

CITY OF ESPANOLA RESOLUTION NO. 2016-01

A RESOLUTION SUPPORTING THE EFFORTS OF NORTHERN NEW MEXICANS PROTECTING LAND, WATER AND RIGHTS TO DEFEND PUBLIC RIGHT OF WAY, PUBLIC EASEMENTS, (HIGHWAYS, ROADS AND STREETS) IN, ON AND ACROSS TRIBAL TERRITORY; RECOGNIZING TRIBAL SOVERIEGNTY DOES NOT CARRY WITH IT ANY RIGHT TO EXTRACT OR FORCE PAYMENT OF MONEY AS A CONDITION OF EXERCISE OF BASIC HUMAN RIGHTS SUCH AS THE RIGHT OF TRAVEL AND RIGHTS OF OWNERSHIP, USE AND ENJOYMENT OF PRIVATE PROPERTY;

CALLING ON THE CONGRESS OF THE UNITED STATES TO ACT IMMEDIATELY TO SETTLE THE QUESTIONS OF THE RIGHT OF ALL TO ACCESS TO THEIR PROPERTY, THE RIGHT TO SERVICE BY PUBLIC UTILITIES OPERATED WITHIN THE PUBLIC ACCESS TO THEIR PRIVATE PROPERTY AND THE RIGHT OF EQUAL OPPORTUNITY TO FINANCE/REFINANCE THEIR PROPERTY WITHOUT NATIVE AMERICAN GOVERNMENTS CLOSING OFF PUBLIC ACCESS BY VEHICLE OR SERVICE BY PUBLIC UTILITY; DECLARING THAT FORCING PAYMENT FOR EXERCISE OF THESE FUNDAMENTAL HUMAN RIGHTS IS NO MORE TO BE TOLERATED THAN MONETARY CONDITIONS ON EXERCISE OF OTHER FREEDOMS SUCH AS THE RIGHT TO VOTE, TO SPEAK FREELY OR TO PETITION GOVERNMENT;

CALLING ON SANTA FE AND RIO ARRIBA COUNTIES TO SUPPORT ESPANOLA IN ITS EFFORTS TO PROVIDE UNHINDERED WATER/WASTEWATER SERVICE; AND THANKING SANTA FE COUNTY FOR TAKING A STAND ON THE ISSUE OF FREEDOM OF ACCESS TO PROPERTY.

WHEREAS, Northern New Mexicans Protecting Land, Water and Rights (NNMPLWR, Inc.) is a public advocacy group made up of citizens concerned about disparate and unfair treatment of Non-Native Americans with respect to use of public roads and easements in Tribal territory;

WHEREAS, NNMPLWR, Inc. on June 30, 2015 filed a lawsuit against the USA et. al. (Case 1:15-CV-00559) in which NNMPLWR, Inc. alleges that the USA on behalf of the Tribes has

"... actively engaged and interfered with the quiet use and enjoyment of vested public rights of way, deprived...access to...private real property and deprived Plaintiffs...of the value of their property interests..." and these

"...actions were taken in an attempt to extract monies for continued access to private property or to facilitate others to extract and/or extort such funds ...contrary to the laws of the United States..." by:

"...denying legal and valid access to their private real property, impairing their property interests, value and ability to sell such properties"

WHEREAS, it is now come to the attention of the City that the USA on behalf of tribal governments south of Espanola in the area of the Pojoaque watershed have issued a trespass notice to Santa Fe County requiring the County to agree to unspecified payments (whatever the Pueblos "negotiate") for public use of County roads in Pueblo territory and, if the County does not accede to Pueblo demands, the Pueblos may block access to personal or residential properties;

WHEREAS, Non-Native American landowners have been refused financing or refinancing of their residential or commercial properties because of the issue of not having legal access to properties being financed, refinanced or bonded;

WHEREAS, the City Council has been made aware that financing of at least one private property in the City in Pueblo territory will be refused because title insurance is not available due to access issues resulting from the trespass notice to the County.

