

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

**AN ACTION**

**RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCMY-39-17  
"APPROVING THE GRANT OF RIGHT-OF-WAY TO JEMEZ MOUNTAIN ELECTRIC  
COOPERATIVE, INC. TO CONSTRUCT, OPERATE AND MAINTAIN ELECTRICAL  
DISTRIBUTION LINE BETONNIE TSOSIE 14.4 KV SINGLE PHASE POWERLINE  
PROJECT LOCATED ON NAVAJO NATION TRUST LANDS IN NAGEEZI CHAPTER  
(SAN JUAN COUNTY, NEW MEXICO)" TO PROVIDE FOR A WAIVER OF BOND  
REQUIREMENT PURSUANT TO 25 CFR PART 169**

**BE IT ENACTED:**

**SECTION ONE. AUTHORITY**

- A. Pursuant to 2 N.N.C. Section §501 (B)(2), The Resources and Development Committee of the Navajo Nation Council has the authority to grant 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) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

**SECTION TWO. FINDINGS**

- A. The Resources and Development Committee of the Navajo Nation approved Resolution RDCMY-39-17 on May 23, 2017. See Exhibit "A".
- B. On November 19, 2015, the United States Department of the Interior published Final Rules governing "Rights-of-Way On Indian Land" 25 CFR Part 169.
- C. These final rules state in part that the Bureau of Indian Affairs "...may waive the requirement for a bond, insurance, or alternative form of security :...( 2) 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." 25 CFR § 169.103 (f) (2).

- D. The Resources and Development Committee of the Navajo Nation determines that amending RDCMY-39-17 to provide for a waiver of the requirement for a bond, insurance, or alternative form of security is in the best interest of the Navajo Nation.

**Section Three. Approval**

The Resources and Development Committee of the Navajo Nation hereby amends RDCMY-39-17 to provide for the waiver of the requirement for a bond, insurance or alternative form of security on the part of the Grantee, based on the determination that such a waiver is in the best interest of the Navajo Nation pursuant to 25 CFR § 169.103 (f)(2).

**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 the Twin Arrows Police/Fire Substation, Leupp, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 1 abstained on this 15<sup>th</sup> day of November, 2017.



Alton Joe Shepherd, Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Jonathan Perry  
Second: Honorable Davis Filfred



RDCMY-39-17

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF  
RIGHT-OF-WAY TO JEMEZ MOUNTAIN ELECTRIC COOPERATIVE, INC. TO  
CONSTRUCT, OPERATE AND MAINTAIN ELECTRICAL DISTRIBUTION LINE  
BETONNIE TSOSIE 14.4 KV SINGLE PHASE POWERLINE PROJECT LOCATED  
ON NAVAJO NATION TRUST LANDS IN NAGEEZI CHAPTER (SAN JUAN  
COUNTY, NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. Pursuant to 2 N.N.C. Section 502(B)(2), the Resources and Development Committee of the Navajo Nation Council has authority to give final approval of all land withdrawal, non-mineral leases, permits, licenses, rights-of way, surface easements and bonding requirements on Navajo Nation land and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and termination.

SECTION TWO. FINDINGS

A. The Jemez Mountain Electric Cooperative, Inc., P.O. Box 128, Espanola, New Mexico 87532, has submitted a Right-of-Way application to construct, operate and maintain the Betonnie Tsosie 14.4 kV electric powerline on, over and across Navajo Nation Trust Lands in Nageezi Chapter (San Juan County, New Mexico) attached hereto and incorporated herein as Exhibit "A"; and

B. The proposed right-of-way is described on Exhibit "B", attached hereto and incorporated herein; and

C. The General Leasing Development Department with the Navajo Division of Natural Resources has determined that the Navajo Nation is the only affected land user and has provided the necessary consent from the District 19 Land Board member, as noted in Exhibit "C"; and

D. The environmental and archaeological studies have been completed and are approved hereto and incorporated herein by this reference.

### SECTION THREE. APPROVAL

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to Jemez Mountain Electric Cooperative, Inc. to construct, operate and maintain the Betonnie Tsosie 14.4 kV electric powerline in Nageezi Chapter (San Juan County, New Mexico). The location is more particularly described on the survey map attached hereto as Exhibit "B."

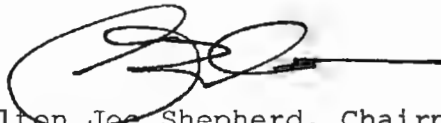
B. The Resources and Development Committee of the Navajo Nation Council hereby approves the right-of-way subject to, but not limited to, the following terms and conditions attached hereto and incorporated herein as Exhibit "D."

C. The Resources and Development Committee of the Navajo Nation Council hereby waives the consideration because the project will benefit the Navajo Nation residents.

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 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 Twin Arrows Navajo Casino Resort, Twin Arrows (Navajo Nation) Arizona, at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 0 abstained on this 23<sup>rd</sup> day of May, 2017.



Alton Joe Shepherd, Chairperson  
Resources and Development Committee  
of the 23<sup>rd</sup> Navajo Nation Council

Motion: Davis Filfred  
Second: Benjamin Bennett



**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

**RIGHT-OF-WAY APPLICATION MUST IDENTIFY [§169.102(a)]:**

1. Applicant Name and Address: Jemez Mountains Electric Cooperative, PO Box 128, Espanola, NM, 87532
2. Tract(s) or parcel(s) affected by the right-of-way: Tribal Trust
3. General location (easement description):

NW/4 Section 6, T. 22 N., R. 8 W., San Juan County, NM

Said right-of-way across Tribal Trust Lands to be 331.74 feet in length, 20 feet in width, and .150 acres in size, as shown on attached map and plats of definite location, attached hereto, and made a part hereof.

