

**RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---Second Year 2016**

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCJN-37-16, WHICH WAS AN APPROVAL OF A RIGHT-OF-WAY WITHIN THE WHITEHORSE LAKE CHAPTER VICINITY TO CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC., TO CLARIFY THE DESCRIPTION OF THE WIDTH OF THE RIGHT-OF-WAY APPROVED BY RDCJN-37-16

BE IT ENACTED:

Section One. Findings

A. Pursuant to 2 N.N.C. §501(B)(2), the Resources and Development Committee of the Navajo Nation Council has authority to grant final approval of rights-of-way, surface easements on Navajo Nation lands and unrestricted (fee) land; and

B. The Resources and Development Committee approved resolution number RDCJN-37-16, An Action Relating to Resources and Development; Approving the Grant of Right-of-Way to Continental Divide Electric Cooperative, Inc., to Construct, Operate and Maintain a Single Phase 14.4/24.9 kV Power Line Extension to Serve the Elsie Whitehorse Residence Located on Navajo Nation Fee Lands Within the Whitehorse Lake Chapter Vicinity, Navajo Nation (McKinley County, New Mexico). Resolution No. RDCJN-37-16 with its Exhibits "A" through "D" is attached and incorporated herein as Exhibit "A"; and

C. RDCJN-37-16 Finding "C" stated that "[t]he proposed right-of-way is 302.90 feet along, 20 feet wide, consisting of 0.209 acres, more or less, located in Section 23, Township 18 North, Range 9 West, NMPM, (McKinley County, New Mexico) the map describing this location is attached hereto and incorporated herein as Exhibit "B[.]". However, the issue of whether the width of the right-of-way is 20 feet wide or 30 feet wide has become a question. This is because the third page of RDCJN-37-16 Exhibit "A" says 30 feet, Exhibit "B" does not clearly state 20 feet or 30 feet; and Exhibit C says 20 feet. Therefore, it would be helpful for Finding "C" to be amended to clarify the width of the right-of-way to state that the right-of-way is 30 feet wide.

Section Two. Amending Resolution No. RDCJN-37-16

Resources and Development Committee of the Navajo Nation Council hereby amends RDCJN-37-16 Finding "C" to read as follows:

"C. The proposed right-of-way is 302.90 feet long, 30 feet wide, consisting of 0.209 acres, more or less, located in Section 23, Township 18 North, Range 9 West, NMPM, (McKinley County, New Mexico); the map describing this location is attached hereto and incorporated herein as Exhibit "B"; and"

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Department of Transportation, (Navajo Nation) Tse Bonito, New Mexico, at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained this 2nd day of August, 2016.

A handwritten signature in black ink, appearing to read 'Ben Bennett', is written over a large, stylized 'X' or 'B' mark.

**Benjamin Bennett, Vice-Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council**

**Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete**



RDCJN-37-16

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---Second Year 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF
RIGHT-OF-WAY TO CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC. TO
CONSTRUCT, OPERATE AND MAINTAIN A SINGLE PHASE 14.4/24.9 kV
POWER LINE EXTENSION TO SERVE THE ELSIE WHITEHORSE RESIDENCE
LOCATED ON NAVAJO NATION FEE LANDS WITHIN THE WHITEHORSE LAKE
CHAPTER VICINITY, NAVAJO NATION (McKINLEY COUNTY, NEW MEXICO)

Section One. Findings

A. Pursuant to 2 N.N.C. § 501 (B)(2), the Resources and Development Committee of the Navajo Nation Council has authority to grant final approval of rights-of-way and surface easements on Navajo Nation lands and unrestricted (fee) land; and

B. The Continental Divide Electric Cooperative, Inc., P.O. Box 1087, Grants, New Mexico 87020 has submitted a right-of-way application to construct, operate and maintain a single phase 14.4/24.9 kV power line extension on, over and across Navajo Nation Fee Lands within the Whitehorse Lake Chapter vicinity, Navajo Nation (McKinley County, New Mexico) attached hereto and incorporated herein as Exhibit "A"; and

