

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; AMENDING RDCO-054-19 TO WAIVE 100% OF THE COMPENSATION FOR THE GRANT OF RIGHT-OF-WAY TO CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC., FOR THE ECHO CANYON POWERLINE PROJECT LOCATED ON NAVAJO NATION TRUST LANDS IN MARIANO LAKE CHAPTER VICINITY (MCKINLEY COUNTY, NEW MEXICO)

BE IT ENACTED:

SECTION ONE. AUTHORITY

Pursuant to 26 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, 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, renewal, and terminations.

SECTION TWO. FINDINGS

- A. Resolutions and Development Committee Resolution RDCO-054-19 approved a grant of right-of-way to the Continental Divide Electric Cooperative, Inc., for the Echo Canyon Powerline Project on, over and across Navajo Nation Trust Lands in Mariano Lake Chapter vicinity, (McKinley County, New Mexico). RDCO-054-19 is attached as **Exhibit A** (without attachments).
- B. Resources and Development Committee RDCD-97-18 limited the amount of a waiver of consideration to no more than 50% for utility companies. Pursuant to RDCD-97-19, RDCO-054-19 waived \$97,113.94 which is half of the assessed consideration of \$194,227.88.
- C. The Continental Divide Electric Cooperative, Inc., requests an amendment of Resolution RDCO-054-19 authorizing a 100% waiver of the assessed consideration of \$194,227.88.

SECTION THREE. APPROVAL

A. The Resources and Development Committee of the Navajo Nation Council hereby amends Resolution RDCO-054-19 SECTION THREE as follows:

"B. The Resources and Development Committee of the Navajo Nation Council hereby waives valuation and waives compensation of ~~\$97,113.94, which is fifty~~ one hundred percent of the assessed \$194,227.88 for the right-of-way project for 20 year term, because it has been determined that accepting the agreed-upon compensation and waiving valuation is in the best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.110.

B. 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 24th Navajo Nation Council at a duly called meeting held by a teleconference for which a quorum was present and that same was passed by a vote of 5 in favor, and 0 opposed, on this 1st day of July 2020.

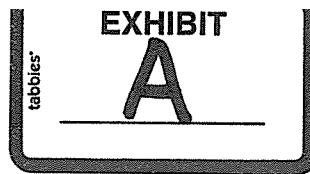


Thomas Walker, Jr., Vice Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Kee Allen Begay, Jr.

Second: Honorable Rickie Nez

Vice Chairperson Thomas Walker, Jr. not voting.



RESOLUTION OF THE
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AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF
RIGHT-OF-WAY TO CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.,
FOR THE ECHO CANYON POWERLINE PROJECT LOCATED ON NAVAJO NATION
TRUST LANDS IN MARIANO LAKE CHAPTER VICINITY (MCKINLEY COUNTY,
NEW MEXICO)

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 Continental Divide Electric Cooperative, Inc., P.O. Box 1087, Grants, New Mexico 87020, has submitted a right-of-way application for Echo Canyon Powerline Project on, over and across Navajo Nation Trust Lands in Mariano Lake Chapter vicinity, McKinley County, New Mexico. The application request is attached hereto and incorporated herein as **Exhibit E**.
- B. The proposed right-of-way is described in map and description attached hereto and incorporated herein as **Exhibit B**.
- C. The Grazing Committee/Land Board Member of District Number 16 has identified one land user who consents to the use of the land by the Continental Divide Electric Cooperative, Inc. The "Consent to Use, Navajo Nation Lands" document is attached as **Exhibit C**.

