

LEGISLATIVE SUMMARY SHEET

Tracking No. 0025-16

DATE: January 13, 2016

TITLE OF RESOLUTION: AN ACT RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; WAIVING THE SOVEREIGN IMMUNITY OF THE NAVAJO NATION WITH RESPECT TO THE NAVAJO NATION SURFACE COAL MINING AND RECLAMATION ACT; ENACTING THE NAVAJO NATION SURFACE COAL MINING AND RECLAMATION ACT, ESTABLISHING NEW SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 ET SEQ.

PURPOSE: The purpose of the resolution is to enact the Navajo Nation Surface Coal Mining and Reclamation Act, establishing new Navajo Nation Code sections 18 N.N.C. §§ 1701 *et seq.* This enactment will provide for the regulation and enforcement of surface coal mining and reclamation operations and coal exploration. This legislation will also waive the sovereign immunity of the Navajo Nation with regard to the Navajo Nation Surface Coal Mining and Reclamation Act allowing suits against the Navajo Nation. If this legislation is passed, the Navajo Nation could be on track to be the first American Indian Nation to obtain primacy over surface coal mining reclamation.

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: None
Website Posting Time/Date: 7:40pm 1/14/16
Posting End Date: 1/19/16
Eligible for Action: 1/20/16

Law & Order Committee

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Resources & Development Committee

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Naa'bik'íyáti' Committee

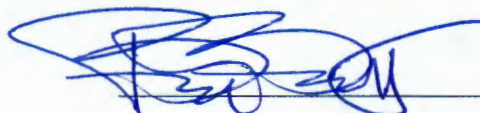
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Navajo Nation Council


PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23rd NAVAJO NATION COUNCIL -- Second Year, 2016

INTRODUCED BY



(Prime Sponsor)



TRACKING NO. 0025-16

AN ACT

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT,
NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL;
WAIVING THE SOVEREIGN IMMUNITY OF THE NAVAJO NATION WITH
RESPECT TO THE NAVAJO NATION SURFACE COAL MINING AND
RECLAMATION ACT; ENACTING THE NAVAJO NATION SURFACE
COAL MINING AND RECLAMATION ACT, ESTABLISHING NEW
SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 *ET SEQ.*

BE IT ENACTED:

Section One. Findings

- A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 601(B)(14), reviews and makes recommendations to the Navajo Nation Council proposed amendments to the Navajo Nation Code.
- B. The Resources and Development Committee is a standing committee of the Navajo Nation Council and exercises oversight over the land and environmental protection. 2 N.N.C. § 500(C).
- C. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 164(A)(9), reviews proposed legislation which requires final action by the Navajo Nation Council.

- 1 D. Enactments of positive law must be reviewed and approved by resolution by the
2 Navajo Nation Council. 2 N.N.C. § 164(A).
- 3 E. Pursuant to the Surface Mining Control and Reclamation Act (SMCRA), when an
4 Indian Nation seeks to obtain SMCRA's primary regulatory authority, "an Indian
5 tribe shall waive sovereign immunity for purposes of section 520 and paragraph
6 (4)." SMCRA, PL 95-87 Section 710(j)(3), or 30 USC 1300(j)(3). Section 520 is
7 the Citizen Suits section of SMCRA which would authorize "Any person having
8 an interest which is or may be adversely affected may commence a civil action in
9 Navajo Nation District Court for the District of Window Rock on his or her own
10 behalf to compel compliance with this Act ... against the Navajo Nation or any
11 other governmental instrumentality or agency of the Navajo Nation[.]"
- 12 F. In addition, Section 520 (G) of this legislation, the Navajo Nation Surface Coal
13 Mining and Reclamation Act, states that: "After exhausting all Navajo Nation
14 remedies with respect to a civil action arising under the Navajo regulatory
15 program, an interested party may, pursuant to section 710(j)(4)(A) of SMCRA,
16 file a petition for judicial review of the civil action in the United States Court of
17 Appeals for the circuit in which the surface coal mining operation named in the
18 petition is located, or, for civil actions in which no surface coal mining operation
19 is named in the petition, in the United States Court of Appeals for the Ninth
20 Circuit."
- 21 G. The Navajo Nation Minerals Department has worked decades to obtain the
22 Navajo Nation primacy over surface coal mining reclamation. If this legislation is
23 passed, the Navajo Nation could be on track to be the first American Indian
24 Nation to obtain primacy over surface coal mining reclamation.
- 25 H. It is in the best interest of the Navajo Nation to obtain primary regulatory
26 authority over surface coal mining reclamation.

27
28 **Section Two. Waiver of Navajo Nation sovereign immunity with regard to**
29 **the Navajo Nation Surface Coal Mining and Reclamation Act**
30

1 The Navajo Nation hereby waives its sovereign immunity with regard to the
2 Navajo Nation Surface Coal Mining and Reclamation Act.

3
4 **Section Three. Enacting the Navajo Nation Surface Coal Mining and**
5 **Reclamation Act, 18 N.N.C. § 1701 *et seq.***

6
7 The Navajo Nation hereby enacts the Navajo Nation Surface Coal Mining and
8 Reclamation Act, to provide for the regulation and enforcement of surface coal
9 mining and reclamation operations and coal exploration, Navajo Nation Code,
10 Title 18, §§ 1701 *et seq.* as follows:

11
12 ****

13
14 NAVAJO NATION CODE ANNOTATED
15 TITLE 18. MINES AND MINERALS
16 CHAPTER 16. NAVAJO NATION SURFACE COAL MINING AND
17 RECLAMATION ACT

18
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25
26 SUBCHAPTER 1 – DEFINITIONS, FINDINGS, AND PURPOSES

27
28 SEC. 101. Definitions

29 For the purposes of this Act —

30 A. Administrative Definitions:

1. "Act" means the Navajo Nation Surface Coal Mining and Reclamation Act;
2. "Attorney General" means the Attorney General of the Navajo Nation;
3. "BIA" means the Bureau of Indian Affairs of the U.S. Department of the
4. Interior;
4. "BLM" means the Bureau of Land Management of the U.S. Department of the
6. Interior;
5. "Federal Lands" means any land, including mineral interests, owned by the
8. United States without regard to how the United States acquired ownership of the
9. land and without regard to the agency having responsibility for management
10. thereof, except Indian lands;
6. "Federal Program for Indian Lands" means the program at 30 CFR Part 750
12. established by the Secretary pursuant to SMCRA section 710(d) to regulate
13. surface coal mining and reclamation operations on Indian Lands in accordance
14. with the requirements of SMCRA;
7. "Indian Lands" means all lands, including mineral interests, within the exterior
16. boundaries of any federal Indian reservation, notwithstanding the issuance of any
17. patent, and including rights-of-way, and all lands including mineral interests held
18. in trust for or supervised by an Indian tribe;
8. "Indian tribe" means any Indian tribe, band, group, or community having a
20. governing body recognized by the Secretary;
9. "Local government," "local agency," "local governmental agency," and "local
22. governmental body" mean a Navajo Nation Chapter, a local governmental unit of
23. a state, or a non-Navajo tribal government or agency or local governmental unit
24. thereof, which may be affected by the Navajo regulatory program;
10. "Navajo Nation" means the federally recognized Navajo Tribe of Indians, an
26. Indian nation governed by the Navajo Nation government;
11. "Navajo Nation Chapter" means a unit of local government that is a political
28. subdivision of the Navajo Nation and identified as a Chapter under Navajo Nation
29. law;

1 12. "Navajo Nation law" means the entire body of law of the Navajo Tribe of
2 Indians, including the Navajo Nation Code, all lawfully promulgated rules and
3 regulations of agencies of the Navajo Tribe of Indians, and all lawfully enacted
4 resolutions and ordinances of the Navajo Nation Chapters, Provided, that this Act
5 preempts any authority of any political subdivision of the Navajo Nation over
6 surface coal mining and reclamation operations;

7 13. "Navajo regulatory program" means the program established by the Navajo
8 Nation and approved by the Secretary pursuant to sections 503, 504(e), and 710(j)
9 of SMCRA to regulate surface coal mining and reclamation operations on Navajo
10 regulatory program lands in accordance with the requirements of SMCRA and 30
11 CFR Chapter VII;

12 14. "Navajo regulatory program lands" means those lands upon which surface
13 coal mining and reclamation operations and coal exploration are regulated by the
14 NSCMP under the Navajo regulatory program, which consist of all lands within
15 the formal Navajo Indian Reservation as established by the Treaty of June 1, 1868
16 and subsequent acts of Congress and executive orders;

17 15. "Navajo Surface Coal Mining Program" is the tribal regulatory authority for
18 administering this Act and SMCRA under the Navajo regulatory program
19 approved by the Secretary;

20 16. "NNOHA" means the Navajo Nation Office of Hearings and Appeals which is
21 the government unit responsible for conducting administrative hearings and
22 deciding appeals of decisions of the Navajo Surface Coal Mining Program that are
23 required or authorized by this Act;

24 17. "NSCMP" means the Navajo Surface Coal Mining Program;

25 18. "operator" means any person, partnership, or corporation engaged in coal
26 mining who removes or intends to remove coal from the earth by coal mining;

27 19. "OSMRE" means the Office of Surface Mining Reclamation and Enforcement
28 of the U.S. Department of the Interior;

29 20. "other minerals" means clay, stone, sand, gravel, metalliferous and
30 nonmetalliferous ores, and any other solid material or substances of commercial

1 value excavated in solid form from natural deposits on or in the earth, exclusive
2 of coal and those minerals which occur naturally in liquid or gaseous form;

3 21. "permit" means a permit to conduct surface coal mining and reclamation
4 operations issued by the NSCMP under the Navajo regulatory program or by
5 OSMRE under the Federal Program for Indian Lands;

6 22. "permit applicant" or "applicant" means a person applying for a permit;

7 23. "permit area" means the area of land indicated on the approved map submitted
8 by the operator with his or her application, which area of land shall be covered by
9 the operator's bond as required by section 509 of this Act and shall be readily
10 identifiable by appropriate markers on the site;

11 24. "permittee" means a person holding a permit;

12 25. "person" means an individual, partnership, association, society, joint stock
13 company, firm, company, corporation, or other business organization, including
14 Navajo Nation business entities;

15 26. "Program Manager" means the Manager of the Navajo Surface Coal Mining
16 Program;

17 27. "reclamation plan" means the plan in a permit application submitted under the
18 Navajo regulatory program or the Federal Program for Indian Lands which sets
19 forth a plan for reclamation of the proposed surface coal mining operations
20 pursuant to section 508 of this Act;

21 28. "regulatory authority" means the state or tribal regulatory authority where the
22 State or Tribe is administering SMCRA under an approved state or tribal program
23 or OSMRE where OSMRE is administering SMCRA under a federal program for
24 a State, the Federal Program for Indian Lands, or the Federal Lands Program, or
25 the Initial Program at 30 CFR Chapter VII, Subchapter B;

26 29. "Resources Committee" means the Resource and Development Committee of
27 the Navajo Nation Council or any successor Navajo governmental entity,
28 including any Navajo Executive Branch Division or Department to which
29 authorities of the Resources and Development Committee may be delegated;

30 30. "Secretary" means the Secretary of the U.S. Department of the Interior;

1 31. "SMCRA" means the Surface Mining Control and Reclamation Act of 1977
2 (P.L. 95-87), and all subsequent revisions and amendments to it;

3 32. "State" means a State of the United States;

4 33. "surface coal mining and reclamation operations" means surface coal mining
5 operations and all activities necessary and incident to the reclamation of such
6 operations after August 3, 1977;

7 34. "surface coal mining operations" means —

8 a. activities conducted on the surface of lands in connection with a surface coal
9 mine or subject to the requirements of Section 516 of this Act surface operations
10 and surface impacts incident to an underground coal mine, the products of which
11 enter commerce or the operations of which directly or indirectly affect interstate
12 commerce. Such activities include excavation for the purpose of obtaining coal
13 including such common methods as contour, strip, auger, mountaintop removal,
14 box cut, open pit, and area mining, the uses of explosives and blasting, and in-situ
15 distillation or retorting, leaching or other chemical or physical processing, and the
16 cleaning, concentrating, or other processing or preparation, loading of coal for
17 interstate commerce at or near the mine site: Provided, however, that such
18 activities do not include the extraction of coal incidental to the extraction of other
19 minerals where coal does not exceed 16 2/3 percent of the tonnage of minerals
20 removed for purposes of commercial use or sale or coal explorations subject to
21 section 512 of this Act; and

22 b. the areas upon which such activities occur or where such activities disturb the
23 natural land surface. Such areas shall also include any adjacent land the use of
24 which is incidental to any such activities, all lands affected by the construction of
25 new roads or the improvement or use of existing roads to gain access to the site of
26 such activities and for haulage, and excavations, workings, impoundments, dams,
27 ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles,
28 spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas,
29 processing areas, shipping areas and other areas upon which are sited structures,
30

1 facilities, or other property or materials on the surface, resulting from or incident
2 to such activities; and

3 35. "Uniform Rules" means the Uniform Regulations for Permit Review,
4 Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo
5 Nation Environmental Acts; Provided, that, as referred to in the Uniform Rules,
6 "Director" shall mean "Program Manager," "NNEPA" shall mean "NSCMP,"
7 "USEPA" shall mean "OSMRE," "tape recording" and "tape" shall include "other
8 types of electronic recording," "a brief description of the proposed regulation"
9 also shall include "a statement of the basis and purpose of the proposed
10 regulation," in section 407(b) of the Uniform Rules, "adoption of the final
11 regulation" shall include "approval of the final regulations by the Resources
12 Committee," and in section 407(c) of the Uniform Rules, "approval of the final
13 regulations by the Resources Committee" shall mean "approval of the final
14 regulations by the Resources Committee and by the Secretary or the OSMRE
15 Director." In the case of any conflict between a provision of this Act or
16 regulations implementing this Act and a provision of the Uniform Rules, the
17 provision of this Act or implementing regulations shall govern.

