# MEMORANDUM

Date: March 21, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Update: Kinder/Morgan Sierrita Natural Gas Pipeline in Altar Valley**

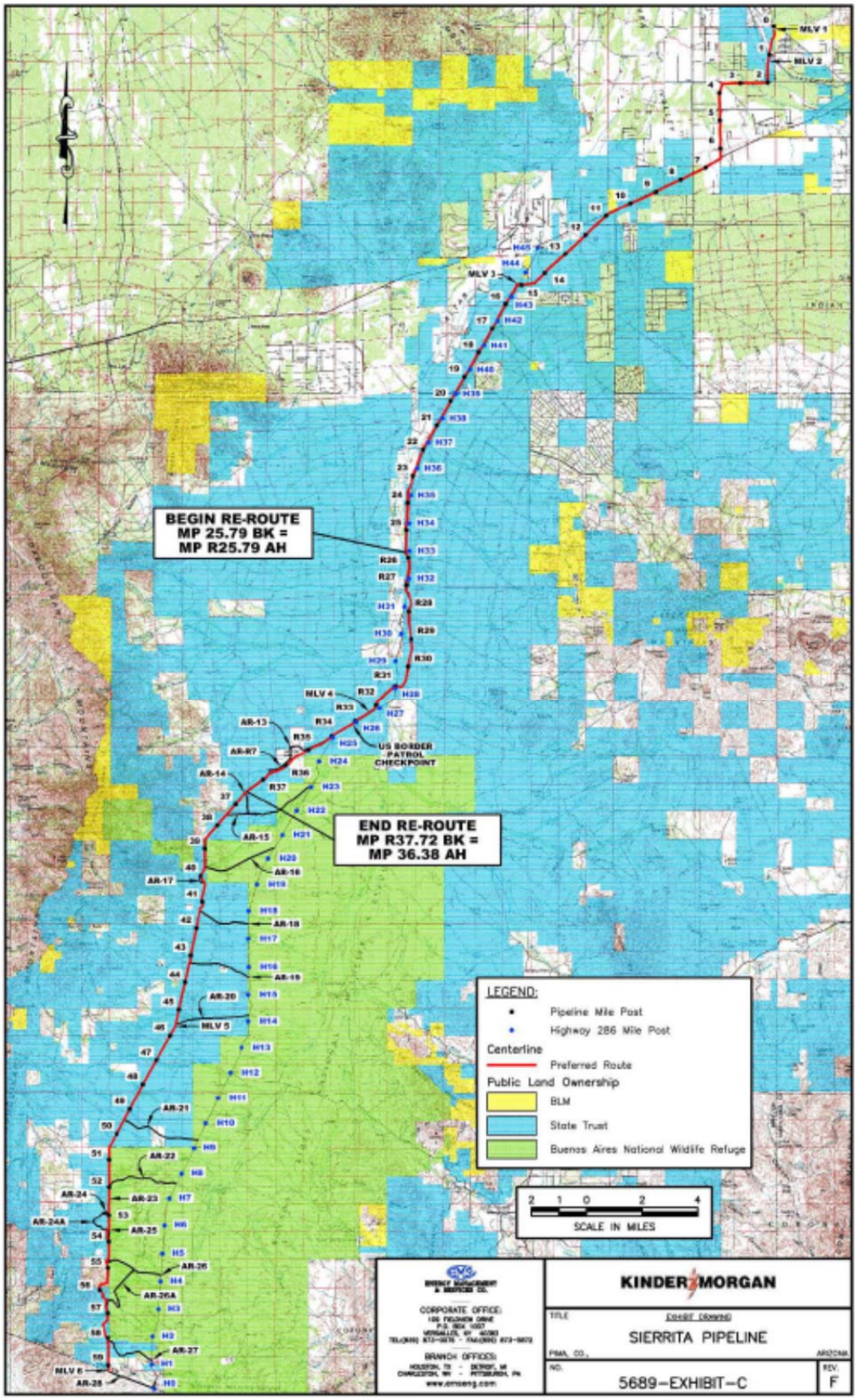
This memorandum provides a further update regarding this project, including a brief review of the Kinder/Morgan project and summary of the project's needed permits, environmental review status by the Federal Energy Regulatory Commission (FERC), and a second look at possible tax revenues to Pima County. Likely impacts and costs to Pima County were also reviewed again by affected departments, which basically confirmed our earlier assessments, costs, and recommended mitigation levels and confirmed that expected tax generation from the project would not offset County costs.

Background

As previously noted in my November 1, 2013 memorandum to the Board, this proposed new pipeline, to be permitted by FERC, will carry pressurized natural gas in a 36-inch diameter pipe for 60 miles in the Altar Valley from the Tucson Mountains south to the international boundary with Mexico, where it will join a new pipeline now currently under construction in Mexico from Sasabe to Puerto Libertad to supply natural gas to Mexico.

Pima County staff was first notified about this project, then called the Sasabe Lateral, in spring of 2012 by representatives of El Paso Natural Gas (now Kinder/Morgan) who indicated several routes were under consideration at that time, including two routes in the Altar Valley – an east route adjacent to State Route 286 and a west route through environmentally pristine areas to the west of the Buenos Aires National Wildlife Refuge (BANWR). Staff's initial response to the route alternatives was to avoid and minimize impacts by siting the pipeline along the existing State Route 286 corridor (the east route in Altar Valley) or to site the pipeline along the designated federal utility corridor along Interstate 19 where Kinder/Morgan already has existing gas pipelines.

On February 7, 2013, Sierrita Pipeline, LLC submitted its application to FERC (Docket No. CP13-73-000), pursuant to Section 7(c) of the Natural Gas Act (NGA), requesting a certificate of public convenience and necessity authorizing the construction and operation of the Sierrita Pipeline Project located in Pima County, Arizona. They concurrently filed an application (Docket No. CP13-74-000), pursuant to Section 3 of the NGA, seeking a new presidential permit, authorizing the export of natural gas at a new international border crossing with Mexico associated with the Sierrita Pipeline. At present, only the western route shown in the figure below is under consideration for authorization by FERC).


BEGIN RE-ROUTE
MP 25.79 BK =
MP R25.79 AH
END RE-ROUTE
MP R37.72 BK =
MP 36.38 AH
US BORDER PATROL CHECKPOINT
LEGEND:
Pipeline Mile Post
Highway 286 Mile Post
Centerline
Preferred Route
Public Land Ownership
BLM
State Trust
Buenos Aires National Wildlife Refuge
SCALE IN MILES
KINDER MORGAN
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5689-EXHIBIT-C
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Shortly after this pipeline and presidential permit applications were filed with FERC, any real consideration of the east alternative pipeline route in Altar Valley was foreclosed by the US Fish and Wildlife Service (the Service), when on March 5, 2013, the Service submitted an Appropriateness Finding that concluded the East Route of the Sierrita Pipeline, sited along State Route 286 which already crosses through the BANWR, would not promote the National Wildlife Refuge System purposes and that they would not authorize construction of the pipeline along the highway corridor through the BANWR. With only the most damaging route under consideration, Pima County and the Tohono O'odham Nation formally objected to siting the pipeline along the west route in March 2013 (Attachment 1).

FERC Draft Environmental Impact Statement DEI) Issued October 2013

The proposed pipeline is a major federal undertaking subject to the National Environmental Policy Act (NEPA) and requires preparation of an environmental impact statement. The pipeline will directly impact some 1,000 acres and more than 200 washes in Pima County, and it is likely to result in increased valley erosion and a new major trafficking route through Altar Valley, affecting public safety and certainly the residents of the Altar Valley.

