

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approving Access and License Agreement for Monitor Wells at the Desert Diamond
Casino Hotel Property and Rescinding Resolution No. 11-056)

RESOLUTION NO. 12-350

1 **WHEREAS, by Resolution No. 11-056 the Tohono O'odham Nation approved an Access and License**
2 **Agreement ("Agreement") for monitor wells at the Desert Diamond Casino Hotel**
3 **property; and**

4 **WHEREAS, after the Nation's approval, the Bank of New York Mellon Trust Company, N.A., who was**
5 **a party to the Agreement as the Trustee under the Soils Remediation Trust Fund**
6 **Agreement, raised issues with certain provisions of the Agreement, and after**
7 **discussions with other involved parties, the parties decided to change the**
8 **implementing entity from the Trustee to the Tucson Airport Authority working on**
9 **behalf of the Soils Steering Committee; and**

10 **WHEREAS, certain party names have been changed on the Agreement, and certain conforming**
11 **changes have been made, but the Agreement remains essentially in the same form**
12 **that the Nation approved by Resolution No. 11-056, and the Attorney General**
13 **recommends that the Agreement be approved again and that Resolution No. 11-056**
14 **be rescinded; and**

15 **WHEREAS, since 1942, industrial activity at the Tucson International Airport east of the San**
16 **Xavier District boundary has caused a plume of groundwater contamination one-half**
17 **mile wide and five miles in length that extends into a portion of the aquifer underlying**
18 **San Xavier District; and**

19 **WHEREAS, in 1982, the site was identified as a federal Superfund site and the United States**
20 **Environmental Protection Agency ("USEPA") began working with the City of Tucson**
21 **and the parties responsible for the groundwater contamination to identify the extent**
22 **of the contamination and to clean up the site; and**

23 **WHEREAS, as a result of the contamination, eleven drinking water wells owned by the City of**
24 **Tucson and additional private wells have been shut down; and**

25 **WHEREAS, in February 2000, a consent decree was signed by the USEPA and the responsible**
26 **parties, and as part of the implementation of the consent decree these parties have**
27 **requested permission to construct and operate up to three monitor wells on the**
28 **property subleased by the Tohono O'odham Gaming Enterprise from the San Xavier**
29 **Development Authority, which in turn has been leased by the San Xavier Development**

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1 **Authority from allottee landowners; and**

2 **WHEREAS, an Access and License Agreement for the monitor wells has been negotiated between**
3 **the Tohono O'odham Nation, the Tohono O'odham Gaming Enterprise, the San Xavier**
4 **Development Authority, and the Tucson Airport Authority as the designated**
5 **representative of the Soils Steering Committee; and**

6 **WHEREAS, the term of the Agreement is for ten years, with the possibility of extension for an**
7 **additional ten years upon further review and approval of the extension by the**
8 **Legislative Council; and**

9 **WHEREAS, the drilling and operation of the monitor wells will be under the supervision of the**
10 **Nation's Water Resources Department under permits granted under the authority of**
11 **the Tohono O'odham Nation Water Code, 25 Tohono O'odham Code, Chapter 3, or any**
12 **successor water code; and**

13 **WHEREAS, under the terms of the Agreement, the Nation and San Xavier District will have the**
14 **opportunity to take split samples of the groundwater when the well operator**
15 **withdraws water for a sample; and**

16 **WHEREAS, the Agreement has been reviewed by the Office of Attorney General, the Nation's**
17 **Environmental Protection Office, the Nation's Water Resources Department and the**
18 **legislative Water Resources and Domestic Affairs Committees, which recommend**
19 **approval by the Legislative Council.**

20 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council approves the**
21 **Access and License Agreement for monitor wells at the Desert Diamond Casino Hotel**
22 **property substantially in the form attached hereto and authorizes the Chairman of the**
23 **Nation to sign and administer the Agreement.**

24 **BE IT FURTHER RESOLVED that Resolution No. 11-056 which approved a previous form of this**
25 **Agreement is hereby rescinded.**

26 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 10TH Day**
27 **of SEPTEMBER, 2012 at a meeting at which a quorum was present with a vote of 2,610.80 FOR; -0-**
28 **AGAINST; -0- NOT VOTING; and 169.80[04] ABSENT, pursuant to the powers vested in the Council**
29 **by Article VI, Section 1 (f) and Article XVII, Section 2 of the Constitution of the Tohono O'odham**
30 **Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting**
31 **Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16**
32 **of the Act of June 18, 1934 (48 Stat. 984).**

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Timothy Joaquin

Timothy Joaquin, Legislative Chairman

13 day of September, 2012

ATTEST:

Evonne Wilson

Evonne Wilson, Legislative Secretary

12 day of September, 2012

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 13 day of September, 2012 at 4:15 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 14 day of September, 2012

DISAPPROVED

at 11:45 o'clock, a.M.

Ned Norris, Jr.

NED NORRIS, JR., CHAIRMAN

TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 14 day of

September, 2012, at 1:00 o'clock, P.M.

Evonne Wilson

Evonne Wilson, Legislative Secretary

ACTION: APPROVING ACCESS AND LICENSE AGREEMENT FOR MONITOR WELLS AT THE DESERT DIAMOND CASINO HOTEL PROPERTY AND RESCINDING RESOLUTION NO. 11-056

MOVED: COUNCILWOMAN FRANCES G. ANTONE

SECOND: COUNCILMAN HILARION CAMPUS

DATE: SEPTEMBER 10, 2012

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 342.0	1. FRANCES MIGUEL (Roberta Harvey)	171.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	171.0	X			
CHUKUT KUK 302.2	1. ETHEL GARCIA (Sara Mae Williams)	151.10	X			
	2. BILLMAN LOPEZ ()	151.10	X			
GU ACHI 244.9	1. TIMOTHY L. JOAQUIN ()	122.45	X			
	2. CYNTHIA E. MANUEL (Louis L. Johnson)	122.45	X			
GU VO 226.7	1. GRACE MANUEL (Floyd Flores)	113.35	X			
	2. PAMELA ANGHILL (Roselda Lewis)	113.35	X			X
HICKIWAN 186.3	1. LOUIS R. LOPEZ (Michelle Ortega)	93.15	X			
	2. SANDRA ORTEGA ()	93.15	X			
PISINEMO 200.7	1. CHESTER ANTONE (<i>Absent</i>) (Tony Murrietta) (<i>Present</i>)	100.35	X			
	2. EDWARD MANUEL (Gerald Fayuant)	100.35	X			
SAN LUCY 204.6	1. LORRAINE EILER ()	102.30	X			
	2. JANA MONTANA (Gloria Ramirez)	102.30	X			
SAN XAVIER 215.8	1. HILARION CAMPUS (Racheal Vilson-Stoner)	107.90	X			
	2. OLIVIA VILLEGAS-LISTON (<i>Absent</i>) (Eugene Enis) (<i>Present</i>)	107.90	X			
SCHUK TOAK 169.8	1. FRANCES B. STEPHENS (Anthony J. Rios)	84.90				X
	2. FREDERICK JOSE (Phyllis Cachora)	84.90				X
SELLS 475.7	1. ARTHUR WILSON (Kimberly Mull)	237.85	X			
	2. EVELYN B. JUAN MANUEL ()	237.85	X			X
SIF OIDAK 211.9	1. NICHOLAS JOSE ()	105.95	X			
	2. MARY LOPEZ ()	105.95	X			
TOTAL		2,780.60	2,610.80	-0-	-0-	169.80 [04]