD and Community Water Company of Green Valley ("CWC") provides**  
34 **that water shall not be delivered for the Project until CWC obtains final**  
35 **environmental clearance from the United States for the pipelines, distribution**

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1 systems, and other facilities through which water for the Project is conveyed  
2 (Bureau of Reclamation Subcontract No. 07-xx-30-W0489 Among the United  
3 States, CAWCD, and CWC, 4.3(f)); and

4 **WHEREAS,** federal approval for the Project RENEWS connection to the CAP pipeline on the  
5 Nation's San Xavier Reservation would have a substantial direct effect on the  
6 Tohono O'odham Nation and Indian trust assets on the Reservation, mandating  
7 meaningful and timely consultation with the Nation; and

8 **WHEREAS,** the Bureau of Reclamation has not consulted with the Nation concerning the  
9 proposal to construct a CAP pipeline connection on the Nation's San Xavier  
10 Reservation to benefit a destructive mining proposal that the Nation opposes, nor  
11 was the Nation consulted in development of any environmental assessment or  
12 environmental impact statement for the proposed on-reservation connection;  
13 and

14 **WHEREAS,** Rosemont Copper's partners have instead sought the "authorization" of the San  
15 Xavier District, which has no authority to act on the Nation's behalf absent an  
16 explicit delegation of authority that the Legislative Council has not granted in this  
17 matter. *San Xavier District Council: Austin Nunez v. Jose Francisco*, 1 TOR3d 49,  
18 50-51 (Trial Ct., Feb. 1, 1988); and

19 **WHEREAS,** the Legislative Council Water Resources, Agricultural and Natural Resources,  
20 and Cultural Preservation Committees recommend that the Nation oppose the  
21 proposed CAP connection on the Nation's San Xavier Reservation pending  
22 meaningful consultation with federal agencies and Project proponents and  
23 compliance with all environmental and other requirements.

24 **NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council directs the  
25 Legislative Council Water Resources, Agricultural and Natural Resources, and  
26 Cultural Preservation Committees in coordination with the Nation's chairman to  
27 engage in consultation with the Bureau of Reclamation, Bureau of Indian Affairs,  
28 and all proponents of the proposed CAP connection for Project RENEWS on the  
29 Nation's San Xavier Reservation.

30 **BE IT FURTHER RESOLVED** that, pending consultation with federal agencies and Project  
31 proponents and compliance with all environmental and other requirements, the  
32 Nation strongly opposes the Project.

33 **BE IT FINALLY RESOLVED** that the Tohono O'odham Legislative Council calls upon the Bureau  
34 of Reclamation and the Bureau of Indian Affairs, in the performance of the United  
35 States' trust obligation to the Tohono O'odham Nation, and the Project

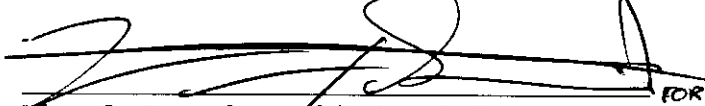
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1                   proponents, including but not limited to CAC, CAWCD, Rosemont Copper, and  
2                   JPAR, LLC, to engage in meaningful consultation directly with the government of  
3                   the Tohono O'odham Nation regarding the Project, and that Rosemont Copper  
4                   and the Bureau of Reclamation consult with the Nation concerning Rosemont's  
5                   Non-Indian Agricultural Water Reallocation Application.

6     The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 01<sup>ST</sup>  
7     day of NOVEMBER, 2016 at a meeting at which a quorum was present with a vote of 2,792.8 FOR;  
8     228.60 AGAINST; -0- NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council  
9     by Article VI, Section 1(f) and 1(i) and Article XVI of the Constitution of the Tohono O'odham  
10    Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting  
11    Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section  
12    16 of the Act of June 18, 1934 (48 Stat.984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL



FOR  
Timothy Joaquin, Legislative Chairman

7<sup>th</sup> day of November, 2016

ATTEST:



Evonne Wilson, Legislative Secretary

7 day of November, 2016

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 7 day of November, 2016 at 1:38 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



FOR  
Timothy Joaquin, Legislative Chairman

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1  APPROVED

on the 8 day of November, 2016

2  
3  DISAPPROVED

at 10:30 o'clock, A.m.

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6   
7 EDWARD D. MANUEL, CHAIRMAN  
8 TOHONO O'ODHAM NATION  
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10  
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13 Returned to the Legislative Secretary on the 8 day of

14 November, 2016, at 11:40 o'clock, A.m.

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19 Evonne Wilson, Legislative Secretary

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**ACTION: OPPOSING CENTRAL ARIZONA PROJECT PIPELINE PROJECT RENEWS CONNECTION ON THE TOHONO O'ODHAM NATION FOR THE BENEFIT OF ROSEMONT COPPER PENDING CONSULTATION WITH FEDERAL AGENCIES AND PROJECT PROPONENTS AND COMPLIANCE WITH ALL ENVIRONMENTAL AND OTHER REQUIREMENTS**

**Moved: COUNCILMAN QUINTIN C. LOPEZ**

**SECOND: COUNCILMAN ANTHONY J. FRANCISCO, JR.**

**DATE: NOVEMBER 01, 2016**

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 367.2	1. FRANCES MIGUEL (Roberta E. Harvey)	183.60	X			
	2. VERNON J. SMITH (Gloria Zazueta)	183.60	X			
CHUKUT KUK 332.1	1. ETHEL GARCIA (Marlakay K. Henry)	166.05	X			
	2. BILLMAN LOPEZ (Patricia Vicenti)	166.05	X			X
GUACHI 265.0	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	132.50	X			
	2. LORETTA LEWIS ( )	132.50	X			X
GU VO 250.6	1. GRACE MANUEL (Dallas Lewis)	125.30	X			
	2. PAMELA ANGHILL (Jeffery Antone, Sr.)	125.30	X			
HICKIWAN 205.8	1. LOUIS R. LOPEZ ( <i>Absent</i> ) (Shirley Molina) ( <i>Present</i> )	102.90	X			
	2. SANDRA ORTEGA ( )	102.90	X			
PISINEMO 219.9	1. CHESTER ANTONE ( )	109.95	X			
	2. MONICA K. MORGAN ( )	109.95	X			
SAN LUCY 226.5	1. DIANA MANUEL ( <i>Absent</i> ) (Lorraine Eller) ( <i>Present</i> )	113.25	X			
	2. JANA MONTANA ( <i>Absent</i> ) (Gloria Ramirez) ( <i>Present</i> )	113.25	X			X
SAN XAVIER 228.6	1. DANIEL L.A. PRESTON III (Felicia Nunez)	114.30		X		
	2. RACHEAL VILSON-STONER (Olivia Villegas-Liston)	114.30		X		
SCHUK TOAK 180.6	1. ANTHONY J. FRANCISCO JR. (Mario J.B. Juan)	90.30	X			
	2. QUINTIN C. LOPEZ (John Fendenheim)	90.30	X			
SELLS 513.5	1. ARTHUR WILSON (Beverly Rivas)	256.75	X			
	2. BARBARA HAVIER ( )	256.75	X			
SIF Oidak 231.6	1. LUCINDA ALLEN ( <i>Absent</i> ) (Nicholas Jose) ( <i>Present</i> )	115.80	X			
	2. MARY LOPEZ ( )	115.80	X			X
<b>TOTAL</b>		<b>3,021.4</b>	<b>2,792.8</b>	<b>228.6</b>	<b>-0-</b>	<b>[04]</b>