FERC released its Draft Environmental Impact Statement (DEIS) in late October 2013; and despite numerous objections, the agency considered only one route through remote areas to the west of the BANWR to the international border near Sasabe. Public and agency comments on the DEIS were submitted on December 16, 2013; and many respondents, including Pima County, considered the DEIS analyses incomplete and inadequate due to its failure to "take a hard look," as NEPA requires, at the immediate and long-term impacts of the project and the agency's inadequate consideration of alternatives that would result in fewer impacts. In addition to written comments, FERC held public meetings in December 2013 in Robles Junction and Sasabe for public comment on the DEIS, where numerous people spoke in opposition to the route. The selected route continues to be opposed by the Tohono O'odham Nation, the Altar Valley Conservation Alliance, private property owners, the City of Nogales, and Pima and Santa Cruz Counties, among others. Should the pipeline be approved as anticipated, the most significant impacts and costs to Pima County and the residents of the Altar Valley can be expected in the areas of public safety, environmental damage and ongoing degradation of the conservation values and investments made in the Altar Valley.

FERC Final Environmental Impact Statement (FEIS) Release Date Moved Up

In September 2013, MGI Supply, Inc. and Kinder/Morgan requested in letters that FERC *"employ whatever tools are available to expedite the remaining regulatory process for these [pipeline] authorizations to facilitate a construction date for the Sierrita Pipeline Project in early June of 2014."* The first notice of schedule, issued on September 10, 2013, identified April 18, 2014 as the FEIS issuance date.

On March 5, 2014, FERC issued a revised schedule for release of its FEIS for the Sierrita Gas Pipeline. FERC now states that it has received all the information necessary to complete its environmental review and that the FEIS and approval schedule has been revised to three weeks earlier than previously noticed:

- Issuance of Notice of Availability of the FEIS: March 28, 2014
- 90-day Federal Authorization Decision Deadline: June 26, 2014

Sierrita Pipeline Status: Permits Needed from Pima County

In addition to federal permits, Sierrita Pipeline, LLC requires a number of Pima County permits, right of way easements, and other assistance to begin construction by July 1, 2014 and operate the pipeline. The following section provides a permit status update.

- Regional Flood Control District (RFCD). Approximately 250 washes will be crossed, and 103 acres of regulated riparian habitat will be impacted by the Sierrita Pipeline.
  - Floodplain Use Permit (FPUP No. 13-269). Sierrita submitted their initial application on July 9, 2013; evaluation and review of Scour and Bank Migration Reports is ongoing.
  - The RFCD requested a full sediment transport analysis at the Altar Wash, which will be started this month.
  - Riparian Habitat Mitigation has not yet been addressed and remains an outstanding issue.
  - Approximately $2.3 million is estimated by Sierrita Pipeline, LLC for FPUP.

- Department of Transportation. At present, Sierrita Pipeline, LLC estimates there will be 17 open cut paved road crossings, borings under four paved crossings and one dirt road crossing at Bopp Road and 12 open cut dirt road crossings.
  - Access roads needs for the project are still being defined.
  - Right of Way Use Permits: Sierrita submitted their initial application February 25, 2014.
  - Blasting Permit: Sierrita has not yet submitted an application.
  - Over Size/Over Weight Permit: Sierrita has not yet submitted an application.

- Regional Wastewater Reclamation Department (RWRD). RWRD permits for the pipeline include the following, as well as coordination regarding construction activities.
  - Small Activity Permit: Sierrita has not yet submitted an application.
  - Coordination of Construction Activities: Sierrita initiated contact with RWRD Civil Engineering on 2/21/2014.

- Real Property: The pipeline requires acquisition of easements and temporary work space on County lands. Approximately, 1.26 miles are estimated.

- Temporary and Permanent Easements: On February 25, 2014, Sierrita submitted an initial proposal and offer of $19,600. Real Property's review and evaluation is underway.
- Franchise Agreement: Not yet ready for presentation to the Board of Supervisors.

- Department of Environmental Quality: These permits will be required for construction.
  - Fugitive Dust Activity Permits: Sierrita has not yet submitted an application.

- Information Technology Department: Sierrita has requested to co-locate communications equipment in a building and tower both owned by Pima County.
  - Keystone Peak is a premium site to monitor meter stations and main line valves for the Sierrita gas pipeline. The request was made based on a no-cost reciprocal license agreement with El Paso Natural Gas. Because the current agreement does not include Kinder/Morgan, a new agreement would have to be executed for Kinder/Morgan to use any Pima County communications site.

- Pima County Sheriff's Office: Sierrita provided a copy of their *Construction Security Management Plan* to the Pima County Sheriff's Department. Security will only be provided during the pipeline construction stage ostensibly to maintain the safety of construction personnel and to prevent the theft of materials and damage to equipment. The document suggests they will be hiring a private security company.

General Stakeholder Recommendations

The most significant impacts and costs to Pima County and the residents of Altar Valley can be expected in the areas of public safety, environmental damage, and ongoing degradation of the conservation values and investments made in the Altar Valley from the direct, indirect, and long-term cumulative impacts of the pipeline. Assuming this pipeline will be approved, stakeholder recommendations also remain as before.

1. Detailed Assessment/ Restoration Plans. Detailed mile-by-mile resource inventories, impact assessments, and remediation and restoration plans should be funded by Kinder/Morgan for a proper analysis and to ensure protection of the base resources of the lands impacted. Much of the resource information is incomplete, and FERC restoration plans are not consistent with the project area's ecological systems.

2. Oversight Committee. An independent project monitoring and remediation oversight committee made of agencies, property owners and other stakeholders in Altar Valley should be established to ensure landscape-level consistency and implementation of appropriate mitigation measures during the initial restoration period and over the long term, since the impacts from this project will take decades to track.

3. Mitigation Endowment Fund. Environmental impacts from this pipeline will be long-term, if not permanent, and will cause ongoing degradation of conservation values and

investments made in the Altar Valley. A significant monitoring and remediation fund, or mitigation endowment, should be established by Kinder/Morgan to cover the costs of long-term and ongoing monitoring and repair of environmental damage. A mitigation fund of $7 million is recommended to meet this goal.

Altar Valley Conservation Alliance

As a major stakeholder organization in the Altar Valley, the Altar Valley Conservation Alliance (AVCA) represents Altar Valley ranchers, landowners, residents and other partners. AVCA is a nonprofit collaborative conservation organization guided by the following vision: Ranchers and other agriculturalists work effectively with our partners to conserve healthy and productive working landscapes, promote a thriving agricultural economy, and resilient rural community enriched by the culture and history of the Altar Valley. Through their stewardship and conservation efforts over the last 20 years, the AVCA has had significant success in improving the health of the watershed and the function of the ecosystem of the entire valley.

Kinder/Morgan/Sierrita has approached the AVCA for ideas about how the company could support local watershed conservation activities in the Altar Valley. AVCA has indicated to Kinder/Morgan that providing $2.5 million would 1) directly support watershed-wide restoration of the Altar Wash floodplain and its tributary systems; and 2) provide vital resources to facilitate community efforts to work effectively with Kinder/Morgan and the numerous regulators responsible for assuring Sierrita pipeline effects are minimized and/or mitigated over the life of the project. Dialogue about how to structure and deliver financial support is ongoing. AVCA believes a contribution of this magnitude would enable Kinder/Morgan to become a meaningful partner in watershed conservation, particularly with regard to addressing restoration of the Altar Wash floodplain system.