4. Purpose: Construction, operation and maintenance of an 14.4 KV electrical distribution line, Betonnie Tsosie, Project #412143.
5. Term (Renewal, if applicable): 20 Years
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under §169.105:

**REQUIRED SUPPORTING DOCUMENTS [§169.102(b)]:**

1. Accurate legal description of the right-of-way, its boundaries, and parcels associated with the right-of way;
2. A map of definite location of the right-of-way; (25 CFR 169.102((b)(2); survey plat signed by professional surveyor or engineer showing the location, size, and extent of the ROW and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C. § 176, 43 U.S.C. § 2 AND § 1764, and showing existing facilities adjacent to the proposed project.)
3. Bond(s), insurance, and/or other security meeting the requirements of §169.103;
4. Record of notice that the right-of-way was provided to all Indian landowners;
5. Record of consent that the right-of-way meets the requirements of §169.107, or a statement documenting a request for a right-of-way without consent under §169.107(b);
6. If applicable, a valuation meeting the requirements of §§ 169.110, 112, 114;
7. With each application, if the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:



- a. The representative has authority to execute the application;
  - b. The right-of-way will be enforceable against the applicant; and
  - c. The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.
8. Current environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;
9. If required, a statement from the appropriate tribal authority that the proposed right-of-way is in conformance with applicable tribal law.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

Applicant Point of Contact Information:

Name: Jemez Mountains Electric Cooperative

Address: PO Box 128, Espanola, NM, 87532

Phone: 505-753-2105 ext 1151

Fax: Click here to enter text.

Email: jsanchez@jmezcoop.org

Date: 3/30/16

Applicant Signature: 

Applicant (Print Name): Joseph Sanchez, General Manager



|      |          |  |          |          |
|------|----------|--|----------|----------|
| DATE | REVISION | BETONNIE TSOSIE<br>POWER LINE PROJECT<br>PERMIT MAP 1 OF 1 |          |          |
|      |          | STATE  | COUNTY   | DISTRICT |
|      |          | NM   | SAN JUAN |          |





# THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

EXHIBIT

C

## MEMORANDUM

TO : Elerina Yazzie, Program Manager  
General Leasing Development Department, DNR

FROM : Esther Kee  
Esther Kee, R/W Agent  
General Leasing Development Department, DNR

DATE : December 02, 1016

SUBJECT: JMEC Betonnie Tsosie Power Line Extension Project

Jemez Mountain Electric Cooperative, Inc., of Post Office Box 128, Espanola, New Mexico 87532, submitted an application for right of way to construct, operate and maintain a single phase distribution line to serve Navajo families on Navajo Trust lands near the vicinity of Nageezi Chapter.

The proposed right of way will be 331.74 feet in length, 20 feet in width, .150 acres, located in the NW/4 of Section 6, Township 22 North, Range 8 West, NMPM, San Juan County, NM.

The Navajo Nation is the only affected land user and provided the necessary consent from the District 19 Land Board member, Carlos Arviso.

Field clearance completed, land user consent and supporting documents are all attached for your information and reference.

cc: Project file



**NAGEEZI CHAPTER  
EASTERN NAVAJO AGENCY  
DISTRICT 19**

Russell Begaye, Navajo Nation President

Jonathan Nez, Navajo Nation Vice-President

December 1, 2016

Ester Kee, ROW Agent  
Navajo Nation Land Department  
Window Rock, AZ 86515

**RE: Land Use Consent for Jemez Mountain Electric Cooperative, Inc ("JMEC") on  
Navajo Trust Land (NW1/4 Section 6, T22N, R8W, San Juan County, NM)**

Dear Miss Kee:

After researching if Navajo Trust Land located at NW1/4, Section 06, T22N, R8W, San Juan County, NM, this Navajo Trust Land is not permitted for grazing. Since this Navajo Trust Land is not permitted for grazing, no land user(s) will be affected by the proposed right-of-way for construction of an Overhead Single Phase Power Line by JMEC. This proposed Overhead Single Phase Power Line Extension is referred as Betonnies Tsosie Power Line Project.

If you have any questions, please contact me at 505-960-7200.

Thank You,

  
Carlos Arviso, Land Board Member  
Nageezi Chapter  
Navajo Eastern Agency

Ervin Chavez  
Chapter President

Rory Jacques  
Chapter Vice President

Jessie Valdez  
Secretary/Treasurer

Carlos Arviso  
Land Board

Jonathan Perry  
Council Delegate



EXHIBIT "D"

**NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS**  
**JEMEZ MOUNTAINS ELECTRICAL COOPERATIVE, INC. (GRANTEE)**  
**(BETONNIE TSOSIE 14.4 kV SINGLE PHASE POWERLINE)**

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 right-of-way is assessed at \$ 2,193.32 and 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, within ten (10) days of approval of and consent to the grant of the right-of-way 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 Grantee may develop, use and occupy the right-of-way for the purpose(s) of constructing and maintaining electrical distribution line. The Grantee may not develop, use or occupy the right-of-way for any other purpose, nor allow others to 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.
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 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., 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 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 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, 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 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.
  - d. An abandonment of the right-of-way.
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.
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 to 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 of the Navajo Nation, including but not limited to the jurisdiction of 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-ways do not unreasonably interfere with the Grantee's use of the right-of-way.