

LEGISLATIVE SUMMARY SHEET

Tracking No. 0060-24

DATE: March 14, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A WAIVER OF CONSIDERATION FOR THE NAVAJO TRIBAL UTILITY AUTHORITY (“NTUA”) FOR CERTAIN TRIBAL AUTHORIZATION ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES; AND AMENDING CERTAIN TRIBAL AUTHORIZATION ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES GRANTED SINCE JUNE 3, 2020 TO WAIVE CONSIDERATION, INCLUDING ANY CONSIDERATION ASSESSED BUT NOT YET PAID BY NTUA TO THE NAVAJO NATION

PURPOSE: The purpose of this legislation is as follows: (1) provide a waiver of consideration to the Navajo Tribal Utility Authority (“NTUA”) for “public purposes” and “commercial operations” Tribal Authorization Accesses (“TAAs”); (2) provide a waiver of consideration to NTUA for telecommunication tower site leases, including those involving commercial co-locations; and (3) to amend certain TAAs and telecommunication tower site leases granted to NTUA since June 3, 2020 to waive consideration, including any consideration that has been assessed, but not yet paid by NTUA to the Navajo Nation.

Final Authority: Resources and Development Committee

Vote Required: Simple Majority

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each Council Delegate to review the proposed resolution in detail.

OLC No. 24-099-1

5-DAY BILL HOLD PERIOD 5-10
Website Posting Time/Date 6:52 pm; 03-14-24
Posting End Date: 03-19-24
Eligible for Action: 03-20-24

PROPOSED STANDING COMMITTEE RESOLUTION
25th NAVAJO NATION COUNCIL— Second Year, 2024
INTRODUCED BY

Primary Sponsor

TRACKING NO. 0060-24

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE;
APPROVING A WAIVER OF CONSIDERATION FOR THE NAVAJO TRIBAL
UTILITY AUTHORITY ("NTUA") FOR CERTAIN TRIBAL AUTHORIZATION
ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES; AND
AMENDING CERTAIN TRIBAL AUTHORIZATION ACCESSES AND
TELECOMMUNICATION TOWER SITE LEASES GRANTED SINCE JUNE 3,
2020 TO WAIVE CONSIDERATION, INCLUDING ANY CONSIDERATION
ASSESSED BUT NOT YET PAID BY NTUA TO THE NAVAJO NATION

BE IT RESOLVED:

SECTION ONE. AUTHORITY

A. The Resources and Development Committee of the Navajo Nation Council has final approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) lands. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals and terminations. 2 N.N.C. § 501(B)(2)(a).

SECTION TWO. FINDINGS

A. The Code of Federal Regulations, Title 25, Part 169. Rights-of-way over Indian Land Subpart A. Purpose, Definitions, General Provisions, 25 CFR § 169.4 (b)(3)(iii) states

1 “You do not need a right-of-way if you are... (iii) An independent legal entity wholly
2 owned and operated by the tribe that owns 100 percent of the trust or restricted interests
3 in the land.” 25 CFR § 169.4 (b)(3)(iii) further states: “but the following conditions
4 apply . . . The tribal governing body must pass a tribal authorization authorizing access
5 without BIA approval and including a legal description, and you must submit both
6 documents to BIA for our records.”

7 B. The Navajo Tribal Utility Authority (“NTUA”) is an enterprise of the Navajo Nation
8 and provides overhead and underground electricity, water, wastewater, natural gas,
9 telecommunication, and photovoltaic services to the Navajo Nation. *See* 21 N.N.C. § 5
10 (A)(1-6).

11 C. Pursuant to RCD-104-10, the Resources Committee of the Navajo Nation Council
12 delegated the authority to the Navajo Land Department to approve NTUA rights-of-
13 way for overhead and underground electric, water, sewer, natural gas distribution lines,
14 service taps, transmission lines, substation tracts, office tracts, well/storage
15 tanks/watering point tracts, communication tracts, and fiber optic cable enabling
16 Navajo Nation residents to obtain these much-needed utility services. No consideration
17 was assessed for these rights-of-way. However, the Resources Committee retained
18 approval authority if any portion of the right-of-way was used for commercial
19 operations. Fees would be assessed for that portion of the right-of-way and would be
20 due to the Navajo Nation. RDC-104-10 is herein attached as **Exhibit 1** (exhibits
21 omitted).

22 D. Pursuant to RDCS-97-17, the Resources and Development Committee of the Navajo
23 Nation Council amended RCD-104-10 to waive consideration for any portion of a
24 right-of-way used for commercial operations until such time the Committee deemed it
25 was not in the best interests of the Navajo Nation to waive the consideration. RDCS-
26 97-17 is herein attached as **Exhibit 2** (with exhibits omitted).

27 E. Pursuant to RDCJN-17-20, the Resources and Development Committee approved the
28 Tribal Authorization Access without Bureau of Indian Affairs Approval for
29 Independent Legal Entities Wholly Owned and Operated by the Navajo Nation,
30 Approved the delegation of authority to the Department Manager of the Navajo Land

1 Department to grant tribal access for rights-of-way on the Navajo Nation for
2 independent legal entities wholly owned by the Navajo Nation, approved the
3 departmental administrative rules and regulations and the terms and conditions for the
4 delegation of authority and rescinded RCD-104-10, RDCS-97-17, and other prior
5 inconsistent resolutions. RDCJN-17-20 is herein attached as **Exhibit 3**.

6 F. Specifically, RDCJN-17-20 provides a Delegation of Authority to the Department
7 Manager of the Navajo Land Department to grant Tribal Authorization Access for the
8 proposed overhead and underground electric, water, sewer, natural gas distribution
9 lines, transmission lines, substation tracts, fiber optic cable and roads. However, the
10 Resources and Development Committee retains the authority to approve all commercial
11 Tribal Authorization Accesses.

12 G. The Navajo Land Department has been assessing consideration on various NTUA
13 utility projects for public purposes, which adds to the overall costs of these projects.
14 "Public purpose" means any residence, governmental building, including chapter
15 houses, healthcare facility, school, including higher education entities, daycare, Head
16 Start building, senior center, library, or public safety building. Assessing consideration
17 for these sorts of projects is in contrast to the Nation's goal of bringing critical
18 infrastructure to the Navajo people, especially in light of the Nation's opportunity to
19 utilize time-sensitive funding opportunities like the American Rescue Plan Act and the
20 Infrastructure Investment and Jobs Act.

21 H. Consideration is also being assessed on Tribal Authorization Accesses related to NTUA
22 installing and operating utilities for commercial customers wanting to develop
23 businesses on the Navajo Nation. Consideration assessed for these commercial
24 operations Tribal Authorization Accesses is passed on to the business developer, which
25 is in addition to the actual costs to extend services to the commercial customer/operator,
26 thereby increasing the overall business development costs. Commercial operations on
27 the Nation are subject to non-typical costs such as business site lease costs, dual
28 taxation from the Nation and the State, as well as federal taxes. The additional costs
29 imposed for a commercial operation Tribal Authorization Access could serve as a
30 deterrent for businesses considering locating to and investing on the Nation.

- 1 I. Obtaining a waiver of consideration for each Tribal Authorization Access is time
2 consuming and delays NTUA from extending basic infrastructure to the Navajo people
3 and potentially hinders business development on the Navajo Nation.
- 4 J. NTUA is requesting a waiver from the Resources and Development Committee for the
5 assessment of consideration for all “public purpose” and “commercial operations”
6 Tribal Authorization Accesses, as described above. This would include any “public
7 purpose” or “commercial operations” Tribal Authorization Access that is currently
8 pending final approval by the Navajo Nation. The Resources and Development
9 Committee finds that amending RDCJN-17-20 to grant such a waiver is in the best
10 interests of the Navajo Nation.
- 11 K. Pursuant to RCJY-98-06, the Resources Committee approved the Delegation of
12 Authority to the Director of the Land Department to Approve Leases, Permits, and
13 Rights-of-Way for Telecommunications Projects upon the Navajo Nation Land. RCJY-
14 98-06 is herein attached as **Exhibit 4**.
- 15 L. Pursuant to RCAP-25-07, the Resources Committee amended RCJY-98-06 to include
16 an annual rental of \$12,000. RCAP-25-07 is herein attached as **Exhibit 5**.
- 17 M. According to NTUA, imposing fees of \$12,000 per tower site lease per year makes it
18 uneconomical to construct and maintain telecommunications towers on the Navajo
19 Nation. Many of the towers that have been constructed or need to be constructed are in
20 areas where they will serve an insufficient number of customers to cover the annual
21 fee, let alone the costs of constructing and powering the towers, in addition to
22 maintaining the associated equipment.
- 23 N. The Resources and Development Committee finds that granting a waiver to NTUA for
24 all annual payments of its Telecommunication Tower Site Leases is in the best interests
25 of the Nation to promote economic growth and to provide utility services on the Nation.
26 This waiver includes any Telecommunication Tower Site Lease where a sublease is
27 issued for any commercial co-location (*i.e.* carriers who are commercial/for profit in
28 nature). However, consideration will still be due for any and all co-locations related to
29 these Telecommunication Tower Site Leases in accordance with RCAP-25-07.
30

1 O. NTUA is also requesting the Resources and Development Committee amend any and
2 all Tribal Authorization Accesses granted by the Navajo Land Department since the
3 adoption of RDCJN-17-20 (*i.e.* June 3, 2020) for “public purposes” to waive the
4 consideration for these Tribal Authorization Accesses, including any consideration that
5 has been assessed but not yet paid by NTUA to the Navajo Nation. Additionally,
6 NTUA is requesting the Resources and Development Committee amend all
7 Telecommunication Tower Site Leases issued to NTUA since June 3, 2020 to waive
8 the annual lease payments for each lease at issue, including any annual lease payment
9 that has been assessed but has yet to be paid by NTUA. These specific Tribal
10 Authorization Accesses and Telecommunication Tower Site Leases have been
11 identified by NTUA and are herein attached and incorporated as **Exhibit 6**.

12 13 **SECTION THREE. APPROVALS**

14 A. The Resources and Development Committee hereby amends RDCJN-17-20 to add the
15 following as a new Section Seven:

16 17 **SECTION SEVEN. WAIVERS OF CONSIDERATION FOR THE** 18 **NAVAJO TRIBAL UTILITY AUTHORITY**

19
20 The Resources and Development Committee hereby grants a waiver for one hundred
21 percent (100%) of the consideration for any public purpose Tribal Authorization
22 Access issued to the Navajo Tribal Utility Authority (“NTUA”). “Public purpose”
23 means any residence, governmental building, including chapter houses, healthcare
24 facility, school, including higher education entities, daycare, Head Start building,
25 senior center, library, or public safety building. Additionally, NTUA shall receive a
26 waiver of one hundred percent (100%) of the consideration for commercial operations
27 Tribal Authorization Accesses. “Commercial operations” means any Tribal
28 Authorization Access granted to NTUA to be used in whole or in part for NTUA to
29 extend utility services to any for-profit business customer/operator located, or to be
30 located, on the Navajo Nation.

1 B. The Resources and Development Committee hereby waives the annual payment of
2 \$12,000, as required under RCAP-25-07, for any Telecommunication Tower Site Lease
3 issued to NTUA after the approval of this resolution. This waiver includes any
4 Telecommunication Tower Site Lease where a sublease is issued for any commercial
5 co-location (*i.e.* carriers who are commercial/for profit in nature). However,
6 consideration will still be due for any and all co-locations related to these
7 Telecommunication Tower Site Leases in accordance with RCAP-25-07.