18 B. Technical Definitions:

19 1. "alluvial valley floors" means the unconsolidated stream-laid deposits holding
20 streams where water availability is sufficient for subirrigation or flood irrigation
21 agricultural activities but does not include upland areas which are generally
22 overlain by a thin veneer of colluvial deposits composed chiefly of debris from
23 sheet erosion, deposits by unconcentrated runoff or slope wash, together with
24 talus, other mass movement accumulation and windblown deposits;

25 2. "approximate original contour" means that surface configuration achieved by
26 backfilling and grading of the mined area so that the reclaimed area, including any
27 terracing or access roads, closely resembles the general surface configuration of
28 the land prior to mining and blends into and complements the drainage pattern of
29 the surrounding terrain, with all highwalls and spoil piles eliminated; water
30

1 impoundments may be permitted where the NSCMP determines that they are in
2 compliance with section 515(B)(8) of this Act;

3 3. "authorized land user" means a landowner, a person with valid homesite lease
4 issued by the Navajo Land Department, a person with a valid grazing permit
5 issued by the BIA, or a person with a valid permit, lease, right-of-way, or other
6 type of authorization for surface or subsurface use of Navajo regulatory program
7 lands or structures;

8 4. "cemetery" means any area of land where human bodies are interred, including
9 family burial grounds and any site or area where a body is interred in the
10 traditional Navajo way;

11 5. "commerce" means trade, traffic, commerce, transportation, transmission, or
12 communication among the several States/Tribes or between a State/Tribe and any
13 other place outside thereof, or between points in the same State/Tribe which
14 directly or indirectly affect interstate commerce;

15 6. "head-of-hollow fill" means a fill structure consisting of any material, other
16 than organic material, placed in the uppermost reaches of a hollow where side
17 slopes of the existing hollow, measured at the steepest point, are greater than 20
18 degrees or the average slope of the profile of the hollow from the toe of the fill to
19 the top of the fill is greater than 10 degrees. In head-of-hollow fills the top surface
20 of the fill, when completed, is at approximately the same elevation as the adjacent
21 ridge line, and no significant area of natural drainage occurs above the fill
22 draining into the fill area;

23 7. "imminent danger to the health and safety of the public" means the existence of
24 any condition or practice, or any violation of a permit or other requirement of this
25 Act in a surface coal mining and reclamation operation, which condition, practice,
26 or violation could reasonably be expected to cause substantial physical harm to
27 persons outside the permit area before such condition, practice, or violation can be
28 abated. A reasonable expectation of death or serious injury before abatement
29 exists if a rational person, subjected to the same conditions or practices giving rise
30

1 to the peril, would not expose himself or herself to the danger during the time
2 necessary for abatement;

3 8. "landowner" means both the legal owner of record and the equitable owner of
4 record of the land;

5 9. "prime farmland" means land that is defined as prime farmland by the
6 Secretary of the U.S. Department of Agriculture on the basis of such factors as
7 moisture availability, temperature regime, chemical balance, permeability, surface
8 layer composition, susceptibility to flooding, and erosion characteristics, and
9 which historically has been used for intensive agricultural purposes, and as
10 published in the Federal Register;

11 10. "steep slope" means any slope above twenty degrees;

12 11. "unwarranted failure to comply" means the failure of a permittee to prevent
13 the occurrence of any violation of his or her permit or any requirement of this Act
14 due to indifference, lack of diligence, or lack of reasonable care, or the failure to
15 abate any violation of such permit or this Act due to indifference, lack of
16 diligence, or lack of reasonable care;

17 12. "valley fill" means a fill structure consisting of any material, other than
18 organic material, that is placed in a valley where side slopes of the existing valley,
19 measured at the steepest point, are greater than 20 degrees, or where the average
20 slope of the profile of the valley from the toe of the fill to the top of the fill is
21 greater than 10 degrees; and

22 13. "water user" means a person with an ownership interest in the water resource,
23 a person with a valid right to the surface water or groundwater, a person with a
24 valid water use permit issued by the Navajo Nation Department of Water
25 Resources Water Code Administration, or a person with a valid permit, lease, or
26 other type of authorization for use of the waters of the Navajo Nation.

27 SEC. 102. Findings

28 The Navajo Nation Council finds and declares that —

29 A. The extraction of coal from the earth can be accomplished by various methods
30 of mining, including surface mining;

1 B. The Navajo Nation owns and leases substantial and valuable deposits of coal,
2 which may be recovered through both surface and underground mining methods.
3 Commercial exploitation of coal resources yields significant benefits to the
4 Navajo Nation and its members, including royalty and tax income and
5 employment opportunities. Moreover, the commercial exploitation of coal
6 resources contributes greatly to the well-being of surrounding States, and
7 enhances the energy self-sufficiency and national security of the United States;

8 C. Many surface coal mining operations on the Navajo Nation have resulted and
9 may result in disturbances of surface areas that burden and adversely affect the
10 public welfare by destroying or diminishing the utility of land for commercial,
11 industrial, residential, recreational, agricultural, cultural, and forestry purposes, by
12 causing erosion and landslides, by contributing to floods, by polluting the water,
13 by destroying vegetation, fish, and wildlife habitats, by impairing natural beauty,
14 by damaging the property of the Navajo Nation and its residents, by creating
15 hazards dangerous to life and property, by degrading quality of life in local
16 communities, and by counteracting governmental programs and efforts to
17 conserve soil, water, and other natural resources;

18 D. The Navajo Nation recognizes the need to establish appropriate standards to
19 minimize damage to the environment and to restore the productivity of the soil
20 and to protect the health and safety of the public;

21 E. Surface coal mining and reclamation technologies are now developed so that
22 the effective and reasonable regulation of surface coal mining operations on the
23 Navajo Nation in accordance with the requirements of this Act is an appropriate
24 and necessary means to minimize so far as practicable the adverse social,
25 economic, and environmental effects of such mining operations;

26 F. The Navajo Nation shall set surface coal mining and reclamation standards
27 consistent with, and no less stringent than, the standards set forth in SMCRA and
28 regulations promulgated thereunder, in order to ensure that competitive pressures
29 among coal suppliers will not undermine the ability of the Navajo Nation to
30

1 improve and maintain adequate environmental standards for coal mining
2 operations within the Navajo Nation;

3 G. Surface coal mining and reclamation operations contribute to the economic
4 well-being and general welfare of the Navajo Nation and should be conducted in
5 an environmentally sound manner, with proper respect for the characteristics,
6 culture, and traditions of the Navajo Nation and its people;

7 H. The comprehensive and cooperative effort established by this Act is necessary
8 to prevent or mitigate adverse environmental effects of present and future surface
9 coal mining operations;

10 I. The health, welfare, cultural integrity, and economic viability of the Navajo
11 Nation depend on its natural and human resources. The lands of the Navajo
12 Nation have enormous economic and social significance for the Navajo People, as
13 rangeland for the grazing of livestock, as homeland for the many thousands of
14 Navajos who prefer to live in the traditional Navajo way on the land, as farmland
15 for the raising of crops, as forests for timber development, as habitat for diverse
16 species of wildlife, as the source of plants and herbs vital to numerous traditional
17 religious rites and ceremonies, and as an embodiment of much of the spirit of
18 traditional Navajo beliefs. The increase in the Navajo population has caused the
19 Navajo Nation land base to become crowded in many areas. Thus, care must be
20 taken to ensure that the positive values of a one-time, temporary land use such as
21 surface coal mining do not damage the long-term interests of the Navajo Nation
22 and its people; and

23 J. The regulation of land use within the territorial jurisdiction of the Navajo
24 Nation for all its residents is an essential component of the sovereignty of the
25 Navajo Nation. The Navajo Nation seeks self-sufficiency and should undertake
26 full responsibility for effectuating this component of Navajo Nation sovereignty.

27
28 SEC. 103. Purposes

29 It is the purpose of this Act to —
30

1 A. Establish a program for the Navajo Nation to protect people and the
2 environment from the adverse effects of surface coal mining operations;

3 B. Assure that the rights of surface landowners, residents, water users, and
4 authorized land users are fully protected from such operations;

5 C. Assure that surface coal mining operations are not conducted where
6 reclamation as required by this Act is not feasible;

7 D. Assure that surface coal mining operations are conducted so as to protect the
8 environment;

9 E. Assure that adequate procedures are undertaken to reclaim surface areas as
10 contemporaneously as possible with the surface coal mining operations;

11 F. Assure that the coal supply essential to the Navajo Nation's economic and
12 social well-being is provided and strike a proper balance, consistent with this Act
13 and SMCRA, between protection of the environment and agricultural productivity
14 and the Navajo Nation's need for coal as an essential source of revenue;

15 G. Assure that appropriate procedures are provided for public participation in the
16 development, revision, and enforcement of regulations, standards, reclamation
17 plans, or programs established by the Navajo Nation under this Act;

18 H. Wherever necessary, exercise the full reach of the sovereign and delegated
19 powers of the Navajo Nation to the extent allowed by applicable laws to ensure
20 the protection of the public interest through effective control of surface coal
21 mining operations; and

22 I. Carry out the provisions and purposes of SMCRA and implementing federal
23 regulations, as amended.

24 25 SUBCHAPTER 2 – NAVAJO SURFACE COAL MINING PROGRAM

26 27 SEC. 201. Establishment, Employees, and Duties of the Navajo Surface Coal 28 Mining Program

29 A. There is established in the Navajo Nation Division of Natural Resources,
30 Minerals Department, the Navajo Surface Coal Mining Program to regulate

1 surface coal mining and reclamation operations and coal exploration on Navajo
2 regulatory program lands pursuant to this Act.

3 B. The NSCMP shall have a Program Manager who shall be hired in accordance
4 with Navajo Nation personnel practices, and who shall report to the Director of
5 the Navajo Nation Minerals Department. The Program Manager shall have the
6 responsibilities provided under subsection (C) of this section. Employees of the
7 NSCMP shall be recruited consistent with Navajo Nation laws and personnel
8 practices on the basis of their professional competence and capacity to administer
9 the provisions of this Act. The NSCMP may use employees of federal agencies
10 on a reimbursable basis when appropriate and where authorized by applicable
11 federal law; Provided that, such federal employees shall be subject to SMCRA
12 section 201(f) and the federal agencies and employees shall comply with the
13 requirements of 30 CFR Part 706. The NSCMP may use, on a reimbursable basis
14 when appropriate, employees of other Navajo Nation agencies to administer the
15 provisions of this Act, providing that no legal authority, program, or function in
16 any Navajo Nation agency which has in its purpose promoting the development or
17 use of coal or other mineral resources or regulating the health and safety of miners
18 under the provisions of the Federal Coal Mine Health and Safety Act of 1969 (83
19 Stat. 742) shall be transferred to the NSCMP.