Costs to Pima County and Mitigation Issues

In addition to these stakeholder recommendations to offset environmental degradation, the following section presents a set of issues to be addressed, together with estimated costs to Pima County that are likely to result from the pipeline. The costs to Pima County are not addressed as direct and indirect impacts in the EIS, and FERC will not require mitigation of impacts outside the pipeline corridor. As indicated in my November 4, 2013 memorandum to the Board, I asked staff to review likely impacts and costs to Pima County, together with a review of mitigation measures for consideration. These costs and issues were again reviewed with affected departments and subject matter experts. They essentially remain unchanged and are summarized in Attachment 2, which has been slightly modified for clarification. The following section summarizes these costs by issue and department.

1. *Public Safety – Sheriff*. The Sheriff's Department continues to advise that four additional law enforcement deputies and vehicles will be required for increased

emergency calls and timely responses to incidents, as well for increased patrols. Their cost estimate remains $461,436 in annual costs, plus an initial one-time cost of $274,040. We understand that Sierrita, LLC recently contacted the Sheriff's Department and pressed them about these estimated costs; attempting to make the case that Customs and Border Patrol (CBP) is committed to address any increase in border trafficking. The conversation ended with the Sheriff's Department explanation that CBP does not have police authority and would not be the agency responding to 911 calls or other law enforcement needs.

2. *Migrant Deaths – Medical Examiner and Public Fiduciary*. With more than 300 miles of new pipeline route in Mexico and Arizona, essentially creating a new "highway" for travel, migrant deaths are likely to increase as a consequence. Current costs to Pima County of $174,000-$261,000 per year are likely to increase once the pipeline is built and if this upward trend continues.

3. *Erosion/Flood Control – Regional Flood Control District*. Some 250 washes in the Altar Valley, including Altar Wash itself, will be crossed by the pipeline, which will be subject to a Floodplain Use Permit. Kinder/Morgan has also applied to the US Army Corps of Engineers for a Nationwide 12 permit, which is under review. It is anticipated that approximately 103 acres of regulated riparian habitat will be impacted by the pipeline; and approximately $2.3 million is estimated as the project's mitigation obligation.

4. *Right of Way Easements – Department of Transportation (DOT); Real Property Services.* Kinder/Morgan has prepared appraisals for County right of way and temporary construction easements needed for pipeline construction, including a one-mile long segment along Snyder Hill Road. Sierrita estimates costs at about $20,000. This estimate is being revised by our Real Property Services Division.

5. *Access Road Maintenance – DOT.* In addition to construction of the 60-mile long pipeline, approximately 36 miles of dirt and gravel roads maintained by various agencies and private landowners would be graded, and some would be widened to provide access and accommodate heavy equipment for pipeline construction. FERC notes in the DEIS that restoration of roads is very difficult. Costs to Pima County are estimated at $7,500 per mile, or $98,250 total annual costs.

6. *Open Space Management – Natural Resources, Parks and Recreation (NRPR)*. Because the pipeline will open up areas to unwanted and illegal vehicular and pedestrian traffic, NRPR estimates the annual additional costs of fencing and waters repairs, trash cleanup, and incident responses due to the pipeline to be $200,000.

7. *Conservation Lands System Impacts – Office of Sustainability and Conservation*. The Sonoran Desert Conservation Plan identified the Altar Valley as having exceptionally high value habitat conservation values. To mitigate land disturbance and impacts to

vulnerable plants and wildlife, the Conservation Lands System (CLS) was adopted into the Comprehensive Plan for Pima County by the Board of Supervisors in December 2001. Consequently, we are requesting that Kinder/Morgan conform to these same guidelines that are applied to discretionary land-use decisions of the Board. Using estimates of 860.1 acres of impact in the CLS, approximately 2,528.6 acres of mitigation land or roughly $3.7 million (assuming $1,500 peracre) would be used to purchase land to offset impacts using the mitigation ratios adopted for development per CLS guidelines.

8. *Madera Highlands PPC Mitigation Bank – NRPR*. Kinder/Morgan will be required by the USFWS to mitigate the loss of Pima Pineapple Cactus (PPC). We understand from Kinder/Morgan that they will be required to purchase in excess of 320 PPC mitigation credits from a recognized PPC mitigation bank such as the County-owned Madera Highlands PPC bank. If sold to Kinder/Morgan at **$5,000 per credit**, this would generate approximately $1.6 million in revenue to Pima County, which would be used by the County to purchase other lands suitable as a PPC bank. Suitable lands for a new PPC bank would be determined by the USFWS.

9. *Mitigation Endowment Fund for Altar Valley* – The Sierrita pipeline will directly impact some 1,000 acres along its length from clear-grading of all vegetation along its right of way, access roads, staging areas, and ancillary disturbances. Past failures of pipeline restoration efforts indicate that the direct and indirect impacts from Sierrita pipeline construction will leave more than 1,000 acres in a highly degraded state. To date, more than $2.0 million has been invested in Altar Valley conservation work, largely through the efforts of the Altar Valley Conservation Alliance (AVCA) and Pima County. These efforts to stop erosion, improve watershed and ecological function, and enhance forage and wildlife habitat will be permanently compromised by the pipeline and will devalue these investments. In addition to the funds requested by the AVCA, Pima County requests a mitigation fund in the amount of **$7.0 million** is needed to generate sufficient annual funds to maintain and to cover the costs of long-term monitoring and repair of environmental damage, and **$1.5 million** is requested for Altar Valley watershed improvements.

10. *Assurance of Pipeline Safety Design for Maximum Wall Thickness* – Given the potential for pipeline ruptures, Pima County is concerned that the pressurized natural gas pipeline could pose a significant threat to public safety from explosion and fire. During pre-filing, we presented a reasonable case for greater safety design for the segment of pipeline from Mile Post 0 to Mile Post 8. Our safety concerns stem from the pipeline's proximity to public sewer conveyance and future development that has approvals for community activity centers, residential master-planned communities and urban industrial uses. We recommend the pipeline be designed and constructed to have the maximum wall thickness in this area where future population densities and the risk for harm will be much greater.

To conclude, the above costs and recommendations have been reviewed again by staff and remain largely unchanged from earlier analyses to quantify costs to Pima County and what funding and compensatory lands might be required to offset impacts to public safety and the environment from the pipeline, and the resultant long-term degradation of the exceptional conservation values of Altar Valley. In addition to funding of $2.5 million requested by AVCA, Kinder/Morgan should be accountable for estimated mitigation costs of $16,416,040. Of the amounts specified in Attachment 2, the only determined revenue that Pima County can expect to receive is approximately $2,300,000 for required Flood Plain Use Permits. Should Kinder/Morgan purchase Pima Pineapple credits from the Madera Highlands PPC bank, about $1,600,000 in additional funds would be obtained. Ongoing annual costs to Pima County for public safety, road maintenance, repair of damage to ranchlands from increased illegal trafficking and law enforcement actions that are likely to result from pipeline construction and operation are estimated at $1,020,686.

Kinder/Morgan Meeting with US Fish and Wildlife Service Administrators

As noted above, the earlier "Appropriateness Finding" by the BANWR in March 2013 effectively stopped Kinder/Morgan from further consideration of the preferable and least-damaging pipeline east route along State Route 286. To Kinder/Morgan's credit, siting the pipeline along the highway was their preferred route until the appropriateness finding precluded them from pursuing this alternative. In an effort to revisit the possibility of siting the pipeline along State Route 286 through BANWR, I asked Kinder/Morgan to explore options with the Service's national-level administrators that might reverse the determination by BANWR. These options included compensatory land of equal or greater habitat value, a land exchange to assure no net loss of habitat, and the position that it is better to site the pipeline adjacent to an existing disturbed corridor, which is consistent with Service policy.

