LEGISLATION NO: 0296-19 SPONSOR: Edmund Yazzie

TITLE: 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)

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DATE: September 25, 2019

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; 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)

PURPOSE: Approving 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. There are requests to waive compensation to the Navajo Nation; to waive the requirement for a bond, insurance, or alternative form of security; and to increase the duration of the right-of-way from 20 years to 50 years.

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

(Principal Sponsor)

TRACKING NO. 0296-19

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.

11. A waiver of the bond, insurance, or alternative form of security on the part of Continental Divide Electric Cooperative, Inc. is requested.

1. 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.