8 C. The Resources and Development Committee hereby approves amendments to the
9 Tribal Authorization Accesses and Telecommunication Tower Site Leases identified in
10 **Exhibit 6** to waive any consideration due to the Navajo Nation pursuant to these Tribal
11 Authorization Accesses and Telecommunication Tower Site Leases, including the
12 waiver of any consideration due that has not yet been paid by NTUA to the Navajo
13 Nation.
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RCD-104-10

**RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL**

21st NAVAJO NATION COUNCIL - Fourth Year, 2010

AN ACTION

RELATING TO RESOURCES; APPROVING THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO APPROVE RIGHTS-OF-WAY FOR NAVAJO TRIBAL UTILITY AUTHORITY'S PROPOSED OVERHEAD AND UNDERGROUND ELECTRIC, WATER, SEWER, NATURAL GAS DISTRIBUTION LINES, TRANSMISSION LINES, SUBSTATION TRACTS, OFFICE TRACTS, WELL/STORAGE TANKS/WATERING POINT TRACTS, COMMUNICATION TRACTS, AND FIBER OPTIC CABLE FOR THE BENEFIT OF NAVAJO NATION RESIDENTS; APPROVING THE ADMINISTRATIVE RULES AND REGULATIONS FOR THE DELEGATION OF AUTHORITY; AND APPROVING THE RIGHT-OF-WAY TERMS AND CONDITIONS

BE IT ENACTED:

- A. The Navajo Nation hereby finds the following with respect to this legislation:
1. Pursuant to 2 N.N.C. § 691, the Resources Committee is authorized to give final approval of the rights-of-way, easements and other clearances related to power, water, sewer, natural gas distribution, communication, and transmission lines.
 2. Pursuant to 2 N.N.C. § 695 (B), the Resources Committee is authorized to delegate its powers to appropriate executive officials within the Division of Natural Resources provided the Committee first approves rules and regulations governing such delegations.
 3. There are many Navajo Nation residents that lack utility services and there are backlogs of pending requests for utility services.
 4. The current system of processing rights-of-way is routine, time consuming and has resulted in the loss of project funds as well as delay in providing Navajo residents with the much-needed utility services across the Navajo Nation.

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5. Therefore, there is a need to delegate the authority to approve rights-of-way to the Director of the Navajo Land Department to expedite the right-of-way process enabling Navajo residents to obtain the much-needed utility services in a timely manner.

6. The process of reviewing documents associated with rights-of-way is essentially an administrative task that can be performed by the Director of Navajo Land Department under specific rules and regulations adopted by the Resources Committee.

7. The Project Review Office was established within the Division of Natural Resources Navajo Land Department to monitor, review, analyze, and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with Navajo Nation and Federal laws and regulations. The Project Review Office is responsible for determining whether each proposed resolution or document is properly prepared, require necessary clearance, investigation or other appropriate action as may be deemed necessary and proper, formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program, conduct such special programs or projects as may be assigned.

8. The Navajo Nation finds it is in the best interest of the residents of the Navajo Nation to approve the delegation of authority.

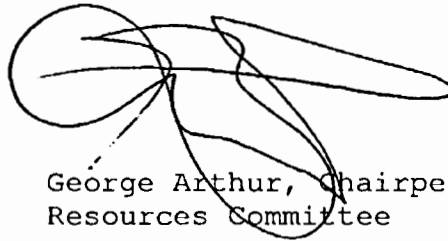
- B. The Navajo Nation hereby approves the delegation of authority to the Director of the Navajo Land Department, Division of Natural Resources, to approve Navajo Tribal Utility Authority ("NTUA") rights-of-way for overhead and underground electric, water, sewer, natural gas distribution lines, service taps, transmission lines, substation tracts, office tracts, well/storage tanks/watering point tracts, communication tracts, and fiber optic cable enabling Navajo Nation residents to obtain the much-needed utility services.
- C. The Navajo Nation hereby approves the Administrative Rules and Regulations, attached hereto as Exhibit "A".

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- D. The Navajo Nation hereby approves the Terms and Conditions, attached hereto as Exhibit "B".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 3rd day of December, 2010.

A handwritten signature in black ink, appearing to read "George Arthur", is written over the printed name and title.

George Arthur, Chairperson
Resources Committee

Motion: Phillip Harrison, Jr.
Second: Harriett K. Becenti

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Third Year, 2017



AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RCD-104-10,
EXHIBIT "B", NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:
NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE), COMMERCIAL OPERATIONS
WAIVER

Section One. Authority

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 500 (A) (2015).
- B. The Resources and Development Committee of the Navajo Nation Council is empowered with oversight authority over land and the power to grant final approval for non-mineral leases and rights-of-way within the Navajo Nation. 2 N.N.C. § 500 (C), 501 (B) (2) (a).

Section Two. Findings

- A. The Resources Committee, on December 3, 2010, approved a delegation of authority to the Director of the Navajo Land Department to approve certain rights-of-way for the Navajo Tribal Utility Authority (NTUA), approved the Administrative Rules and Regulations for the delegation of authority, and approved the Right-of-Way Terms and Conditions. See RCD-104-10.
- B. The Administrative Rules and Regulations, within RDC-104-10, provide a delegation from the Resources Committee to the Director of the Navajo Land Department that include: III. Delegation (d), "The Director of the Navajo Land Department shall give final approval of NTUA rights-of-way, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by reference." See RCD-104-10, Exhibit A.
- C. The Administrative Rules and Regulations, within RDC-104-10, state, "The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Rules and Regulations may be amended or

rescinded by the Resources Committee of the Navajo Nation Council. See Administrative Rules and Regulations, Section V. Review and Amendment (a), Exhibit A, RDC-104-10.

- D. References in the Navajo Nation Code and other official documents to the Resources, Transportation and Community Development and Economic Development Committees shall mean the Resources and Development Committee, unless the amendments enacted herein for the context of previous law indicates otherwise. See CJA-03-13, overriding President's veto of CO-45-12, Section 5(B).
- E. Commercial operations on the Nation promote economic growth via taxation revenue and employment. The Nation receives a Sales Tax (currently 5%) revenue on the utility consumption of customers and commercial customers consume more than the average customer, therefore, the Nation receives more taxation revenue from these commercial operations. In addition, the costs to construct utilities within these right-of-ways are subject to the same tax, adding to the tax revenue.
- F. Commercial operations on the Nation are subject to non-typical additional costs such as business site lease costs, dual taxation from the Nation and State, as well as federal taxes. The additional costs imposed for a right-of-way will add to the additional non-typical costs and continue to deter any businesses considering locating and investing on the Nation.
- G. Obtaining the approval for each right-of-way used for commercial operations is time consuming and delays businesses from developing and operating. In addition, the costs assessed are not readily determinable to the business until the business has substantially made progress in its development, therefore, these unknown costs further act as a deterrent to develop on the Nation.
- H. The consideration assessed for commercial operations rights-of-way is passed onto the business developer therefore, increasing their overall business development costs. This deters business development within the Nation because these fees are not typical outside the Nation. In addition, NTUA is a not-for-profit enterprise and if had to absorb these added costs it would have to pass them on to its customers therefore, the customers would subsidize these added costs.

- I. This consideration assessment/cost is in addition to the actual costs to extend such utility service(s) to the commercial operator/customer.
- J. Commercial operations promote employment for the economic self-sufficiency of the Navajo people and residents. The further development of commercial operations on the Nation will promote a more diverse economy therefore, promoting economic competition, resulting in competitive pricing. In addition, these added goods and services are provided to the residents of the Nation, which result in additional choices, reduced travel time and dollars staying on the Nation.
- K. There has been no clear interpretation of what constitutes a "commercial operation". The term has had ambiguous interpretations to various departments desiring to assess consideration, therefore, it is more efficient to waive consideration until such time the Committee deems that it is not in the best interests of the Nation.
- L. The Resources and Development Committee finds that the proposed language is in the best interests of the Nation to promote much needed economic growth.

Section Three. Proposed Amendment

- A. RCD-104-10, Exhibit "B" states the Terms and Conditions of the Navajo Tribal Utility Authority's (NTUA's) rights-of-ways.
- B. NTUA proposes an amendment to Exhibit "B"--Navajo Nation Right-of-Way Terms and Conditions: Navajo Tribal Utility Authority (Grantee).
- C. Section of paragraph 2 of Exhibit "B" states:

"2. Consideration for the use of land covered by the Delegation is assessed at \$N/A, which shall be the Navajo Nation's contribution to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s)."

D. NTUA is proposing this language to state:

~~NTUA must obtain the approval of the Resources Committee if any portion of the right of way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).~~

Consideration shall be assessed and waived for the portion of the line used of commercial operation(s) until such time the Resources and Development Committee deems that it is not in the Nation's best interests to waive the consideration."

Attached is amended Navajo Nation Right-of-Way Terms and Conditions; Navajo Tribal Utility Authority (Grantee), **Exhibit 1.**

Section Four. Approval

The Resources and Development Committee hereby finds that the proposed language is in the best interests of the Nation and amends the language of RCD-104-10, Exhibit "B", paragraph 2, as stated above and in **Exhibit 1**, and hereby requires NTUA to work together with the NN Land Department and Minerals Department and to report to the Resources and Development Committee quarterly as to the total amount of commercial use fees waived, new service areas opened and other relevant information demonstrating the effect of this legislation.

CERTIFICATION

I, hereby certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Standing Rock Chapter, Standing Rock, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained on this 20th day of September, 2017.



Benjamin Bennett, Vice Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- Second Year, 2020



AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING TRIBAL AUTHORIZATION AUTHORIZING ACCESS WITHOUT BUREAU OF INDIAN AFFAIRS APPROVAL FOR INDEPENDENT LEGAL ENTITIES WHOLLY OWNED AND OPERATED BY THE NAVAJO NATION; APPROVING THE DELEGATION OF AUTHORITY TO THE DEPARTMENT MANAGER OF THE NAVAJO LAND DEPARTMENT TO GRANT TRIBAL ACCESS FOR RIGHTS-OF-WAY ON THE NAVAJO NATION FOR INDEPENDENT LEGAL ENTITIES WHOLLY OWNED BY THE NAVAJO NATION; APPROVING THE DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS AND THE TERMS AND CONDITIONS FOR THE DELEGATION OF AUTHORITY; AND, RESCINDING RCD-104-10, RDCS-97-17, AND OTHER PRIOR INCONSISTENT RESOURCES AND DEVELOPMENT RESOLUTIONS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. Pursuant to 2 N.N.C. § 500, the Resources and Development Committee was established as a standing committee of the Navajo Nation Council.
- B. Pursuant to 2 N.N.C. § 501 (B)(2)(a), the Resources and Development Committee grants final approval for all rights-of-way.
- C. Pursuant to 2 N.N.C. § 501 (B)(3), the Resources and Development Committee is authorized to delegate its powers to appropriate divisions of the Navajo Nation for efficiency and streamlining of government processes provided the Committee first grants final approval of rules and regulations governing such delegations and rescission of such delegations.

SECTION TWO. FINDINGS

- A. The Code of Federal Regulations, Title 25, Part 169. Rights-of-way over Indian Land Subpart A. Purpose, Definitions, General Provisions, 25 CFR § 169.4 (b)(3)(iii) states "You do not need a right-of-way if you are... (iii) An independent legal entity wholly owned and operated by the tribe that owns 100 percent of the trust or restricted interests in the land." 25 CFR § 169.4 (b)(3)(iii) further states: "but the following conditions apply... The tribal governing body must pass a

tribal authorization authorizing access without BIA approval and including a legal description, and you must submit both documents to BIA for our records."