- D. A waiver of valuation of the right-of-way and waiver of compensation for a twenty year right-of-way is requested. See, 25 CFR § 169.110 (a)(1), (2) and (3). **Exhibit A**, the terms and conditions states that the compensation for a twenty year right-of-way is \$194,227.88.
- E. A request is made for a grant of a fifty-year right-of-way.
- F. The Resources and Development Committee, through resolution number RDCD-97-18, **Exhibit F**, limited the amount of a waiver of consideration to no more than 50% that will be allowed for utility companies requesting a waiver of consideration.
- G. 25 CFR § 169.110 addresses how much monetary compensation must be paid for a right-of-way over or across tribal land. It states: (a) A right-of-way over or across tribal land may allow for any payment amount negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a tribal authorization expressly stating that it:
- (1) Has agreed upon compensation satisfactory to the tribe;
 - (2) Waives valuation; and
 - (3) Has determined that accepting such agreed-upon compensation and waiving valuation is in its best interest.
- (b) The tribe may request, in writing, that we determine fair market value, in which case we will use a valuation in accordance with § 169.114. After providing the tribe with the fair market value, we will defer to a tribe's decision to allow for any compensation negotiated by the tribe.
- (c) If the conditions in paragraph (a) or (b) of this section are not met, we will require that the grantee pay fair market value based on a valuation in accordance with § 169.114.
- H. A waiver of the bond, insurance, or alternative form of security on the part of Continental Divide Electric Cooperative, Inc. is requested.
- I. 25 CFR § 169.103 states: (a) You must include payment of bonds, insurance, or alternative forms of security with your application for a right-of-way in amounts that cover:

- (1) The highest annual rental specified in the grant, unless compensation is a one-time payment;
- (2) The estimated damages resulting from the construction of any permanent improvements;
- (3) The estimated damages and remediation costs from any potential release of contaminants, explosives, hazardous material or waste;
- (4) The operation and maintenance charges for any land located within an irrigation project;
- (5) The restoration of the premises to their condition at the start of the right-of-way or reclamation to some other specified condition if agreed to by the landowners.

* * * *

- (f) We 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.

J. The environmental studies and archaeological clearances, including the Finding of No Significant Impact (FONSI) dated May 22, 2019, are attached as **Exhibit D**.

K. The application for the Right-of-Way as submitted by the Continental Divide Electric Cooperative, Inc., has been reviewed Executive Official Review process, including review by the Department of Justice and "Approved" or found "Sufficient.". See documents included in Executive Official Review Document No. 012792, **Exhibit G**.


SECTION THREE. APPROVAL

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to Continental Divide Electric Cooperative, Inc. for the Echo Canyon Powerline Project on Navajo Nation Trust Lands in Mariano Lake Chapter, McKinley 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 waives valuation and waives compensation of \$97,113.94, which is fifty percent of the assessed \$194,227.88 for the right-of-way project for 20 year term, because it has been determined that accepting the agreed-upon compensation and waiving valuation is in its best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.110.
- C. The Resources and Development Committee of the Navajo Nation Council hereby waives the requirement for a bond, insurance or alternative form of security on the part of the Grantee, based on the determination that the project benefits the Navajo Nation and such a waiver is in the best interest of the Navajo Nation, pursuant to Title 25 CFR § 169.103 (f) (2).
- D. 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 incorporated herein and attached as **Exhibit A**.
- E. 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 24th 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, and 0 opposed, on this 16th day of October 2019.


Rickie Nez, Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Thomas Walker, Jr.
Second: Honorable Herman M. Daniels

Chairperson Rickie Nez not voting.

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0148-20: An Action Relating to Resources and Development; Amending RDCO-054-19 to Waive 100% of the Compensation For the Grant of Right of Way to Continental Divide Electric Cooperative, Inc. for the Echo Canyon Powerline Project Located on Navajo Nation Trust Lands in Mariano Lake Chapter Vicinity (McKinley County, New Mexico). *Sponsor: Honorable Mark A. Freeland*

Date: July 8, 2020 - Regular Meeting (Teleconference)
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

Main Motion:

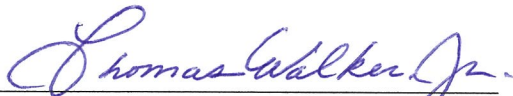
Motion: Kee Allen Begay, Jr. S: Rickie Nez Vote: 5-0-1 (VCNV)

In Favor: Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay, Jr., Herman M. Daniels, and Thomas Walker, Jr.

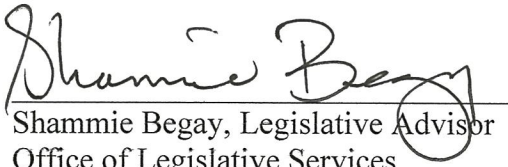
Oppose: NONE

Excuse: None

Not Voting: Presiding Chairperson Thomas Walker, Jr.



Honorable Thomas Walker, Jr., Presiding Vice-Chairperson
Resources and Development Committee


Shammie Begay, Legislative Advisor
Office of Legislative Services