C. The proposed right-of-way is 302.90 feet long, 20 feet wide, consisting of 0.209 acres, more or less, located in Section 23, Township 18 North, Range 9 West, NMPM, (McKinley County, New Mexico) the map describing this location is attached hereto and incorporated herein as Exhibit "B"; and

D. Pursuant to Ms. Esther Kee's, Right-of-Way Agent's, Memorandum dated February 5, 2015 attached hereto as Exhibit "C", the Navajo Land Department Project Review Section has obtained the consents from the affected land users (i.e. grazing permittees); and

E. The environmental and archaeological studies have been completed and are attached hereto and incorporated herein by this reference. The Archeological Inventory Report is attached as Exhibit "E." Biological Resources Compliance Form is attached as Exhibit "F." Biological Evaluation Report is attached as Exhibit "G." The Cultural Resources Compliance Form is attached as Exhibit "H." The Final Environmental Assessment is attached as Exhibit "I." The Finding of No Significant Impact is attached as Exhibit "J."

Section Two. Approval

A. Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to Continental Divide Electric Cooperative, Inc., to construct, operate and maintain a single phase 14.4kV/24.9 kV electric power line extension to serve the Elise Whitehorse residence near White Horse Lake Chapter, Navajo Nation (McKinley County, New Mexico). The location is more particularly described on the survey map attached hereto as Exhibit "B".

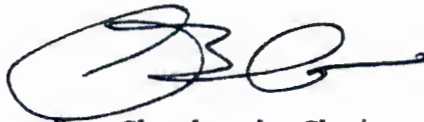
B. The Resource sand Development Committee of the Navajo Nation Council hereby waives the consideration of \$3,260.00 because the grant of right-of-way will provide electrical power to a Navajo citizen's home.

C. The Resources and Development Committee of the Navajo Nation Council hereby approves the Right-of-Way subject to, but not limited to, the terms and conditions attached hereto and incorporated herein as Exhibit "D".

D. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Department of Transportation Administrative Complex - Nataanii Conference Room, (Navajo Nation) Tse Bonito, New Mexico, at which quorum was present and the same was passed by a vote of 3 in favor, 0 opposed, 1 abstained this 7th day of June, 2016.



Alton Joe Shepherd, Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

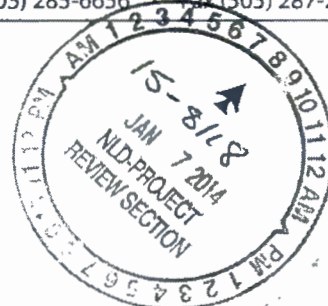
Main Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete
Vote: 4-0-1 (CNV)



CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.



200 E. High St. • P.O. Box 1087 • Grants, New Mexico 87020 • (505) 285-6656 • Fax (505) 287-2234



January 6, 2015

The Navajo Land Department
Attn: Mr. Howard Draper
Project Review Office
PO Box 2249
Window Rock, Arizona 86515

Re: Elsie Whitehorse, WO#50301, Resubmit ROW Package

Dear Mr. Draper,

Continental Divide Electric Cooperative, Inc. is resubmitting our request for right-of-way for the proposed 14.4 kv line to the home of Elsie Whitehorse. Continental Divide Electric Cooperative was informed that the package was lost, therefore we are providing copies of the package which was hand delivered by Vernon McArthur from NHA on October 28, 2014.

If you have any questions, please contact our office at your convenience.

Sincerely,

Debbie Olivar
Engineering/ROW

Enclosures

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Navajo Land Dept.
Project Review Office
P.O. Box 2249
Window Rock, AZ
86515

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

G. Jones

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/28/14

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

Elsie Wh. tohorse
New Fee Land.

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.

