

LEGISLATIVE SUMMARY SHEET

Tracking No. 0242-20

DATE: September 30, 2020

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCAP-007-19 TO WAIVE 100% OF THE COMPENSATION FOR THE GRANT OF RIGHT-OF-WAY TO JEMEZ MOUNTAIN ELECTRIC COOPERATIVE, INC. FOR THE BEYALE CAMP 14.4 KV SINGLE PHASE POWERLINE PROJECT LOCATED ON NAVAJO NATION TRUST LANDS IN NAGEEZI CHAPTER (SAN JUAN COUNTY, NEW MEXICO)

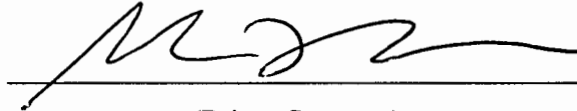
PURPOSE: Approving an amendment to Resolution RDCAP-007-19 which approved a grant of Right-of-Way to Jemez Mountain Electric Cooperative, Inc., for the Beyale Camp 14.4 kV electric powerline project on, over and across Navajo Nation Trust Lands in Nageezi Chapter vicinity, San Juan County, New Mexico. Jemez Mountain Electric Cooperative, Inc., requests a 100% waiver of the assessed consideration of \$24,763.64.

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.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: 1:00pm 10-05-20
Posting End Date: 10-10-20
Eligible for Action: 10-11-20

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 24th NAVAJO NATION COUNCIL -- Second Year, 2020

3 INTRODUCED BY

4 
5

6 (Prime Sponsor)

7
8 TRACKING NO. 0242-20

9
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCAP-007-
12 19 TO WAIVE 100% OF THE COMPENSATION FOR THE GRANT OF RIGHT-
13 OF-WAY TO JEMEZ MOUNTAIN ELECTRIC COOPERATIVE, INC. FOR THE
14 BEYALE CAMP 14.4 KV SINGLE PHASE POWERLINE PROJECT LOCATED
15 ON NAVAJO NATION TRUST LANDS IN NAGEEZI CHAPTER (SAN JUAN
16 COUNTY, NEW MEXICO)

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18 BE IT ENACTED:

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20 **Section One. Authority**

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

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28 **Section Two. Findings**

29 A. Resources and Development Committee Resolution RDCAP-007-19 approved a
30 grant of right-of-way to the Jemez Mountain Electric Cooperative, Inc., for the

1 Beyale Camp 14.4 kV Electric Powerline Project on, over and across Navajo
2 Nation Trust Lands in Nageezi Chapter vicinity, San Juan County, New Mexico.
3 RDCAP-007-19 is attached as **Exhibit A** (without attachments).

4 B. Resources and Development Committee Resolution RDCD-97-18 limited the
5 amount of a waiver of consideration to no more than 50% for utility companies.
6 Pursuant to RDCD-97-19, RDCAP-007-19 waived \$12,381.82 which is half of
7 the assessed consideration of \$24,763.64.

8 C. The Jemez Mountain Electric Cooperative, Inc., requests an amendment of
9 Resolution RDCAP-007-19 authorizing a 100% waiver of the assessed
10 consideration of \$24,763.64.

11
12 **Section Three. Approval**

13 A. The Resources and Development Committee of the Navajo Nation Council hereby
14 amends Resolution RDCAP-007-19 SECTION THREE as follows:

15 "B. The Resources and Development Committee of the Navajo Nation
16 Council hereby waives valuation and waives compensation of ~~\$12,381.82,~~
17 100% (one hundred percent) of the assessed \$24,763.64 for the right-of-
18 way project because it has determined that accepting the agreed-upon
19 compensation and waiving valuation is in the best interest of the Navajo
20 Nation pursuant to Title 25 CFR § 169.110.

21 B. The Resources and Development Committee of the Navajo Nation Council hereby
22 authorizes the President of the Navajo Nation to execute any and all documents
23 necessary to affect the intent and purpose of this resolution.
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RDCAP-007-19

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

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. AUTHORITY

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) 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.

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 waives valuation and waives compensation of \$12,381.82 of the assessed \$24,763.64 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 grant of right-of-way subject to, but not limited to, the terms and conditions 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 to affect the intent and purpose of this resolution.

CERTIFICATION

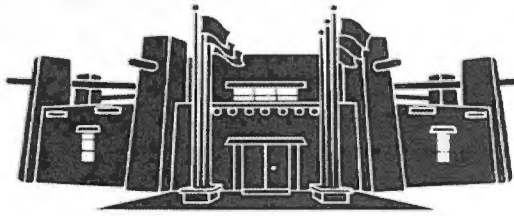
I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting at the Twin Arrows Navajo Casino, Leupp, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 24th day of April 2019.



Rickie Nez, Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Mark Freeland
Second: Honorable Thomas Walker, Jr.

Chairperson Rickie Nez not voting.



MEMORANDUM

TO: Honorable Mark Freeland
Becenti, Lake Valley, Nahodishgish, Standing Rock, Whiterock, Huerfano,
Nageezi, Crownpoint Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: September 30, 2020

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCAP-007-19 TO WAIVE 100% OF THE COMPENSATION FOR THE GRANT OF RIGHT-OF-WAY TO JEMEZ MOUNTAIN ELECTRIC COOPERATIVE, INC. FOR THE BEYALE CAMP 14.4 KV SINGLE PHASE POWERLINE PROJECT LOCATED ON NAVAJO NATION TRUST LANDS IN NAGEEZI CHAPTER (SAN JUAN COUNTY, NEW MEXICO)

I have prepared the above-referenced proposed resolution pursuant to your request. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that this particular legislation request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0242-20_

SPONSOR: Mark A. Freeland

TITLE: An Action Relating To Resources And Development; Amending RDCAP-007-19 To Waive 100% Of The Compensation For The Grant Of Right-Of-Way To Jemez Mountain Electric Cooperative, Inc. For The Bevale Camp 14.4 kV Single Phase Powerline Project Located On Navajo Nation Trust Lands In Nageezi Chapter (San Juan County, New Mexico)

Date posted: October 5, 2020 at 1:00PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*