WHEREAS, the Board of County Commissioners of Santa Fe County by Resolution No. 2015-125 on August 25, 2015 resolved that prior to County funding of the construction costs of the regional water system the legal status of Santa Fe County roads within the exterior boundaries of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque must be resolved;

WHEREAS, the City of Espanola has within its boundaries portions of two Pueblos, Santa Clara and Ohkay Owingeh, both of which are federally recognized sovereigns;

WHEREAS, ancestors of members of the Pueblos were located and living in the Valley for hundreds of, if not a thousand, years prior to Europeans;

WHEREAS, cultural contributions of Native Americans through language, traditions, special connections to the land and economic initiatives make Espanola a special place;

WHEREAS, this special status of the Pueblos, the Native Americans special connection to the land and their economic development achievements resulting in jobs and opportunities for all is deeply appreciated by the City of Espanola, however Pueblo government must allow the City the opportunity to provide local services necessary to the public health, welfare and safety without threat of interference for failure to pay money to the Pueblo government;

WHEREAS, the City is required to provide services necessary to the public health, welfare and safety and these essential public services must be provided to all equally, Native American and Non-Native American no matter their location in the City.

WHEREAS, hence just as freedom of the press, of religion and of speech are tempered in such a fashion as to prohibit their exercise in a manner which interferes with the rights of others, Tribal sovereignty may not be exercised by Native Americans for the purpose of extraction of money as a condition of others exercising their property rights, including the right to acquire and enjoy all the attributes of private property such as access and services by public utilities necessary for modern life;

WHEREAS, in the USA, the democratic system of government - local, state and federal - stands on the principle that one's guaranteed property rights may not be denied or limited by exercise of the fundamental rights of others and thus Tribal sovereignty is limited in that such power may not be exercised in a manner resulting in denial of others right to acquire and enjoy all the attributes of private property;

WHEREAS, when public safety issues arise at locations within Pueblo boundaries, City first responders are invited by the Pueblos and called upon to respond to police, fire or other emergency calls at locations in Pueblo territory;

WHEREAS, Pueblos, their members and enterprises in Pueblo territory, pay no local taxes for these services, but they are expected and indeed claimed as rights;

WHEREAS, with rights come the responsibility not to interfere with rights of others to the full use and enjoyment of their private property;

WHEREAS, Pueblo governments and the USA on their behalf have demanded the City show cause why it should not be required to pay trespass fees in amounts equal to the fair market value of private commercial property, the surface of which is not restricted to motor vehicle travel;

WHEREAS, the Pueblo method of determining the value of subsurface placement of utility facilities (the alleged damage suffered to Pueblo property as a result of utilities in the public access) is without merit because equating the value of subsurface easements in public roads with unencumbered fee interests is a proposition foreign to the law of the land;

WHEREAS, the City has responded to the notice to show cause by pointing out that its duty and right to maintain these essential human services within and outside Pueblo territory is as inviolate as Pueblo sovereignty; and

WHEREAS, the City on behalf of all its residents must not be harassed or intimidated in going about its duty of constructing, maintaining, improving and operating these facilities in the public roads, streets, and highways whether crossing Pueblo territory or not;

WHEREAS, the BIA has recently reviewed its rules with respect to "trespass" and has clarified that "service lines" are not included within the definition of "right-of-way" thus the City will continue to allow connection to its water/sewer systems provided it is done pursuant to City policies and service lines are not within BIA jurisdiction;

WHEREAS, Santa Clara Pueblo, to maintain flow in case of fire at its Casino/Hotel, has illegally, without permission from the City, installed a booster pump on the undersized 6-inch water line in Riverside Drive and if the pump is activated it will collapse the undersized line now in place jeopardizing all water service in the vital commercial corridor of the City along Riverside Drive;

WHEREAS, Santa Clara Pueblo's self-serving actions are contrary to the public health, welfare and safety of all citizens of Espanola, and when combined with the BIA's November 13, 2013 NOTICE TO SHOW CAUSE demanding payment of trespass damages for water/sewer infrastructure in public roads and threatening eviction of the City from the public right-of-way if money is not paid, must and should be condemned at all levels of government;