200 E. High St. • P.O. Box 1087 • Grants, New Mexico 87020 • (505) 285-6656 • Fax (505) 287-2234

October 13, 2014

The Navajo Land Department
Attn: Mr. Howard Draper
Project Review Office
PO Box 2249
Window Rock, Arizona 86515

Re: Elsie Whitehorse, WO#50301

Dear Mr. Draper,


Continental Divide Electric Cooperative, Inc. is requesting right-of-way for the proposed 14.4 kv line to the home of Elsie Whitehorse. The power line Right-of-way packet consists of the following documents being submitted for review by the Division of Natural Resources, Project Review Office.

1. Letter from CDEC requesting permission to Survey On Tribal Fee Land
2. Permission to Survey – Navajo Nation Fee Land (Copy)
3. Right of way Application – Navajo Nation Fee Land
4. Archaeological Report
5. Cultural Resources Compliance Form
6. Environmental Report
7. FONSI
8. Map with legal (3 copys)
9. Copy of CDEC Secretary's Certificate and Certificate of Incorporation

This project traverses over and across Navajo Fee Land. The distance on Navajo Fee Land is 302.90' feet in length, 30' feet in width, and .209 acres and is located in the South West $\frac{1}{4}$ of Section 23, T18N, R09W, NMPM McKinley County New Mexico Whitehorse Chapter.

Also attached for your information is a copy of the approved Grant of Easement for ROW across allotment #2038 for Elsie Whitehorse.

If you have any questions, please contact our office at your earliest convenience.

Sincerely,

Debbie Olivar
Engineering/ROW

Enclosures



CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.

200 E. High St. • P.O. Box 1087 • Grants, New Mexico 87020 • (505) 285-6656 • Fax (505) 287-2234

July 12, 2013

Navajo Nation
Project Review Office
Attn: Howard Draper
PO Box 2249
Window Rock, AZ 86515

Re: Permission to Survey

Dear Mr. Draper,

Continental Divide Electric Cooperative is seeking permission to survey for an electric power line project. The section of Tribal Fee Land that will have a survey crew is as follows:

Section 23, SW/4, T18N, R09W

Tribal Fee Land

Included in this letter is a preliminary map showing the proposed route of the electrical line. If you have questions, please contact our office at your convenience at (505) 285-6656.

Respectfully,

Debbie Olivar
Engineering/Right of Way

Enclosure

Age	Percentage
18-24	10
25-34	20
35-44	30
45-54	40
55-64	50
65-74	60
75-84	70
85-94	80
95-104	90

**CONTINENTAL Divide
Electric Cooperative, Inc.**

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THE NAVAJO NATION



BEN SHELLY
PRESIDENT

REX LEE JIM
VICE-PRESIDENT

MEMORANDUM

TO : Howard P. Draper, Supervisor
Project Review Section, NLD

FROM : Esther Kee
Esther Kee, R/W Agent
Project Review Section, NLD

DATE : February 6, 2015

SUBJECT: CDEC Whitehorse Power Line Project

Continental Divide Electric Cooperative, Inc., of Grants, New Mexico 87020, submitted a right of way application to construct, operate and maintain a single phase distribution line across Navajo Fee land to serve Elsie Whitehorse residence near Whitehorse Lake Chapter.

The power line will be 302.90 feet in length, 20 feet wide, 0.209 acres, in Section 23, Township 18 North, Range 9 West, NMPM, McKinley County, New Mexico.

The proposed project is located in District 20, Sand Springs Range 13, permitted to Johnathan Nolan and Elsie Whitehorse for grazing. I informed the affected grazing permittees on the proposed request and they had no objection, I obtained the land users consent along with the concurrence of the District 20 Land Board Member, Howard Martinez.

