IGRMY-133-06

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL - Fourth Year, 2006

AN ACTION

RELATING TO INTERGOVERNMENTAL RELATIONS; RESOURCES; APPROVING THE PRINCIPLES FOR RIGHTS-OF-WAY OVER NAVAJO LAND

BE IT ENACTED:

1. The Navajo Nation hereby finds that:

   a. the Navajo Nation and the United States entered into two solemn treaties guaranteeing the Navajo Nation the right to exclude non-members and to condition the entry of those seeking to do business within the Navajo territory;

   b. the tribal consent principle is a fundamental tenet of federal policy honoring self-determination and promoting economic self-sufficiency;

   c. the Navajo Nation has long been a significant contributor to the energy security of the United States;

   d. rights-of-way across Navajo lands implicate important sovereign and proprietary interests of the Navajo Nation; and

   e. Federal agencies conducting a Study of Indian Energy Rights-of-Way under Section 1813 of the Energy Policy Act of 2005 are seeking comments from Indian Nations.

2. The Navajo Nation hereby approves the Principles for Rights-of-Way over Navajo Land, attached hereto as Exhibit "A".

3. The Navajo Nation hereby authorizes the Division of Natural Resources, the Resources Committee of the Navajo Nation Council, the Office of the Navajo Nation

President/Vice President, and the Speaker of the Navajo Nation Council to forward a copy of this legislation to the U.S. Department of Interior and the U.S. Department of Energy for inclusion in the record related to the Study of Energy Rights-of-Way under Section 1813 of the Energy Policy Act of 2005 and to do all things necessary and proper to advocate these principles by the industry partners, states and other entities.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor and 3 opposed, this 1st day of May, 2006.

Omer Begay, Jr., Chairperson Pro Tem
Intergovernmental Relations Committee

Motion: Ervin M. Keeswood, Sr.
Second: Lawrence R. Platero

EXHIBIT "A"

PRINCIPLES FOR RIGHTS-OF-WAY OVER NAVAJO LAND

1. TREATY RIGHTS; TRUST RESPONSIBILITY. The Navajo Reservation was created as a permanent homeland for the Navajo People. In the 1868 Treaty with the Navajo Nation, the United States promised that no one except Government and military officials would be allowed to enter the Navajo territory without the consent of the Navajo Nation. This promise must remain inviolate.

2. NATIONAL ENERGY SECURITY. The Navajo Nation has contributed immensely to the energy security of the United States, and will continue to do so. Navajo soldiers have fought and died for this country in numbers far greater, proportionately, than the population of the United States as a whole. The Navajo Nation will not use its right to control Navajo land to harm other Americans.

3. NO ADVERSE EFFECTS. The only federal Indian policy that has worked is the present one respecting tribal self-determination and promoting tribal self-sufficiency. Federal policy for over 50 years has required tribal consent as a condition for the grant or renewal of rights-of-way. The consent requirement has had no discernable adverse effect on the availability or cost of energy to consumers, and, indeed, has often resulted in greater energy production and lower costs to the consumer.

4. PRIOR STUDY SUFFICIENT. In 1967, the Department of the Interior proposed rules to eliminate the consent requirement, targeting the Navajo Nation. The Congress interceded and, after two years of study, determined that the DOI proposal "violates property rights, democratic principles and the pattern of modern Indian legislation." DOI properly withdrew that proposal, and there is no reason to second-guess the results of the congressional study now.

5. INDUSTRY PARTNERSHIPS - BEST PRACTICES. Congress should continue to recognize, as it did most recently in the Indian Tribal Energy Development and Self Determination Act of 2005, that energy production increases and consumers benefit when the Indian nations are active partners and investors in energy production and transmission on their lands. The Navajo Nation has increased oil production from its lands with its industry partners, and its integrated oil company has leveraged the Nation's right-of-way authority to finance its cooperative energy ventures with industry partners.

6. PRESERVATION OF TRIBAL JURISDICTION. Congress defined rights-of-way within Indian reservations as "Indian country" for purposes of criminal and civil jurisdiction in order to correct confusion caused by two Supreme Court cases decided in 1912 and 1918. In dictum in the recent Strate case, the Supreme Court reintroduced the jurisdictional uncertainty that Congress sought to remedy. Congress should again correct the Court and prohibit any divestiture of tribal authority over rights-of-way absent explicit agreement of the tribe.

7. PRESERVATION OF CONTRACT AND PROPERTY RIGHTS. The Navajo Nation negotiated contracts with the El Paso Natural Gas Company ("EPNG") and others that require EPNG to leave peaceably and to turn over title to improvements to the Nation at the end of the

fixed term of the agreements. These contract and property rights were supported by valuable consideration. The Constitution prohibits DOI or Congress from impairing the Nation's contracts and taking its property.

8. REJECTION OF MISINFORMATION. EPNG, in particular, has suggested to members of Congress that the Navajo Nation will cause an energy emergency in retaliation for EPNG's wilful trespass on Navajo land and that the Navajo negotiating position regarding a possible new right-of-way agreement will damage consumers. The Navajo Nation urges that responsible people reject this propaganda. The Navajo position (as stated in news articles using information provided by EPNG) represents a 57% increase over the amount that EPNG paid in 1995, not some astronomical increase, as represented by EPNG.

9. POSSIBLE RELIEF FOR CONSUMERS. It was El Paso, not the Navajo Nation, who settled allegations of market manipulation in the California energy crisis for $1.7 BILLION, and it is El Paso, not the Navajo Nation, whose shareholders are alleging massive corporate corruption – Enron-style wash trading, overstating reserves, providing risk-free investment opportunities to insiders, filing false financial statements, etc. The total of all right-of-way payments to all Indian nations is wholly insignificant compared to the extraordinary profits and executive compensation in the energy sector. Congress may wish to examine these other, truly significant, issues to provide some real relief for consumers.

10. INTER-TRIBAL COOPERATION. EPNG and a few others are employing what the Wall Street Journal calls the "FUD" strategy – the exploitation of fear, uncertainty and doubt to scare regulators and the public. The Navajo Nation will continue to work with NCAI, CERT, other tribal consortia, and individual Indian nations, tribes and Pueblos to present facts and to ensure that fundamental Indian rights are respected.