- B. Independent legal entities wholly owned by the Navajo Nation include but are not limited to: Navajo Tribal Utility Authority (NTUA), Navajo Engineering Construction Authority (NECA), Navajo Nation Oil and Gas Company (NNOGC), Navajo Nation Gaming Enterprise (NNGE), Navajo Agricultural Product Industry (NAPI), Navajo Housing Authority (NHA), Navajo Nation Hospitality Enterprise (NNHE), Dine Power Authority (DPA), and Navajo Nation government divisions and departments such as the Navajo Division of Transportation and Department of Water Resources.
- C. The Resources and Development Committee desires uniform rules and regulations for issuing rights-of-way for all independent legal wholly owned by the Navajo Nation.
- D. Currently, there are Resources and Development Committee (RDC) and Resources Committee (predecessor to the RDC) resolutions pertaining to rights-of-way and the Navajo Tribal Utility Authority (NTUA), an independent legal entity wholly owned by the Navajo Nation. These resolutions include RCD-104-10 (Delegation to Director of Navajo Land Department to approve rights-of-way for NTUA for electric, water, sewer, natural gas, and other such NTUA activities; approving rules and regulations for the delegation; and approving the terms and conditions for the rights-of-way to allow waivers of compensation for commercial rights-of-way. RCD-104-10 is attached as **Exhibit C**. RDCS-19-17 is attached as **Exhibit D**.
- E. The Resources and Development Committee through this resolution will rescind RCD-104-10 and RDCS-97-17 both of which pertain only to NTUA. Rescinding RCD-104-10 and RDCS-97-17 will make the rights-of-way process uniform for to all the above mentioned independent legal entities wholly owned by the Navajo Nation.

SECTION THREE. TRIBAL AUTHORIZATION PURSUANT TO 25 CFR § 169.4 (b) (3) (iii)

The Resources and Development Committee of the Navajo Nation Council, established as a standing committee of the Navajo Nation Council with the authority to grant final approval for all rights-of-way, hereby "pass[es] [this] tribal authorization authorizing access without BIA approval" for independent legal entities wholly

owned and operated by the Navajo Nation pursuant to the requirement stated in 25 CFR § 169.4 (b)(3)(iii).

SECTION FOUR. DELEGATION OF AUTHORITY, APPROVAL OF RULES AND REGULATIONS, AND APPROVAL OF TERMS AND CONDITIONS

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the delegation of authority to the Department Manager of the Navajo Land Department, Division of Natural Resources, to grant tribal access for rights-of-way on the Navajo Nation for legal entities wholly owned by the Navajo Nation on Navajo Nation trust and fee lands.
- B. The Resources and Development Committee of the Navajo Nation Council hereby approves the Departmental Administrative Rules and Regulations for the Delegation of Authority to the Department Manager of the Navajo Land Department as described in **Exhibit A**.
- C. The Resources and Development Committee of the Navajo Nation Council hereby approves the Terms and Conditions attached as **Exhibit B**.

SECTION FIVE. RESCINDING RCD-104-10, RDCS-97-17 AND PRIOR INCONSISTENT RESOLUTIONS

- A. The Resources and Development Committee of the Navajo Nation Council hereby rescinds Resolutions RCD-104-10, and RDCS-97-17, attached as **Exhibit C** and **Exhibit D**.
- B. The Resources and Development Committee of the Navajo Nation Council hereby rescinds any other prior inconsistent Resources and Development Committee resolution(s) establishing rules and regulations and terms and conditions for independent legal entities wholly owned by the Navajo Nation to insure uniformity with regard to the rights-of-way process for independent legal entities wholly owned by the Navajo Nation.

SECTION SIX. DIRECTIVE TO NAVAJO LAND DEPARTMENT MANAGER, NAVAJO NATION DIVISION OF NATURAL RESOURCES

The Resources and Development Committee of the Navajo Nation Council hereby directs the Navajo Land Department Manager, Navajo Nation Division of Natural Resources to provide this authorizing tribal authorization resolution and a legal description to the Bureau of Indian Affairs as is provided in 25 CFR § 169.4 (b)(3)(iii).

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting held by a teleconference for which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 3rd day of June 2020.



Mark A. Freeland
Pro Tempore Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Herman M. Daniels
Second: Honorable Kee Allen Begay, Jr.

Pro Tempore Chairperson Mark A. Freeland not voting.

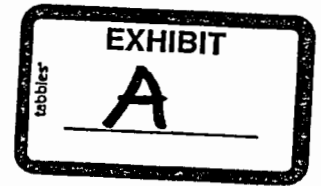


Exhibit "A"

DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS FOR THE DELEGATION OF AUTHORITY TO THE DEPARTMENT MANAGER OF THE NAVAJO LAND DEPARTMENT TO GRANT TRIBAL AUTHORIZATION ACCESS FOR PROPOSED OVERHEAD AND UNDERGROUND ELECTRIC, WATER, SEWER, NATURAL GAS DISTRIBUTION LINES, TRANSMISSION LINES, SUBSTATION TRACTS, FIBER OPTIC CABLE AND ROADS, FOR NAVAJO RESIDENTS ON FEE AND TRUST LANDS INCLUDING THE EASTERN NAVAJO AGENCY

I. AUTHORTIES

Pursuant to 2 N.N.C. §500 (A) and (C) (1) and 2 N.N.C. §501 (C) (1), the Resources and Development Committee was established as a standing committee of the Navajo Nation Council to ensure the optimum utilization and protection of all resources of the Navajo Nation. The Resources and Development Committee serves as the Legislative oversight authority for the Division of Natural Resources.

Pursuant to 2 N.N.C §501 (B) (11), the Resources and Development Committee is authorized to delegate its responsibilities and authorities as appropriate for efficiency and streamlining of government processes to executive officials within the Division of Natural Resources provided that the Committee first approves rules and regulations governing such delegations.

By Resolution No. RDCO-80-16, the General Land Development Department is a Department under the Division of Natural Resources. This Department administratively processes applications for land withdrawals, non-mineral leases, permits and rights-of-way, on and across Navajo Nation lands, including any amendments, subleases, or assignments thereof. The General Land Development Department is further authorized to obtain, require, manage and record all land user consents for the issuance of mineral surface leases, permits, and rights-of-way on or across all Navajo Nation lands consistent with the requirements of Navajo Nation laws, regulations, procedures and policies including those governmental requirements codified at 16 N.N.C §§1401-1403.

25 C.F.R. § 169.4(b)(3)(iii) provides that "[y]ou do not need a right-of-way to cross Indian land if: . . . (3) You meet any of the criteria in the following table: . . . you do not need a right-of-way if you are . . . (iii) an independent legal entity wholly owned and operated by the tribe that owns 100 percent of the trust or restricted interests in the land . . . but the following conditions apply . . . The tribal governing body must pass a tribal authorization authorizing access without BIA approval and including a legal description, and you must submit both documents to BIA for our records."

II. PURPOSE AND SCOPE

The purpose of this Administrative Rule is to authorize and empower the Department Manager of the Navajo Land Department of the Division of Natural resources to grant tribal authorization access for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads that are consistent with applicable Federal and Navajo Nation Laws. Telecommunication tower land leases do not qualify as rights-of-way and do not fall under these regulations.

III. DELEGATION

The Resources and Development Committee hereby delegates to the Department Manager of the Navajo Land Department the following powers and authorities:

- a. To grant tribal authorization access for applications for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads to legal entities wholly owned by the Navajo Nation and Navajo Nation governmental agencies on Navajo Nation trust and fee lands. Legal entities wholly owned by the Navajo Nation included but not limited to: Navajo Tribal Utility Authority (NTUA), Navajo Transitional Energy Company (NTEC), Navajo Engineering and Construction Authority (NECA), Navajo Nation Oil and Gas (NNOG), Navajo Nation Gaming Enterprise (NNGE), Navajo Agricultural Product Industry (NAPI), Navajo Housing Authority (NHA), Navajo Nation Hospitality Enterprise (NNHE) and Dine Power Authority (DPA).
- b. The Department Manager of the Navajo Land Department shall ensure that all applications are accompanied by proper surveys, easements, evaluations, and clearances as may be required by Federal and Navajo Nation Laws and Regulations.
- c. The Department Manager of the Navajo Land Department shall ensure that all applications are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate tribal departments.
- d. The Department Manager of the Navajo Land Department shall grant tribal authorization access, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by this reference. The Resources and Development Committee retains the authority to approve all commercial tribal authorization accesses.

- e. This delegation of authority shall not be re-delegated to any other tribal official without the consent and approval of the Resources and Development Committee of the Navajo Nation Council.

IV. AUTHORITY, DUTY AND RESPONSIBILITY

- a. The Department Manager of the Navajo Land Department is authorized to implement and administer this delegation of authority to grant tribal authorization access for overhead and underground electric, water, sewer, natural gas distribution lines, transmission lines, utility fiber optic, temporary construction easements and roads to legal entities wholly owned by the Navajo Nation and Navajo Nation governmental agencies on Navajo Nation trust and fee lands.
- b. Requirements to process all rights-of-way applications and examples include:
 - 1. Letter of Application (Exhibit "A")
 - 2. Survey of Right-of-Way and Location Maps with legal descriptions (Exhibit "A-1" and "A-1")
 - 3. Biological Resource Compliance Forms (BRCF) (Exhibit "C")
 - 4. Cultural Resources Compliance Forms (Exhibit "D")
 - 5. Compliance Determination (Exhibit "E")
 - 6. Grazing Permittee Consent Documents (Exhibit "F")
 - 7. Chapter Support Resolution (Exhibit "G")
 - 8. Other pertinent documents if necessary
- c. Respective Departments (General Land Development Department, Fish and Wildlife Department, Heritage and Historic Preservation Department, Navajo Environmental Protection Administration and the Navajo Nation Department of Justice) shall receive one set of the application forms with the Signature Approval Sheet that is sent electronically. Each Tribal Department shall concurrently review the application. The respective Department's reviewer shall review, surname and return the application with the signed Signature Approval Sheet to the Department Manager of the Navajo Land Department within ten (10) business days for final approval. If the application is not reviewed and surnamed within the said timeline, the Department Manager of the Navajo Land Department may grant tribal authorization access for the application, provided; however, the Navajo Land Department is responsible for ensuring compliance with all applicable environmental laws.

The Department Manager of the Navajo Land Department shall provide the Resources and Development Committee with an annual report on the status of all granted tribal authorization accesses applications.

V. REVIEW AND AMENDMENT

- a. This tribal authorization cannot be transferred, assigned or provided to another entity or LLC or any holding companies that are established or created in the future.
- b. The scope and administration of this delegation of authority to the Department Manager of the Navajo Land Department and Administrative Rules and Regulations may be amended or rescinded by the Resources and Development Committee of the Navajo Nation Council on the recommendation of the Navajo Land Department and the Division of Natural Resources Executive Director.

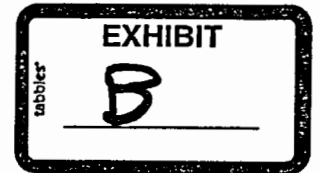


EXHIBIT "D"

NAVAJO NATION TRIBAL AUTHORIZATION ACCESS TERMS AND CONDITIONS

(ASSIGNEE)

1. The term of the TAA shall be for _____ () years, beginning on the date the TAA is authorized by the Navajo Nation.
2. Consideration for the TAA is assessed at \$_____ and shall be paid to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor, within _____ () days of approval of and consent by the Navajo Nation.

If consideration has been waived, the Navajo Nation contributes the amount listed above to the project because the project serves a public purpose and will benefit Navajo residents.

