

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
23<sup>RD</sup> Navajo Nation Council --- Third Year, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; DETERMINING, PURSUANT TO TITLE 25 OF THE CODE OF FEDERAL REGULATIONS SECTION (§) 169.103 (f) (2), THAT IT IS IN THE BEST INTEREST OF THE NAVAJO NATION TO WAIVE THE REQUIREMENT OF BOND, INSURANCE OR ALTERNATIVE FORM OF SECURITY FOR ALL PROJECTS OF THE NAVAJO TRIBAL UTILITY AUTHORITY REQUIRING A RIGHT OF WAY

BE IT ENACTED:

**Section One. Authority**

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. On April 21, 2016, the Bureau of Indian Affairs revised and implemented the updated Right-of-Way Regulations.
- B. As part of this update, a bond, insurance or alternative form of security is now required for all Right-of-Ways.
- C. The Bureau of Indian Affairs, pursuant to 25 CFR § 169.103 (f) (2), may waive the requirement "...for tribal land, deferring to the maximum extent possible, to the tribe's determination that a waiver of a bond, insurance or alternative form of security is in its best interest."
- D. Due to this change in the Bureau of Indian Affairs Right-of-Way regulations, the Navajo Tribal Utility Authority projects are being held up at the Bureau of Indian Affairs pending bonding/insurance or waiver of the bonding/insurance.
- E. The Navajo Tribal Utility Authority is already subject to extensive right-of-way terms and conditions as found in Exhibit B as part of Resolution RCD-104-10. See **Exhibit "A"** attached hereto.
- F. The Navajo Tribal Utility Authority's coverage is provided through Marsh and McLennan Companies-Navajo Nation Insurance Provider.

- G. Without a waiver costs for Navajo Tribal Utility Authority projects could increase an average of 3-15% for bonding. This cost would be passed on to the consumer.
- H. The Resources and Development Committee finds that the waiver of the requirement for a bond, insurance, or alternative form of security for all projects of the Navajo Utility Authority requiring a Right-of-Way is in the best interest of the Navajo Nation.

**Section Three. Approval**

- A. The Resources and Development Committee hereby waives the requirement for a bond, insurance or alternative form of security for all projects of the Navajo Utility Authority requiring Right-of-Way, based on the determination that such a waiver is in the best interest of the Navajo Nation.
- B. The Resources and Development Committee hereby directs the Navajo Minerals Department and the Department of Justice to develop the appropriate Terms and Conditions for use that reflect the intent of this legislation.

**CERTIFICATION**

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting at NDOT Administrative Complex, Tse Bonito (Navajo Nation) New Mexico, at which quorum was present and that same was passed by a vote of 4 in favor, 1 opposed, 1 abstained this 11<sup>th</sup> of April, 2017.

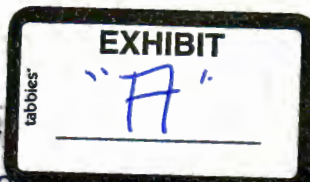


Benjamin Bennett, Vice Chairperson  
Resources and Development Committee  
Of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Leonard H. Pete  
Second: Honorable Walter Phelps



# Navajo



JOE SHIRLEY, JR.  
President

DEN SHIRLEY  
Vice President

DEC 08 2010

Omar Bradley, Regional Director  
Bureau of Indian Affairs  
Navajo Regional Office  
Post Office Box 1060  
Gallup, New Mexico 87305


RE: Delegation of Authority to the Director of the Navajo  
Land Department to Approve Rights-of-Way for  
Navajo Tribal Utility Authority

Dear Mr. Bradley:

On December 3, 2010, the Resources Committee of the Navajo Nation Council approved the Delegation of Authority to the Director of the Navajo Land Department to Approve Rights-of-Way for Navajo Tribal Utility Authority by Resolution No. RCD-104-10, entitled, 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 Administration Rules and Regulations for the Delegation of Authority; and Approving the Right-of-Way Terms and Conditions.

Approval of the Delegation is given subject to the terms and conditions stipulated in the resolution approved by the Resources Committee and the attached exhibits.

Sincerely,  
THE NAVAJO NATION

  
Joe Shirley, Jr.  
President

ENCLOSURES

Xc: Walter W. Haase, P.E. General Manager, Navajo Tribal Utility  
Authority  
Fredrick H. White, Acting Executive Director, Division of Natural  
Resources, Navajo Nation

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

**21<sup>st</sup> 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 3<sup>rd</sup> day of December, 2010.

A handwritten signature in blue 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

## 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"**

**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".