

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; AMENDING THE
TERMS AND CONDITIONS IN RESOLUTION RDCD-127-17, WHICH APPROVED A
RIGHT-OF-WAY FOR NAVAJO TRANSITIONAL ENERGY COMPANY, LLC, FOR
PINTO HAUL ROAD ACCESS ROAD

BE IT ENACTED:

SECTION ONE. AUTHORITY

Pursuant to 2 N.N.C. § 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, right-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 approved Resolution RDCD-127-17, which granted a renewal of a right-of-way for Pinto Haul Road to the Navajo Transitional Energy Company. Resolution RDCD-127-17 and Exhibit D, the Terms and Conditions, are attached hereto as **Exhibit 1**.
- B. A request has been made to amend the Terms and Conditions approved by RDCD-127-17 by amending Paragraph 2 of the Terms and Conditions, Exhibit D of RDCD-127-17.

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby amends Paragraph Number 2 of the Terms and Conditions for RDCD-127-17 in the following manner:

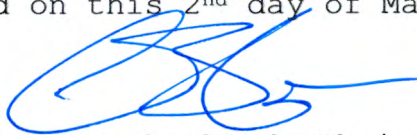
~~Consideration for ROW is assessed at \$410,729.24 and shall be split into three equal annual payments, the first of which being \$136,909.75 to be paid to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provided to the Navajo Nation Minerals Department, or its successor within ten (10) days of approval of the ROW by the Navajo Nation. Each of the two subsequent payments (adjusted for CPI, based on the June 2017 CPI-Urban Index) shall be paid on the next two anniversaries of the approval of and consent to the grant of the ROW by the Navajo Nation.~~

Consideration for the ROW is assessed at \$107,680.00. The Grantee shall make annual payments in the amount of \$5,384.00 for the first three years of the ROW term and in the fourth year, a lump sum payment as consideration in the amount of \$91,528.00 to the Controller of the Navajo Nation, in lawful money of the United States, and a copy of the receipt for such payment provide to the Navajo Nation Minerals Department, or its successor within 10 days of approval of the ROW by the Navajo Nation.

- B. The Resources and Development Committee of the Navajo Nation Council hereby directs the Navajo Nation Minerals Department to make changes to the RDCD-127-17, *Navajo Nation Terms and Conditions for Right-of-Way (ROW) Navajo Transitional Energy Company, LLC, (Grantee)* consistent with this resolution.
- C. 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 23rd Navajo Nation Council at a duly called meeting at the Navajo Nation Council Chambers, 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, 1 abstained on this 2nd day of May 2018.



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

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete



RDCD-127-17

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

AN ACTION

**RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE RENEWAL FOR
TWENTY (20) YEARS OF A RIGHT-OF-WAY FOR PINTO HAUL ROAD ACCESS
INTO THE NAVAJO TRANSITIONAL ENERGY COMPANY COAL LEASE AREA FOR
THE NAVAJO TRANSITIONAL ENERGY COMPANY SAID RIGHT-OF-WAY BEING
LOCATED ON THE NAVAJO NATION AND WITHIN NENAHNEZAD CHAPTER, SAN
JUAN COUNTY, NEW MEXICO AND BEING PRESENTLY SCHEDULED TO EXPIRE
DECEMBER 7, 2017**

BE IT ENACTED:

SECTION ONE. AUTHORITY

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 existing Right-of-Way (ROW) was originally granted in 1967 to the Utah Construction and Mining Company, held by Utah International, Inc. See Exhibit E.
- B. In 1976 Utah International, Inc. merged with General Electric Company. See Exhibit E.
- C. In 1984 Utah International, Inc. was sold by General Electric Company to BHP Billiton. In the three years immediately after the acquisition, Utah International continued to operate as an independent business entity during which time it directly owned and operated the Navajo Mine and associated ROWs. See BHP Billiton website Corporate History 1984.
- D. By 2013 Navajo Mine and its associated ROWs were owned and operated by the BHP Navajo Coal Company, LLC, a wholly owned subsidiary of BHP Billiton New Mexico Coal, Inc.

- E. BHP Navajo Coal Company, LLC and BHP Navajo Coal Company were indirect and wholly owned subsidiaries of BHP.
- F. Navajo Transitional Energy Company (NTEC), in 2013, acquired from BHP Billiton New Mexico Coal, Inc. all shares of the Navajo Mine Coal Company, LLC, previously known as the BHP Navajo Coal Company, LLC, thereby giving NTEC the Navajo Mine and its associated ROWs.
- G. In 2014, NTEC causes the Navajo Mine Coal Company to be merged with and into NTEC thereby making NTEC the direct owner of the Navajo Mine and all its associated ROWs.
- H. NTEC seeks to renew the ROW for the Pinto Haul access road to the NTEC coal lease area, specifically located within SE ¼ of Section 36, T29N, R16W, being 1.02 miles in length, 100 feet in width and 6.73 acres more or less in size. The ROW begins at the NTEC North Plant Lease and leads to the NTEC Coal Lease just above the Pinto Pit. See Exhibits A thru E.
- I. The necessary Executive Review, including legal, has been completed and the request is deemed sufficient. See Exhibit C and Exhibit F.
- J. The Resources and Development Committee finds a waiver of the bond requirement, 25 C.F.R. § 169, is in the best interest of the Navajo Nation.
- K. The Resources and Development Committee finds a waiver of valuation, 25 C.F.R. § 169.110, and that the waiver of valuation is in the best interest of the Navajo Nation.
- L. The Resources and Development Committee of the Navajo Nation Council finds it to be in the best interest of the Navajo Nation to approve the requested renewal of the ROW under the Terms and Conditions as found at Exhibit D.

