

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Granting a Utility Alignment to the Tohono O'odham Utility Authority for IHS Project
No. TU 17-394 – Regionalization of the Chui-Chu and Cockleburr Water Systems)

RESOLUTION NO. 21-429

1 **WHEREAS,** the Tohono O'odham Legislative Council is authorized "to manage, protect,
2 preserve and regulate the use of the property . . . of the Tohono O'odham Nation"
3 and "[t]o manage . . . or otherwise deal with lands, or interests in land" belonging
4 to the Nation (Constitution of the Tohono O'odham Nation, Article VI, Section
5 1(i)(2) and Section 2(d)); and

6 **WHEREAS,** the Bureau of Indian Affairs, Department of the Interior, promulgated amended
7 regulations at 25 CFR Part 169 Rights-of-Way Over Indian Land, which provide
8 that an independent legal entity that is wholly owned and operated by a tribe that
9 owns 100 percent of the trust or restricted interests in the land does not need to
10 obtain a BIA right-of-way but instead such tribe shall pass a resolution
11 authorizing access to the entity, without BIA approval, including a legal
12 description, and shall submit both documents to the BIA for its records (25 CFR
13 §169.4(b)(3)(iii)); and

14 **WHEREAS,** by Resolution No. 91-175, the Tohono O'odham Legislative Council approved the
15 Second Restated Plan of Operation for the Tohono O'odham Utility Authority
16 ("TOUA"), formerly known as the Papago Tribal Utility Authority, to plan, provide
17 and furnish utility services to all areas within the Nation, to acquire, construct,
18 operate, maintain, promote and expand utility systems to furnish electric, gas,
19 water, sewer and telephone services within the Nation's lands; and

20 **WHEREAS,** by Resolution 17-032, the Tohono O'odham Legislative Council approved the
21 Utility Alignment Recordation Procedures for Tohono O'odham Utility Authority
22 Projects, which provided the process for TOUA to be granted a right to a utility
23 alignment on the Nation; and

24 **WHEREAS,** the Indian Health Service's (IHS) planning study entitled "Preliminary
25 Engineering Report for the Regionalization of the Chui-Chu and Cockleburr
26 Water Systems" (the "Study"), dated January 2017, determined the best way to
27 bring the Cockleburr water supply into compliance with the EPA Safe Drinking
28 Water Act (SDWA) was through regionalization of the Cockleburr and Chui-
29 Chu/East Chui-Chu water system; and

30 **WHEREAS,** through regionalization, a beneficial water supply for the Cockleburr village (the
31 "Village") would be attained by: 1) alleviating the water pressure problem evident
32 within the village; 2) lowering the arsenic and natural nitrate levels which exceed

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the EPA maximum contaminate levels (MCL); and 3) addressing the fluoride level which is approaching the MCL, and which already exceeds the Secondary Contaminant Levels (SMLs) including Total Dissolved Solids (TDS); and

WHEREAS, the Study evaluated several potential routes and pipe size options and recommended the Preferred Alternative which is to construct an 8" HDPE water transmission main from Chui-Chu to Cockleburr which includes AC pipe replacement for the Chui-Chu Village; and

WHEREAS, in response to the Study, IHS Project No. TU 17-394 will construct the facilities, which are described in the "Project Summary for the Regionalization of the Chui-Chu and Cockleburr Water Systems on the Tohono O'odham Reservation, Pinal County, Arizona, Sif Oidak District, Tohono O'odham Nation ("Project Summary"), attached as Exhibit A to this resolution; and

WHEREAS, Project TU 17-394 is funded from the Environmental Protection Agency (EPA) through the Drinking Water Tribal Set-Aside (DWTSA) program to construct the facilities which will effectively resolve the water supply problems in the village of Cockleburr, which will serve 71 homes for a total cost of \$2,334,000.00; and

WHEREAS, the new utility alignment is 50 feet wide and is 43,099.47 feet long, encompassing 49.471 acres more or less, and which is more particularly described in "Attachment 1. Location Map" (Exhibit A, Attachment 1), and in "Attachment 5. Utility Alignment Plan & Legal Description" (Exhibit A, Attachment 5); and

WHEREAS, the regionalization of this new water system will be of substantial benefit to the Cockleburr village and their respective members, including access to better quality drinking water and an increase in water pressure, as well as an upgrade to the water distribution lines for both communities; and

WHEREAS, IHS consulted with the Nation's Cultural Affairs Office to conduct a Cultural Resource Survey, March 7, 2019, attached as "Attachment 3. Cultural Resources Clearance" (Exhibit A, Attachment 3), and based on their survey, the planned water line easement bisects a cultural resources site located in the SW ¼ of Section 5, T08S, R05E; and

WHEREAS, the Cultural Resource Survey recommends: (1) a preconstruction meeting with the contractor to provide an overview of the procedures for excavating the water line trench; (2) the contractor to flag the easement boundary before construction starts, so that construction activities stay within the waterline easement; (3) an archeological monitor is required on site during construction of the water line

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through the cultural site; and (4) if subsurface cultural materials are located during excavation for the waterline – work at that location must stop so the Cultural Affairs Office can evaluate any discovery; and

WHEREAS, the Wildlife and Vegetation Management Program, in “Attachment 4. Natural Resources Clearance” (Exhibit A, Attachment 4) has provided clearances that no federally-listed threatened species, endangered or special status species, or habitat was found, including O’odham-sensitive plant species; and