20 C. The Program Manager shall —

21 1. administer the NSCMP and the Navajo regulatory program for controlling
22 surface coal mining and reclamation operations and coal exploration; make those
23 investigations and inspections necessary to ensure compliance with this Act;
24 conduct hearings, administer oaths, issue subpoenas, and compel the attendance
25 of witnesses and production of written or printed material as provided for in this
26 Act; issue cease-and-desist orders; review and vacate or modify or approve orders
27 and decisions; review and approve, disapprove, or conditionally approve permit
28 applications for surface coal mining operations and coal exploration; issue or
29 deny permits for surface coal mining operations and coal exploration; and order
30 the suspension, revocation, or withholding of any permit for surface coal mining

1 operations and coal exploration for failure to comply with any of the provisions of
2 this Act or any rules and regulations adopted pursuant thereto;

3 2. publish and promulgate, pursuant to the rulemaking procedures of Subpart 4 of
4 the Uniform Rules, such rules and regulations as may be necessary to carry out
5 the purposes and provisions of this Act, including procedures and requirements
6 for administrative adjudicatory hearings to be conducted by the NNOHA under
7 this Act;

8 3. consult with federal agencies, other Navajo Nation agencies, and, where
9 appropriate, state and non-Navajo tribal agencies having expertise in the control
10 and reclamation of surface coal mining operations, to provide for effective
11 administration of this Act and to minimize unnecessary duplication of effort;

12 4. conduct a continuing study of surface coal mining and reclamation operations
13 within the Navajo Nation by collecting data, conducting experiments, and
14 conducting appropriate research in order to improve reclamation technology;

15 5. develop objective criteria and appropriate procedures and institutions for
16 determining those areas of Navajo regulatory program lands to be designated
17 unsuitable for all or certain types of surface coal mining pursuant to section 522
18 of this Act;

19 6. cooperate with other Navajo Nation and federal agencies and state and tribal
20 regulatory authorities to minimize duplication of inspections, enforcement, and
21 administration of this Act and SMCRA;

22 7. administer cooperative agreements with OSMRE, other federal agencies, and,
23 where appropriate, state and tribal agencies;

24 8. develop and implement the Navajo regulatory program for regulation of surface
25 coal mining and reclamation operations that reflects the requirements and
26 environmental, cultural, and agricultural conditions of the Navajo Nation as
27 provided in this Act;

28 9. assure that the decisions, goals, regulations, and non-confidential information
29 of the NSCMP are made available to the public at reasonable times and
30 interpreted when requested;

1 10. notify OSMRE of potential criminal actions associated with surface coal
2 mining and reclamation operations on Navajo regulatory program lands and
3 recommend that OSMRE pursue criminal penalties under SMCRA; and

4 11. perform such other duties as may be provided by law and relate to the
5 purposes of this Act.

6 D. The Program Manager shall not use, either permanently or temporarily, any
7 person charged with responsibility of inspecting coal mines under the Federal
8 Coal Mine Health and Safety Act of 1969, unless he or she finds and publishes
9 such finding in a daily or weekly newspaper of general circulation in the Navajo
10 Nation that such activities would not interfere with such inspections under the
11 1969 Act.

12 E. No employee of the NSCMP or any other Navajo Nation employee performing
13 any function or duty under this Act shall have a direct or indirect financial interest
14 in underground or surface coal mining operations. A person shall not be deemed
15 to have a direct or indirect financial interest in underground or surface coal
16 mining operations by virtue of such person's membership in the Navajo Nation.
17 No employee of the NSCMP or any other Navajo Nation employee performing
18 any function or duty under this Act shall be eligible for a per capita distribution of
19 any proceeds from coal mining operations conducted on Indian reservation lands
20 under SMCRA. Whoever knowingly violates the provisions of this subsection
21 shall, upon conviction, be punished by a fine of not more than \$2,500, or by
22 imprisonment for not more than one year, or both, to the extent authorized by
23 applicable law. The Program Manager shall publish and promulgate regulations,
24 in accordance with the Uniform Rules, Subpart 4, that meet the minimum policies
25 and procedures of 30 CFR Part 705 to monitor and enforce the provisions of this
26 subsection, including appropriate rules for the filing by such employees of
27 statements concerning their financial interests which may be affected by this
28 subsection and the review of such statements and supplements thereto.

29 F. Petitions for issuance, amendment, or repeal of rule; filing; hearing or
30 investigation; notice of denial

1 1. After the NSCMP has adopted regulations as required by section 501 of this
2 Act, any person may petition the Program Manager to initiate a proceeding for the
3 issuance, amendment, or repeal of a rule under this Act.

4 2. Such petitions shall be filed in the principal office of the Program Manager and
5 shall set forth only the facts which it is claimed established that it is necessary to
6 issue, amend, or repeal a rule under this Act.

7 3. The Program Manager may hold a public hearing or may conduct such
8 investigation or proceeding as he or she deems appropriate in order to determine
9 whether or not such petition should be granted.

10 4. Within 90 days after filing of a petition described in paragraph (1) of this
11 subsection, the Program Manager shall either grant or deny the petition. If the
12 Program Manager grants such petition, the Program Manager shall promptly
13 commence an appropriate proceeding in accordance with the provisions of
14 Subpart 4 of the Uniform Rules. If the Program Manager denies such petition, the
15 Program Manager shall so notify the petitioner in writing setting forth the reasons
16 for such denial. The Program Manager's decision denying in whole or in part
17 such petition shall be subject to appeal pursuant to section 526 of this Act.

18 G. The NSCMP shall not participate in any way in negotiations for and leasing of
19 Navajo Nation coal or other mineral resources.

20 H. The NSCMP is authorized to submit grant applications and receive and
21 administer grants under 30 CFR Chapter VII, Subchapter C. Funds received by
22 the NSCMP for any purpose whatsoever shall be disbursed and accounted for in
23 accordance with this Act and applicable Navajo Nation and federal laws.

24 I. The Navajo Nation hereby waives sovereign immunity for the limited purposes
25 of citizen suits arising under section 520 of this Act or under section 520 of
26 SMCRA, judicial review under section 526 of this Act, and judicial review under
27 SMCRA section 710(j)(4). The NSCMP shall be and hereby is clothed with the
28 sovereign immunity from suit enjoyed by the Navajo Nation, to the extent not
29 waived in this Act. Permittees and operators of surface coal mining and
30 reclamation operations in which the Navajo Nation has an ownership or

1 controlling interest are not clothed in sovereign immunity for the purposes of this
2 Act and are fully subject to the provisions of this Act.

3 J. The Program Manager shall closely monitor all pertinent legislation, both
4 Navajo Nation and federal, concerning coal mining, Indian lands, regulatory
5 powers, reclamation, and related issues to protect the interests of the Navajo
6 Nation. The Program Manager may represent the Navajo Nation at hearings and
7 provide comments, both written and oral, with respect to mining reclamation and
8 regulatory issues in the name of the Navajo Nation: Provided, that participation
9 in such hearings and such comments are reviewed and approved in accordance
10 with applicable Navajo Nation law.

11
12 SUBCHAPTER 3 – RESERVED

13
14 SUBCHAPTER 4 – RESERVED

15
16 SUBCHAPTER 5 – CONTROL OF THE ENVIRONMENTAL IMPACTS OF
17 SURFACE COAL MINING

18
19 SEC. 501. Promulgation of Implementing Regulations

20 A. After the enactment of this Act, the Program Manager shall publish and
21 promulgate regulations covering the standards and procedures for surface coal
22 mining and reclamation operations based on and incorporating the provisions set
23 out in this Act. The Program Manager shall follow the rulemaking procedures in
24 Subpart 4 of the Uniform Rules, including providing public notice of these
25 proposed regulations and affording interested persons and Navajo Nation, federal,
26 state, and local governments a period of not less than 30 days following
27 publication to review and comment on the proposed regulations. The Program
28 Manager also shall provide at least one public hearing, in Window Rock, on the
29 proposed regulations.

1 B. The Program Manager shall consult with OSMRE, BIA, BLM, and the Navajo
2 Nation Environmental Protection Agency, and solicit their comments prior to the
3 promulgation of such rules. Comments submitted by all agencies and the public
4 shall be considered by the Program Manager.

5
6 SEC. 502. Reserved

7
8 SEC. 503. Reserved

9
10 SEC. 504. Reserved

11
12 SEC. 505. Reserved

13
14 SEC. 506. Permits

15 A. Persons engaged in surface coal mining within Navajo Nation; time limit;
16 exception

17 1. On the effective date of approval of the Navajo regulatory program by the
18 Secretary, pursuant to SMCRA sections 503 and 710(j), no person shall engage in
19 or carry out on Navajo regulatory program lands any surface coal mining
20 operations unless such person has first obtained a permit issued by the NSCMP
21 pursuant to the Navajo regulatory program or holds a valid permit from OSMRE
22 under the Federal Program for Indian Lands. A person conducting surface coal
23 mining operations under a permit issued by OSMRE under the Federal Program
24 for Indian Lands may continue to conduct such operations as authorized in the
25 permit, subject to the provisions of paragraph (A)(2) of this section.

26 2. Upon the effective date of approval of the Navajo regulatory program by the
27 Secretary, the NSCMP shall become the regulatory authority administering the
28 federal permits issued by OSMRE under the Federal Program for Indian Lands for
29 those surface coal mining operations on Navajo regulatory program lands that are
30 authorized under the federal permit. The NSCMP shall review such permits to

1 determine that the permit meets the requirements of this Act and the regulations
2 promulgated thereunder. The federal permittee shall also have the right to apply
3 for a tribal permit to supersede his or her federal permit. Should the Navajo
4 regulatory program contain additional requirements not contained in the Federal
5 Program for Indian Lands, the permittee will be provided the opportunity for an
6 administrative hearing and up to 180 days after notification by the NSCMP of
7 such additional requirements or the conclusion of the administrative hearing, if
8 requested, to conform his or her ongoing surface coal mining and reclamation
9 operations to such additional requirements. Upon the effective date of approval
10 of the Navajo regulatory program by the Secretary, the NSCMP shall also be
11 responsible for the regulation of surface coal mining and reclamation operations
12 on Navajo regulatory program lands under the initial regulatory program at 30
13 CFR Chapter VII Subchapter B.

14 B. All permits issued pursuant to this Act shall be issued for a term not to exceed
15 five years: Provided, that if the applicant demonstrates that a specified longer
16 term is reasonably needed to allow the applicant to obtain necessary financing for
17 equipment and the opening of the operation, and if the application is full and
18 complete for such specified longer term, the NSCMP may grant a permit for such
19 longer term. A successor-in-interest to a permittee who applies for a new permit
20 within 30 days of succeeding to such interest, and who is able to obtain the bond
21 coverage of the original permittee, may continue surface coal mining and
22 reclamation operations according to the approved mining and reclamation plan of
23 the original permittee until such successor's application is granted or denied.

24 C. A permit shall terminate if the permittee has not commenced the surface coal
25 mining operations covered by such permit within three years of the permit
26 issuance: Provided, that the NSCMP may grant reasonable extensions of time
27 upon a showing that such extensions are necessary by reason of litigation
28 precluding such commencement or threatening substantial economic loss to the
29 permittee, or by reason of conditions beyond the control and without the fault or
30 negligence of the permittee: Provided further, that in the case of a coal lease

1 issued by the Navajo Nation for coal owned in whole or in part in fee by the
2 Navajo Nation or held by the United States in trust for the Navajo Tribe of
3 Indians, no extension of time may extend beyond the period allowed for
4 development in accordance with such lease or other applicable law and in the case
5 of a coal lease issued under the federal Mineral Leasing Act, as amended,
6 extensions of time may not extend beyond the period allowed for diligent
7 development in accordance with section 7 of that Act: Provided further, That with
8 respect to coal to be mined for use in a synthetic fuel facility or specific major
9 electric generating facility, the permittee shall be deemed to have commenced
10 surface coal mining operations at such time as the construction of the synthetic
11 fuel or generating facility is initiated.

12 D. Renewal

13 1. Any valid permit issued pursuant to this Act shall carry with it the right of
14 successive renewal upon expiration with respect to areas within the boundaries of
15 the existing permit. The holders of the permit may apply for renewal and such
16 renewal shall be issued (provided, that on application for renewal the burden shall
17 be on the opponents of renewal), subsequent to fulfillment of the public notice
18 requirements of sections 513 and 514 of this Act unless it is established that and
19 written findings by the NSCMP are made that:

20 (a) the terms and conditions of the existing permit are not being satisfactorily met;
21 (b) the present surface coal mining and reclamation operations are not in
22 compliance with the environmental protection standards of this Act and the
23 Navajo regulatory program;

24 (c) the renewal requested substantially jeopardizes the operator's continuing
25 responsibility on existing permit areas;

26 (d) the operator has not provided evidence that the performance bond in effect for
27 said operation will continue in full force and effect for any renewal requested in
28 such application as well as any additional bond the NSCMP might require
29 pursuant to section 509 of this Act; or
30

1 (e) any additional revised or updated information required by the NSCMP has not
2 been provided.

