

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; AMENDING RDCAP-008-19 TO WAIVE 100% OF THE COMPENSATION FOR THE GRANT OF RIGHT-OF-WAY TO CONTEINENTAL DIVIDE ELECTRIC COOPERATIVE, INC., FOR THE RED WILLOW 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 RDCAP-008-19 approved a grant of right-of-way to the Continental Divide Electric Cooperative, Inc., for the Red Willow Powerline Project on, over and across Navajo Nation Trust Lands in Mariano Lake Chapter vicinity, (McKinley County, New Mexico). RDCAP-008-19 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, RDCAP-008-19 waived \$144,458.65 which is half of the assessed consideration of \$288,917.29.
- C. The Continental Divide Electric Cooperative, Inc., requests an amendment of Resolution RDCAP-008-19 authorizing a 100% waiver of the assessed consideration of \$288,917.29.

**SECTION THREE. APPROVAL**

A. The Resources and Development Committee of the Navajo Nation Council hereby amends Resolution RDCAP-008-19 SECTION THREE as follows:

"B. The Resources and Development Committee of the Navajo Nation Council hereby waives valuation and waives compensation of ~~\$144,458.65, which is fifty one hundred~~ percent of the assessed \$288,917.29 for the right-of-way project 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 24<sup>th</sup> 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 1<sup>st</sup> day of July 2020.



Rickie Nez, Chairperson  
Resources and Development Committee  
of the 24<sup>th</sup> Navajo Nation Council

Motion: Honorable Wilson C. Stewart, Jr.

Second: Honorable Herman M. Daniels

Chairperson Rickie Nez not voting.



RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
24<sup>th</sup> Navajo Nation Council --- First Year, 2019

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE  
GRANT OF RIGHT-OF-WAY TO CONTINENTAL DIVIDE ELECTRIC  
COOPERATIVE, INC. FOR THE RED WILLOW 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. § 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 Continental Divide Electric Cooperative, Inc., P.O. Box 1087, Grants, New Mexico 87020, has submitted a right-of-way application for Red Willow 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 C**.
- B. The proposed right-of-way is described in map and description attached hereto and incorporated herein as **Exhibit B**.
- C. The Land Board Member of District Number 16 has stated that there are no authorized permittees within the proposed project area. The Land Board Member February 7, 2018 memorandum is attached as **Exhibit D**.
- D. A waiver of compensation is requested; **Exhibit A**, the terms and conditions states that the compensation for a twenty year right-of-way is \$288,917.29.



- 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 E**, 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) and (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.

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- (f) We may waive the requirement for a bond, insurance, or alternative form of security:

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- (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 are attached as **Exhibit F**, including the Environmental Assessment dated May 2018. Biological Evaluation dated October 2017, Finding of No Significant Impact, Biological Resources Compliance Form, Cultural Resources Compliance Form, and the Archaeological Inventory Report.
- K. The application for the Right-of-Way as submitted by the Continental Divide Electric Cooperative, Inc., has been reviewed by the Fish and Wildlife; Historic Preservation; Minerals; Navajo Nation Environmental Protection; Division of Natural Resources and the Department of Justice and "Approved" or found "Sufficient". See documents included in Executive Official Review Document Number 010751, **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 Red Willow 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 \$144,458.65 which is fifty percent of the assessed \$288,917.29 for the right-of-way project because it has 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 24<sup>th</sup> Navajo Nation Council at a duly called meeting at the Twin Arrows Navajo Casino, Leupp, 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 24<sup>th</sup> day of April 2019.



Rickie Nez, Chairperson  
Resources and Development Committee  
of the 24<sup>th</sup> Navajo Nation Council

Motion: Honorable Mark Freeland  
Second: Honorable Wilson C. Stewart, Jr.

Chairperson Rickie Nez not voting.



**RESOURCES AND DEVELOPMENT COMMITTEE**  
**24<sup>th</sup> Navajo Nation Council**

**ROLL CALL**  
**VOTE TALLY SHEET:**

**Legislation # 0142-20:** An Action Relating to Resources and Development; Amending RDCAP-008-19 to Waive 100% of the Compensation For the Grant of Right of Way to Continental Divide Electric Cooperative, Inc. for the Red Willow Powerline Project Located in Mariano Lake Chapter Vicinity (McKinley County, New Mexico). *Sponsor: Honorable Edmund Yazzie*

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: Wilson C. Stewart, Jr. S: Herman M. Daniels Vote: 5-0-1 (CNV)

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

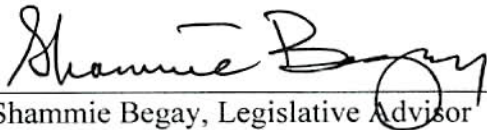
**Oppose:** NONE

**Excuse:** None

**Not Voting:** Presiding Chairperson Rickie Nez



Honorable Rickie Nez, Presiding Chairperson  
Resources and Development Committee



Shammie Begay, Legislative Advisor  
Office of Legislative Services