

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; AMENDING RDCS-101-17 "APPROVING THE GRANT OF RIGHT-OF-WAY TO CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC. FOR THE EXISTING ELECTRICAL DISTRIBUTION 14.4/24.9 KV LINE FOR THE IYANBITO CHAPTER, NAVAJO NATION, MCKINLEY COUNTY, NEW MEXICO" TO WAIVE THE CONSIDERATION ASSESSMENT OF \$849,168.00

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 RDCS-101-17 on September 20, 2017. See **Exhibit A**.
- B. Resolution RDCS-101-17 waived the requirements for bond, insurance or alternative form of security but did not waive the consideration fee of \$849,168.00 as found in the Terms and Conditions. See **Exhibit D** of **Exhibit A**.
- C. The Resources and Development Committee finds it to be in the best interest of the Navajo Nation to waive the consideration fee for the Continental Divide Electric Cooperative, Inc.

SECTION THREE. APPROVAL

The Resources and Development Committee of the Navajo Nation hereby amends RDCS-101-17 to provide for the waiver of the assessment fee of \$849,168.00 as found at Terms and Conditions, No. 2, **Exhibit D** of **Exhibit A**, and directs that the Terms and Conditions be amended accordingly.

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 Division of Transportation, Tse Bonito, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 3 in favor, 2 opposed, 0 abstained on this 21st day of March, 2018.



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

Motion: Honorable Jonathan Perry
Second: Honorable Leonard Pete



RDCS-101-17

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF
RIGHT-OF-WAY TO CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC.
FOR THE EXISTING ELECTRICAL DISTRIBUTION 14.4/24.9 KV LINE FOR
THE IYANBITO CHAPTER, NAVAJO NATION, 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. PO Box 1087, 200 East High Street, Grants, New Mexico, has submitted a right-of-way (ROW) application for the operation and maintenance of a 14.4 kv existing Electrical Distribution Line for the Iyanbito Chapter area. The application request is attached hereto and incorporated herein at Exhibit "A".
- B. The proposed Right-of-Way is for a power line already existing in the Chapter as described on the maps attached hereto and incorporated herein as Exhibit "B".
- C. The application for the Right-of-Way as submitted by Continental Divide Electric Cooperative, Inc. has been reviewed by the Navajo Land Department; Fish and Wildlife; Historic Preservation; Minerals; Navajo Nation Environmental Protection Agency; Division of Natural Resources and the Department of Justice and "Approved" or found "Sufficient" by all. See Exhibit "C".

- D. The Terms and Conditions provide for consideration for the right-of-way to be assessed at \$849,168.00, as found in Exhibit "D".
- E. The consideration for the right-of-way may be waived at the discretion of the Committee the when the right-of-way project serves a public purpose because the project benefits Navajo residents.
- F. The environmental and archaeological studies including the Biological Resource Compliance Form, the Cultural Resources Compliance Form and the Finding of No Significant Impact have all been completed and attached hereto as Exhibit "E".
- G. The Resources and Development Committee of the Navajo Nation Council finds it to be in the best interest of the Navajo Nation to approve granting the Right-of-Way to Continental Divide Electric Cooperative, Inc. for the operation and maintenance of an existing 14.4 kv Electrical Distribution Line for Iyanbito Chapter, Navajo Nation, McKinley County, New Mexico as found and attached and incorporated herein at Exhibits "A" thru "E" inclusive.

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 operation and maintenance of an existing 14.4 kv Electrical Distribution Line for Iyanbito Chapter, Navajo Nation, McKinley County, New Mexico as found and attached and incorporated herein at Exhibits "A" thru "E" inclusive.
- 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 incorporated herein and attached as found in Exhibit "D".
- C. The Resources and Development Committee of the Navajo Nation Council hereby waives the requirements for a bond, insurance, or alternative form of security on 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 §196.013(f)(2).

- 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 Standing Rock Chapter, Standing Rock, 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 20th day of September, 2017.

A handwritten signature in black ink, appearing to read 'B. Bennett', with a long horizontal stroke extending to the right.

Benjamin Bennett, Vice Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Walter Phelps
Second: Honorable Davis Filfred



EXHIBIT "D"

**NAVAJO NATION RIGHT-OF-WAY TERMS AND CONDITIONS
CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC. (GRANTEE)
(Iyanbito Chapter)**

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 \$ 849,168.00 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 construction, maintenance, and operation of a 14.4 kV 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.*

RESOURCES AND DEVELOPMENT COMMITTEE

Regular Meeting

March 21 2018

ROLL CALL
VOTE TALLY SHEET:

LEGISLATION # 0093-18: An Action Relating to Resources and Development; Amending RDCS-101-17 "Approving the Grant of Right-of-Way to Continental Divide Electric Cooperative, Inc., for the Existing Electrical Distribution 14.4/24/9 KV Line For the Iyanbito Chapter, Navajo Nation, McKinley County, New Mexico" to Waive the Consideration Assessment of \$849,168.00

MAIN MOTION: Jonathan Perry **S:** Leonard Pete **V:** 3-2-0

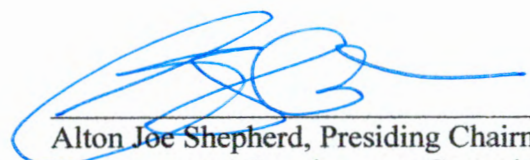
ROLL CALL VOTE TALLY:

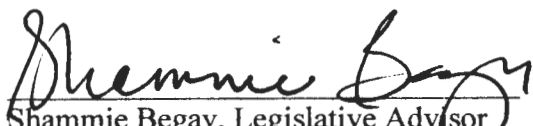
YEAS: Benjamin Bennett; Jonathan Perry;

NAYS: Leonard Pete and Walter Phelps

VOTING: Chairman Alton Joe Shepherd voted in favor to break the tie vote.

EXCUSED: Davis Filfred



Alton Joe Shepherd, Presiding Chairman
Resources and Development Committee

Shammie Begay, Legislative Advisor
Resources and Development Committee