3. The Assignee may develop, use and occupy the TAA for the purpose(s) of _____. The Assignee may not develop, use or occupy the TAA for any other purpose, nor allow others to use or occupy the TAA for any other purpose, without the prior written approval of the Navajo Nation. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Assignee may not develop, use or occupy the TAA for any unlawful purpose.
4. In all activities conducted by the Assignee within the Navajo Nation, the Assignee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169 4. (b); subject to the terms of this TAA.
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Heritage and Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
 - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and
 - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq., Assignee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Assignee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the TAA.
6. The Assignee shall clear and keep clear the lands within the TAA to the extent compatible with the purpose, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

7. The Assignee shall reclaim all surface lands disturbed related to the TAA; as outlined in a restoration and re-vegetation plan, which shall be approved by Navajo Nation Environmental Protection Agency (NNEPA). The Assignee shall comply with all provisions of such restoration and re-vegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection is made.
8. The Assignee shall at all times during the term and at the Assignee sole cost and expense, maintain the land subject to the TAA and all improvements located thereon and make all necessary and reasonable repairs.
9. The Assignee shall obtain prior written permission to cross-existing TAA or rights-of-way, if any, from the appropriate parties.
10. The Assignee shall be responsible for and promptly pay all damages when they are sustained.
11. The Assignee shall indemnify and hold harmless the Navajo Nation, and respective authorized agents, employees and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of TAA by the Assignee.
12. The Assignee shall not assign, convey, transfer or sublet, in any manner whatsoever, the TAA or any interest therein, or in or to any of the improvements on the land subject to the TAA, without the prior written consent of the Navajo Nation. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the TAA for violation of any of the terms and conditions stated herein. In addition, the TAA shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations;
 - b. A non-use of the TAA for the purpose for which it is granted for a consecutive two-year period; and
 - c. The use of the land subject to the TAA for any purpose inconsistent with the purpose for which the TAA is authorized.
 - d. An abandonment of the TAA.
14. At the termination of this TAA, the Assignee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear accepted. Upon the written request of the Navajo Nation, the Assignee shall provide the Navajo Nation, at the Assignee sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises.
15. Holding over by the Assignee after the termination of the TAA shall not constitute a renewal or extension thereof or give the Assignee any rights hereunder or in to the land subject to the TAA or to any improvements located thereon.
16. The Navajo Nation shall have the right, at any reasonable time during the term of the TAA; to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.

17. By acceptance of the TAA, the Assignee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Assignee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
18. By acceptance of the TAA, the Assignee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the TAA or to the Navajo Nation.
19. Any action or proceeding brought by the Assignee against the Navajo Nation in connection with or arising out of the terms and conditions of the TAA shall be brought only in the Courts of the Navajo Nation, and no such action or proceeding shall be brought by the Assignee against the Navajo Nation in any court of any state.
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
21. Except as prohibited by applicable federal law, the laws of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Assignee, and the term "Assignee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the TAA and all lands burdened by the TAA, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the TAA; and the TAA and all lands burdened by the TAA shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. The Navajo Nation reserves the right to grant TAA within a TAA or right-of-way referenced herein for utilities, provided that such the TAA or rights-of-way do not unreasonably interfere with the Assignee's use of the TAA or right-of-way.



RCD-104-10

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - Fourth Year, 2010

AN ACTION

RELATING TO RESOURCES; APPROVING THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO APPROVE RIGHTS-OF-WAY FOR NAVAJO TRIBAL UTILITY AUTHORITY'S PROPOSED OVERHEAD AND UNDERGROUND ELECTRIC, WATER, SEWER, NATURAL GAS DISTRIBUTION LINES, TRANSMISSION LINES, SUBSTATION TRACTS, OFFICE TRACTS, WELL/STORAGE TANKS/WATERING POINT TRACTS, COMMUNICATION TRACTS, AND FIBER OPTIC CABLE FOR THE BENEFIT OF NAVAJO NATION RESIDENTS; APPROVING THE ADMINISTRATIVE RULES AND REGULATIONS FOR THE DELEGATION OF AUTHORITY; AND APPROVING THE RIGHT-OF-WAY TERMS AND CONDITIONS

BE IT ENACTED:

A. The Navajo Nation hereby finds the following with respect to this legislation:

1. Pursuant to 2 N.N.C. § 691, the Resources Committee is authorized to give final approval of the rights-of-way, easements and other clearances related to power, water, sewer, natural gas distribution, communication, and transmission lines.
2. Pursuant to 2 N.N.C. § 695 (B), the Resources Committee is authorized to delegate its powers to appropriate executive officials within the Division of Natural Resources provided the Committee first approves rules and regulations governing such delegations.
3. There are many Navajo Nation residents that lack utility services and there are backlogs of pending requests for utility services.
4. The current system of processing rights-of-way is routine, time consuming and has resulted in the loss of project funds as well as delay in providing Navajo residents with the much-needed utility services across the Navajo Nation.

5. Therefore, there is a need to delegate the authority to approve rights-of-way to the Director of the Navajo Land Department to expedite the right-of-way process enabling Navajo residents to obtain the much-needed utility services in a timely manner.

6. The process of reviewing documents associated with rights-of-way is essentially an administrative task that can be performed by the Director of Navajo Land Department under specific rules and regulations adopted by the Resources Committee.

7. The Project Review Office was established within the Division of Natural Resources Navajo Land Department to monitor, review, analyze, and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with Navajo Nation and Federal laws and regulations. The Project Review Office is responsible for determining whether each proposed resolution or document is properly prepared, require necessary clearance, investigation or other appropriate action as may be deemed necessary and proper, formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program, conduct such special programs or projects as may be assigned.

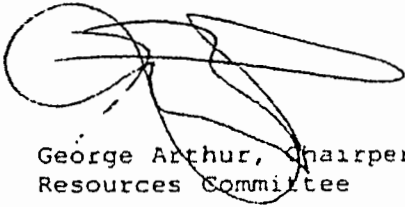
8. The Navajo Nation finds it is in the best interest of the residents of the Navajo Nation to approve the delegation of authority.

- B. The Navajo Nation hereby approves the delegation of authority to the Director of the Navajo Land Department, Division of Natural Resources, to approve Navajo Tribal Utility Authority ("NTUA") rights-of-way for overhead and underground electric, water, sewer, natural gas distribution lines, service taps, transmission lines, substation tracts, office tracts, well/storage tanks/watering point tracts, communication tracts, and fiber optic cable enabling Navajo Nation residents to obtain the much-needed utility services.
- C. The Navajo Nation hereby approves the Administrative Rules and Regulations, attached hereto as Exhibit "A".

D. The Navajo Nation hereby approves the Terms and Conditions, attached hereto as Exhibit "B".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 3rd day of December, 2010.



George Arthur, Chairperson
Resources Committee

Motion: Phillip Harrison, Jr.
Second: Harriett K. Becenti



Exhibit "A"

**DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS FOR
THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE OFFICE
OF NAVAJO LAND DEPARTMENT TO APPROVE RIGHTS-OF-WAY FOR
NAVAJO TRIBAL UTILITY AUTHORITY'S PROPOSED OVERHEAD AND
UNDERGROUND ELECTRIC, WATER, SEWER, NATURAL GAS
DISTRIBUTION LINES, SERVICE TAPS, TRANSMISSION LINES,
SUBSTATION TRACTS, OFFICE TRACTS, WELL/STORAGE
TANKS/WATERING POINT TRACTS, COMMUNICATION TRACTS, AND
FIBER OPTIC CABLE SO NAVAJO RESIDENTS CAN OBTAIN MUCH-
NEEDED SERVICES**

I. AUTHORITIES

Pursuant to 2 N.N.C. §§ 691, 693 and 695 (B)(14), the Resources Committee was established as a standing committee of the Navajo Nation Council to ensure the optimum utilization of all resources of the Navajo Nation and to protect such resources. The Resources Committee serves as the Legislative oversight authority for the Division of Natural Resources, District Grazing Officers, Eastern Navajo Land Board and Farm Boards' policy of certain adjudication matters affecting Navajo resources.

By Resolution RCJN-105-91, the Project Review Office is a section within the Navajo Land Department under the Division of Natural Resources. This office is authorized to monitor, review, analyze, and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with the laws and regulations of the Navajo Nation, State, and Federal governments. The Project Review Office is further authorized to determine whether necessary field clearances are required; determine whether investigations or other appropriate actions as may be deemed necessary and proper are required; formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program; and conduct such special programs or projects as may be assigned.

II. PURPOSE AND SCOPE

The purpose of this Administrative Rule is to authorize and empower the Director of the Navajo Land Department of the Division of Natural Resources to approve Navajo Tribal Utility Authority (NTUA) rights-of-way for Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts,

Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable consistent with applicable Federal and Navajo Nation Laws.

III. DELEGATION

The Resources Committee hereby delegates to the Director of Navajo Land Department the following powers and authorities:

- a. To give final approval of NTUA rights-of-way applications for Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable.
- b. The Director of the Navajo Land Department shall ensure that NTUA applications for rights-of-way are accompanied by proper surveys, easements, evaluations, clearances as may be required by Federal and Navajo Nation Laws and Regulations.
- c. The Director of the Navajo Land Department shall ensure that NTUA applications for rights-of-way are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate tribal departments.
- d. The Director of the Navajo Land Department shall give final approval of NTUA rights-of-way, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by this reference.
- e. This delegation of authority shall not be re-delegated to any other tribal official without the consent and approval of the Resources Committee of the Navajo Nation Council.

IV. AUTHORITY, DUTY, AND RESPONSIBILITY

- a. The Director of the Navajo Land Department is authorized to implement and administer this delegation of authority to approve NTUA rights-of-way for Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable in accordance with this Administrative Rule.

b. **Requirements to process NTUA rights-of-way applications and examples:**

1. Letter of Application (Exhibit "A")
2. Legal Description (Exhibit "A-1")
3. Right-of-Way and Location Maps (Exhibit "A-2" and "A-3")
4. Biological Resource Compliance Form (BRCF) (Exhibit "C")
5. Cultural Resources Compliance Form (Exhibit "D")
6. Field Clearance Documents (Exhibit "E")
7. Chapter Resolution (Exhibit "F")
8. Environmental Assessment and/or Addendum
9. Other pertinent documents if required

c. **Respective Departments (Project Review, Land, Fish & Wildlife, Historic Preservation, Environmental Protection Agency, and Department of Justice) shall receive one set of the right-of-way application with Signature Approval Sheet (SAS). Each Tribal Departments shall concurrently review the right-of-way application. The respective Department's reviewer shall review, surname, and return the right-of-way application with Signature Approval Sheet to the Director of the Navajo Land Department within three days for final approval. If the right-of-way application is not reviewed and surnamed within the said timeline, the Director of the Navajo Land Department may approve the right-of-way application, provided; however, the Navajo Land Department is responsible for ensuring compliance with all applicable environmental laws.**

d. **The Director of the Navajo Land Department shall provide the Resources Committee with an annual report on the status of approved NTUA rights-of-way applications.**

V. REVIEW AND AMENDMENT

- a. **The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Rules and Regulations may be amended or rescinded by the Resources Committee of the Navajo Nation Council.**

EXHIBIT "B"

**NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:
NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE)**

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of the Interior.
2. Consideration for the use of land covered by this Delegation is assessed at \$N/A, which shall be the Navajo Nation's contributions to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).

3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of construction and maintaining [Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable]. The Grantee may not develop, use or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.

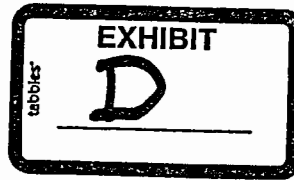
If the right-of-way is for a power line, then the maximum capacity of the power line shall be _____ kilovolts (kV). Once constructed, the capacity of the power line, whether expressed in terms of watts, volts, amperes, and ohms or otherwise, shall not be increased without the prior written consent of the Navajo Nation. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169;
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operation in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
 - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Law, 5 N.N.C. §§ 201 et seq.; and

- d. The Navajo Nation Water Code, 22 N.N.C. §§ 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damage arising from the development, use or occupancy or use of the right-of-way by the Grantee.
12. The Grantee shall not sublet, assign, convey or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or in part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any terms or conditions of the grant or of applicable laws or regulations;
 - b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period;
 - c. An abandonment of the right-of-way;
 - d. The use of land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.