At the County's insistence, Kinder/Morgan representatives met with Service administrators in Washington, DC on January 28, 2014 to review the BANWR appropriateness determination of siting the Sierrita Pipeline along State Route 286 through BANWR. Attending the meeting were Jim Kurth, Chief, National Wildlife Refuge System; Scott Covington, Refuge Energy Program Coordinator; and Paul Steblein, Chief, Policy, National Wildlife Refuge System; as well as Messrs. Allen Fore, Bill Biggs, Dan Tygret, and Floyd Robertson representing Kinder/Morgan and Sierrita Pipeline, LLC.

As noted in the attached meeting notes provided by Kinder/Morgan (Attachment 3), each option presented to Service representatives was rejected as "incompatible with the purposes of the refuge or mission of the Refuge System." When presented with recent case studies where the Service issued compatibility determinations that allowed pipelines or transmission lines to be sited adjacent to preexisting utility corridors that cross other refuges, these examples were dismissed by the Service as presenting "circumstances that were substantially different from those at BANWR."

While not unexpected, Service officials precluded any further consideration of any reasonable options to siting the pipeline along State Route 286 and affirmed the earlier determination that siting the pipeline through BANWR along the highway corridor is not compatible with the Refuge mission. Despite the fact that the western route will cause much greater environmental damage to the integrity of the ecosystem that the Refuge is supposed to protect, the Service's decision indicates the greater health of the Valley was never a consideration. Apparently, the more damaging west route along the boundary of the Refuge is considered compatible with the Refuge because it is not directly on the Refuge. This decision is clearly shortsighted, not consistent with scientific analyses, and unfortunately serves to physically isolate BANWR as an "island Refuge" created by two major disturbed areas encircling the Refuge – the highway and the new pipeline route. How this damage to the ecological integrity and connectivity of the Valley serves the long-term mission of the Refuge is a mystery and defies logic.

Kinder/Morgan Meetings to Discuss Tax Revenues and Mitigation Costs

In light of the confirmation by Service officials of the BANWR decision and public comment and opposition to the proposed west pipeline route by Pima County, residents and landowners in the Altar Valley, the Tohono O'odham Nation, and many others, Kinder/Morgan requested a meeting to discuss their project and County mitigation requirements. We met on February 25, 2014, and Kinder/Morgan provided information on their key milestones and project schedule, as well as a partial list of their permit status.

Regarding mitigation and our estimated costs, Kinder/Morgan asserted that tax revenues to Pima County from the pipeline should entirely offset County costs. More specifically, they referenced how the Transaction Privilege Tax (TPT) and Ad Valorem, or property taxes, would provide the necessary mitigation. I asked staff to take a second look at the County's earlier tax analyses and offered to provide these to Kinder/Morgan. If not sufficient, Kinder/Morgan offered to make a one-time payment to Pima County provided mitigation requirements were specified.

Tax Revenues to Pima County Are Not Sufficient to Offset County Costs

In the earlier analysis, we asked our Finance Department to review this issue. While Kinder/Morgan has provided FERC an estimate of $12.4 million in TPT revenue to the State and/or Pima County, our Finance Department concluded Pima County would receive only a very small portion of the prime contracting tax revenue through "state-shared sales tax." The State would share a portion of 20 percent of the tax revenue it receives from 5 percent of its overall TPT rate (6.6 percent before June 1, 2013 and 5.6 percent from June 1, 2013 on) with all Arizona counties and incorporated cities and towns. In the earlier analysis, Finance estimated the Pima County share of "state-shared sales tax" would be about $120,000. This was incorrect. When more thoroughly analyzed to include exemptions, Finance provided the new analysis below showing Pima County would receive much less, only $7,334 in TPT, and property tax estimates remain essentially unchanged.

*Re-analysis of Transaction Privilege Tax Revenues*. At the time of the previous analysis in October 2013, there was very little information regarding actual taxable activities associated with construction of the Sierrita pipeline. It was stated that Sierrita Gas Pipeline, LLC would expend approximately $200 million to construct a "spur line" extending from its main pipeline in unincorporated Pima County, southwest of metropolitan Tucson, to the border with Mexico, just west of the Buenos Aires National Wildlife Refuge. Available information suggested the $12.4 million reported by the company for TPT pertained to revenues paid to the State of Arizona and the Regional Transportation Authority (RTA) in Pima County, rather than $12.4 million of overall taxable sales. Based on the assumption of $12.4 million of total TPT taxes paid, I previously estimated Pima County government would receive about $120,000 in state-shared "sales" taxes from the construction of the pipeline (see the calculation below).

**Table 1: Previous Estimated Transaction Privilege Tax Revenues.**

| Arizona And Local Transaction Privilege Tax Revenues | Percent | Revenue |
|---|---|---|
| Total TPT Tax Revenues Paid By Company | | $12,400,000 |
| Breakdown For TPT Taxes Paid: | | |
| State TPT to be Shared by State, Counties, Cities and Towns | 5.00 | $10,163,934 |
| State TPT Retained By State For Education | 0.60 | $1,219,672 |
| Regional Transportation Excise Tax Retained for RTA Use | 0.50 | $1,016,393 |
| Amount Of State TPT Available to be Shared by State, Counties, Cities and Towns Under Contracting Classification | 20.00 | $2,032,787 |
| Amount Available Only to Counties | 40.51 | $823,482 |
| Pima County Portion of Counties Amount (FY 2012/13 Share) | 14.60 | $120,228 |

*Note: Estimates assume all activity under "contracting" classification, which shares only 20 percent of tax revenue to counties, cities and towns. Taxable "retail" activities involved in construction of the pipeline would share 40 percent of tax revenue to counties, cities and towns.*

Subsequent to having made the estimate for state-shared sales tax revenues to be received by Pima County, it was determined that a significant amount of materials costs related to construction of the pipeline would be exempt from transaction privilege and use taxes. For example, A.R.S. §42-5061(B)(6) exempts from the retail transaction privilege tax classification pipes or valves four inches in diameter or larger used to transport natural gas, including compressor units, regulators, machinery and equipment, fittings, seals and any other part used in operating the pipes or valves. A.R.S. §42-5159(B)(6) exempts the same items from the State use tax. All use tax revenues collected by the State are retained by the State and not distributed to counties, cities or towns.

A.R.S. §42-5075(B)(7) also exempts contract costs associated with the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property exempt under either §42-5061(B)(6) or A.R.S. §42-5159(B)(6) that does not become a permanent attachment to a building, highway, road, railroad, excavation or

manufactured building or other structure, project, development or improvement if the ownership of the realty is separate from the ownership of the machinery, equipment or tangible personal property.

A subsequent, closer reading of the company's August 2013 response to FERC as presented above, as well as additional detail provided in Exhibit N of the company's February 7, 2013 filing with FERC (see Table 2 below and Attachment 1), indicates the overall amount of taxable sales appears to be only $12.4 million; as spending "for work performed to the physical land, such as clearing and grading, ditching, backfilling, and restoration of the easement that is part of pipeline construction" will be taxable under the transaction privilege tax contracting classification.