3 2. Prior to the approval of any permit renewal, the NSCMP shall provide notice to
4 the appropriate Navajo Nation Chapters, Departments, Commissions, and
5 Divisions, and other public authorities.

6 3. If an application for renewal of a valid permit includes a proposal to extend the
7 mining operation beyond the boundaries authorized in the existing permit, the
8 portion of the application for renewal of a valid permit which addresses any new
9 land areas shall be subject to the full standards applicable to new applications
10 under this Act.

11 4. Any permit renewal shall be for a term not to exceed the period of the original
12 permit established by this Act. An application for permit renewal shall be made
13 at least 120 days prior to the expiration of the valid permit.

14
15 SEC. 507. Application Requirements

16 A. Each application for a surface coal mining and reclamation permit pursuant to
17 this Act shall be accompanied by a fee as determined by the NSCMP. Such fee
18 may be less than but shall not exceed the actual or anticipated cost of reviewing,
19 administering, and enforcing such permit issued pursuant to the Navajo regulatory
20 program. The NSCMP may develop procedures so as to enable the cost of the fee
21 to be paid over the term of the permit.

22 B. The permit application shall be submitted in a manner satisfactory to the
23 NSCMP and shall contain, among other items —

24 1. the names and addresses of (A) the permit applicant; (B) every landowner of
25 the property (surface and mineral) to be mined; (C) the holders of record of any
26 leasehold interest in the property; (D) any purchaser of record of the property
27 under a real estate contract; (E) any authorized land user; (F) the operator if s/he
28 is a person different from the applicant; and (G) if any of the above is a business
29 entity other than a single proprietor, the names and addresses of its principals.
30

1 officers, and registered agent for service of process pursuant to the Navajo Nation
2 Corporation Code;

3 2. the names and addresses of the landowners of all surface and subsurface areas
4 adjacent to any part of the permit area;

5 3. a statement of any current or previous surface coal mining permits in the
6 United States held by the applicant and the permit identification, and each
7 pending application;

8 4. if the applicant is a partnership, corporation, association, or other business
9 entity, the following where applicable: the names and addresses of every officer,
10 partner, director, or person performing for the applicant a function similar to a
11 director, together with the name and address of any person owning of record 10
12 percent or more of any class of voting stock of the applicant, and a list of all
13 names under which the applicant, partner, or principal shareholder previously
14 operated a surface mining operation within the United States within the five-year
15 period preceding the date of submission of the application;

16 5. a statement of whether the applicant or any subsidiary, affiliate, or persons
17 controlled by or under common control with the applicant, has ever held a federal,
18 state, or tribal mining permit, that in the five-year period prior to the date of
19 submission of the application has been suspended or revoked or has had a mining
20 bond or similar security deposited in lieu of bond forfeited and, if so, a brief
21 explanation of the facts involved;

22 6. a copy of the applicant's advertisement to be published in a newspaper of
23 general circulation in the locality of the proposed site at least once a week for four
24 successive weeks, and which includes the ownership, a description of the exact
25 location and boundaries of the proposed site sufficient so that the proposed
26 operation is readily locatable by local residents, and the location of where the
27 application is available for public inspection;

28 7. a description of the type and method of coal mining operation that exists or is
29 proposed, the engineering techniques used or proposed to be used, and the
30 equipment used or proposed to be used;

1 8. the anticipated or actual starting and termination dates of each phase of the
2 mining operation and the number of acres of land to be affected;

3 9. an accurate map or plan, to an appropriate scale, that clearly shows the land to
4 be affected as of the date of the application, the area of land within the permit area
5 upon which the applicant has the legal right to enter and commence surface
6 mining operations, and a statement of those documents upon which the applicant
7 bases his or her legal right to enter and commence surface mining operations on
8 the area affected and whether that right is the subject of pending court litigation:
9 Provided, that nothing in this Act shall be construed as vesting in the NSCMP the
10 jurisdiction to adjudicate property title disputes;

11 10. the name of the watershed and location of the surface stream or tributary into
12 which surface and pit drainage will be discharged;

13 11. a determination of the probable hydrologic consequences of the mining and
14 reclamation operations, both on and off the mine site, with respect to the
15 hydrologic regime, quantity and quality of water in surface water and
16 groundwater systems, including the dissolved and suspended solids under
17 seasonal flow conditions, and the collection of sufficient data for the mine site and
18 surrounding areas so that an assessment can be made by the NSCMP of the
19 probable cumulative impacts of all anticipated mining in the area upon the
20 hydrology of the area and particularly upon water availability: Provided,
21 however, that the determination shall not be required until such time as
22 hydrologic information on the general area prior to mining is made available from
23 an appropriate Navajo Nation, federal, state, or tribal agency, and Provided
24 further, that the permit shall not be approved until such information is available
25 by the applicant and is incorporated into the application;

26 12. when requested by the NSCMP, the climatological factors that are peculiar to
27 the locality of the land to be affected, including the average seasonal precipitation,
28 the average direction and velocity of prevailing winds, and the seasonal
29 temperature ranges;

1 13. accurate maps to an appropriate scale clearly showing (A) the land to be
2 affected as of the date of application and (B) all types of information set forth on
3 the topographical maps of the U.S. Geological Survey of a scale of 1:24,000 or
4 1:25,000 or larger, including all manmade features and significant known
5 archaeological sites (including all Indian historical, burial, and religious sites)
6 existing on the date of application, provided, however, that information which
7 pertains to such sites shall be kept confidential and not made a matter of public
8 record. Such a map or plan shall, among other requirements specified by the
9 NSCMP, show all boundaries of the land to be affected, the boundary lines and
10 names of present landowners of all surface areas abutting the permit area, and the
11 location of all buildings within 1,000 feet of the permit area;

12 14. cross-sections, maps or plans of the land to be affected including the actual
13 area to be mined, prepared by or under the direction of and certified by a qualified
14 registered professional engineer or professional geologist, with assistance from
15 experts in related fields such as land surveying and landscape architecture,
16 showing the pertinent elevation and location of test borings or core samplings and
17 depicting the following information: the nature and depth of the various strata of
18 overburden; the location of groundwater, if encountered, and its quality; the
19 nature and thickness of any coal or rider seam above the coal seam to be mined;
20 the nature of the stratum immediately beneath the coal seam to be mined; all
21 mineral crop lines and the strike and dip of the coal to be mined, within the area
22 of land to be affected; existing or previous surface mining limits; the location and
23 extent of known workings of any underground mines, including mine openings to
24 the surface; the location of aquifers; the estimated elevation of the water table; the
25 location of spoil, waste, or refuse areas and topsoil preservation areas; the location
26 of all impoundments for waste or erosion control; any settling or water treatment
27 facility; constructed or natural drainways and the location of any discharges to
28 any surface body of water on the area of land to be affected or adjacent thereto;
29 and profiles at appropriate cross-sections of the anticipated final surface
30

1 configuration that will be achieved pursuant to the operator's proposed
2 reclamation plan;

3 15. a statement of the result of test borings or core samplings from the permit
4 area, including logs of the drill holes, the thickness of the coal seam found, and an
5 analysis of the chemical properties of such coal; the sulfur content of any coal
6 seam; chemical analysis of potentially acid- or toxic-forming sections of the
7 overburden; and a chemical analysis of the stratum lying immediately underneath
8 the coal to be mined, except that the provisions of this paragraph may be waived
9 by the NSCMP with respect to the specific application, by a written determination
10 that such requirements are unnecessary;

11 16. for those lands in the permit application, which a reconnaissance inspection
12 suggests may be prime farmlands, a soil survey which shall be made or obtained
13 according to standards established by the Natural Resources Conservation Service
14 in order to confirm the exact location of such prime farmlands, if any;

15 C. Information pertaining to coal seams, test borings, core samplings, or soil
16 samples as required by this section shall be made available to any person with an
17 interest which is or may be adversely affected: Provided, that information which
18 pertains only to the analysis of the chemical and physical properties of the coal
19 (excepting information regarding such mineral or elemental content which is
20 potentially toxic in the environment) shall be kept confidential and not made a
21 matter of public record.

22 D. Applications for surface coal mining and reclamation permits pursuant to this
23 Act shall be submitted to the NSCMP in a format approved by the NSCMP. The
24 NSCMP shall notify and make available to each applicant for a surface coal
25 mining and reclamation permit the format in which the application must be
26 submitted.

27 E. If the NSCMP finds that the probable total annual production at all locations of
28 a surface coal mining operation will not exceed 300,000 tons, the cost of the
29 following activities, which shall be performed by a qualified public or private
30 laboratory or such other public or private qualified entity designated by the

1 NSCMP, shall be assumed by the NSCMP upon the written request of the
2 operator in connection with his or her permit application:

3 1. the determination of probable hydrologic consequences required by subsection
4 (B)(11) of this section, including the engineering analyses and designs necessary
5 for the determination;

6 2. the development of cross-sections, maps and plans required by subsection
7 (B)(14) of this section;

8 3. the geologic drilling and statement of results of test borings and core samplings
9 required by subsection (B)(15) of this section;

10 4. the collection of archaeological information required by subsection (B)(13) of
11 this section and any other archaeological and historical information required by
12 the NSCMP, and the preparation of plans necessitated thereby;

13 5. pre-blast surveys required by section 515(B)(15)(e) of this Act; and

14 6. the collection of site-specific resource information and the production of
15 protection and enhancement plans for fish and wildlife habitats and other
16 environmental values required by the NSCMP under this Act.

17 F. Each applicant for a permit shall be required to submit to the NSCMP, as part
18 of the permit application, a reclamation plan which shall meet the requirements of
19 this Act.

20 G. Each applicant for a surface coal mining and reclamation permit shall file a
21 copy of the application for public inspection at the appropriate Navajo Nation
22 Chapter(s) or public office designated by the NSCMP near where the mining is
23 proposed to occur, except for that information pertaining to the coal seam itself—
24 or any other information required to be kept confidential pursuant to Navajo law.

25 H. Each applicant for a permit shall be required to submit to the NSCMP, as part
26 of the permit application, a certificate issued by an insurance company authorized
27 to do business in the United States which certifies that the applicant has a public
28 liability insurance policy in force for the surface coal mining and reclamation
29 operations for which such permit is sought. Such policy shall provide for
30 personal injury and property damage protection in an amount adequate to

1 compensate any persons damaged as a result of surface coal mining and
2 reclamation operations, including the use of explosives, and entitled to
3 compensation under the applicable provisions of Navajo Nation law and/or state
4 law. Such policy shall be maintained in full force and effect during the terms of
5 the permit or any renewal, including the duration of all reclamation operations.

6 I. Each applicant for a surface coal mining and reclamation permit shall submit to
7 the NSCMP, as part of the permit application, a blasting plan which outlines the
8 procedures and standards by which the operator will meet the provisions of
9 section 515(B)(15) of this Act.

10 J. An operator that has received assistance pursuant to subsection (E) of this
11 section shall reimburse the NSCMP for the cost of the services rendered if the
12 Program Manager finds that the operator's actual and attributed annual production
13 of coal for all locations exceeds 300,000 tons during the 12 months immediately
14 following the date on which the operator is issued the surface coal mining and
15 reclamation permit.