14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of the said premises.
15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any improvements located hereon.
16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
17. By acceptance of the grant of the right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.
18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare of the Navajo people) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
19. Any action or claim brought against the Navajo Nation arising out of injury to person or property (tort) shall only be heard in the Courts of the Navajo Nation and not in any state court.
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee", whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

24. The Grantee shall construct the power line in accordance with "Suggested Practices for Raptor Protection on Power Lines: State of the Art in 2006".



RDCS-97-17

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RCD-104-10,
EXHIBIT "B", NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:
NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE), COMMERCIAL OPERATIONS
WAIVER

Section One. Authority

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 500 (A) (2015).
- B. The Resources and Development Committee of the Navajo Nation Council is empowered with oversight authority over land and the power to grant final approval for non-mineral leases and rights-of-way within the Navajo Nation. 2 N.N.C. § 500 (C), 501 (B) (2) (a).

Section Two. Findings

- A. The Resources Committee, on December 3, 2010, approved a delegation of authority to the Director of the Navajo Land Department to approve certain rights-of-way for the Navajo Tribal Utility Authority (NTUA), approved the Administrative Rules and Regulations for the delegation of authority, and approved the Right-of-Way Terms and Conditions. See RCD-104-10.
- B. The Administrative Rules and Regulations, within RDC-104-10, provide a delegation from the Resources Committee to the Director of the Navajo Land Department that include: III. Delegation (d), "The Director of the Navajo Land Department shall give final approval of NTUA rights-of-way, subject to, but not limited to, the terms and conditions contained in Exhibit "B", attached hereto and incorporated herein by reference." See RCD-104-10, Exhibit A.
- C. The Administrative Rules and Regulations, within RDC-104-10, state, "The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Rules and Regulations may be amended or

rescinded by the Resources Committee of the Navajo Nation Council. See Administrative Rules and Regulations, Section V. Review and Amendment (a), Exhibit A, RDC-104-10.

- D. References in the Navajo Nation Code and other official documents to the Resources, Transportation and Community Development and Economic Development Committees shall mean the Resources and Development Committee, unless the amendments enacted herein for the context of previous law indicates otherwise. See CJA-03-13, overriding President's veto of CO-45-12, Section 5(B).
- E. Commercial operations on the Nation promote economic growth via taxation revenue and employment. The Nation receives a Sales Tax (currently 5%) revenue on the utility consumption of customers and commercial customers consume more than the average customer, therefore, the Nation receives more taxation revenue from these commercial operations. In addition, the costs to construct utilities within these right-of-ways are subject to the same tax, adding to the tax revenue.
- F. Commercial operations on the Nation are subject to non-typical additional costs such as business site lease costs, dual taxation from the Nation and State, as well as federal taxes. The additional costs imposed for a right-of-way will add to the additional non-typical costs and continue to deter any businesses considering locating and investing on the Nation.
- G. Obtaining the approval for each right-of-way used for commercial operations is time consuming and delays businesses from developing and operating. In addition, the costs assessed are not readily determinable to the business until the business has substantially made progress in its development, therefore, these unknown costs further act as a deterrent to develop on the Nation.
- H. The consideration assessed for commercial operations rights-of-way is passed onto the business developer therefore, increasing their overall business development costs. This deters business development within the Nation because these fees are not typical outside the Nation. In addition, NTUA is a not-for-profit enterprise and if had to absorb these added costs it would have to pass them on to its customers therefore, the customers would subsidize these added costs.

- I. This consideration assessment/cost is in addition to the actual costs to extend such utility service(s) to the commercial operator/customer.
- J. Commercial operations promote employment for the economic self-sufficiency of the Navajo people and residents. The further development of commercial operations on the Nation will promote a more diverse economy therefore, promoting economic competition, resulting in competitive pricing. In addition, these added goods and services are provided to the residents of the Nation, which result in additional choices, reduced travel time and dollars staying on the Nation.
- K. There has been no clear interpretation of what constitutes a "commercial operation". The term has had ambiguous interpretations to various departments desiring to assess consideration, therefore, it is more efficient to waive consideration until such time the Committee deems that it is not in the best interests of the Nation.
- L. The Resources and Development Committee finds that the proposed language is in the best interests of the Nation to promote much needed economic growth.

Section Three. Proposed Amendment

- A. RCD-104-10, Exhibit "B" states the Terms and Conditions of the Navajo Tribal Utility Authority's (NTUA's) rights-of-ways.
- B. NTUA proposes an amendment to Exhibit "B"-Navajo Nation Right-of-Way Terms and Conditions: Navajo Tribal Utility Authority (Grantee).
- C. Section of paragraph 2 of Exhibit "B" states:

"2. Consideration for the use of land covered by the Delegation is assessed at \$N/A, which shall be the Navajo Nation's contribution to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s)."

D. NTUA is proposing this language to state:

~~NTUA must obtain the approval of the Resources Committee if any portion of the right of way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).~~

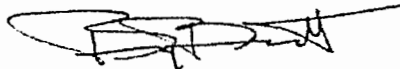
Consideration shall be assessed and waived for the portion of the line used for commercial operation(s) until such time the Resources and Development Committee deems that it is not in the Nation's best interests to waive the consideration. The Director of the Land Department shall obtain the approval of the Resources and Development Committee to not waive the consideration. Attached is amended Navajo Nation Right-of-Way Terms and Conditions; Navajo Tribal Utility Authority (Grantee), **Exhibit 1.**

Section Four. Approval

The Resources and Development Committee hereby finds that the proposed language is in the best interests of the Nation and amends the language of RCD-104-10, Exhibit "B", paragraph 2, as stated above and in **Exhibit 1**, and hereby requires NTUA to work together with the NN Land Department and Minerals Department and to report to the Resources and Development Committee quarterly as to the total amount of commercial use fees waived, new service areas opened and other relevant information demonstrating the effect of this legislation.

CERTIFICATION

I, hereby certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Standing Rock Chapter, Standing Rock, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained on this 20th day of September, 2017.



Benjamin Bennett, Vice Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete

EXHIBIT "1"

NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:
NAVAJO TRIBAL UTILITY AUTHORITY (GRANTEE)

1. The term of the right-of-way shall be for twenty (20) years, beginning on the date the right-of-way is granted by the Secretary of Interior.
2. Consideration for the use of land covered by this Delegation is assessed at \$N/A, which shall be the Navajo Nation's contributions to the project since it will benefit Navajo resident(s) by providing them with the much-needed utilities across the Navajo Nation.

~~NTUA must obtain the approval of the Resources Committee if any portion of the right-of-way is used for commercial operation(s). The Nation's consideration shall be assessed and paid by NTUA for the portion of the line used for commercial operation(s).~~

Consideration shall be assessed and waived for the portion of the line used for commercial operation(s) until such time the Resources and Development Committee deems that it is not in the Nation's best interests to waive the consideration. The Director of the Land Department shall obtain the approval of the Resources Committee to not waive the consideration.

3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of construction and maintaining [Overhead and Underground Electric, Water, Sewer, Natural Gas Distribution Lines, Service Taps, Transmission Lines, Substation Tracts, Office Tracts, Well/Storage, Tanks/Watering Point Tracts, Communication Tracts, and Fiber Optic Cable]. The Grantee may not develop, use or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.

If the right of way is for a power line, then the maximum capacity of the power line shall be _____ kilovolts (kV). Once constructed, the capacity of the power line, whether expressed in terms of watts, volts, amperes, and ohms or otherwise, shall not be increased without the prior written consent of the Navajo Nation. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole direction of the Navajo Nation.

4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169;
 - b. All Applicable federal and Navajo Nation antiquated laws and regulations, with the following additional condition: In the event of a discovery, all operation in the immediate vicinity of the discovery, all operation in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or Incorrectly Identified cultural resources, Including but not limited to archaeological

deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;

- c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Law, 5 N.N.C. §§ 201 et seq.; and
 - d. The Navajo Nation Water Code, 22 N.N.C. §§ 1101 et seq. Grantee shall apply for and submit all applicable permits and Information to the Navajo Nation Water Resources Department, or its successor.
5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
 6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
 7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in the restorations and revegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Directory of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
 8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
 9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriated parties.
 10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
 11. The Grantee shall Indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damage arising from the development use or occupancy or use of the right-of-way by the Grantee.
 12. The Grantee shall not sublet, assign, convey or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
 13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or in part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any terms or conditions of the grant or of applicable laws or regulations;

- b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period;
 - c. An abandonment of the right-of-way;
 - d. The use of land subjects to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted
14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost an expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of the said premises.
 15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land subject to the right-of-way or to any Improvements located hereon.
 16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any Improvements located thereon.
 17. By acceptance of the grant of the right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, Including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and Injunctive relief, in connection with all activities conducted by the property within the Navajo Nation.
 18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is Inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (I.e., the power to legislate and regulate for the general health and welfare of the Navajo People) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in the provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
 19. Any action or claim brought against the Navajo Nation arising out of injury to person or property (tort) shall only be heard in the Courts of the Navajo Nation and not in any state court.
 20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
 21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.

22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee", whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. The Grantee shall construct the power line in accordance with "Suggested Practices for Raptor Protection on Power Lines: State of the Art in 2006".

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0124-20: An Action Relating to Resources and Development Committee; Approving Tribal Authorization Authorizing Access Without Bureau of Indian Affairs Approval for Independent Legal Entities Wholly Owned and Operated by the Navajo Nation; Approving the Delegation of Authority to the Department Manager of the Navajo Land Department to Grant Tribal Access for Rights-of-Way on the Navajo Nation for Independent Legal Entities Wholly Owned by the Navajo Nation; Approving the Departmental Administrative Rules and Regulations and the Terms and Conditions for the Delegation of Authority; and, Rescinding RCD-104-10 and RDCS-97-17 and Other Prior In Consistent Resources and Development Resolutions.
Sponsor: Honorable Rickie Nez

Date: June 3, 2020 - Regular Meeting (Teleconference)
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

Main Motion:

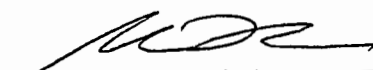
Motion: Herman M. Daniels S: Kee Allen Begay, Jr. Vote: 4-0-1 (Pro Tem CNV)

In Favor: Wilson C. Stewart, Jr., Kee Allen Begay, Jr., Rickie Nez, and Herman M. Daniels

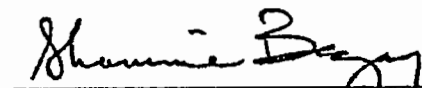
Oppose: None

Excuse: Thomas Walker, Jr.

Not Voting: Presiding Pro Tem Chairperson Mark A. Freeland



Honorable Mark A. Freeland, Presiding Pro Tem Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services

Delegation:
Telecommunication



RCJY-98-06

RESOLUTION OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL - Fourth Year, 2006

AN ACTION

RELATING TO RESOURCES; APPROVING THE DELEGATION OF
AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO
APPROVE LEASES, PERMITS AND RIGHTS-OF-WAY FOR
TELECOMMUNICATION PROJECTS UPON NAVAJO NATION LAND

BE IT ENACTED:

1. The Navajo Nation hereby hereby finds the following:

- a. Pursuant to 2 N.N.C. § 695 (B), the Resources Committee is authorized to delegate its powers to appropriate executive officials within the Division of Natural Resources provided the Committee first approves rules and regulations governing such delegation;
- b. There are many Navajo families residing in areas that lack utility services; and there is a backlog of requests for utility services pending;
- c. The current system of processing telecommunication utilities involves the complex procurement of Navajo Nation lands involving Federal laws and criteria (i.e. rights-of-way, leases and permits) which is time consuming and has resulted in the loss of companies interested in providing services on Navajo Nation lands;
- d. There is a need to delegate the authority to approve telecommunication applications to the Director of Navajo Land Department to expedite the Section 164 Review process so that Navajo residents can obtain needed telecommunication services in a timely manner;
- e. The Project Review Section was established within the Navajo Land Department under the Division of Natural Resources to monitor, review, analyze,

and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with laws and regulations of the Navajo Nation and federal government. The Project Review Section is responsible for determining whether each proposed resolution or document is properly prepared, require necessary clearances, investigation or other appropriate action as may be deemed necessary and proper, formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program, conduct such special programs or projects as may be assigned; and

- f. The Navajo Land Department believes the Rules and Regulations Governing Navajo Nation Telecommunication Projects will be in the best interests of the Navajo Nation.