WHEREAS, any attempted eviction of public utilities from free use of public rights-of-way for service to Native and Non-Native alike because extortion money is not paid to the Pueblos will be litigated by the City, and moreover, if the City is unsuccessful in this regard, any funds paid for trespass must be passed on to Tribal residents or commercial enterprises in the form of increased water/wastewater fees;

WHEREAS, the refusal of the Pueblo governments to allow delivery of mandated City services essential to a modern society (water service, sewerage treatment and disposal, solid waste, road and street construction, maintenance and repair, code enforcement, and police and fire protection) within their boundaries unless cash demands are met result in the City being unable to fulfill its lawful responsibility to provide services in an efficient and effective manner, for example:

1. **MAINTENANCE/RECONSTRUCTION/OPERATION** - City crews have been prevented by Pueblo police officers from maintaining City water lines located in tribal territory, resulting in waste of water because of system leaks the City is prevented from fixing.
2. **CONSTRUCTION/OPERATION** - Santa Clara Pueblo has threatened to interfere with activation of a new 12 inch water main now installed in the state highway in Santa Fe County between the Dandy Burger North to the top of the hill, approximately 1.36 miles, all of which is built to serve both residents and businesses located within and outside of tribal territory;
3. **New Water Line Construction Immediately Needed** - The City water line under Riverside Drive serving Santa Clara Pueblo hotel/casino and approximately 15 other Tribal enterprises along with approximately 100 non-

Tribal commercial enterprises in the Riverside Drive corridor is undersized and must be replaced by a new 18 inch line because the current line size is inadequate. The City will proceed to seek funding and construction of this line and will not allow interference by the Pueblo.

NOW, THEREFORE BE IT RESOLVED by the Governing Body, of the City of Espanola, New Mexico, that:

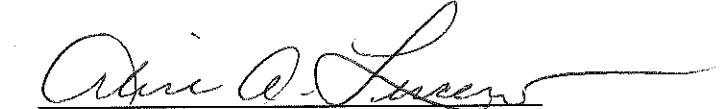
1. State and Federal law as well as City ordinance prohibits anyone, Native American or Non-Native American from interfering with or tampering with construction, reconstruction, maintenance or operation of facilities for delivery of public utility services and all law enforcement agencies, federal, state and local, are requested to enforce this prohibition.
2. The United States Congress is called upon to clarify federal law and regulations so as to guarantee the right of the City on behalf of all of its residents to operate, construct, maintain and provide municipal services through infrastructure located in public roads, streets and highways located in, on and across Native American territory.
3. The United States Congress is called upon to clarify federal law and regulations so as to guarantee the right of all citizens (Native American and Non-Native American) to access financing through federally guaranteed lending institutions without regard to whether property is located within the exterior boundaries of Native American territory.
4. The City of Espanola supports Santa Fe County's defunding of the Pojoaque watershed regional water system and calls on the state and federal governments to do the same until the legal status of County roads within the exterior boundaries of the Pueblos are resolved.
5. The City of Espanola requests Santa Fe County, the state and federal government, to also condition funding of the regional water system on resolving the legal status of public roads and public utilities in them throughout Rio Arriba and Santa Fe Counties, including inside the City of Espanola.

The City of Espanola calls on Rio Arriba and Santa Fe Counties to join with it in resisting trespass notices against the City demanding payment to the Tribes as a condition of use and occupation of public right-of-way for provision of municipal utility services.

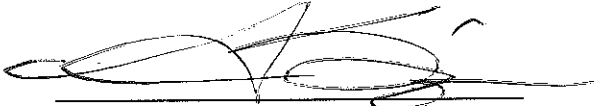
PASSED, APPROVED AND ADOPTED THIS 12th DAY OF JANUARY, 2016.



CITY OF ESPANOLA


Honorable Alice Alarid Lucero
Mayor, City of Espanola

ATTEST:



Anna Squires, City Clerk
[SEAL]