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the renewal for a period of twenty years (20) the Pinto Haul Road Right-Of-Way in Nenahnezad Chapter, Navajo Nation, San Juan County, New Mexico, as further described at Exhibit B and under the Terms and Conditions as found at Exhibit D.

- B. The Resources and Development Committee of the Navajo Nation Council hereby approves waiver of the bond requirement.
- C. The Resources and Development Committee of the Navajo Nation Council hereby approves waiver of the valuation.
- 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 23rd Navajo Nation Council at a duly called meeting at the Navajo Transportation Administrative Complex, Tse Bonito, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, 1 abstained on this 19th day of December, 2017.



Jonathan Perry, Pro Tempore Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete

EXHIBIT D of RD CD-127-17

EXHIBIT "D"

NAVAJO NATION TERMS AND CONDITIONS FOR RIGHT-OF-WAY (ROW) NAVAJO TRANSITIONAL ENERGY COMPANY, LLC (GRANTEE)

1. The term of the ROW shall be extended for twenty (20) years, effective December 8, 2017 and expiring on December 7, 2037.
2. Consideration for the ROW is assessed at \$410,729.24 and shall be split into three equal annual payments, the first of which being \$136,909.75 to 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 ten (10) days of approval of the ROW by the Navajo Nation. Each of the two subsequent payments (adjusted for CPI, based on the June 2017 CPI-Urban Index) shall be paid on the next two anniversaries of the approval of and consent to the grant of the ROW by the Navajo Nation.
3. The Grantee may develop, use and occupy the ROW for the purpose(s) of constructing, operating, and maintaining the access road (called the Pinto Haul Road) leading from the Grantee's mine plant lease into the Grantee's coal lease. 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 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 ROW 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

- 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 this ROW.
6. The Grantee shall clear and keep clear the lands within the ROW 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.
7. The Grantee shall reclaim all surface lands distributed related to the ROW.
8. The Grantee shall at all times during the term of the ROW 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.
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 attributable to the development, occupancy or use of the ROW by the Grantee.
11. The Grantee shall indemnify and hold harmless the Navajo Nation and the Secretary 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 the area under the ROW by the Grantee.
12. Any assignment, conveyance or transfer by the Grantee, in any manner whatsoever, of the ROW or any interest therein, or in or to any of the improvements on the land subject to the ROW, shall be subject to the 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 at the sole discretion of the Navajo Nation.
13. The ROW may be terminated 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.

14. At the termination of this ROW, 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 all applicable Navajo Nation and applicable Federal laws, rules, and regulations.
15. Holding over by the Grantee after the termination of ROW shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in to the land subject to the permit 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 ROW 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 ROW, 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 the ROW, 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 ROW 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 ROW 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 ROW and all lands burdened by the ROW, including without limitations over all persons, including the public, and all activities conducted or otherwise occurring within the ROW; and the ROW and all lands burdened by the ROW shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.
24. By acceptance of the ROW Grant, the Grantee shall obtain rights to Navajo Nation lands in the nature of easements only; a right to pass over, occupy and reasonably use and occupy the ROW for the particular purpose herein with limited rights of ingress and egress via those particular access roads that are in existence and useable at the grant of this ROW. Such easement shall be limited term usufructuary interest consistent with all general property rights flowing from beneficial ownership of Navajo Nation lands, with no subsurface rights to any minerals or natural resources located on or within the ROW. The ROW under no circumstances or rule of law, shall be interpreted as granting a fee simple interest or creating any greater property right possessed by the Grantee other than the limited easement described herein.

RESOURCES AND DEVELOPMENT COMMITTEE

Regular Meeting

May 2, 2018

ROLL CALL

VOTE TALLY SHEET:

Legislation # 0146-18: An Action Relating to Resources and Development; Amending the Terms and Conditions in Resolution # RDCD-127-17 Which Approved a Right-of-Way for Navajo Transitional Energy Company, LLC, for Pinto Haul Road Access Road. *Sponsor: Honorable Benjamin Bennett; Co-Sponsor: Honorable Davis Filfred*

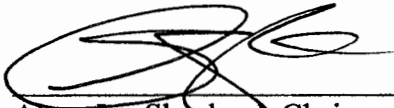
MAIN MOTION: Davis Filfred S: Leonard Pete V: 4-0-1 (CNV)

ROLL CALL VOTE TALLY:

YEAS: Benjamin Bennett, Davis Filfred, Leonard Pete and Jonathan Perry

NAYS: NONE

EXCUSED: Walter Phelps



Alton Joe Shepherd, Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Resources and Development Committee