WHEREAS, the Sif Oidak District Council has approved SODC Resolution No. SODC 20-038, attached as Exhibit B, supporting IHS Project No. TU 17-394, and any necessary encroachment permits; and

WHEREAS, TOUA has submitted the Project Summary in application to the Nation’s Real Estate Management Office for the approval and recordation of the new utility alignment as required under the Nation’s Utility Alignment Recordation Procedures; and

WHEREAS, the Agricultural and Natural Resources and Commerce Committees have reviewed the Project Summary and recommend approval.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O’odham Legislative Council grants to TOUA a utility alignment for Project TU 17-394, for the regionalization of the Cockleburr village into the Chui-Chu/East Chui-Chu public water system, based on the submittal of the Project Summary in application for a utility alignment, which includes an accurate legal description in accordance with 25 CFR 169.102(b)(1) and a survey-grade Map of Definite Location, prepared in accordance with 25 CFR §169.102(b)(2) and certified by a registered professional engineer or an Arizona Registered Land Surveyor.

BE IT FURTHER RESOLVED that the Tohono O’odham Legislative Council grants approval of any encroachment permits for this project, including future individual services installed on the system, which may be granted by the Bureau of Indian Affairs pursuant to federal regulations to allow the utility alignment or service lines to individual customers to cross roads constructed by the Bureau of Indian Affairs.

BE IT FINALLY RESOLVED that the Nation’s chairperson, or his designee, is authorized to execute any documents reasonably necessary to implement this resolution.

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(Granting a Utility Alignment to the Tohono O'odham Utility Authority for IHS Project No. TU 17-394 - Regionalization of the Chui-Chu and Cockleburr Water Systems)

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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 16TH day of NOVEMBER, 2021 at a meeting at which a quorum was present with a vote of 3,218.0 FOR; -0- AGAINST; -0-NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by, Article VI, Section 1 (i)(2) and Section 2(d) 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

Timothy Joaquin, Legislative Chairman
19 day of November, 2021

ATTEST:

Evonne Wilson

Evonne Wilson, Legislative Secretary
19 day of November, 2021

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 19 day of November, 2021 at 2:32 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

Timothy Joaquin, Legislative Chairman

APPROVED

on the 22 day of November, 2021

DISAPPROVED

at 10:49 o'clock, a.m.

Ned Norris, Jr.

NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

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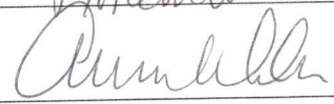
**(Granting a Utility Alignment to the Tohono O'odham Utility Authority for IHS Project No. TU 17-394
- Regionalization of the Chui-Chu and Cockleburr Water Systems)**

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Returned to the Legislative Secretary on the 23 day of

November, 2021, at 10:12 o'clock, a.m.



Evonne Wilson, Legislative Secretary

ACTION: GRANTING A UTILITY ALIGNMENT TO THE TOHONO O'ODHAM UTILITY AUTHORITY FOR IHS PROJECT NO. TU 17-394 – REGIONALIZATION OF THE CHUI-CHU AND COCKLEBURR WATER SYSTEMS

Moved: COUNCILWOMAN MARLAKAY HENRY

SECOND: COUNCILWOMAN LUCINDA ALLEN

DATE: NOVEMBER 16, 2021

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 245.6	1. MARY LOPEZ (<i>Absent</i>)	122.8	X			
	(Ann M. Garcia) (<i>Present</i>)	122.8	X			
SELLS 556.5	2. LUCINDA ALLEN (Francis Homewytewa)					
	1. ARTHUR WILSON ()	278.25	X			
SCHUK TOAK 190.5	2. EVELYN JUAN-MANUEL (Arvada Liston)	278.25	X			
	1. TERESA F. DONAHUE (Alberta Espinoza)	95.25	X			
SAN XAVIER 242.6	2. DELISA M. RAMON (Sharon A. Francisco)	95.25	X			
	1. DANIEL L.A. PRESTON III (Racheal Vilson-Stoner)	121.3	X			
SAN LUCY 243.8	2. JANICE FELIX (Adam P. Andrews)	121.3	X			
	1. JANA MONTANA (Lorraine M. Eiler)	121.9	X			
PISINEMO 232.7	2. ROGER MANUEL (Christina Andrews)	121.9	X			
	1. MARIETTA MARTIN ()	116.35	X			
HICKIWAN 216.6	2. EDWARD D. MANUAL (Monica Morgan)	116.35	X			
	1. LOUIS R. LOPEZ ()	108.3	X			
GU VO 270.7	2. SANDRA D. ORTEGA (<i>Absent</i>) (Delma M. Garcia) (<i>Present</i>)	108.3	X			X
	1. GRACE MANUEL ()	135.35	X			
GU ACHI 278.5	2. CYNTHIA SAAVEDRA (Dallas Lewis)	135.35	X			
	1. TIMOTHY L. JOAQUIN ()	139.25	X			X
CHUKUT KUK 351.6	2. VICTORIA HOBBS (Tonya L. Joaquin)	139.25	X			
	1. MARLAKAY HENRY (Billman Lopez)	175.8	X			
BABOQUIVARI 388.9	2. VIVIAN JUAN-SAUNDERS (Cornelius Antone)	175.8	X			
	1. ALBERTA J. RAY (Frances G. Antone)	194.45	X			
	2. LEANDER MASE (Francine Schooling)	194.45	X			
	TOTAL	3,218.0	3,218.0	-0-	-0-	[02]