LEGISLATIVE SUMMARY SHEET
Tracking No. 0078-18

DATE: February 23, 2018

SUBJECT AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCJA-04-18 "APPROVING THE GRANT OF RIGHT-OF-WAY TO THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS FOR A TERM OF SEVENTY FIVE (75) YEARS FOR THE KAIBETO RECONSTRUCTION PROJECT: N6330(1)/N6331 (1-2) (2)/N21 (3A)1, 2 & 4 IN KAIBETO, NAVAJO NATION, COCONINO COUNTY, ARIZONA" TO PROVIDE FOR THE INCLUSION OF THE CONSTRUCTION OF UTILITIES

PURPOSE: The purpose of this legislation is to amend RDCJA-04-18 to provide for the construction of utilities.

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 review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: [illegible]
Website Posting Time/Date: 3:28pm 2/27/18
Posting End Date: 3/4/2018
Eligible for Action: 3/5/2018

PROPOSED STANDING COMMITTEE RESOLUTION

23rd NAVAJO NATION COUNCIL – Fourth Year, 2018

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0078-18

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCJA-04-18 "APPROVING THE GRANT OF RIGHT-OF-WAY TO THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS FOR A TERM OF SEVENTY FIVE (75) YEARS FOR THE KAIBETO RECONSTRUCTION PROJECT: N6330(1)/N6331 (1-2) (2)/N21 (3A)1, 2 & 4 IN KAIBETO, NAVAJO NATION, COCONINO COUNTY, ARIZONA" TO PROVIDE FOR THE INCLUSION OF THE CONSTRUCTION OF UTILITIES

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. 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 Resources and Development Committee of the Navajo Nation approved Resolution RDCJA-04-18 on January 3, 2018. See Exhibit "A".

B. Resolution RDCJA-04-18 included the Terms and Conditions as found attached at Exhibit B.

C. The Resources and Development Committee finds it to be in the best interest of the Navajo Nation to amend the Terms and Conditions of RDCJA-04-18 as found at Exhibit B as follows:

On Page 2 of 2 of the Terms and Conditions, after section "o" add new section and following new language:

p. "The Right-of-Way easement will include construction of utilities with the N6330(1)/N6331(1-1)(2)/N21(3A) 1,2&4 easement corridor. This provision will allow the road right-of-way grant to the Bureau of Indian Affairs, Navajo Region, to be used for such purpose that will benefit the tribal communities and their socioeconomic development needs with respect to utilities. The utility conveyance, construction, and maintenance must not interfere with the integrity of the road prism, road ditches, road design features and miscellaneous road appurtenances. Any and all utility installations or relocations will be approved through the BIA NRDOT permit process where applicable and subject to the Utility Company's acquiring consent from the underlying land owner in writing. "

Section Three. Approval

The Resources and Development Committee of the Navajo Nation hereby amends the Terms and Conditions of RDCJA-04-18 as found at Exhibit B as follows and directs the involved parties to make such changes in the original document:

On Page 2 of 2 of the Terms and Conditions, after section "o" add new section and following new language:

p. "The Right-of-Way easement will include construction of utilities with the N6330(1)/N6331(1-1)(2)/N21(3A) 1,2&4 easement corridor. This provision will allow the road right-of-way grant to the Bureau of Indian Affairs, Navajo Region, to be used for such purpose that will benefit the tribal communities and their socioeconomic development needs with respect to utilities. The utility conveyance, construction, and maintenance must not interfere with the integrity of the road prism, road ditches, road design features and miscellaneous road appurtenances. Any and all utility installations

or relocations will be approved through the BIA NRDOT permit process where applicable and subject to the Utility Company's acquiring consent from the underlying land owner in writing. "

EXHIBIT
A

RDCJA-04-18

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE GRANT OF RIGHT-OF-WAY TO THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS FOR A TERM OF SEVENTY FIVE (75) YEARS FOR THE KAIBETO RECONSTRUCTION PROJECT: N6330(1)/N6331(1-2)(2)/N21(3A)1,2&4 IN KAIBETO, NAVAJO NATION, COCONINO COUNTY, ARIZONA

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 United States Department of the Interior, Bureau of Indian Affairs (BIA) has submitted a Right-of-Way application for a term of seventy-five (75) years for the Kaibeto Reconstruction Project: N6330(1)/N6331(1-2)(2)/N21(3A)1,2&4 in Kaibeto, Navajo Nation, Coconino County, Arizona. See Exhibit "A".

B. The application for the Right-of-Way as submitted by the BIA has been reviewed by the Navajo Land Departments; Fish and Wildlife; Historic Preservation; Minerals; Navajo Nation Environmental Protection; Division of Natural Resources and the Department of Justice and "Approved" or found "Sufficient" by all. See Exhibit "B".

C. The Navajo Nation may waive consideration upon a determination that the project at issue benefits the Navajo Nation and its People and such waiver is specified in the Terms and Conditions Paragraph (b). See Exhibit "C".

D. The Navajo Nation, pursuant to 25 CFR § 169.103 (f), may waive the requirements of bonding insurance or other security upon the determination that such a waiver is in the best interest of the Navajo Nation.