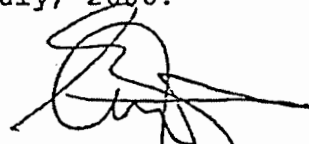
2. The Navajo Nation hereby approves the delegation of authority to the Director of the Navajo Land Department, Division of Natural Resources, to approve telecommunication applications requiring the procurement of land and property rights-of-way as set forth in the Departmental Administrative Rules and Regulations, attached hereto as EXHIBIT "A", and in accordance with the following stipulations:

- a. Telecommunication applications shall be subject to all applicable regulatory laws or statutes for non-real estate matters as set forth in 21 N.N.C. §§ 501-529 and the Navajo Nation Telecommunication Regulatory Commission.
- b. Telecommunication applications shall comply with all applicable Federal and Navajo Nation laws and regulations and Navajo Nation procedures.
- c. The Director of the Navajo Land Department shall ensure that applications for telecommunications are accompanied by proper environmental, biological and cultural resources clearances, and reviewed by appropriate Navajo Nation departments.

3. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent and purpose of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 20th day of July, 2006.



George Arthur, Chairperson
Resources Committee

Motion: Norman John, II
Second: Harry J. Goldtooth

RCAP-25-07

RESOLUTION OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - First Year, 2007

AN ACTION

RELATING TO RESOURCES; RESCINDING RCO-144-05 CONCERNING THE
CONDITIONAL GRANTING OF CERTAIN RIGHTS-OF-WAY TO SMITH
BAGLEY, INC. D.B.A. CELLULARONE; AMENDING CERTAIN EXHIBITS
OF RCJY-98-06 (APPROVING THE DELEGATION OF AUTHORITY TO THE
DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO APPROVE LEASES,
PERMITS AND RIGHTS-OF-WAY TELECOMMUNICATION PROJECTS UPON
NAVAJO NATION LAND)

BE IT ENACTED:

1. The Navajo Nation hereby rescinds Resources Committee Resolution RCO-144-05; "RELATING TO RESOURCES; CONDITIONALLY CONSENTING TO 47 TELECOMMUNICATION RIGHTS-OF-WAY FOR SMITH BAGLEY, INC. D.B.A CELLULARONE; AUTHORIZING THE NAVAJO LAND DEPARTMENT TO PROCESS THE RIGHT-OF-WAY APPLICATIONS FOR THESE SITES", attached as Exhibit "A".

2. The Navajo Nation hereby amends Resources Committee Resolution RCJY-98-06; "APPROVING THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO APPROVE LEASES, PERMITS AND RIGHTS-OF-WAY FOR TELECOMMUNICATION PROJECTS UPON NAVAJO NATION LAND", attached as Exhibit "A-1", to include the new Exhibit "A-1" "Navajo Nation Right-of-Way Terms and Conditions", as found in Exhibit "A-1-A", attached and made a part hereto.

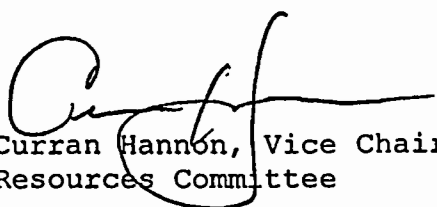
3. The Resources Committee of the Navajo Nation Council hereby directs the Navajo Land Department, in accordance with RCJY-98-06, to process the necessary right-of-way authorizations for the telecommunications projects as identified in Exhibit "B", and by other applications that are submitted by other licensed wireless companies.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo

RCAP-25-07

Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 30th day of April, 2007.



Curran Hannon, Vice Chairperson
Resources Committee

Motion: Cecil F. Eriacho
Second: Norman John, II

EXHIBIT

tabbier

"A"

RCO-144-05

**RESOLUTION OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL**

20th NAVAJO NATION COUNCIL – Third Year, 2005

AN ACTION

**RELATING TO RESOURCES; CONDITIONALLY CONSENTING TO 47
TELECOMMUNICATION RIGHTS-OF-WAY FOR SMITH BAGLEY, INC. D.B.A.
CELLULARONE; AUTHORIZING THE NAVAJO LAND DEPARTMENT TO
PROCESS THE RIGHT-OF-WAY APPLICATIONS FOR THESE SITES**

BE IT ENACTED:

1. The Navajo Nation conditionally consents to 47 telecommunication rights-of-way for Smith Bagley, Inc., d.b.a. CellularOne (hereinafter "CellularOne") to construct, operate and maintain telecommunication towers on those rights-of-way. The locations are set forth in Exhibit "A", with the replacement of projects from Planning Phase 2 to Planning Phase 1 contingent upon availability of all documents and consent forms.

2. The Navajo Nation conditions its consent of these rights-of-way on Navajo Nation Terms and Conditions for Rights-of-Way (hereinafter "Terms") being fully and strictly complied with. The Terms are attached hereto as Exhibit "B". This conditional consent shall not authorize construction unless and until all of the legal requirements for obtaining rights-of-way have been complied with.

3. The Navajo Nation conditions its consent on CellularOne submitting applications within 120 days of approval of this legislation, for all co-location sites where CellularOne constructed on other companies' sites without authorization of the Resources Committee.

4. The Navajo Nation conditions its consent on CellularOne, within 120 days of approval of this legislation, providing to the Department Director of the Navajo Land Department a list of all companies it allowed to co-locate on CellularOne's sites on the Navajo Nation; advising such companies that they must obtain approval of the Resources Committee for the co-location sites; and taking all actions necessary and proper to prohibit other companies from using its sites and facilities unless and until such companies obtain rights-of-way in accordance with Navajo Nation and federal law. If no companies have been allowed to co-locate on CellularOne sites, then CellularOne shall provide a notarized statement to that effect to the Department Director of the Navajo Land Department.

5. The Navajo Nation directs the Department Director of the Navajo Land Department to receive and review all requisite documents from CellularOne, as well as submit such documents for Administrative Review by the Historic Preservation Department, Fish and Wildlife Department, Minerals Department, Navajo Environmental Protection Agency, and the Department of Justice.

6. The Navajo Nation directs the Department Director of the Navajo Land Department to submit each right-of-way application to the Secretary of the Interior after he has determined the rights-of-way application packets are complete and all applicable laws, regulations, policies have been complied with and comments of the reviewers have been addressed.

7. The Navajo Nation can terminate its consent if CellularOne fails to abide by this legislation and/or the Terms contained in Exhibit "B".

CERTIFICATION

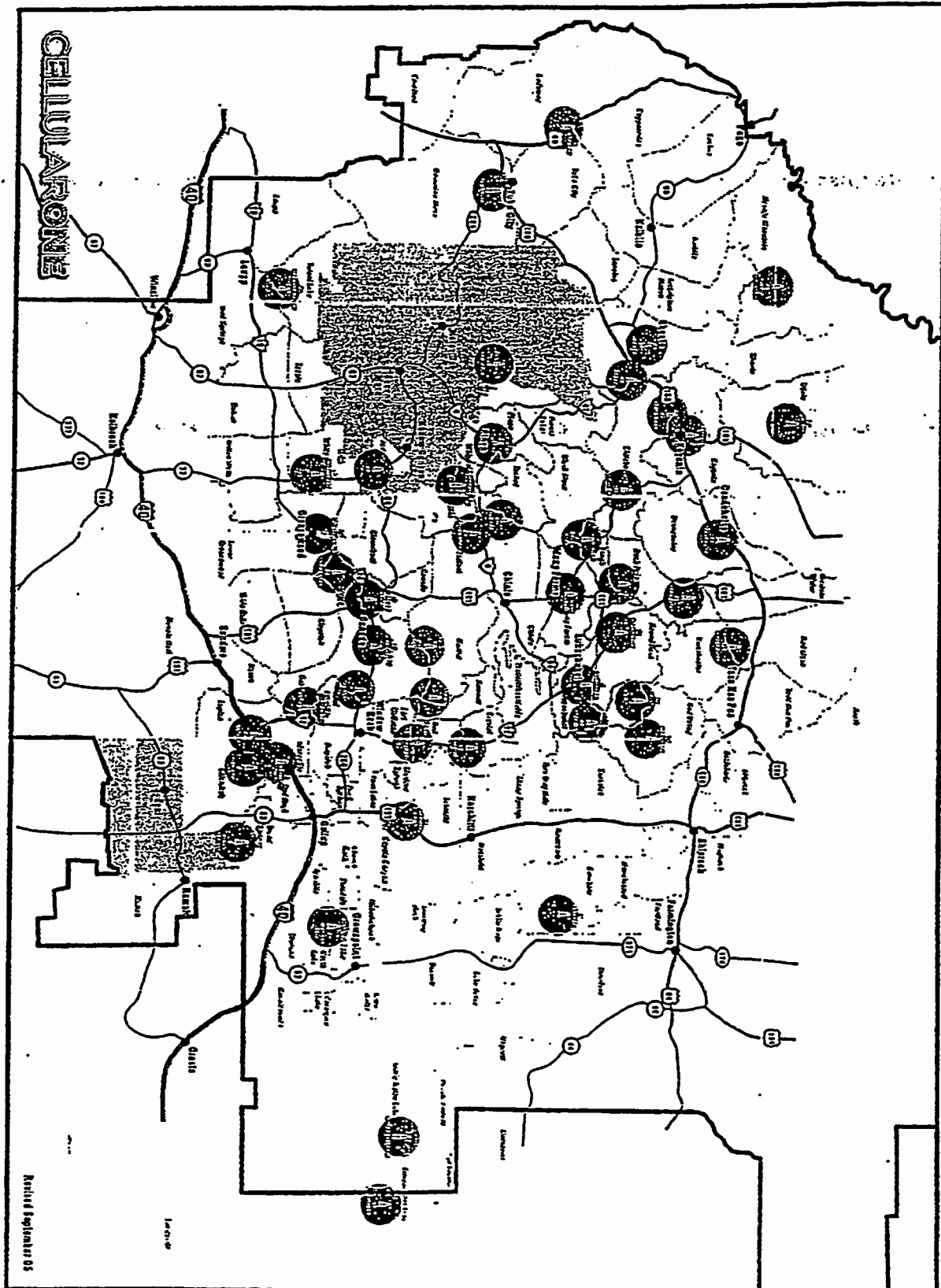
I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 1 opposed and 0 abstained, this 27th day of October, 2005.


