

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0131-23_

SPONSOR: Curtis Yanito

TITLE: An Action Relating to Resources and Development; Approving the Grant of Right-of-Way to the Utah Department of Transportation for the Construction, Operation and Maintenance of Highway SR 162 from Montezuma Creek to Aneth Located on Navajo Nation Trust Lands in Aneth Chapter (San Juan County, Utah); and, Waiving the Requirement of Bonds, Insurance or Alternative Form of Security Based Pursuant to Title 25 Code of Federal Regulations Section 169.103(f)(2)

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0131-23

DATE: June 6, 2023

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF RIGHT-OF-WAY TO THE UTAH DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF HIGHWAY SR 162 FROM MONTEZUMA CREEK TO ANETH LOCATED ON NAVAJO NATION TRUST LANDS IN ANETH CHAPTER (SAN JUAN COUNTY, UTAH); AND, WAIVING THE REQUIREMENT OF BONDS, INSURANCE OR ALTERNATIVE FORM OF SECURITY BASED PURSUANT TO TITLE 25 CODE OF FEDERAL REGULATIONS SECTION 169.103 (f)(2)

PURPOSE: The purpose of this legislation is to approves the Grant of Right-of-Way to Utah Department of Transportation for constructing, operating, and maintaining highway SR 162 from Montezuma Creek to Aneth, Utah on, over and across Navajo Nation Trust Lands in Aneth Chapter vicinity (San Juan County, Utah). The legislation will also waive 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).

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.

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 25th NAVAJO NATION COUNCIL -- First Year, 2023

3 INTRODUCED BY

4 
5 _____

6 (Prime Sponsor)

7
8 TRACKING NO. 0131-23

9
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT
12 OF RIGHT-OF-WAY TO THE UTAH DEPARTMENT OF TRANSPORTATION FOR
13 THE CONSTRUCTION, OPERATION AND MAINTENANCE OF HIGHWAY SR 162
14 FROM MONTEZUMA CREEK TO ANETH LOCATED ON NAVAJO NATION
15 TRUST LANDS IN ANETH CHAPTER (SAN JUAN COUNTY, UTAH); AND,
16 WAIVING THE REQUIREMENT OF BONDS, INSURANCE OR ALTERNATIVE
17 FORM OF SECURITY BASED PURSUANT TO TITLE 25 CODE OF FEDERAL
18 REGULATIONS SECTION 169.103 (f)(2)

19
20 **BE IT ENACTED:**

21 **SECTION ONE. AUTHORITY**

22 A. Pursuant to 2 N.N.C. §501 (B)(2), the Resources and Development Committee of the
23 Navajo Nation Council has the authority to grant final approval for all land
24 withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements
25 and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This
26 authority shall include subleases, modifications, assignments, leasehold encumbrances,
27 transfers, renewals, and terminations.

28
29 **Section Two. Findings**

30 A. The Utah Department of Transportation has submitted a request for a right-of-way for

1 the purposes of constructing, operating, and maintaining highway SR 162 from
2 Montezuma Creek, Utah to Aneth, Utah. The Terms and Conditions is attached hereto
3 and incorporated herein as **Exhibit A**.

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

6 C. The General Land Development Department Utah Land Office Right-of-Way Agent in
7 memorandum dated May 20, 2022 states that the General Land Development
8 Department Utah Land Office completed the Field Clearances with the Aneth Chapter
9 Grazing Committee Member. Nine grazing permittees were identified. The General
10 Land Development Department memorandum, the "Field Clearance Checklist," and
11 the land users' consent forms are attached as **Exhibit C**.

12 D. The environmental studies and archaeological clearances including the Biological
13 Resources Compliance Form, NNDFW Review No. 21heng102, **Exhibit D**; the State
14 of Utah Department of Transportation memorandum dated March 20, 2023 in response
15 to the NNDFW Review No. 21heng102, **Exhibit E**; the Heritage and Historic
16 Preservation Department Cultural Resources Compliance Form HPD-21-523, **Exhibit**
17 **F**; and, the Navajo Nation Environmental Protection Agency Air and Toxics
18 Department memorandum dated March 16, 2023, **Exhibit G**, are attached.

19 E. The Right of Way Application including the State of Utah Department of
20 Transportation's request for waiver of the 25 C.F.R. 169.103 bond requirement is
21 attached as **Exhibit H**.

22 F. The Code of Federal Regulations requires a payment of bonds, insurance, or alternative
23 forms of security for the right-of-way. 25 CFR § 169.103. The Code of Federal
24 Regulations at 25 CFR § 169.103 (f) (2) describes how a waiver may be obtained. It
25 states: "We may waive the requirement for a bond, insurance, or alternative form of
26 security: ... (2) For tribal land, deferring, to the maximum extent possible, to the tribe's
27 determination that a waiver of a bond, insurance or alternative form of security is in its
28 best interest."

29 G. The Resources and Development Committee of the Navajo Nation finds that the waiver
30 of the requirement for a bond, insurance, or alternative form of security as requested

1 by the Utah Department of Transportation is in the best interest of the Navajo Nation.

2 H. The Aneth Chapter supporting Resolution AC-MAR-2021-034, entitled *Aneth Chapter*
3 *Supporting the Utah Department of Transportation for Development and Construction*
4 *of the SR162/SR262 Safety Improvement and Energy Corridor Project*, is attached as
5 **Exhibit I.**

6 I. The application for the Right-of-Way has been reviewed through the Executive Official
7 Review process, including review by the Department of Justice and “Approved” or
8 found “Sufficient.” Executive Official Review Document No. 019447 is attached as
9 **Exhibit J.**

10
11 **Section Three. Approval**

12 A. The Resources and Development Committee of the Navajo Nation Council hereby
13 approves the Grant of Right-of-Way to Utah Department of Transportation for
14 constructing, operating, and maintaining highway SR 162 from Montezuma Creek to
15 Aneth, Utah on, over and across Navajo Nation Trust Lands in Aneth Chapter vicinity
16 (San Juan County, Utah).

17 B. The Resources and Development Committee of the Navajo Nation Council hereby
18 approves the right-of-way subject to, but not limited to, the terms and conditions
19 incorporated herein and attached as **Exhibit A.** The location is more particularly
20 described on the survey map attached hereto as **Exhibit B.**

21 C. The Resources and Development Committee of the Navajo Nation hereby waives the
22 requirement for bonds, insurance or alternative form of security on the part of the
23 Grantee, based on the determination that such a waiver is in the best interest of the
24 Navajo Nation pursuant to 25 CFR § 169.103 (f) (2).

25 D. The Resources and Development Committee of the Navajo Nation Council hereby
26 authorizes the President of the Navajo Nation to execute any and all documents
27 necessary to affect the intent and purpose of this resolution.
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