SECTION THREE. APPROVAL

A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Grant of Right-of-Way to the BIA for the Kaibeto Reconstruction Project: N6330(1)/N6331(1-2)(2)/N21(3A)1,2&4 in Kaibeto, Navajo Nation, Coconino County, Arizona. See Exhibit "A".

B. The Resources and Development Committee of the Navajo Nation Council hereby approves the Right-Of-Way subject to, but not limited to the Terms and Conditions, incorporated herein, including the waiver of consideration, as attached and found at Exhibit "C".

C. The Resources and Development Committee 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 authorizes the President of the Navajo Nation to execute any and all documents necessary 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 23rd Navajo Nation Council at a duly called meeting at the Navajo Transportation Administrative Complex, Tse Bonito, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, 1 abstained on this 3rd day of January, 2018.

Benjamin Bennett, Vice Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete

EXHIBIT
B

FORM 05/09/02
(BIA Roads Gen)

TERMS AND CONDITIONS
Right-of-Way for BIA
Project No. N6330(1)/N6331(1-1)(2)/N21(3A)1,2&4
Kaibeto Road

a. The term of the right-of-way shall be 75 years.

b. Consideration for the grant of the right-of-way is hereby waived, because the project will benefit Navajos living in the area.

c. The Grantee shall abide by all laws and regulations of the Navajo Nation and of the United States, now in force and effect or as may be hereafter in force and effect, including but not limited to the following:

   i. Title 25, Code of Federal Regulations, Parts 162 and 169;

   ii. All applicable Federal and Tribal antiquities laws and regulations, with the following additional condition: In the event of a discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein, "discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practices; and

   iii. The Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., and the Navajo Nation Business Preference Law, 5 N.N.C. §§ 201 et seq.;

d. The Grantee shall clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during construction and maintenance of the project.

e. The Grantee shall at all times during the term of the right-of-way and at the Grantee's sole cost and expense, maintain the land and all improvements thereon and make all necessary and reasonable repairs.

f. The Grantee shall obtain permission to cross-existing rights-of-way from the appropriate parties before construction the proposed project.

g. The Grantee shall be responsible for and promptly pay all damages when they are sustained.

h. The Grantee shall not assign, convey or transfer, in any manner whatsoever, the right-of-way or any interest therein, or in or to any of the improvements on the

land, without the prior written consent of the Navajo Nation and the Secretary. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no effect. The consent of the Navajo Nation may be granted, granted upon conditions or withheld in the sole discretion of the Navajo Nation.

i. Holding over by the Grantee after the termination of the right-of-way shall not constitute a renewal or extension thereof or give the Grantee any rights hereunder or in or to the land or to any improvements located thereon.

j. The Navajo Nation and the Secretary shall have the right, at any reasonable time during the term of the right-of-way, to enter upon the premises, or any part thereof, to inspect the same and any buildings and other improvements erected or placed thereon.

k. Nothing contained herein shall be construed to affect or be deemed a waiver of the sovereign immunity from suit of the Navajo Nation.

l. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, contractors and subcontractors, of the Grantee, and the term "Grantee," whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

m. Grantee shall retain as much of the natural vegetation within the right-of-way as possible.

n. Grantee shall re-vegetate all disturbed areas.

o. There is expressly reserved to the Navajo Nation full territorial legislative, executive and judicial jurisdiction over the rights-of-way and all lands burdened by the right-of-way, including without limitation over all persons, including the traveling public, and all activities conducted or otherwise occurring within the right-of-way, and specifically including, but not limited to, jurisdiction to enforce speed limits and compliance with traffic control devices, jurisdiction to enforce Navajo Nation laws applicable to the operation of motor vehicles and jurisdiction to adjudicate disputes arising from motor vehicle accidents or other conduct, or activities occurring within the right-of-way, and the right-of-way and all lands burdened by the right-of-way shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction consistent with federal law.

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable LoRenzo Bates
Speaker
23rd Navajo Nation Council

MEMORANDUM

TO: Honorable Tuchoney Slim, Jr.
Navajo Nation Council

FROM: Edward A. McCool, Principal Attorney
Office of Legislative Counsel

DATE: February 23, 2018

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCJA-04-18 "APPROVING THE GRANT OF RIGHT-OF-WAY TO THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS FOR A TERM OF SEVENTY FIVE (75) YEARS FOR THE KAIBETO RECONSTRUCTION PROJECT: N6330(1)/N6331 (1-2) (2)/N21 (3A)1, 2 & 4 IN KAIBETO, NAVAJO NATION, COCONINO COUNTY, ARIZONA" TO PROVIDE FOR THE INCLUSION OF THE CONSTRUCTION OF UTILITIES

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. 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. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. 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).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0078-18_____ SPONSOR: Tuchoney Slim, Jr.

TITLE: An Action Relating to Resources And Development; Amending RDCJA-04-18 "Approving The Grant Of Right-Of-Way To The United States Department Of Interior, Bureau Of Indian Affairs For A Term Of Seventy Five (75) Years For The Kaibeto Reconstruction Project: N6330(1)/N6331 (1-2) (2)/N21 (3A)1,2 & 4 In Kaibeto, Navajo Nation, Coconino County, Arizona "To Provide For The Inclusion Of The Construction Of Utilities"

***Date posted*: February 27, 2018 at 3:28pm**

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) 871-7590

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.*