

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0081-19_____

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 Red Willow Powerline Project Located on Navajo Nation Trust Lands in Mariano Lake Chapter Vicinity (McKinley County, New Mexico)

Date posted: April 4, 2019 at 4:20pm

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0081-19

DATE: March 26, 2019

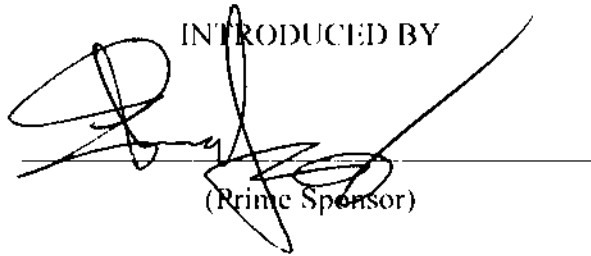
TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF RIGHT-OF-WAY TO CONTINENTAL DIVIDE ELECTRIC COOPERATIVE, INC., FOR THE RED WILLOW POWERLINE PROJECT LOCATED ON NAVAJO NATION TRUST LANDS IN MARIANO LAKE CHAPTER VICINITY (MCKINLEY COUNTY, NEW MEXICO)

PURPOSE: Approving the Grant of Right-of-Way to Continental Divide Electric Cooperative, Inc. for the Red Willow 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



(Prime Sponsor)

TRACKING NO. 0081-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; 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. 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 Red Willow
Powerline Project on, over and across Navajo Nation Trust Lands in Mariano

1 Lake Chapter vicinity, McKinley County, New Mexico. The application request
2 is attached hereto and incorporated herein as **Exhibit C**.

3 B. The proposed right-of-way is described in map and description attached hereto
4 and incorporated herein as **Exhibit B**.

5 C. The Land Board Member of District Number 16 has stated that there are no
6 authorized permittees within the proposed project area. The Land Board Member
7 February 7, 2019 memorandum is attached as **Exhibit D**.

8 D. A waiver of compensation is requested; **Exhibit A**, the terms and conditions
9 states that the compensation for a twenty year right-of-way is \$288,917.29.

10 E. A request is made for a grant of a fifty-year right-of-way.

11 F. The Resources and Development Committee, through resolution number RDCCD-
12 97-18, **Exhibit E**, limited the amount of a waiver of consideration to no more than
13 50% that will be allowed for utility companies requesting a waiver of
14 consideration.

15 G. 25 CFR § 169.110 addresses how much monetary compensation must be paid for
16 a right-of-way over or across tribal land. It states: *(a) A right-of-way over or*
17 *across tribal land may allow for any payment amount negotiated by the tribe, and*
18 *we will defer to the tribe and not require a valuation if the tribe submits a tribal*
19 *authorization expressly stating that it:*

20 *(1) Has agreed upon compensation satisfactory to the tribe;*

21 *(2) Waives valuation; and*

22 *(3) Has determined that accepting such agreed-upon compensation and waiving*
23 *valuation is in its best interest.*

24 *(b) The tribe may request, in writing, that we determine fair market value, in*
25 *which case we will use a valuation in accordance with § 169.114. After providing*
26 *the tribe with the fair market value, we will defer to a tribe's decision to allow for*
27 *any compensation negotiated by the tribe.*

28 *(c) If the conditions in paragraph (a) or (b) of this section are not met, we will*
29 *require that the grantee pay fair market value based on a valuation in accordance*
30 *with § 169.114.*

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

3 I. 25 CFR § 169.103 states: *(a) You must include payment of bonds, insurance, or*
4 *alternative forms of security with your application for a right-of-way in amounts*
5 *that cover:*

6 *(1) The highest annual rental specified in the grant, unless compensation is a one-*
7 *time payment;*

8 *(2) The estimated damages resulting from the construction of any permanent*
9 *improvements;*

10 *(3) The estimated damages and remediation costs from any potential release of*
11 *contaminants, explosives, hazardous material or waste;*

12 *(4) The operation and maintenance charges for any land located within an*
13 *irrigation project;*

14 *(5) The restoration of the premises to their condition at the start of the right-of-*
15 *way or reclamation to some other specified condition if agreed to by the*
16 *landowners.*

17 * * * *

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

20 * * * *

21 *(2) For tribal land, deferring, to the maximum extent possible, to the tribe's*
22 *determination that a waiver of a bond, insurance or alternative form of security is*
23 *in its best interest.*

24 J. The environmental studies and archaeological clearances are attached as **Exhibit**
25 **F**, including the Environmental Assessment dated May 2018, Biological
26 Evaluation dated October 2017, Finding of No Significant Impact, Biological
27 Resources Compliance Form, Cultural Resources Compliance Form, and the
28 Archaeological Inventory Report.

29 K. The application for the Right-of-Way as submitted by the Continental Divide
30 Electric Cooperative, Inc., has been reviewed by the Fish and Wildlife; Historic
Preservation; Minerals; Navajo Nation Environmental Protection; Division of

1 Natural Resources and the Department of Justice and "Approved" or found
2 "Sufficient.". See documents included in Executive Official Review Document
3 No. 010751, **Exhibit G**.

4
5 **Section Three. Approval**

- 6 A. The Resources and Development Committee of the Navajo Nation Council hereby
7 approves the Grant of Right-of-Way to Continental Divide Electric Cooperative,
8 Inc. for the Red Willow Powerline Project on Navajo Nation Trust Lands in
9 Mariano Lake Chapter, McKinley County, New Mexico. The location is more
10 particularly described on the survey map attached hereto as **Exhibit B**.
- 11 B. The Resources and Development Committee of the Navajo Nation Council hereby
12 approves the right-of-way subject to, but not limited to, the following terms and
13 conditions incorporated herein and attached as **Exhibit A**.
- 14 C. The Resources and Development Committee of the Navajo Nation Council hereby
15 authorizes the President of the Navajo Nation to execute any and all documents
16 necessary to affect the intent and purpose of this resolution.
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