**Table 2: Taxable Construction Activities under Arizona Transaction Privilege and Use Taxes.**

| Sierrita Gas Pipeline LLC Preliminary Cost Estimate For Construction of 59 Miles of 36-Inch O.D. Pipeline (FERC 7c Filing, Exhibit "N") | | | |
|---|---|---|---|
| **Categories** | **Estimated Cost** | | **Comments Regarding Category Being Subject to Arizona Transaction Privilege Tax** |
| Right of Way | $7,316,510 | | Not taxed |
| Permitting | 425,000 | | Not taxed |
| Materials | 56,595,557 | | ARS 42-5061(B)(6) & ARS 42-5159(B)(6) exempt 4-inch and larger pipe & valves, compressor units, regulators, machinery & equipment, fittings, seals and any other part used in operation of pipes & valves to transport natural gas. Other materials potentially taxable if purchased from Arizona vendors under "contracting" or "retail" classifications; other materials purchased from out-of-state vendors may be subject to State use tax, which is not shared to counties or cities/towns. |
| Installation | 57,415,279 | | May be subject to "contracting" classification (e.g., trenching), but 35% labor deduction would reduce actual tax paid. "Retail" classification allows exemption if cost to install tangible personal property is listed separately on invoice. |
| Inspection | 3,953,800 | | Not taxed |
| Legal | 5,300,000 | | Not taxed |
| Labor | 8,685,000 | | Likely exempt as allowed deduction under "contracting" classification |
| Engineering | 3,652,293 | | Not taxed |
| Environmental | 14,231,400 | | Not taxed |
| Line Pack | 1,238,500 | | Assumed to be compressor/pressurization equipment exempt under ARS 42-5061(B)(6) or ARS 42-5159(B)(6). |
| Other | 3,815,400 | | Depends on what constitutes "Other" costs. |
| Estimated Direct Cost | $162,628,739 | | |
| | | | |
| Overheads | 0 | | $0, therefore, not tax |
| Allowance for Funds Used During Construction | 7,951,122 | | Not taxed |
| Contingency and Escalation | 33,670,139 | | May contain taxable items associated with above listed categories |
| Estimated Total Cost | $204,250,000 | | |

Based on $12.4 million of taxable contracting sales, Pima County government would receive only $7,334 in state-shared sales taxes during construction of the Sierrita Gas Pipeline (see Table 3 below). Tax revenue for the RTA would be $62,000; while local incorporated cities and towns would receive about $3,870 in state-shared sales taxes (calculation not shown in table).

**Table 3: Revised Estimated Transaction Privilege Tax Revenues.**

| Arizona and Local Transaction Privilege Tax Revenues | Taxable Sales | Percent | Revenue |
|---|---|---|---|
| Total Taxable Spending by Company Under Contracting Classification | $12,400,000 | | |
| Breakdown For TPT Taxes Paid: | | | |
| State TPT to be Shared by State, Counties, Cities and Towns | | 5.00 | $620,000 |
| State TPT Retained by State for Education | | 0.60 | $74,400 |
| Regional Transportation Excise Tax Retained for RTA Use | | 0.50 | $62,000 |
| Amount of State TPT Available to be Shared to State, Counties, Cities and Towns Under Contracting Classification | | 20.00 | $124,000 |
| Amount Available Only to Counties | | 40.51 | $50,232 |
| Pima County Portion of Counties Amount (FY 2012/13 share) | | 14.60 | **$7,334** |

*Re-analysis of Property Tax Revenues.* As noted in the October 2013 analysis, County Finance was asked to analyze the claim by Kinder/Morgan that Pima County would benefit from $4.9 million in "ad valorem" taxes from the assessed value of the pipeline itself. Finance determined that Kinder/Morgan's annual property tax base would be determined by the Arizona Department of Revenue's (ADOR's) Centrally Valued Property Unit. The County Finance Department further refined this statement and offered that based on the projected $200 million in pipeline costs, the original cost base would be $200 million (approximate based on any adjustments as determined by ADOR may determine).

When an 18 percent commercial property assessment ratio is applied to the $200 million original cost base, the taxable value of the pipeline would be $36 million for the first year. If the $36 million taxable value is divided by $100 and the result is multiplied by the average tax rate of $13.5523, the resulting amount of property taxes to all state and local authorities would be approximately $4,878,828. This estimate is in line with the $4.9 million estimate from Kinder/Morgan. Of this amount, approximately $1.6 million would be realized by Pima County based on 2013 tax rates (see Table 4 below).

**Table 4.**

| $200 Million Value For Plant In Service and Taxable Net Assessed Value of $36 Million At 18% Commercial Assessment Ratio | | | | |
|---|---|---|---|---|
| | 2012 Tax Rates | Property Tax Assuming 100% Collection Rate | 2013 Tax Rates | Property Tax Assuming 100% Collection Rate |
| Pima County General Fund Primary | $3.4178 | $1,230,408 | $3.6665 | $1,319,940 |
| Pima County Debt Service | $0.7800 | $280,800 | $0.7800 | $280,800 |
| Total Pima County Government | $4.1978 | $1,511,208 | $4.4465 | $1,600,740 |

A second look at this analysis indicates that earlier comments regarding property taxes Pima County will receive remain unchanged, except for how system-wide depreciation will affect those revenues over time. When the analysis was undertaken in October 2013, it

was assumed the future taxable value of pipeline property, as determined by the ADOR Centrally Valued Property Unit, would follow a system depreciation schedule similar to that used for electric utilities, which would suggest an annual reduction of 3 percent to 4 percent in the taxable value of pipeline property subject to property taxes. Subsequent information provided by the Pima County Assessor indicates the valuation of pipeline property by the ADOR is much more complex in that it involves both an "asset change factor" and an "income change factor" to determine the system's taxable value over time.

The asset change factor has similarities to depreciation experienced by other types of property in that the current year's net book value of plant in service in Arizona is divided by the previous year's net book value. The income change factor compares recent earnings from the system with earnings in prior years. The two factors are then combined into a "value change factor" that adjusts the system's base value over time to determine the valuation of the pipeline for property tax purposes.

Therefore, system assets may decline in value over time as they age, but the income change factor can offset some depreciation when profitability increases due to greater efficiencies or rising commodity prices. During the early years of the pipeline, as Sierrita Gas Pipeline ramps up the volume of natural gas delivered, the income change factor may well outweigh any asset depreciation, thus increasing the overall value of the system for property tax purposes. A valuation increase in the early years of the pipeline would be consistent with the company's pro forma projections for state and local property taxes as detailed in Exhibit L of its February 7, 2013 filing with FERC (see Other Taxes highlighted in Table 5 below, which represent the company's pro forma property tax projections).

**Table 5**
**Sierrita Gas Pipeline LLC**
**Pro Forma Statement of Income**

| Line No. | Description | Year 1 | Year 2 | Year 3 |
|---|---|---|---|---|
| | (a) | (c) | (d) | (e) |
| 1 | Total Operating Revenues | $ 35,986,743 | $ 35,986,743 | $ 35,986,743 |
| | Operating Expenses | | | |
| 2 | Operation & Maintenance | 1,773,656 | 1,816,224 | 1,859,813 |
| 3 | Depreciation and Amortization | 8,120,460 | 8,120,460 | 8,120,460 |
| 4 | Other Taxes | 4,930,391 | 5,048,720 | 5,169,889 |
| 5 | Operating Income | $ 21,162,236 | $ 21,001,339 | $ 20,836,580 |
| | Income Taxes | | | |
| 6 | Current | 4,887,806 | 1,433,936 | 2,362,983 |
| 7 | Deferred | 802,515 | 4,413,831 | 3,651,441 |
| 8 | Total Income Taxes | $ 5,690,321 | $ 5,847,767 | $ 6,014,424 |
| 9 | Interest Expense | $ 6,767,476 | $ 6,208,288 | $ 5,621,938 |
| 10 | Net Income | $ 8,704,439 | $ 8,945,283 | $ 9,200,218 |