16 17 SEC. 508. Reclamation Plan Requirements

18 A. Each reclamation plan submitted as part of a permit application to the NSCMP
19 shall include, in the degree of detail necessary to demonstrate that reclamation as
20 required by the Navajo regulatory program can be accomplished, a statement of:

21 1. the identification of the lands subject to surface coal mining operations, over
22 the estimated life of those operations, and the size, sequence, and timing of the
23 sub-areas for which it is anticipated that individual permits for mining will be
24 sought;

25 2. the condition of the land to be covered by the permit prior to any mining,
26 including:

27 a. the uses existing at the time of the application, and if the land has a history of
28 previous mining, the uses which preceded any mining;

29 b. the capability of the land prior to mining to support a variety of uses, giving
30 consideration to soil and foundation characteristics, topography, and vegetative

1 cover, and if applicable, a soil survey prepared pursuant to section 507(B)(16) of
2 this Act; and

3 c. the productivity of the land prior to mining, including appropriate classification
4 as prime farmlands, as well as the average yield of food, fiber, forage, or wood
5 products from such lands obtained under high levels of management;

6 3. the use which is proposed to be made of the land following reclamation,
7 including a discussion of the utility and capacity of the reclaimed land to support
8 a variety of alternative uses and the relationship of such use to existing land-use
9 policies and plans, the comments of any landowners of the surface , and the
10 comments of the Navajo Nation Land Department and other Navajo Nation
11 agencies, the BIA, and state and local governments or agencies thereof that would
12 have to initiate, implement, approve or authorize the proposed use of the land
13 following reclamation;

14 4. a detailed description of how the use which is proposed to be made of the land
15 following reclamation is to be achieved, and the necessary support activities
16 which may be needed to achieve the proposed land use;

17 5. the engineering techniques proposed to be used in mining and reclamation and
18 a description of the major equipment to be utilized; a plan for the control of
19 surface water drainage and of water accumulation; a plan, where appropriate, for
20 backfill, soil stabilization, compaction and grading, and appropriate revegetation;
21 a plan for soil reconstruction, replacement, and stabilization, pursuant to the
22 performance standards in sections 515(B)(7)(a), (b), (c) and (d) of this Act, for
23 those food, forage, and forest lands identified in section 515(B)(7) of this Act; an
24 estimate of the cost per acre of the reclamation, including a statement as to how
25 the permittee plans to comply with each of the requirements set out in section 515
26 of this Act;

27 6. the consideration which has been given to maximize the utilization and
28 conservation of the solid fuel resource being recovered so that re-affecting the land
29 in the future can be eliminated or minimized;
30

1 7. a detailed estimated timetable for accomplishing each major step in the
2 reclamation plan;

3 8. the consideration which has been given to making the surface mining and
4 reclamation operations consistent with the plans of the surface landowners and
5 applicable Navajo Nation, BIA, state, and local land-use plans and programs;

6 9. the steps to be taken to comply with applicable air and water quality laws and
7 regulations and any applicable health and safety standards, including a detailed
8 description of how the applicant proposes to conduct dust abatement during
9 surface mining and reclamation operations;

10 10. the consideration which has been given to developing the reclamation plan in
11 a manner consistent with the local physical, environmental, and climatological
12 conditions;

13 11. all lands, interests in lands, or options on such interests held by the applicant
14 or pending bids by the applicant on interests in lands, which lands are contiguous
15 to the area to be covered by the permit;

16 12. the results of test borings which the applicant has made at the area to be
17 covered by the permit, or other equivalent information and data in a form
18 satisfactory to the NSCMP, including the location of groundwater, and an analysis
19 of the chemical and physical properties of the coal and overburden, including the
20 acid-forming properties of the mineral contents and overburden: Provided, that
21 information which pertains only to the analysis of the chemical and physical
22 properties of the coal (excepting information regarding such mineral or elemental
23 contents which is potentially toxic in the environment) shall be kept confidential
24 and not made a matter of public record;

25 13. a detailed description of the measures to be taken during the mining and
26 reclamation process to ensure the protection of:

27 a. the quality of surface water and groundwater systems, both on- and offsite,
28 from the adverse effects of the mining and reclamation process;

29 b. the rights of present water users to surface water and groundwater systems,
30 both on- and offsite; and

1 c. the quantity of surface water and groundwater systems, both on- and offsite,
2 from adverse effects of the mining and reclamation process, or to provide
3 alternative sources of water where such protection of water quantity cannot be
4 ensured; and

5 14. such other requirements as the NSCMP shall prescribe by regulations.

6 B. Any information required by this section which is not required to be held in
7 confidence shall be a matter of public record.

8
9 SEC. 509. Performance Bonds

10 A. After a surface coal mining and reclamation permit application has been
11 approved but before such a permit is issued, the applicant shall file with the
12 NSCMP, on a form prescribed and furnished by the NSCMP, a bond for
13 performance payable to the Navajo Nation and conditional upon faithful
14 performance of all the requirements of this Act and the permit. The bond shall
15 cover that area of land within the permit area upon which the operator will initiate
16 and conduct surface coal mining and reclamation operations within the initial
17 term of the permit. As succeeding increments of surface coal mining and
18 reclamation operations are to be initiated and conducted within the permit area,
19 the permittee shall file with the NSCMP an additional bond or bonds to cover
20 such increments in accordance with this section. The amount of the bond required
21 for each bonded area shall depend upon the reclamation requirements of the
22 approved permit; reflect the probable difficulty of reclamation considering such
23 factors as the site's topography, geology, hydrology, and revegetation potential;
24 and be determined by the NSCMP. The amount of the bond shall be sufficient to
25 ensure the completion of the reclamation plan if the work had to be performed by
26 the NSCMP in the event of forfeiture, and in no case shall the bond for the entire
27 area under one permit be less than \$10,000.

28 B. Liability under the bond shall be for the duration of the surface coal mining
29 and reclamation operation and for a period coincident with the operator's
30 responsibility under the revegetation requirements in section 515 of this Act. The

1 bond shall be executed by the operator and a corporate surety licensed to do
2 business in the state where such operation is located, except that the operator may
3 elect to deposit cash, negotiable bonds of the United States Government or such
4 state, or negotiable certificates of deposit of any bank organized or transacting
5 business in the United States. The cash deposit or market value of such securities
6 shall be equal to or greater than the amount of the bond required for the bonded
7 area: Provided, that the manner of deposit and the institution where the deposit is
8 to be made must be approved specifically by the NSCMP and the Attorney
9 General.

10 C. Cash or securities so deposited shall be deposited upon the same terms as the
11 terms upon which surety bonds may be deposited. Such securities shall be
12 security for the repayment of such negotiable certificates of deposit.

13 D. The amount of the bond or deposit required and the terms of each acceptance
14 of the applicant's bond shall be adjusted by the NSCMP from time to time as
15 affected land acreages are increased or decreased or where the anticipated cost of
16 future reclamation changes.

17 18 SEC. 510. Permit Approval or Denial

19 A. Upon the basis of a complete mining application and reclamation plan or a
20 revision or renewal thereof, as required by this Act, and pursuant to the Navajo
21 regulatory program, including public notification and an opportunity for a public
22 hearing as required by section 513 of this Act, the NSCMP shall grant, require
23 modification of, or deny the application for a permit in a reasonable time set by
24 the NSCMP and notify the applicant in writing. The applicant for a permit, or
25 revision of a permit, shall have the burden of establishing that his or her
26 application is in compliance with all the requirements of the Navajo regulatory
27 program. Within ten days after the granting of a permit, the NSCMP shall notify
28 the President of the Navajo Nation, the Speaker of the Navajo Nation Council,
29 and officials of the local governments in which the area of land to be affected is
30 located that a permit has been issued and shall describe the location of the land.

1 B. No permit or revision application shall be approved unless the application
2 affirmatively demonstrates and the NSCMP finds in writing, on the basis of the
3 information set forth in the application or from information otherwise available,
4 which will be documented in the approval and made available to the applicant,
5 that —

6 1. the permit application is accurate and complete and that all the requirements of
7 this Act and the Navajo regulatory program have been complied with;

8 2. the applicant has demonstrated that reclamation as required by this Act and the
9 Navajo regulatory program can be accomplished under the reclamation plan
10 contained in the permit application;

11 3. the NSCMP has assessed the probable cumulative impact of all anticipated
12 mining in the area on the hydrologic balance specified in section 507(B) of this
13 Act, and the proposed operation has been designed to prevent material damage to
14 the hydrologic balance outside the permit area;

15 4. the area proposed to be mined is not included within an area designated
16 unsuitable for surface coal mining pursuant to section 522 of this Act or is not
17 within an area under study for such designation in an administrative proceeding
18 commenced pursuant to section 522(A)(4)(c) or (B) of this Act (unless in such an
19 area as to which an administrative proceeding has commenced pursuant to section
20 522(A)(4)(c) of this Act, the operator making the permit application demonstrates
21 that, prior to January 1, 1977, he or she has made substantial legal and financial
22 commitments in relation to the operation for which he or she is applying for a
23 permit);

24 5. the proposed surface coal mining operation would —

25 a. not interrupt, discontinue, or preclude farming on alluvial valley floors that are
26 irrigated or naturally sub-irrigated, but excluding undeveloped range lands which
27 are not significant to farming on said alluvial valley floors and those lands as to
28 which the NSCMP finds that if the farming that will be interrupted, discontinued,
29 or precluded is of such small acreage as to be of negligible impact on the farm's
30 agricultural production, or

1 b. not materially damage the quantity or quality of water in surface water or
2 groundwater systems that supply such valley floors in paragraph (a) of subsection
3 (B)(5) of this section.

4 6. in cases where the private mineral estate has been severed from the private
5 surface estate, the applicant has submitted to the NSCMP –

6 a. the written consent of the surface landowner to the extraction of coal by surface
7 mining methods; or

8 b. a conveyance that expressly grants or reserves the right to extract the coal by
9 surface mining methods; or

10 c. if the conveyance does not expressly grant the right to extract coal by surface
11 mining methods, the surface-subsurface legal relationship shall be determined in
12 accordance with applicable law: Provided, That nothing in this Act shall be
13 construed to authorize the NSCMP to adjudicate property rights disputes.

14 C. The applicant shall file with his or her permit application a schedule listing any
15 and all notices of violations of this Act, SMCRA, and any other law, rule, or
16 regulation of the Navajo Nation or the United States, or of any department or
17 agency of the Navajo Nation or in the United States pertaining to air or water
18 environmental protection incurred by the applicant in connection with any surface
19 coal mining operation during the three-year period prior to the date of application.
20 The schedule shall also indicate the final resolution of any such notice of
21 violation. Where the schedule or other information available to the NSCMP
22 indicates that any surface coal mining operation owned or controlled by the
23 applicant is currently in violation of this Act or such other laws referred to in this
24 subsection, the permit shall not be issued until the applicant submits proof that
25 such violation has been corrected or is in the process of being corrected to the
26 satisfaction of the NSCMP or other department or agency which has jurisdiction
27 over such violation. No permit shall be issued to an applicant after a finding by
28 the NSCMP, after opportunity for an administrative hearing, that the applicant, or
29 the operator specified in the application, controls or has controlled mining
30 operations with a demonstrated pattern of willful violations of this Act of such

1 nature and duration with such resulting irreparable damage to the environment as
2 to indicate an intent not to comply with the provisions of this Act.

3 D. In addition to finding the application in compliance with subsection (B) of this
4 section, if the area proposed to be mined contains prime farmland pursuant to
5 section 507(B)(16) of this Act, the NSCMP shall, after consultation with the
6 Navajo Nation Department of Agriculture and the U.S. Department of
7 Agriculture, and pursuant to regulations issued by the NSCMP, grant a permit to
8 mine on prime farmland if the NSCMP finds in writing that the operator has the
9 technological capability to restore such mined area, within a reasonable time, to
10 equivalent or higher levels of yield as non-mined prime farmland in the
11 surrounding area under equivalent levels of management, and can meet the soil
12 reconstruction standards in section 515(B)(7) of this Act. Except for compliance
13 with subsection (B) of this section, the requirements of this paragraph shall apply
14 to all permits issued after August 3, 1977.

15
16 SEC. 511. Revision of Permits

17 A. Application revisions and extensions shall comply with the following.

18 1. During the term of the permit, the permittee may submit an application for a
19 revision of the permit, together with a revised reclamation plan, to the NSCMP.

20 2. An application for a revision of a permit shall not be approved unless the
21 NSCMP finds that reclamation as required by this Act, and the Navajo regulatory
22 program can be accomplished under the revised reclamation plan. The revision
23 shall be approved or disapproved within a period of time established by the
24 Navajo regulatory program. The NSCMP shall establish guidelines for a
25 determination of the scale or extent of a revision request for which all permit
26 application information requirements and procedures, including notice and
27 hearings, shall apply: Provided, that any revisions which propose significant
28 alterations in the reclamation plan shall, at a minimum, be subject to public
29 notice, comment, and hearing requirements set forth in section 513 of this Act.
30

1 3. Any extensions to the area covered by the permit, except incidental boundary
2 revisions, must be made by application for another permit.

3 B. No transfer, assignment, or sale of the rights granted under any permit issued
4 pursuant to this Act shall be made without the written approval of the NSCMP.

5 C. The NSCMP, within a time limit prescribed in the regulations promulgated by
6 the NSCMP, shall review outstanding permits and may require reasonable
7 revision or modification of the permit provisions during the term of such permit:
8 Provided, that such revision or modification shall be based upon written findings
9 and subject to the public notice, comment, and hearing requirements set forth in
10 section 513 of this Act.