LaVern Wagner, Vice Chairperson
Resources Committee

Motion: Larry Noble
Second: Amos F. Johnson

CellularOne Wireless Facility Buildout Plan for Navajo Lands: 2005-2006-2007		
Chapter located	Planning Phase	Requested ROW Approval Date
1 Bread Springs	1	2005
2 Chi Chil Tah	1	2005
3 Kayenta	1	2005
4 Lukachuki	1	2005
5 Manueto Mesa	1	2005
6 Mariano Lake	1	2005
7 Pinon	1	2005
8 Red Lake	1	2005
10 Round Rock	1	2005
11 Sawmill	1	2005
12 Summit	1	2005
13 Tohatchi	1	2005
14 Yale point	1	2005
16 Lupton	1	2005
17 Blue Gap/Tahchee	2	2006-2007
18 Burnside/Ganado 2	2	2006-2007
19 Chilchibito	2	2006-2007
20 Cornfields	2	2006-2007
21 Cottonwood	2	2006-2007
22 Cove	2	2006-2007
23 Crystal	2	2006-2007
24 Dinnehosto	2	2006-2007
25 Greasewood springs	2	2006-2007
26 Hard Rock	2	2006-2007
27 Jeddito	2	2006-2007
28 Kinlichee	2	2006-2007
29 Low Mountain	2	2006-2007
30 Many Farms	2	2006-2007
31 Navajo Mountain	2	2006-2007
32 Nazalini	2	2006-2007
33 Red Lake-Tolanee lake	2	2006-2007
34 Red Valley	2	2006-2007
35 Rock Point	2	2006-2007
36 Rough Rock	2	2006-2007
37 Shonto	2	2006-2007
38 Sweetwater	2	2006-2007
39 Torreon	2	2006-2007
40 Tuba city	2	2006-2007
41 Whitecone	2	2006-2007
42 Whitehorse Lake	2	2006-2007
43 Whipporwill	2	2006-2007
44 Roof Butte	2	2006-2007
45 Black Mesa	2	2006-2007
46 Peabody	2	2006-2007
47 Burnham	3	2006-2007

Wireless Facility Build-out Plan for Navajo Lands 2005-06



● 2005 Build-out

● 2006-07 Build-out

EXHIBIT "B"

NAVAJO NATION TERMS AND CONDITIONS For Rights-of-Way (ROWs)

SMITH BAGLEY, INC. dba CELLULAR ONE (GRANTEE)

1. The term of the ROW shall expire on December 31, 2011. The Effective Date of the ROW is the date the Navajo Nation consents to grant of the ROW which is also the date the Navajo Nation submits the ROW application to the Department of the Interior (DOI) for approval.

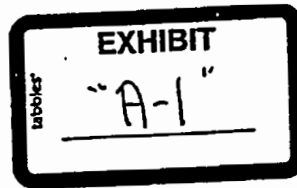
The Grantee shall have the option to renew the ROW for another five (5) years. If the option is exercised, it shall provide ninety (90) days advance notice to the Navajo Nation and the DOI.

2. Consideration for ROW is assessed at Twenty-Four Thousand Dollars (\$24,000.00) per year per ROW if the application is processed prior to November 30, 2005. In case the individual ROW application is processed after November 30, 2005, the first year annual payment will be adjusted by using the CPI for November 2005 as the base.
3. The first year consideration payment is due within ten (10) days after the Effective Date. The subsequent annual payments are due on or before each anniversary of the Effective Date. The Grantee shall provide copies of all payments to the BIA for accounting purposes.
4. Subsequent annual payments beginning with the second annual payment shall be adjusted based upon the increase in the Consumer Price Index (CPI), U.S. City Average for All Urban Consumers. The CPI for November 2005 shall be used as the base for all of the adjustments. It is the responsibility of Cellular One to compute the adjustments and make the adjusted payments to the Navajo Nation in a timely manner.
5. If the option to renew the ROW is exercised, the payment for the first year option term shall be the adjusted amount of the annual payment at the time the payment is due pursuant to Section 3 and the subsequent annual payments for the option term are also subject to annual adjustments pursuant to Section 4.
6. The Grantee may develop, use and occupy the ROWs for the purpose(s) of constructing, operating and maintaining telecommunication towers for providing cellular service. The Grantee may not develop, use or occupy the ROW for any other purpose without the prior written approval of the Navajo Nation and the Secretary of Interior. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the ROW for any unlawful purpose.

7. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code Federal Regulations, Part 169;
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;
 - c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq., and
 - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Department of Water Resources, or its successor.
8. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the ROW.
9. The Grantee shall clear and keep clear the lands within the ROWs to the extent compatible with the purpose of the ROW, and shall dispose of all vegetation and other materials cut, uprooted or otherwise accumulated during any surface disturbance activities.
10. The Grantee shall reclaim all surface lands disturbed related to the ROWs, as outlined in a restoration and re-vegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and re-vegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection can be made.
11. The Grantee shall at all times during the term of the ROWs and at the Grantee's sole cost and expense, maintain the land subject to the ROW and all improvements located thereon and make all necessary and reasonable repairs.
12. The Grantee shall obtain prior written permission to cross existing ROW, if any, from the appropriate parties.
13. The Grantee shall be responsible for and promptly pay all damages attributable to the development, occupancy or use of the ROWs by the Grantee.

14. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants against any liability for loss of life, personal injury and property damages arising from the development, occupancy or use of ROWs by the Grantee.
15. The Grantee shall not assign, convey, transfer or sublet (including co-location) in any manner whatsoever, the ROW or any interest therein, or in or to any of the improvements on the land subject to the ROWs, without the prior written consent of the Navajo Nation. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, grant upon conditions or withheld in the sole discretion of the Navajo Nation.
16. The Navajo Nation may terminate the ROW for violation of any of the terms and conditions stated herein. In addition, the ROW shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations;
 - b. A non-use of the ROW for the purpose for which it is granted for a consecutive two year period; and
 - c. The use of the land subject to the ROW for any purpose inconsistent with the purpose for which the ROW is granted.
16. At the termination of this ROW, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition. The Grantee shall have the option to remove the facilities and reclaim the land within ninety (90) days after the termination of the ROW. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises. All reclamation or abandonment shall be performed in accordance with the rules, regulations and guidelines of the NNEPA and applicable federal laws and regulations.
17. Holding over by the Grantee after the termination of the ROWs shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in to the land subject to the ROWs or to any improvements located thereon.
18. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the ROWs, to enter upon the premises, or any part thereof, to inspect the same and any improvements located therein.
19. By acceptance of the grant of ROWs, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction of the Navajo Nation jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.

20. By acceptance of the grant of ROWs, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full policy power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the ROWs or to the Navajo Nation.
21. Any dispute arising out of the consent of the Navajo Nation (approving Resources Committee resolutions/enactment) or of the terms and conditions of the ROWs shall be resolved administratively under the laws of the Navajo Nation, and no such action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
22. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
23. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
24. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
25. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the ROW and all lands burdened by the ROWs, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the ROWs; and all lands burdened by the ROWs shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.



RCJY-98-06

RESOLUTION OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL - Fourth Year, 2006

AN ACTION

RELATING TO RESOURCES; APPROVING THE DELEGATION OF
AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO
APPROVE LEASES, PERMITS AND RIGHTS-OF-WAY FOR
TELECOMMUNICATION PROJECTS UPON NAVAJO NATION LAND

BE IT ENACTED:

1. The Navajo Nation hereby hereby finds the following:

- a. Pursuant to 2 N.N.C. § 695 (B), the Resources Committee is authorized to delegate its powers to appropriate executive officials within the Division of Natural Resources provided the Committee first approves rules and regulations governing such delegation;
- b. There are many Navajo families residing in areas that lack utility services; and there is a backlog of requests for utility services pending;
- c. The current system of processing telecommunication utilities involves the complex procurement of Navajo Nation lands involving Federal laws and criteria (i.e. rights-of-way, leases and permits) which is time consuming and has resulted in the loss of companies interested in providing services on Navajo Nation lands;
- d. There is a need to delegate the authority to approve telecommunication applications to the Director of Navajo Land Department to expedite the Section 164 Review process so that Navajo residents can obtain needed telecommunication services in a timely manner;
- e. The Project Review Section was established within the Navajo Land Department under the Division of Natural Resources to monitor, review, analyze,

and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with laws and regulations of the Navajo Nation and federal government. The Project Review Section is responsible for determining whether each proposed resolution or document is properly prepared, require necessary clearances, investigation or other appropriate action as may be deemed necessary and proper, formulate administrative policies pertaining to Project Review, conduct periodic evaluation of the effectiveness and progress of the program, conduct such special programs or projects as may be assigned; and

- f. The Navajo Land Department believes the Rules and Regulations Governing Navajo Nation Telecommunication Projects will be in the best interests of the Navajo Nation.

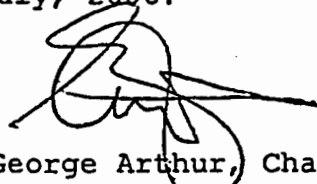
2. The Navajo Nation hereby approves the delegation of authority to the Director of the Navajo Land Department, Division of Natural Resources, to approve telecommunication applications requiring the procurement of land and property rights-of-way as set forth in the Departmental Administrative Rules and Regulations, attached hereto as EXHIBIT "A", and in accordance with the following stipulations:

- a. Telecommunication applications shall be subject to all applicable regulatory laws or statutes for non-real estate matters as set forth in 21 N.N.C. §§ 501-529 and the Navajo Nation Telecommunication Regulatory Commission.
- b. Telecommunication applications shall comply with all applicable Federal and Navajo Nation laws and regulations and Navajo Nation procedures.
- c. The Director of the Navajo Land Department shall ensure that applications for telecommunications are accompanied by proper environmental, biological and cultural resources clearances, and reviewed by appropriate Navajo Nation departments.

3. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent and purpose of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 20th day of July, 2006:



George Arthur, Chairperson
Resources Committee

Motion: Norman John, II
Second: Harry J. Goldtooth

EXHIBIT "A"

DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS FOR THE DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE OFFICE OF THE NAVAJO LAND DEPARTMENT TO APPROVE TELECOMMUNICATION PROJECTS

I. AUTHORITIES

Pursuant to 2 N.N.C. Sections 691, 693, and 695(B) (14), the Resources Committee was established as a standing committee of the Navajo Nation Council to ensure the optimum utilization of all resources of the Navajo Nation and to protect such resources. The Resources Committee serves as the Legislative oversight authority for the Division of Natural Resources to grant rights-of-way, leases, and permits for telecommunication sites.

By Resolution RCJN-105-91, the Project Review Office is a section within the Navajo Land Department under the Division of Natural Resources. This office shall monitor, review, analyze, and expedite all development documents and activities conducted by private, Tribal, State, and Federal Agencies to comply with the laws and regulations of the Navajo Nation. The Project Review Office is further authorized to determine whether necessary field clearances are required; determine whether investigations or other appropriate actions as may be deemed necessary and proper are required; formulate administrative policies pertaining to Project Review; conduct periodic evaluation of the effectiveness and progress of the program; and conduct such special programs or projects as may be assigned.

II. PURPOSE AND SCOPE

The purpose of these RULES is to authorize and empower the Director of the Navajo Land Department of the Division of Natural Resources to approve telecommunication applications as it pertains to formal approval of rights-of-ways (ROW), Leases (surface lease), or Permits consistent with applicable Federal and Navajo Nation Laws.

III. DELEGATION

The Resources Committee hereby delegates to the Director of Navajo Land Department the following powers and authorities:

- a. To give final approval of telecommunication applications as defined as access which is reasonably necessary for the construction, operations, and maintenance of telecommunication sites by any granting permits, or rights-of-way or leases.
- b. To approve on behalf of the Navajo Nation access and telecommunication permits, rights-of-way and leases consistent with these rules and regulations upon terms and conditions approved by the Resources Committee which are attached hereto as Exhibit "A". The

telecommunication site application terms and conditions forms may be revised to incorporate minor changes due to unforeseen circumstances after consultation with the Navajo Nation Department of Justice; provided the applications are essentially the same or similar to Exhibit "A-1".

- c. The Director of the Navajo Land Department shall ensure that applications for telecommunications are accompanied by proper surveys, easements, evaluations, clearances as may be required by Federal and Navajo Nation laws and regulations.
- d. The Director of the Navajo Land Department shall ensure that applications for telecommunications are accompanied by proper environmental and cultural resources clearances, and reviewed by appropriate Navajo Nation Departments.
- e. This delegation of authority shall not be re-delegated to any other tribal official without the consent and approval of the Resources Committee of the Navajo Nation Council.