Kinder/Morgan Mitigation Funds Established for Other Pipeline Impacts

Should the Sierrita Pipeline be permitted, Pima County has identified costs associated with impacts to public safety, increased services, and environmental damage. Offsetting these costs to local government is not a new concept, and there is ample precedent where Kinder/Morgan and El Paso Natural Gas have established mitigation funds where highly damaging and long-term impacts to sensitive environments were likely to result from construction. A few examples from western North America Include:

- ***The Trans Mountain Expansion Project, Canada.*** The Trans Mountain Pipeline Anchor Loop project cuts through Jasper National Park and Mount Robson Provincial Park in western Canada.
  - **$3 million ecological benefit fund** – Trans Mountain Legacy Fund in 2004

- ***Rockies Express Pipeline (REX)*** is a 1,700-mile long pipeline that will stretch from Colorado to Ohio. Rockies Express, LLC agreed to establish a mitigation fund to advance landscape-level conservation of forest habitat and riparian corridors favored by certain migratory birds.
  - **$4 million to conserve forest land** – Rockies Express Migratory Bird Account

- ***The Ruby Pipeline*** is a 680-mile, 42-inch diameter pipeline that extends from Opal, Wyoming to Malin, Oregon. Ruby Pipeline, LLC filed an application with FERC on January 27, 2009; and on April 5, 2010, FERC approved the application. Construction began on July 31, 2010, and the pipeline was in service on July 28, 2011.

Similar to the Sierrita pipeline, the Ruby pipeline was also opposed by environmental groups, Native Americans, and others for the environmental damage it would do crossing more than 1,000 rivers and streams and impacting endangered species and habitat. In an effort to address stakeholder concerns, a variety of agreements were negotiated to establish trust funds. These agreements involve nonprofit organizations, as well as state and federal agencies. Some of these trusts were created with payment of a one-time lump sum to be exhausted on specified projects over a specified number of years. some were created as endowments, and others were created with a sizable up-front payment with the balance to be paid over a specified number of years.

- **$1.6 million** to the Service-approved nonprofit for conservation of endangered species.
- **$2.8 million** to a Service-approved nonprofit for conservation of migratory bird habitat.
- **$8.5 million** to nonprofit created by Oregon Natural Desert Association for land acquisition, habitat restoration, and retirement of grazing permits around Hart Mountain and Sheldon National Wildlife Refuges.
- **$8.8 million** to the Nevada Department of Wildlife and the Bureau of Land Management for sage grouse and pygmy rabbit conservation
- **$15 million** to the Public Lands Council to promote grazing on public lands.
- **$15 million** to the Western Watershed Project for retirement of grazing permits.

It bears repeating that the creation of each of these trust funds was voluntary and not required to fulfill any regulatory requirements. In fact, the funds provided to the Oregon Natural Desert Association and Western Watershed Project were *quid pro quo* for these organizations not pursuing litigation.

County Options to FERC Decision to Authorizing the Sierrita Pipeline

Given that FERC will release its FEIS on March 28, 2014 and the high probability that the pipeline will be authorized by June 26, 2014, potential options for Pima County to consider include the following responses and a brief explanation of the process that is likely.

1. Intervenor Status: Challenge FERC's issuance of Certificate of Public Convenience and Necessity (CPCN) and challenge FEIS process/NEPA implementation

After issuing the FEIS, the FERC will issue an order either granting or denying Sierrita Pipeline, LLC a CPCN. If the FERC grants Sierrita a CPCN, the order will include an explanation of the FERC's findings and mitigation measures required for the project. The County, as an intervenor in the proceedings, has the right to challenge the final order. Because the FEIS is an essential basis of the FERC's final order, a challenge to the final order would also need to include any challenges to the FEIS.

To challenge the final order, the County must first request a rehearing of the decision within 30 days. The FERC then has 30 days to deny or accept the request. A request for a rehearing does not stay the construction of a project. Therefore, the project could break ground during the rehearing process. If the County wishes to stop the project pending the decision on the rehearing, it must request a stay from the FERC.

The County has the right to appeal the final order to a federal court of appeals within 60 days of the FERC's decision of the rehearing. The Natural Gas Act provides that the proper circuit court of appeals is either the DC circuit or the circuit where Sierrita is incorporated (Delaware) or has its principal place of business (Colorado). The Court is limited to considering those objections raised in the proceedings before the FERC and is very deferential to the FERC's findings and determinations. Also, like the rehearing, an appeal does not stay the project and the County would have to request a stay from the Court.

2. Mitigation Agreement and Establishment of a Conservation Fund

Another option is reaching a mitigation settlement that includes establishment of conservation funds for the Altar Valley. As noted above, both Pima County and the AVCA have had discussions with Kinder/Morgan about establishing conservation funds to offset costs and damages and to enhance ongoing conservation efforts. As noted above in the County cost assessment and documentation of other Kinder/Morgan pipeline projects that cause long-term environmental damages, there is the possibility of negotiating a satisfactory mitigation agreement that specifies how costs to Pima County will be offset

now and in the future. In addition, Kinder/Morgan and El Paso have also initiated conservation funds that serve not only to mitigate impact but to enhance and improve conservation efforts for preservation of regional habitat values and connectivity, protecting migratory bird habitat, and conservation of endangered species habitat.

CHH/mjk

Attachments

c: Linda Mayro, Director, Sustainability and Conservation

# ATTACHMENT 1

RESOLUTION NO. 2013- 17

**A RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS OPPOSING THE CONSTRUCTION AND OPERATION OF THE WEST ROUTE ALTERNATIVE FOR THE PROPOSED SIERRITA GAS PIPELINE LLC/KINDER MORGAN SIERRITA PIPELINE TO BE SITED THROUGH THE ALTAR VALLEY WEST OF THE BUENOS AIRES NATIONAL WILDLIFE REFUGE CROSSING THE INTERNATIONAL BORDER WITH MEXICO NEAR SASABE, ARIZONA**

WHEREAS, the Altar Valley is one of the few remaining unfragmented and pristine areas in Pima County; and

WHEREAS, Sierrita Gas Pipeline LLC/Kinder Morgan proposes to construct, operate and maintain a 59- mile, 36-inch natural gas pipeline from just southwest of Tucson Mountain Park, through the Altar Valley to the international border near Sasabe, Arizona; and

WHEREAS, Sierrita Gas Pipeline LLC/Kinder Morgan has proposed two alternative routes consisting of the East Route, which closely parallels State Route 286, and the West Route, which cuts through the remote and pristine area west of the Buenos Aires National Wildlife Refuge; and

WHEREAS, Pima County has provided extensive comments on the proposed routes; and

WHEREAS, Pima County has found that the impacts of the West Route far outweigh the impacts of the East Route; and

WHEREAS, a pipeline sited on the East Route along SR286 within the already degraded highway corridor would create fewer impacts and allow for more manageable circumstances; and

WHEREAS, a pipeline sited on the West Route would create a new de facto highway from the international border north through the Altar Valley; and

WHEREAS, a new West Route corridor will increase border and law enforcement security issues, increase unwanted and unlawful vehicular and human traffic, increase health and safety risks to Altar Valley residents, increase the need for Border Patrol and Sheriff patrol coverage and incident investigation, increase public safety and land management costs to Pima County; and