11
12 SEC. 512. Coal Exploration Permits

13 A. Coal exploration operations which substantially disturb the natural land surface
14 shall be conducted in accordance with exploration regulations issued by the
15 NSCMP. Such regulations shall include, at a minimum: (1) the requirement that
16 prior to conducting any exploration under this section, any person must file with
17 the NSCMP an application for a permit to conduct coal exploration, which shall
18 include a description of the exploration area, a description of the methods and
19 equipment to be used to conduct the coal exploration, and the period of supposed
20 exploration, and (2) provisions for reclamation, in accordance with the
21 performance standards in section 515 of this Act, of all lands disturbed in
22 exploration, including excavations, roads, drill holes, and the removal of
23 necessary facilities and equipment.

24 B. Information submitted to the NSCMP pursuant to this subsection as
25 confidential, concerning trade secrets or privileged commercial or financial
26 information which relates to the competitive rights of the person or entity
27 intending to explore the described area, shall not be available for public
28 examination.

1 C. Any person who conducts any coal exploration activities which substantially
2 disturb the natural land surface in violation of this section or regulations issued
3 pursuant thereto shall be subject to the provisions of section 518 of this Act.

4 D. No operator shall conduct coal exploration without the specific written
5 approval of, and a coal exploration permit issued by, the NSCMP.

6 E. Coal exploration on Federal lands shall be governed by section 4 of the Federal
7 Coal Leasing Amendments Act of 1976 (90 Stat. 1085).

8
9 SEC. 513. Public Notice and Informal Conferences

10 A. At the time of submission of an application for a surface coal mining and
11 reclamation permit, or revision of an existing permit, pursuant to the provisions of
12 this Act, the applicant shall submit to the NSCMP a copy of his or her
13 advertisement of the ownership, precise location, and boundaries of the land to be
14 affected. The advertisement shall provide for a public comment period on the
15 application of at least 30 days following the publication of the last advertisement,
16 and shall include notice of an informal conference if the NSCMP determines there
17 is sufficient interest in the application. As soon as the NSCMP approves the form
18 and content of the advertisement, the applicant shall place such advertisement in a
19 local newspaper of general circulation in the locality of the proposed surface mine
20 at least once a week for four consecutive weeks, as required by section 507(B)(6)
21 of this Act. The NSCMP shall notify appropriate agencies of the Navajo Nation,
22 various local governmental bodies, planning agencies, sewage and water
23 treatment authorities, and water companies in the locality in which the proposed
24 surface mining will take place, notifying them of the operator's intention to
25 surface mine a particularly described tract of land and indicating the application's
26 permit number and where a copy of the proposed mining and reclamation plan
27 may be inspected. These local bodies, agencies, authorities, or companies may
28 submit written comments on the mining application, within the public comment
29 period, with respect to the effects of the proposed operation on the environment
30 which are within their area of responsibility. Such comments shall immediately

1 be transmitted to the applicant by the NSCMP and be made available to the public
2 at the same location(s) as the mining application.

3 B. Any person having an interest which is or may be adversely affected or the
4 officer or head of any Navajo Nation, federal, or local governmental agency or
5 authority shall have the right to file written objections to the proposed initial or
6 revised application for a permit for surface coal mining and reclamation operation
7 with the NSCMP within 30 days after the last publication of the above notice and
8 request an informal conference on the application if one has not already been
9 scheduled pursuant to subsection (A) of this section. Such objections shall
10 immediately be transmitted to the applicant by the NSCMP and shall be made
11 available to the public. If written objections are filed and an informal conference
12 is requested, the NSCMP shall hold the conference in the locality of the proposed
13 mining and reclamation operation if requested within a reasonable time of the
14 receipt of such objections or request. If not already advertised under subsection
15 (A) of this section, the date, time and location of the conference shall be
16 advertised by the NSCMP in a newspaper of general circulation in the locality at
17 least two weeks prior to the scheduled conference date. The NSCMP may arrange
18 with the applicant, upon request by any party, access to the proposed mining area
19 for the purpose of gathering information relevant to the conference. An electronic
20 or stenographic record shall be made of the informal conference. Such record
21 shall be maintained and be accessible to the parties until final release of the
22 applicant's performance bond. In the event all parties requesting the informal
23 conference withdraw their request prior to the informal conference, such informal
24 conference need not be held.

25
26 SEC. 514. Decisions of the Navajo Surface Coal Mining Program and Appeals

27 A. If an informal conference has been held pursuant to section 513(B) of this Act,
28 the NSCMP shall issue and furnish the applicant for a permit and persons who are
29 parties to the administrative proceedings with the written finding of the NSCMP,
30

1 granting or denying the permit in whole or in part and stating the reasons therefor,
2 within the 60 days of said hearings.

3 B. If there has been no informal conference held pursuant to section 513(B) of
4 this Act, the NSCMP shall notify the applicant for a permit within a reasonable
5 time as determined by the NSCMP and set forth in regulations, taking into
6 account the time needed for proper investigation of the site, the complexity of the
7 permit application, and whether or not written objection to the application has
8 been filed, whether the application has been approved or disapproved in whole or
9 part.

10 C. If the application is approved, the permit shall be issued. If the application is
11 disapproved, specific reasons therefor must be set forth in the notification. Within
12 30 days after the applicant is notified of the final decision of the NSCMP on the
13 permit application, the applicant or any person with an interest which is or may be
14 adversely affected may request a hearing on the reasons for the final
15 determination. The NNOHA shall hold a hearing within 30 days of such request
16 and provide notification to all interested parties at the time that the applicant is so
17 notified. Such hearing shall be of record, adjudicatory in nature and no person
18 who presided at a conference under section 513(B) of this Act shall either preside
19 at the hearing or participate in this decision thereon or in any administrative
20 appeal therefrom. Within 30 days after the hearing the NNOHA shall issue and
21 furnish the applicant, and all persons who participated in the hearing, with the
22 written decision of the NNOHA granting or denying the permit in whole or in part
23 and stating the reasons therefor.

24 D. Where a hearing is requested pursuant to subsection (C) of this section, the
25 NNOHA may, under such conditions as it may prescribe, grant such temporary
26 relief as it deems appropriate pending final determination of the proceedings if –
27 1. all parties to the proceedings have been notified and given an opportunity to be
28 heard on a request for temporary relief;

1 2. the person requesting such relief shows that there is a substantial likelihood that
2 he or she will prevail on the merits of the final determination of the proceeding;
3 and

4 3. such relief will not adversely affect the public health or safety or cause
5 significant imminent environmental harm to land, air, or water resources.

6 E. For the purpose of such hearing, the NNOHA may administer oaths, subpoena
7 witnesses, or written or printed materials, compel attendance of witnesses, or
8 production of the materials, and take evidence including but not limited to site
9 inspections of the land to be affected and other surface coal mining operations
10 carried on by the applicant in the general vicinity of the proposed operation. A
11 verbatim record of each public hearing required by this Act shall be made, and a
12 transcript made available on the motion of any party or by order of the NNOHA.

13 F. Any applicant or any person with an interest which is or may be adversely
14 affected, who has participated in the administrative proceedings as an objector,
15 and who is aggrieved by the final permit decision of the NNOHA, or if the
16 NSCMP or the NNOHA fails to act within the time limits specified in this Act,
17 shall have the right to appeal the final permit decision in accordance with section
18 526 of this Act.

19
20 SEC. 515. Performance Standards

21 A. Any permit issued under the Navajo regulatory program to conduct surface
22 coal mining operations shall require that such surface coal mining operations will
23 meet all applicable performance standards of this Act, and such other
24 requirements as the NSCMP shall promulgate in the Navajo regulatory program.

25 B. General performance standards shall be applicable to all surface coal mining
26 and reclamation operations and shall require an operation as a minimum to —

27 1. conduct surface coal mining operations so as to maximize the utilization and
28 conservation of the solid fuel resource being recovered so that reffecting the land
29 in the future through surface coal mining can be minimized or eliminated;
30

1 2. restore the land affected to a condition capable of supporting the uses which it
2 was capable of supporting prior to any mining, or higher or better uses of which
3 there is reasonable likelihood, so long as such use or uses do not present any
4 actual or probable hazard to public health or safety or pose any actual or probable
5 threat of water diminution or pollution, and the permit applicant's declared
6 proposed land use following reclamation is not deemed to be impractical or
7 unreasonable, inconsistent with applicable land-use policies and plans, involves
8 unreasonable delay in implementation, or violates federal or Navajo Nation law or
9 applicable laws of states or local governments;

10 3. with respect to all surface coal mining operations, backfill, compact (where
11 advisable to ensure stability or to prevent leaching of toxic materials), and grade
12 in order to restore the approximate original contour of the land with all highwalls,
13 spoil piles, and depressions eliminated (unless small depressions are needed in
14 order to retain moisture to assist revegetation or as otherwise authorized pursuant
15 to this Act): Provided, however, that in surface coal mining which is carried out
16 at the same location over a substantial period of time where the operation
17 transects the coal deposit and the thickness of the coal deposits relative to the
18 volume of the overburden is large, and where the operator demonstrates that the
19 overburden and other spoil and waste materials at a particular point in the permit
20 area or otherwise available from the entire permit area is insufficient, giving due
21 consideration to volumetric expansion, to restore the approximate original
22 contour, the operator, at a minimum, shall backfill, grade, and compact (where
23 advisable) using all available overburden and other spoil and waste materials to
24 attain the lowest practicable grade but not more than the angle of repose, to
25 provide adequate drainage and to cover all acid-forming and other toxic materials,
26 in order to achieve an ecologically sound land use compatible with the
27 surrounding region: And provided further, that in surface coal mining where the
28 volume of overburden is large relative to the thickness of the coal deposit and
29 where the operator demonstrates that due to volumetric expansion the amount of
30 overburden and other spoil and waste materials removed in the course of the

1 mining operation is more than sufficient to restore the approximate original
2 contour, the operator shall after restoring the approximate contour, backfill, grade
3 and compact (where advisable) the excess overburden and other spoil and waste
4 materials to attain the lowest grade but not more than the angle of repose, and to
5 cover all acid-forming and other toxic materials, in order to achieve an
6 ecologically sound land use compatible with the surrounding region and that such
7 overburden or spoil shall be shaped and graded in such a way as to prevent slides,
8 erosion, and water pollution and shall be revegetated in accordance with the
9 requirements of this Act;

10 4. stabilize and protect all surface areas, including spoil piles affected by the
11 surface coal mining and reclamation operation, to effectively control erosion and
12 attendant air and water pollution;

13 5. remove the topsoil from the land in a separate layer, replace it on the backfill
14 area, or if not utilized immediately, segregate it in a separate pile from other spoil,
15 and when the topsoil is not replaced on a backfill area within a time short enough
16 to avoid deterioration of the topsoil, maintain a successful cover thereafter by
17 quick-growing plants or other means so that the topsoil is preserved from wind
18 and water erosion, remains free of any contamination by other acid or toxic
19 materials, and is in a usable condition for sustaining vegetation when restored
20 during reclamation, except if the topsoil is of insufficient quantity or of poor
21 quality for sustaining vegetation, or if other strata can be shown to be more
22 suitable for vegetation requirements, then the operator shall remove, segregate,
23 and preserve in a like manner such other strata which are best able to support
24 vegetation;

25 6. restore the topsoil or the best available subsoil which is best able to support
26 vegetation;

27 7. for all prime farmlands, as identified in section 507(B)(16) of this Act, to be
28 mined and reclaimed, soil removal, storage, replacement, and reconstruction shall
29 be conducted according to specifications established by the Natural Resources
30 Conservation Service, and the operator shall, as a minimum, be required to —

1 a. segregate the A horizon of the natural soil, except where it can be shown that
2 other available soil materials will create a final soil having a greater productive
3 capacity; and if not utilized immediately, stockpile this material separately from
4 other spoil, and provide needed protection from wind and water erosion or
5 contamination by other acid or toxic material;

6 b. segregate the B horizon of the natural soil, or underlying C horizons or other
7 strata, or a combination of such horizons or other strata that are shown to be both
8 texturally and chemically suitable for plant growth and that can be shown to be
9 equally or more favorable for plant growth than the B horizon, in sufficient
10 quantities to create in the regraded final soil a root zone of comparable depth and
11 quality to that which existed in the natural soil; and if not utilized immediately,
12 stockpile this material separately from other spoil, and provide needed protection
13 from wind and water erosion or contamination by other acid or toxic material;

14 c. replace and regrade the root zone material described in subparagraph (b) of this
15 subsection with proper compaction and uniform depth over the regraded spoil
16 material; and

17 d. redistribute and grade in a uniform manner the surface soil horizon described in
18 subparagraph (a) of this subsection;

19 8. create, if authorized in the approved surface coal mining and reclamation plan
20 and permit, permanent impoundments of water on mining sites as part of
21 reclamation activities only when it is adequately demonstrated that:

22 a. the size of the impoundment is adequate for its intended purposes;

23 b. the impoundment dam construction will be so designed as to achieve the
24 necessary stability with an adequate margin of safety compatible with that of
25 structures constructed under Public Law 83-566 (16 U.S.C. 1006);

26 c. the quality of impounded water will be suitable on a permanent basis for its
27 intended use and that discharges from the impoundment will not degrade the
28 water quality in the receiving stream below water quality standards established
29 pursuant to applicable federal, Navajo Nation, state, and non-Navajo tribal laws;

30 d. the level of water will be reasonably stable;

1 e. final grading will provide adequate safety and access for proposed water users;
2 and

3 f. such water impoundments will not result in the diminution of the quality or
4 quantity of water utilized by adjacent or surrounding landowners, water users, and
5 authorized land users for agricultural, industrial, recreational, or domestic uses;

6 9. conduct any augering or highwall mining operation associated with surface
7 mining in a manner to maximize the recoverability of mineral reserves remaining
8 after the operation and reclamation are complete and seal all auger or highwall
9 mining holes with an impervious and noncombustible material in order to prevent
10 drainage except where the NSCMP determines that the resulting impoundment of
11 water in such auger or highwall mining holes may create a hazard to the
12 environment or to public health or safety: Provided, that the NSCMP may
13 prohibit augering or highwall mining if necessary to maximize the utilization,
14 recoverability, or conservation of the solid fuel resources or to protect against
15 adverse water quality impacts;

16 10. minimize the disturbances to the prevailing hydrologic balance at the mine
17 site and in associated offsite areas, and to the quality and quantity of water in
18 surface water and groundwater systems both during and after surface coal mining
19 operations and during reclamation by —

20 a. avoiding acid or other toxic mine drainage by such measures as, but not limited
21 to —

22 i. preventing or removing water from contact with toxic-producing deposits;

23 ii. treating drainage to reduce toxic content which adversely affects downstream
24 water upon being released to watercourses;

25 iii. casing, sealing, or otherwise managing boreholes, shafts, and wells and
26 keeping acid or other toxic drainage from entering surface water and
27 groundwater;

28 b. conducting surface coal mining operations so as to prevent, to the extent
29 possible using the best technology currently available, additional contributions of
30 suspended solids to streamflow, or runoff outside the permit area, but in no event

1 shall contributions be in excess of requirements set by applicable federal, Navajo
2 Nation, state, and non-Navajo tribal law; and constructing any siltation structures
3 pursuant to this subsection prior to commencement of surface coal mining
4 operations, such structures to be certified by a qualified registered engineer or a
5 qualified professional land surveyor registered by any State that authorizes land
6 surveyors to prepare and certify such maps or plans that they are constructed as
7 designed and as approved in the reclamation plan;

8 c. cleaning out and removing temporary or large settling ponds or other siltation
9 structures from drainways after disturbed areas are revegetated and stabilized, and
10 depositing the silt and debris at a site and in a manner approved by the NSCMP;

11 d. restoring recharge capacity of the mined area to approximate premining
12 conditions;

13 e. avoiding channel deepening or enlargement in operations requiring the
14 discharge of water from mines;

15 f. preserving, throughout the mining and reclamation process, the essential
16 hydrologic functions of alluvial valley floors; and

17 g. such other actions as the NSCMP may prescribe;

18 11. with respect to the surface disposal of mine wastes, tailings, coal processing
19 wastes, and other wastes in areas other than the mine workings or excavations,
20 stabilize all waste piles in designated areas through construction in compacted
21 layers, including the use of incombustible and impervious materials if necessary,
22 and ensure that the final contour of the waste pile will be compatible with natural
23 surroundings and that the site can and will be stabilized and revegetated according
24 to the provisions of this Act;

25 12. refrain from surface coal mining within 500 feet of active and abandoned
26 underground mines in order to prevent breakthroughs and to protect the health or
27 safety of miners: Provided, that the NSCMP shall permit an operator to mine
28 near, through, or partially through an abandoned underground mine or closer to an
29 active underground mine if (A) the nature, timing, and sequencing of the
30 approximate coincidence of specific surface mine activities with specific

1 underground mine activities are jointly approved by the NSCMP and the
2 appropriate regulatory authority concerned with the health and safety of
3 underground miners, and (B) such operations will result in improved resource
4 recovery, the abatement of water pollution, or the elimination of hazards to public
5 health and safety;

6 13. design, locate, construct, operate, maintain, enlarge, modify, and remove or
7 abandon, in accordance with the standards and criteria of 30 CFR 816.81 through
8 816.87, all existing and new coal mine waste piles consisting of mine wastes,
9 tailings, coal processing wastes, or other liquid and solid wastes, and used either
10 temporarily or permanently as dams or embankments;

11 14. ensure that all debris, acid-forming materials, toxic materials, or materials
12 constituting a fire hazard are treated or buried and compacted or otherwise
13 disposed of in a manner designed to prevent the contamination of surface water or
14 groundwater and that contingency plans are developed to prevent sustained
15 combustion;

16 15. ensure that explosives are used only in accordance with existing Navajo
17 Nation and federal law and the regulations promulgated by the NSCMP, which
18 shall include provisions to —

19 a. provide adequate advance written notice to local governments, residents, and
20 authorized land users who might be affected by the use of such explosives by
21 publication of the planned blasting schedule in a newspaper of general circulation
22 in the locality, and by mailing a copy of the proposed blasting schedule to every
23 resident living within ½ mile of the proposed blasting site, and by providing daily
24 notice to resident/occupiers in such areas prior to any blasting;

25 b. maintain for a period of at least three years, and make available for public
26 inspection upon request, a log detailing the location of the blasts, the pattern and
27 depth of the drill holes, the amount of explosive used per hole, and the order and
28 length of delay in the blasts;

29 c. limit the type of explosives and detonating equipment and the size, the timing
30 and the frequency of blasts based upon the physical conditions of the site so as to

1 prevent (i) injury to persons, (ii) damage to public and private property outside the
2 permit area, (iii) adverse impacts on any underground mine, and (iv) change in the
3 course, channel, or availability of ground or surface water outside the permit area;

4 d. require that all blasting operations be conducted by trained and competent
5 persons as certified by the NSCMP;

6 e. provide that upon the request of a resident or owner of a manmade dwelling or
7 structure within ½ mile of any portion of the permitted area the applicant or
8 permittee shall conduct a pre-blasting survey of such structures and submit the
9 survey to the NSCMP and a copy to the resident or owner making the request.
10 The area of the survey shall be decided by the NSCMP and shall include such
11 provisions as the NSCMP shall promulgate;

12 16. ensure that all reclamation efforts proceed in an environmentally sound
13 manner and as contemporaneously as practicable with the surface coal mining
14 operations: Provided, however, that where the applicant proposes to combine
15 surface mining operations with underground mining operations to ensure
16 maximum practical recovery of the mineral resources, the NSCMP may grant a
17 variance for specific areas within the reclamation plan from the requirement that
18 reclamation efforts proceed as contemporaneously as practicable to permit
19 underground mining operations prior to reclamation:

20 a. if the NSCMP finds in writing that —

21 i. the applicant has presented, as part of the permit application, specific, feasible
22 plans for the proposed underground mining operations;

23 ii. the proposed underground mining operations are necessary or desirable to
24 ensure maximum practical recovery of the mineral resource and will avoid
25 multiple disturbances of the surface;

26 iii. the applicant has satisfactorily demonstrated that the plan for the underground
27 mining operations conforms to requirements for underground mining in the
28 jurisdiction and that permits necessary for the underground mining operations
29 have been issued by the appropriate authority;
30

1 iv. the areas proposed for the variance have been shown by the applicant to be
2 necessary for implementing the proposed underground mining operations;
3 v. no substantial adverse environmental damage, either on- or offsite, will result
4 from the delay in completion of reclamation as required by this Act;
5 vi. provisions for the offsite storage of spoil will comply with section 515(B)(22)
6 of this Act;
7 b. if the NSCMP has promulgated specific regulations to govern the granting of
8 such variances in accordance with the provisions of this subsection and section
9 501 of this Act, and has imposed such additional requirements as it deems
10 necessary;
11 c. if variances granted under the provisions of this subsection are to be reviewed
12 by the NSCMP not more than three years from the date of issuance of the permit;
13 and
14 d. if liability under the performance bond filed by the applicant with the NSCMP
15 pursuant to section 509(B) of this Act shall last for the duration of the
16 underground mining operations and until the requirements of sections 515(B) and
17 519 of this Act have been fully complied with;
18 17. ensure that the construction, maintenance, and postmining conditions of
19 access roads into and across the site of operations will control or prevent erosion
20 and siltation, pollution of water, damage to fish or wildlife or their habitat, or
21 public or private property;
22 18. refrain from constructing roads or other access up a stream bed or drainage
23 channel or in such proximity to such channel so as to seriously alter the normal
24 streamflow;
25 19. establish on the regraded areas, and all other lands affected, a diverse,
26 effective, and permanent vegetative cover of the same seasonal variety native to
27 the area of land affected and capable of self-regeneration and plant succession at
28 least equal in extent of cover to the natural vegetation of the area; except that
29 introduced species may be used in the revegetation process where desirable and
30 necessary to achieve the approved postmining land-use plan;

1 20. assume the responsibility for successful vegetation, as required by paragraph
2 (19) of this subsection, for a period of at least 10 full years after the last year of
3 augmented seeding, fertilizing, irrigation, or other work: Provided, that when the
4 NSCMP approves a long-term intensive agricultural postmining land use, the
5 period of responsibility for revegetation shall commence at the date of initial
6 planting for such long-term intensive agricultural postmining land use: Provided
7 further, that when the NSCMP issues a written finding approving a long-term
8 intensive agricultural postmining land use as part of the mining and reclamation
9 plan, the NSCMP may grant exception to the provisions of paragraph (19) of this
10 subsection;

11 21. protect offsite areas from slides or damage occurring during the surface coal
12 mining and reclamation operations, and not deposit spoil material or locate any
13 part of the operations or waste accumulations outside the permit area;

14 22. place all excess spoil material resulting from coal surface mining and
15 reclamation activities in such a manner that:

16 a. spoil is transported and placed in a controlled manner in position for concurrent
17 compaction and in such a way to ensure mass stability and to prevent mass
18 movement, provided that excess spoil shall not be disposed in head-of-hollow fills
19 or valley fills;

20 b. the areas of disposal are within the bonded permit areas and all organic matter
21 shall be removed immediately prior to spoil placement;

22 c. appropriate surface and internal drainage systems and diversion ditches are
23 used so as to prevent spoil erosion and movement;

24 d. the disposal area does not contain springs, natural watercourses or wet weather
25 seeps unless lateral drains are constructed from the wet areas to the main
26 underdrains in such a manner that filtration of the water into the spoil pile will be
27 prevented;

28 e. if placed on a slope, the spoil is placed upon the most moderate slope among
29 those upon which, in the judgment of the NSCMP, the spoil could be placed in
30 compliance with all the requirements of this Act, and shall be placed, where

1 possible, upon, or above, a natural terrace, bench, or berm, if such placement
2 provides additional stability and prevents mass movement;

3 f. where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient
4 size to prevent mass movement, is constructed;

5 g. the final configuration is compatible with the natural drainage pattern and
6 surroundings and is suitable for intended uses;

7 h. design of the spoil disposal area is certified by a qualified registered
8 professional engineer in conformance with professional standards; and

9 i. all other provisions of this Act are met;

10 23. meet such other criteria as are necessary to achieve reclamation in accordance
11 with the purposes of this Act, taking into consideration the physical,
12 climatological, and other characteristics of the site;

13 24. to the extent possible, using the best technology currently available, minimize
14 disturbances and adverse impacts of the operation on fish, wildlife, and related
15 environmental values, and enhance such resources where practicable; and

16 25. provide for an undisturbed natural barrier beginning at the elevation of the
17 lowest coal seam to be mined and extending from the outslope for such distance
18 as the NSCMP shall determine shall be retained in place as a barrier to slides and
19 erosion.

20 C. The following performance standards shall be applicable to steep-slope surface
21 coal mining and shall be in addition to those general performance standards
22 required by this section: Provided, however, That the provisions of this
23 subsection (C) shall not apply to those situations in which an operator is mining
24 on flat or gently rolling terrain, on which an occasional steep slope is encountered
25 through which the mining operation is to proceed, leaving a plain or
26 predominantly flat area:

27 1. Ensure that when performing surface coal mining on steep slopes, no debris,
28 abandoned or disabled equipment, spoil material, or waste mineral matter be
29 placed on the downslope below the bench or mining cut: Provided, That spoil
30 material in excess of that required for the reconstruction of the approximate

1 original contour under the provisions of paragraph 515(B)(3) or 515(C)(2) of this
2 Act shall be permanently stored pursuant to section 515(B)(22) of this Act.