IV. AUTHORITY, DUTY, AND RESPONSIBILITY

- a. The Director of the Navajo Land Department is authorized to implement and administer this delegation of authority to approve telecommunication applications in accordance with this DEPARTMENTAL ADMINISTRATIVE RULE AND REGULATIONS (Exhibit "A").
- b. Requirements to process telecommunication applications as they pertain to rights-of-way, revocable use permits, revocable joint use permits, or leases, and as provided in 2 N.N.C. Sections 695 (B). Any and all land use transactions are considered and approved in accordance with 2 N.N.C. Section 695 (B) (2) and Resolution No. RCED-289-93 of the Resources Committee of the Navajo Nation Council. The Navajo Land Department shall also comply with applicable provisions of the United States Code and Code of Federal Regulations as implemented by the regulations contained in 25 C.F.R. Parts 162 and 169.
- c. The Director of the Navajo Land Department shall provide the Resources Committee with an annual report on the status of the approved telecommunication applications.

V. REVIEW AND AMENDMENT

- a. The scope and administration of this delegation of authority to the Director of the Navajo Land Department may be amended from time-to-time by the Resources Committee of the Navajo Nation Council.
- b. Pursuant to 2 N.N.C. Sections 695(B) and (B)(13) and other authorities of the Committee, these DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS may be amended and/or rescinded by the Resources Committee of the Navajo Nation Council.

EXHIBIT

tabbies

"A-1-A"

EXHIBIT "A-1A"

NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:

Smith Bagley, Inc. dba Cellular One (GRANTEE)

1. The term of the right-of-way shall be for five (5) years, beginning on the date the right-of-way is granted by the Secretary of the Interior.
2.
 - a. Consideration to the Navajo Nation for the grant of the right-of-way shall be twelve thousand dollars (\$12,000.00) per year. The first payment is due within ten (10) days of the date the right-of-way is approved by the Navajo Nation, and subsequent payments shall be due on or before the anniversary date of approval thereafter. Payment shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor and the Bureau of Indian Affairs, within seven days of payment.
 - b. Co-location is defined as the attachment of a cellular antenna or other telecommunication equipment to a cellular tower or other vertical structure. The Grantee shall pay the Navajo Nation additional compensation of \$2,000.00 per year for each co-location. The first payment is due on the date of approval of each co-location by the Navajo Nation and thereafter in the manner provided for in paragraph 2.a above.
3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of constructing and operating a cellular tower. The Grantee may not develop, use or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The Grantee may allow the attachment of cellular antennas (referred to as co-location) and other telecommunication equipment with the prior approval of the Navajo Nation. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169;
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic

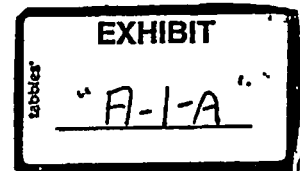


EXHIBIT "A-1A"

NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS:

Smith Bagley, Inc. dba Cellular One (GRANTEE)

1. The term of the right-of-way shall be for five (5) years, beginning on the date the right-of-way is granted by the Secretary of the Interior.
2.
 - a. Consideration to the Navajo Nation for the grant of the right-of-way shall be twelve thousand dollars (\$12,000.00) per year. The first payment is due within ten (10) days of the date the right-of-way is approved by the Navajo Nation, and subsequent payments shall be due on or before the anniversary date of approval thereafter. Payment shall be paid in full to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor and the Bureau of Indian Affairs, within seven days of payment.
 - b. Co-location is defined as the attachment of a cellular antenna or other telecommunication equipment to a cellular tower or other vertical structure. The Grantee shall pay the Navajo Nation additional compensation of \$2,000.00 per year for each co-location. The first payment is due on the date of approval of each co-location by the Navajo Nation and thereafter in the manner provided for in paragraph 2.a above.
3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of constructing and operating a cellular tower. The Grantee may not develop, use or occupy the right-of-way for any other purpose without the prior written approval of the Navajo Nation and the Secretary of the Interior. The Grantee may allow the attachment of cellular antennas (referred to as co-location) and other telecommunication equipment with the prior approval of the Navajo Nation. The approval of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation. The Grantee may not develop, use or occupy the right-of-way for any unlawful purpose.
4. In all activities conducted by the Grantee within the Navajo Nation, the Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:
 - a. Title 25, Code of Federal Regulations, Part 169;
 - b. All applicable federal and Navajo Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic

Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices;

- c. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq.; and by other applications that are submitted by other licensed wireless companies; and
 - d. The Navajo Nation Water Code, 22 N.N.C. § 1101 et seq.. Grantee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.
- 5. The Grantee shall ensure that the air quality of the Navajo Nation is not jeopardized due to violation of applicable laws and regulations by its operations pursuant to the right-of-way.
 - 6. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.
 - 7. The Grantee shall reclaim all surface lands disturbed related to the right-of-way, as outlined in a restoration and revegetation plan, which shall be approved by NNEPA prior to any surface disturbance. The Grantee shall comply with all provisions of such restoration and revegetation plan and shall notify the Director of the NNEPA immediately upon completion of the surface disturbance activities so that a site inspection be can made.
 - 8. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land subject to the right-of-way and all improvements located thereon and make all necessary and reasonable repairs.
 - 9. The Grantee shall obtain prior written permission to cross existing rights-of-way, if any, from the appropriate parties.
 - 10. The Grantee shall be responsible for and promptly pay all damages when they are sustained.
 - 11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary of the Interior and their respective authorized agents, employees, land users and occupants, against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of right-of-way by the Grantee.

12. The Grantee shall not assign, convey or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the land subject to the right-of-way, without the prior written consent of the Navajo Nation and the Secretary of the Interior. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.
13. The Navajo Nation may terminate the right-of-way for violation of any of the terms and conditions stated herein. In addition, the right-of-way shall be terminable in whole or part by the Navajo Nation for any of the following causes:
 - a. Failure to comply with any terms and conditions of the grant or of applicable laws or regulations;
 - b. A non-use of the right-of-way for the purpose for which it is granted for a consecutive two year period; and
 - c. The use of the land subject to the right-of-way for any purpose inconsistent with the purpose for which the right-of-way is granted.
14. At the termination of this right-of-way, the Grantee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request of the Navajo Nation, the Grantee shall provide the Navajo Nation, at the Grantee's sole cost and expense, with an environmental audit assessment of the premises at least sixty (60) days prior to delivery of said premises. All reclamation or abandonment shall be performed in accordance with the rules, regulations and guidelines of the NNEPA and applicable federal laws and regulations.
15. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or into the land subject to the right-of-way or to any improvements located thereon.
16. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any improvements located thereon.
17. By acceptance of the grant of right-of-way, the Grantee consents to the full territorial legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Grantee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation.

18. By acceptance of the grant of right-of-way, the Grantee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the right-of-way or to the Navajo Nation.
19. Any dispute arising out of the consent of the Navajo Nation or of the terms and conditions of the right-of-way shall be resolved administratively under the laws of the Navajo Nation, and no action or proceeding shall be brought by the Grantee against the Navajo Nation in any court of any state.
20. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.
21. Except as prohibited by applicable federal law, the law of the Navajo Nation shall govern the construction, performance and enforcement of the terms and conditions contained herein.
22. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.
23. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the right-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the right-of-way; and the right-of-way and all lands burdened by the right-of-way shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

TAA's Approved Fiber

NTUA Tower Projects requiring waiver (TTSL)

NTUA Utility Projects -

TAA's Waterline Approved by the Navajo Nation

No.	Project ID or Work Order #	Project Description	Chapter	TAA Approval Date	Utility/Customer Type
1	312240006	Waterline	Fort Defiance	9/5/2023	ARPA Waterline, Septic & Drainfield
2	392100002	Waterline	Round Rock	3/11/2024	ARPA Waterline, Septic & Drainfield

3	330900003	As Built BIA Waterline and Well Tract	Chinle	8/21/2020	Waterline/Well
4		Chinle Water Treatment Facility	Chinle	12/8/2022	Water Treatment
5		Lukachukai Waterline	Lukachukai	9/9/2021	Distribution Waterline
6		Rock Springs Lagoon & Sewerline	Rock Springs	10/1/2021	Lagoon/Sewerline

Tribal Authorization Access (TAA)

EOR #	Comments	Assessment Amount (Terms and Conditions)	Term (Years)	Footage	No. of Customers
20639	TAA approved without Waiver of Consideration	\$20,776.86	20 years	2,095	1
21931	TAA approved without Waiver of Consideration	\$225,800.00	20 years	1,862.77	1
TOTAL:		\$225,800.00		3,958	2

TOTAL: 1,652 1

TOTAL: 8,858 34

3023	TAA approved without Waiver of Consideration	55,663.39	20	WL 1,798.07 ft	community
13229	TAA approved without Waiver of Consideration	202,069.93	20	Well 0.05 ac	community
17023	TAA approved without Waiver of Consideration	101,266.56	20	4.71 ac	community
17022	TAA approved without Waiver of Consideration	87,083.80		10,211.11 ft	community
TOTAL:		446,083.68		Lagoon 5.26 ac	community
			20	SL 1143.43 ft	community

Grand Total: 671,883.68

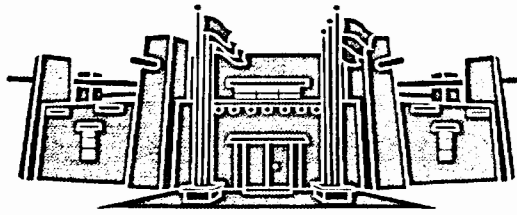
NTUA Utility Projects - Tribal Authorization Access (TAA)

TAA's Natural Gasline Approved by the Navajo Nation

No.	Project ID or Work Order #	Project Description	Chapter	TAA Approval Date	Utility/Customer Type	EOB #
1	6019326	Kayenta 4 Inch Natural Gas Loop	Kayenta	7/6/2022	Distribution Line	17892

Comments	Assessment Amount (Terms and Conditions)	Term (Years)	Footage/Mile	No. of Customers
TAA approved with waived of consideration	\$ 756,717.87	20	9.70	Kayenta Com.

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax No.: (928) 871-7576



Honorable Crystalyne Curley
Speaker
25th Navajo Nation Council

MEMORANDUM

TO: Hon. Otto Tso, Council Delegate
25th Navajo Nation Council

FROM: 
April Quinn, Principal Attorney
Office of Legislative Counsel

DATE: March 14, 2024

SUBJECT: **AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A WAIVER OF CONSIDERATION FOR THE NAVAJO TRIBAL UTILITY AUTHORITY ("NTUA") FOR CERTAIN TRIBAL AUTHORIZATION ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES; AND AMENDING CERTAIN TRIBAL AUTHORIZATION ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES GRANTED SINCE JUNE 3, 2020 TO WAIVE CONSIDERATION, INCLUDING ANY CONSIDERATION ASSESSED BUT NOT YET PAID BY NTUA TO THE NAVAJO NATION**

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees' powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please review this draft legislation and its exhibits to make sure it is drafted to your satisfaction and that all necessary and appropriate supporting documents have been provided and the attached exhibits are correct. If you find anything unacceptable, please let me know immediately and advise me of your desired changes. I can be reached at (928)871-7166 and april.quinn@navajo-nsn.gov. Thank you.

OLC No. 24-099-1

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0060-24_

SPONSOR: Otto Tso

**TITLE: An Action Relating to the Resources and Development Committee;
Approving a Waiver of Consideration for the Navajo Tribal Utility Authority
("NTUA") for Certain Tribal Authorization Accesses and Telecommunication
Tower Site Leases; and Amending Certain Tribal Authorization Accesses and
Telecommunication Tower Site Leases Granted Since June 3, 2020 to Waive
Consideration, Including any Consideration Assessed But Not Yet Paid by NTUA to
the Navajo Nation**

Date posted: March 14, 2024 at 6:52PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*