WHEREAS, a new West Route corridor will significantly impact conservation values within the Altar Valley watershed by fragmenting an intact, pristine landscape creating a second 59-mile long degraded infrastructure corridor, exacerbating the spread of invasive species and permanent loss of native vegetation, increasing erosion and head

cutting of drainages, devaluing Altar Valley Conservation Alliance investments in landscape restoration, impacting Tohono O'odham cultural values, and devaluing County conservation investments in Altar Valley; and

WHEREAS, Pima County has invested over $44 million in voter-approved public funds, acquiring over 20,000 acres of fee land and managing over 62,000 acres of State grazing leases, which will be used as the County's mitigation for federal permits; and

WHEREAS, constructing the pipeline on the West Route will force Pima County to involuntarily bear significant increases to annual expenditures necessary to maintain appropriate levels of law enforcement services and provide responsible stewardship of the County's conservation lands and that these annual cost increases will result from constructing the pipeline on the West Route; and

WHEREAS, on February 7, 2013, Sierrita Gas Pipeline LLC/Kinder Morgan filed their application to the Federal Energy Regulatory Commission for the Sierrita Pipeline LLC project seeking authorization of the West Route; and

WHEREAS, Pima County would like the Federal Energy Regulatory Commission to issue a notice for a full Environmental Impact Statement for this project; and

WHEREAS, Pima County informed the Federal Energy Regulatory Commission and the U.S. Fish and Wildlife Service that the West Route is the worst possible route and will cause the most damage; and

WHEREAS, on March 5, 2013, the U.S. Fish and Wildlife Service submitted an Appropriateness Finding that concluded the East Route of the Sierrita Pipeline, sited along SR286 which already crosses through the Buenos Aires National Wildlife Refuge (BANWR), would not promote the National Wildlife Refuge System purposes and that it would therefore not authorize construction of the pipeline on the East Route through the BANWR; and

WHEREAS, the significant impacts discussed above will not end at the BANWR boundary if the West Route is chosen; and

WHEREAS, the U.S. Fish and Wildlife Service's Appropriateness Finding conflicts with the Service's own Arizona Ecological Services Office's and the Arizona Game and Fish Department's findings that the East Route is the least damaging and their recommendation that the East Route be selected over the West Route; and

WHEREAS, the Board of Supervisors believes no pipeline should be constructed through the Altar Valley; and

WHEREAS, if a pipeline is absolutely necessary, it should be constructed on the route with the least impact; and

WHEREAS, Pima County will continue to request that the larger regional impacts to the Altar Valley watershed be considered and mitigated.

NOW, THEREFORE, BE IT RESOLVED that the Pima County Board of Supervisors:

1. Opposes the construction and operation of the Sierrita Pipeline on the West Route alignment.

2. Will intervene at the appropriate time in the proceedings on the applications of Sierrita Gas Pipeline L.L.C. before the Federal Energy Regulatory Commission.

3. Directs the County Administrator to file a statement of opposition/protest with the Secretary of the Federal Energy Regulatory Commission.

4. Calls upon the Congressional Delegation, the Department of Homeland Security, and the Department of Interior to consider the larger regional impacts on sensitive environmental resources as well as public safety that will result from constructing and operating a new pipeline through the pristine and undisturbed lands of the Altar Valley (West Route), as opposed to constructing and operating a pipeline that occurs within an already degraded pre-existing highway corridor.

5. Calls upon the Federal Energy Regulatory Commission, Congressional Delegation, the Department of Homeland Security, and the Department of Interior to use all authorities and resources to urge thorough consideration and analysis of alternative US/Mexico border crossing locations other than Sasabe, Arizona.

Passed by the Board of Supervisors of Pima County, this 12th day of March, 2013.

Chairman, Pima County Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Deputy County Attorney

MICHAEL LEBLANC

# RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL

**(Opposing Sierrita Gas Pipeline LLC's Proposed Pipeline in the Altar Valley and Authorizing the Nation to Intervene in the Federal Energy Regulatory Commission Proceedings)**

**RESOLUTION NO. 13-119**

**WHEREAS,** the Tohono O'odham way of life is to promote "enjoyable harmony between members of the Nation and their environment" (Constitution, Article XVIII, Section 1); and

**WHEREAS,** the Tohono O'odham Nation is charged with the responsibility to preserve "its historic and cultural artifacts and archeological sites" as well as "preserve and cultivate native arts, crafts and traditions" (Constitution, Article XVIII, Section 1, and Article VI, Section 1(c)(8)); and

**WHEREAS,** Sierrita Gas Pipeline, LLC, an indirect subsidiary of Kinder Morgan, Inc. and Kinder Morgan Energy Partners, L.P., has filed an application pursuant to Section 7(c) of the Natural Gas Act before the Federal Energy Regulatory Commission requesting a Certificate of Public Convenience and Necessity authorizing the construction and operation of a new interstate natural gas pipeline, and a second application under Section 3 of the Natural Gas Act for a Presidential Permit to cross the border with the pipeline; and

**WHEREAS,** the Sierrita Pipeline Project ("Project") is being proposed to provide natural gas supplies to power plants in Mexico; and

**WHEREAS,** the Project consists of approximately 59 miles of 36 inch natural gas pipeline in a 100 foot right-of-way located between Tucson and Sasabe, Arizona, and a 60 foot segment of pipeline which crosses the border; and

**WHEREAS,** the Project proposes to follow a western route through the Altar Valley which will cut through remote and pristine areas of the Altar Valley located to the west of the Buenos Aires National Wildlife Refuge; and

**WHEREAS,** the alternative eastern route, which was initially considered but dropped due to the Buenos Aires National Wildlife Refuge's opposition, would co-locate the pipeline along the existing State Route 286 and low-voltage power line corridor, crossing within the boundaries of the Refuge; and

**WHEREAS,** the Tohono O'odham Nation presented comments on the proposal at a Federal Energy Regulatory Commission scoping meeting held in Three Points in October 2012; and

**WHEREAS,** the Project will adversely affect 40-60 cultural resource sites which are regarded as sacred and significant to the Tohono O'odham Nation and which are associated with the Hohokam or the Tohono O'odham and include several village sites, trash mounds, and quarry sites; and

**WHEREAS,** the Project will adversely affect Baboquivari Peak, which is listed as a Traditional Cultural Place under the National Historic Preservation Act, 16 U.S.C. §470a(d)(6)(A), as an area sacred to Tohono O'odham and the home of I'itoi; and

**WHEREAS,** the Project will adversely impact Traditional-Use Lands of the Tohono O'odham Nation and destroy natural resources and negatively affect the surrounding environment; and

**WHEREAS,** the Project creates a new north-south corridor and service road which will undoubtedly be used for illegal traffic, Border Patrol, and recreational users; and

**WHEREAS,** the Project creates habitat fragmentation in an otherwise pristine area; and

**WHEREAS,** the Project will adversely impact the Pima County Sonoran Desert Conservation Plan which seeks to preserve and protect natural and cultural landscapes of the Altar Valley and other areas in Pima County and has been supported by the Tohono O'odham Nation; and

**WHEREAS,** the Project will have an adverse impact on the Buenos Aires National Wildlife Refuge and on the jaguar habitat recovery plan being developed by the United States Fish and Wildlife Service; and

**WHEREAS,** Pima County, the Altar Valley Conservation Alliance, and the United States Border Patrol all oppose the Project; and

**WHEREAS,** the Cultural Preservation Committee has reviewed this resolution and recommends its approval.

**NOW, THEREFORE, BE IT RESOLVED** that the Tohono O'odham Legislative Council opposes the Sierrita Gas Pipeline, LLC, Project as set out in its application for a Certificate of Public Convenience and Necessity and its application for a Presidential Permit and authorizes the Office of Attorney General to intervene in both Federal Energy Regulatory Commission proceedings.