Field clearance complete, land users consent, map and supporting documents are all attached for your information and reference.

cc: Project file

CONSENT 3
(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Johnathan Nolan, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Continental Divide Electric Cooperative, Inc., Post Office Box 1078, Grants, New Mexico 87020, to use a portion of my land use area for the following purpose(s): Right of Way to construct, operate and maintain 302.90 feet (0.209 acres) distribution line across Navajo Fee Lands to serve Elise Whitehorse residence in the SW/4 of Section 23, T18N, R9W, Whitehorse Lake, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

2-6-15
Date

Johnathan Nolan
Land User Signature (or Thumbprint)

Sand Springs
RA-13
Census No. Permit No.

WITNESS: _____

3/6/15
Date

[Signature]
Grazing Committee or Land Board Member

20
District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained ~~to~~ to the land user in Navajo ~~to~~ or English// (check where applicable)

E. H. Kie
Field Agent Signature

CONSENT 3

(Waiver of compensation for damages)

CONSENT TO USE
NAVAJO TRIBAL LANDS

TO WHOM IT MAY CONCERN:

I, Elsie Whitehorse, hereby grant consent to the Navajo Tribe and the Bureau of Indian Affairs to permit Continental Divide Electric Cooperative, Inc., Post Office Box 1078, Grants, New Mexico 87020, to use a portion of my land use area for the following purpose(s): Right of Way to construct, operate and maintain 302.90 feet (0.209 acres) distribution line across Navajo Fee Lands to serve Elise Whitehorse residence in the SW/4 of Section 23, T18N, R9W, Whitehorse Lake, McKinley County, New Mexico, as shown on the map showing the location of the proposed project on the back of this consent form.

I hereby waive any rights I may have to compensation for the diminishment in value of my land use rights as a result of the above-referenced project as proposed.

REMARKS:

2/5/15
Date

Elsie Whitehorse
Land User Signature (or Thumbprint)

Census No.

Sand Springs
24.13
Permit No.

WITNESS: _____

2/6/15
Date

[Signature]
Grazing Committee or Land Board Member

20
District No.

Acknowledgement of Field Agent

I acknowledge that the contents of this consent form was read// or fully explained to to the land user in Navajo to or English// (check where applicable)

[Signature]

Field Agent Signature



EXHIBIT "D"

NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS

CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC. (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 Navajo Nation.
2. The consideration for the right-of-way is assessed at \$3,260.40. The Navajo Nation contributes this amount to the project to provide electricity to constructing, operating and maintaining a 14.4/24.9 kV single phase electrical power line to Navajo home.
3. The Grantee may develop, use and occupy the right-of-way for the purpose(s) of constructing, operating, and maintaining a 14.4/24.9 kV single phase electrical power line. 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. 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, subject to the terms of this right-of-way;
 - 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 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 the Navajo Nation Environmental Protection Agency (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 their respective authorized agents, employees, landusers 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, transfer or sublet, 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. 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 term or condition 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 (2) year period;
 - c. An Abandonment of the right-of-way;
 - d. 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 phase 1 environmental site assessment of the premises at least sixty (60) days prior to delivery of 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 into the land subject to the right-of-way or to any improvements located thereon.
16. The Navajo Nation 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 action or proceeding brought by the Grantee against the Navajo Nation in connection with or arising out of the terms and conditions of the right-of-way shall be brought only in the Courts 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.
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.
24. The Navajo Nation reserves the right to grant rights-of-way within the right-of-way referenced herein for utilities, provided that such rights-of-way do not unreasonably interfere with the Grantee's use of the right-of-way.

25. The Grantee shall construct the power line in accordance with "suggested practices for Raptor Protection on Power Lines: State of the Art in 2006."

As a condition of the grant of right-of-way, the grantee agrees to the above referenced terms and conditions.

In witness whereof, the parties hereto have executed the grant of right-of-way this ____ day of _____, 2015.

THE NAVAJO NATION

By:


Ben Shelly, President

**CONTINENTAL DIVIDE ELECTRIC
COOPERATIVE, INC.**

By:

_____, General Manager