LEGISLATION NO: _0080-19__  SPONSOR: Edmund Yazzie

TITLE: An Action Relating To Resources And Development Committee; Approving The Grant Of Right-Of-Way To Jemez Mountain Electric Cooperative, Inc. To Construct, Operate And Maintain The Beyale Camp 14.4 KV Single Phase Powerline Project Located On Navajo Nation Trust Lands In Nageezie Chapter, Navajo Nation (San Juan County, New Mexico)

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DATE: March 28, 2019

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE GRANT OF RIGHT-OF-WAY TO JEMEZ MOUNTAIN ELECTRIC COOPERATIVE, INC. TO CONSTRUCT, OPERATE AND MAINTAIN THE BEYALE CAMP 14.4 KV SINGLE PHASE POWERLINE PROJECT LOCATED ON NAVAJO NATION TRUST LANDS IN NAGEEZI CHAPTER, NAVAJO NATION (SAN JUAN COUNTY, NEW MEXICO)

PURPOSE: Approving the Grant of Right-of-Way to the grant of right-of-way to Jemez Mountain Electric Cooperative, Inc., to construct, operate and maintain the Beyale Camp 14.4 kV electric powerline on, over and across Navajo Nation Trust Lands in Nageezi Chapter (San Juan County, New Mexico).

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.
PROPOSED STANDING COMMITTEE RESOLUTION
24th NAVAJO NATION COUNCIL—First Year, 2019

INTRODUCED BY

Primary Sponsor

TRACKING NO. 0080-19

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

BE IT ENACTED:

Section One. Authorities
Pursuant to 2 N.N.C. § 500 (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 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 Beyale Camp 14.4 kV electric powerline on, over and across Navajo
Nation Trust Lands in Nageezi Chapter (San Juan County, New Mexico), attached as
Exhibit C.

B. The proposed right-of-way is described in Exhibit B.

C. The Land Board Member of the Nageezi Chapter, District 19, has issued a memorandum dated April 17, 2017, Exhibit D, stating that “there is no grazing permit issued for Navajo Trust Land located in [the proposed project area].”

D. 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.

E. 25 CFR § 169.103 address bond, insurance or alternative forms of security. It 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.

F. The Resources and Development Committee, through resolution number RDCD-97-18, limited the amount of a waiver of compensation to no more than 50% that will be allowed for utility companies requesting a waiver of compensation.

G. The environmental and archaeological studies have been completed and are attached hereto as Exhibit E.

H. The application for the Right-of-Way 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 009706, Exhibit F.

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 Beyale Camp 14.4 kV electric powerline on, over and across Navajo Nation Trust Lands in Nageezi Chapter (San Juan County, New
Mexico), the location is more particularly described on the survey map attached as Exhibit B.

B. The Resources and Development Committee of the Navajo Nation Council hereby approves the grant of right-of-way subject to, but not limited to, the terms and conditions attached as Exhibit A.

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 to affect the intent and purpose of this resolution.