**The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 04TH Day of APRIL, 2013 at a meeting at which a quorum was present with a vote of 2,667.25 FOR; 113.65 AGAINST; [02] NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1 (c)(8) and Article XVIII, 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**

**5 day of April, 2013**

**ATTEST:**

**Evonne Wilson, Legislative Secretary**

**4 day of April, 2013.**

**Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 5 day of April, 2013 at 11:51 o'clock, A.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**

**[X] APPROVED** **on the 08 day of April, 2013**

**[ ] DISAPPROVED** **at 9:13 o'clock, A.M.**

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

**Returned to the Legislative Secretary on the** 8 **day of**

April, **2013, at** 10:15 **o'clock,** a **.M.**

**Evonne Wilson, Legislative Secretary**

# ATTACHMENT 2

# Altar Valley Sierrita Pipeline Mitigation Issues and Recommendations

*March, 2014*

| **Public Safety Sheriff** | **Medical Examiner** | **Erosion Flood RFCD** | **Easements RP/DOT** | **Access Roads DOT** | **Ranch Issues NRPR** | **CLS Impacts OSC** | **PPC Credits NRPR** | **Long-Term Env. Impacts** |
|---|---|---|---|---|---|---|---|---|
| Costs/ Impacts: Increased calls for vandalism, trafficking, emergency services, and increased deputy patrols. | Costs/Impacts: Increased UDI deaths due to migrant use of pipeline road. Increased number of un-claimed human bodies. | Costs/Impacts 210 washes to be open cut and crossed by pipeline, and 100 acres of riparian area to be destroyed under FPUP. | Costs/Impacts Sierrita has appraisals for submittal. | Costs/Impacts Possible road degradation, erosion, loss of vegetation. | Costs/Impacts Damage to open space, infrastructure, wells, fences, trash clean-up, etc. from unwanted pedestrian and vehicle traffic. | Costs/Impacts Direct loss of county-owned Section 10 mitigation land and lease lands; as well as 1,000+/- acres of destroyed CLS habitat on ASLD and private lands. | Costs/Impacts About 320+/- acres of PPC habitat and about 130 PPC will be destroyed by pipeline. | Costs/Impacts Long-term pipeline direct impacts of 1,000 acres will devalue past investments of $2,100,000 by ranchers and agencies to stop erosion and improve watershed function. |
| Mitigation: Annual cost of **$461,436**** (for 4 deputies, investigations, services) and one-time cost of **$224,040*** for vehicles. | Mitigation: Annual cost estimated **$174,000 to $261,000**** | Mitigation: Flat rate fee for impact mitigation in the range of **$2,300,000+/-*** | Mitigation: Easement documents and appraisals submitted and costs to be determined* | Mitigation: Cost of restoration of 13.1 miles at **$7,500/mile = $98,250**** | Mitigation: Annual costs for increased repairs, trash removal, etc. and staff time of **$200,000**** | Mitigation : Conservation of 2,528 acres to offset CLS habitat loss at $1,500/acre estimated at **$3,792,000*** | Mitigation: County Madera Highlands PPC bank available. Estimated at $5,000/credit for cost to KM of **$1,600,000*** | Mitigation: County mitigation fund of **$7,000,000*** to be used as, and matching funds of **$1,500,000*** for Altar Valley Watershed Restoration County Bond Project. |
| *Notes: The one-time cost of **$224,040** is reduced to 4 vehicles in Sheriff estimate.* | *Notes: This is unchanged.* | *Notes: Costs previously estimated at $2.5 million and subject to further change. This is a cost to KM and revenue to County.* | *Notes: Currently under review.* | *Notes: This is unchanged.* | *Notes: This is unchanged.* | *Notes: CLS mitigation land of **2,528 acres*** to offset direct loss of 860.1 acres of CLS in Altar Valley, inclusive of County land.* | *Notes: This is a lower estimate that is subject to further change. This is a cost to KM and possible revenue to County.* | *Notes: This fund is estimated to generate about $200,000/ year. Matching funds of $1.5 million to be used for Altar watershed restoration.* |

* One -Time Costs to Kinder Morgan: $16,416,040

**Annual Ongoing Costs to Pima County: $ 1,020,686

# ATTACHMENT 3

Meeting Notes, January 28, 2014

U.S. Fish and Wildlife Service
National Wildlife Refuge System
**Re: Buenos Aires National Wildlife Refuge, Pima County, AZ**

Department of the Interior Main Building

Attendees:
Jim Kurth, Chief, National Wildlife Refuge System
Scott Covington, Refuge Energy Program Coordinator
Paul Steblein, Chief, Branch of Policy, National Wildlife Refuge System
Allen Fore, Director, Government Affairs, Sierrita Gas Pipeline LLC
Bill Biggs, Senior Right of Way Agent II, Land and Right of Way, Sierrita Gas Pipeline LLC
Dan Tygret, Senior Regulatory Analyst II, Regulatory Affairs, Sierrita Gas Pipeline LLC
Floyd Robertson, Director, Land and Right of Way, Sierrita Gas Pipeline LLC

The purpose of this meeting was to discuss the routing of the Sierrita Pipeline through the Altar Valley. Pima County officials have expressed a preference that the pipeline be routed adjacent to State Highway 286 through the entire length of Buenos Aires National Wildlife Refuge (BANWR), instead of the Draft EIS preferred route just west of the Refuge. Sierrita Gas Pipeline (Sierrita) representatives met with top officials of the National Wildlife Refuge System (NWRS) in Washington, DC to discuss this routing.

As with previous meetings between Sierrita representatives and NWRS officials, Jim Kurth (Chief, NWRS) again confirmed that the US Fish and Wildlife Service (USFWS) may not approve any pipeline routing that crosses the BANWR, including any route adjacent to State Highway 286 that is determined to be incompatible with the purposes of the refuge or the mission of the Refuge System. This conforms with the Appropriateness Finding (Finding) sent to interested parties of the Sierrita Pipeline on March 5, 2013. The circumstances and results of that Finding have not changed. The position of the USFWS is that any action to grant a right of way or other permit that is incompatible with the purposes of the refuge or the mission of the Refuge System is against the laws and regulations governing the National Wildlife Refuge System.

Sierrita representatives asked about the possibility of offsetting impacts of a route along State Highway 286 with a land donation of appropriate size. Mr. Kurth advised that the NWRS is specifically forbidden from using compensatory mitigation to permit a right-of-way for a project such as the Sierrita Pipeline that has been found to be incompatible with the purposes of the refuge or the mission of the Refuge System. Sierrita staff pointed to the 2010 authorization of a loop pipeline across the Walkill NWR in New Jersey. This project involved a loop pipeline by Tennessee Gas Pipeline (TGP). The loop was to parallel the previous pipeline owned by TGP, which was installed prior to creation of the NWR and which had a perpetual right of way grant that predated the NWR. As such, the NWR did agree to allow the

second pipeline within the boundary of the original right of way and with construction stipulations and requirements. The circumstances related to the issuance of a compatibility determination for that loop line, including a pre-existing right of way, work by the original holder of that right of way (TGP), as well as the shorter length of the pipeline on NWR property, were substantially different than those of the Sierrita Pipeline.

A similar circumstance existed for a transmission line at the Upper Mississippi River NWR and again the circumstances were substantially distinct from those at the Buenos Aires NWR.

Mr. Kurth advised Sierrita that he has previously met with Pima County officials and others, as well as with Sierrita Pipeline representatives and that the results and application of the Appropriateness Finding have not changed.