3 2. Complete backfilling with spoil material shall be required to cover completely
4 the highwall and return the site to the appropriate original contour, which material
5 will maintain stability following mining and reclamation.

6 3. The operator may not disturb land above the top of the highwall unless the
7 NSCMP finds that such disturbance will facilitate compliance with the
8 environmental protection standards of this section: Provided, however, that the
9 land disturbed above the highwall shall be limited to that amount necessary to
10 facilitate said compliance.

11
12 SEC. 516. Surface Effects of Underground Coal Mining Operations

13 A. The NSCMP shall promulgate rules and regulations directed toward the
14 surface effects of underground mining operations, embodying the following
15 requirements and in accordance with the procedures established under section 501
16 of this Act: Provided, however, that in adopting any rules and regulations, the
17 NSCMP shall consider the distinct difference between surface coal mining and
18 underground coal mining. Such rules and regulations shall not conflict with nor
19 supersede any provision of the Federal Coal Mine Health and Safety Act of 1969
20 nor any regulation issued pursuant thereto, and shall be consistent with the
21 applicable requirements of 30 CFR Chapter VII.

22 B. Each permit issued under the Navajo regulatory program pursuant to this Act
23 and relating to underground coal mining shall require the operator to -

24 1. adopt measures consistent with known technology in order to prevent
25 subsidence causing material damage to the extent technologically and
26 economically feasible, maximize mine stability, and maintain the value and
27 reasonably foreseeable use of such surface lands, except in those instances where
28 the mining technology used requires planned subsidence in a predictable and
29 controlled manner: Provided, That nothing in this subsection shall be construed
30 to prohibit the standard method of room and pillar mining;

1 2. seal all portals, entryways, drifts, shafts, or other openings between the surface
2 and underground mine working when no longer needed for the conduct of the
3 mining operations;

4 3. fill or seal exploratory holes no longer necessary for mining, maximizing to the
5 extent technologically and economically feasible return of mine and processing
6 waste, tailings, and any other waste incident to the mining operation, to the mine
7 workings or excavations;

8 4. with respect to surface disposal of mine wastes, tailings, coal processing
9 wastes, and other wastes in areas other than the mine workings or excavations,
10 stabilize all waste piles created by the permittee from current operations through
11 construction in compacted layers including the use of incombustible and
12 impervious materials if necessary and ensure that the leachate will not degrade
13 below water quality standards established pursuant to applicable federal, Navajo
14 Nation, state, and non-Navajo tribal law surface waters or groundwaters, that the
15 final contour of the waste accumulation will be compatible with natural
16 surroundings, and that the site is stabilized and revegetated according to the
17 provisions of this section;

18 5. design, locate, construct, operate, maintain, enlarge, modify, and remove, or
19 abandon, in accordance with the standards and criteria of 30 CFR 817.81 through
20 817.87, all existing and new coal mine waste piles consisting of mine wastes,
21 tailings, coal processing wastes, or other liquid and solid wastes and used either
22 temporarily or permanently as dams or embankments;

23 6. establish on regraded areas and all other lands affected, a diverse and
24 permanent vegetative cover capable of self-regeneration and plant succession and
25 at least equal in extent of cover to the natural vegetation of the area;

26 7. protect offsite areas from damages which may result from such mining
27 operations;

28 8. eliminate fire hazards and otherwise eliminate conditions which constitute a
29 hazard to health and safety of the public;

1 9. minimize the disturbances of the prevailing hydrologic balance at the minesite
2 and in associated offsite areas and to the quantity of water in surface water and
3 groundwater systems both during and after coal mining operations and during
4 reclamation by-

5 a. avoiding acid or other toxic mine drainage by such measures as, but not limited
6 to --

7 i. preventing or removing water from contact with toxic producing deposits;

8 ii. treating drainage to reduce toxic content which adversely affects downstream
9 water upon being released to water courses;

10 iii. casing, sealing, or otherwise managing boreholes, shafts, and wells to keep
11 acid or other toxic drainage from entering ground and surface waters; and

12 b. conducting surface coal mining operations so as to prevent, to the extent
13 possible using the best technology currently available, additional contributions of
14 suspended solids to streamflow or runoff outside the permit area (but in no event
15 shall such contributions be in excess of requirements set by applicable federal,
16 Navajo Nation, state, or non-Navajo tribal law), and avoiding channel deepening
17 or enlargement in operations requiring the discharge of water from mines;

18 10. with respect to other surface impacts not specified in this subsection including
19 the construction of new roads or the improvement or use of existing roads to gain
20 access to the site of such activities and for haulage, repair areas, storage areas,
21 processing areas, shipping areas, and other areas upon which are sited structures,
22 facilities, or other property or materials on the surface, resulting from or incident
23 to such activities, operate in accordance with the standards established under
24 section 515 of this Act for such effects which result from surface coal mining
25 operations: Provided, That the Program Manager shall make such modifications
26 in the requirements imposed by this subparagraph as are necessary to
27 accommodate the distinct difference between surface and underground coal
28 mining;

29 11. to the extent possible using the best technology currently available, minimize
30 disturbances and adverse impacts of the operation on fish, wildlife, and related

1 environmental values, and achieve enhancement of such resources where
2 practicable;

3 12. locate openings for all new drift mines working acid-producing or iron-
4 producing coal seams in such a manner as to prevent a gravity discharge of water
5 from the mine.

6 C. In order to protect the stability of the land, the NSCMP shall suspend
7 underground coal mining under urbanized areas, cities, towns, and communities
8 and adjacent to industrial or commercial buildings, major impoundments, or
9 permanent streams if he or she finds imminent danger to inhabitants of the
10 urbanized areas, cities, towns, and communities.

11 D. The provisions of this Act relating to permits, bonds, inspections and
12 enforcement, public review, and administrative and judicial review shall be
13 applicable to surface operations and surface impacts incident to an underground
14 coal mine with such modifications to the permit application requirements, permit
15 approval or denial procedures, and bond requirements as are necessary to
16 accommodate the distinct difference between surface and underground coal
17 mining. The Program Manager shall promulgate such modifications in
18 accordance with the rulemaking procedure established in section 501 of this Act
19 and shall ensure that such modifications are consistent with the applicable
20 provisions of 30 CFR Chapter VII.

21
22 SEC. 517. Inspections and Monitoring

23 A. For the purpose of developing, enforcing, and administering the Navajo
24 regulatory program under this Act, or in the administration and enforcement of
25 any permit under this Act, or of determining whether any person is in violation of
26 any requirement of the Navajo regulatory program or any other requirements of
27 this Act—

28 1. the NSCMP shall require any permittee to (A) establish and maintain
29 appropriate records, (B) make monthly reports to the NSCMP, (C) install, use,
30 and maintain any necessary monitoring equipment or methods, (D) evaluate

1 results in accordance with such methods, at such locations and intervals, and in
2 such manner as the NSCMP shall prescribe, and (E) provide such other
3 information relative to surface coal mining and reclamation operations as the
4 NSCMP deems reasonable and necessary;

5 2. for those surface coal mining and reclamation operations which remove or
6 disturb strata that serve as aquifers which significantly ensure the hydrologic
7 balance of water use either on or off the mining site, the NSCMP shall specify
8 those—

9 a. monitoring sites to record the quantity and quality of surface drainage above
10 and below the mine site as well as in the potential zone of influence;

11 b. monitoring sites to record level, amount, and samples of groundwater and
12 aquifers potentially affected by the mining and also directly below the lowermost
13 (deepest) coal seam to be mined;

14 c. records of well logs and borehole data to be maintained; and

15 d. monitoring sites to record precipitation. The monitoring data collection and
16 analysis required by this section shall be conducted according to standards and
17 procedures set forth by the NSCMP in order to ensure their reliability and
18 validity; and

19 3. the authorized representatives of the Program Manager, without advance notice
20 and upon presentation of appropriate credentials: (A) shall have the right of entry
21 to, upon, or through any surface coal mining and reclamation operations or any
22 premises in which any records required to be maintained under paragraph (1) of
23 this subsection are located; and (B) may at reasonable times, and without delay,
24 have access to and copy any record or inspect any monitoring equipment or
25 method of operation required under this Act.

26 B. The inspections by the NSCMP shall (1) occur on an irregular basis averaging
27 not less than one partial inspection per month and one complete inspection per
28 calendar quarter for the surface coal mining and reclamation operation covered by
29 each permit; (2) occur without prior notice to the permittee or his or her agents or
30 employees except for necessary onsite meetings with the permittee; and (3)

1 include the filing of inspection reports adequate to enforce the requirements of
2 and to carry out the terms and purposes of this Act.

3 C. Each permittee shall conspicuously maintain at the entrances to the surface
4 coal mining and reclamation operations a clearly visible sign which sets forth the
5 name, business address, and phone number of the permittee and the permit
6 number of the surface coal mining and reclamation operations. Such sign shall
7 include the following — “Mining and Reclamation Operations are regulated by
8 the NAVAJO SURFACE COAL MINING PROGRAM.”

9 D. Each inspector, upon detection of each violation of any requirement of the
10 Navajo regulatory program or this Act, shall forthwith notify the operator in
11 writing, and shall report in writing any such violation to the NSCMP.

12 E. Copies of any records, reports, inspection materials, or information obtained
13 under this Act by the NSCMP shall be made immediately available to the public
14 at central and sufficient locations in the Navajo Nation and in the Chapter offices
15 of the Navajo Nation Chapters within which the surface coal mining operation is
16 located so that they are conveniently available to residents in the areas of mining.

17 F. Review; procedures for inspection

18 1. Any person who is or may be adversely affected by a surface mining operation
19 may notify the Program Manager or his or her authorized representative, in
20 writing, of any violation of this Act which he or she has reason to believe exists at
21 the surface mining site. The Program Manager shall, by regulation, establish
22 procedures for the informal review of any refusal by a representative of the
23 Program Manager to issue a citation with respect to any such alleged violation.
24 The Program Manager shall furnish such persons requesting the review a written
25 statement of the reasons for the Program Manager's final disposition of the case.

26 2. The Program Manager shall also, by regulation, establish procedures to ensure
27 that adequate and complete inspections are made. Any person may notify the
28 Program Manager of any failure to make such inspections, after which the
29 Program Manager shall determine whether adequate and complete inspections
30 have been made. The Program Manager shall furnish such persons a written

1 statement of the reasons for the Program Manager's determination that adequate
2 and complete inspections have or have not been conducted.

3
4 SEC. 518. Penalties

5 A. In the enforcement of the Navajo regulatory program and this Act, any
6 permittee who violates any permit condition, or who violates any other provision
7 of this Act, may be assessed a civil penalty by the NSCMP, provided that if such
8 violation leads to the issuance of a cessation order under section 521 of this Act,
9 the civil penalty shall be assessed. Such penalty shall not exceed \$12,000 for
10 each violation. Each day of continuing violation may be deemed a separate
11 violation for purposes of penalty assessments. In determining the amount of the
12 penalty, consideration shall be given to the permittee's history of previous
13 violations at the particular surface coal mining operation; the seriousness of the
14 violation, including any irreparable harm to the environment and any hazard to
15 public health or safety; whether the permittee was negligent; and the
16 demonstrated good faith of the permittee so charged in attempting to achieve
17 rapid compliance after notification of the violation.

18 B. A civil penalty shall be assessed by the NSCMP only after the person charged
19 with a violation described under subsection (A) of this section has been given an
20 opportunity for an administrative hearing. Where such an administrative hearing
21 has been held, the NNOHA shall make findings of fact, and it shall issue a written
22 decision as to the occurrence of the violation and the amount of the penalty which
23 is warranted, incorporating, when appropriate, an order therein requiring that the
24 penalty be paid. When appropriate, the NNOHA shall consolidate such hearings
25 with other proceedings under section 521 of this Act. Any administrative hearing
26 under this section shall be on the record and conducted in accordance with the
27 regulations for administrative hearings promulgated pursuant to section 201(C)(2)
28 of this Act. Where the person charged with such a violation fails to avail himself
29 of the opportunity for an administrative hearing, a civil penalty shall be assessed
30 by the NSCMP after the NSCMP has determined that a violation did occur and

1 the amount of the penalty which is warranted and has issued an order requiring
2 that the penalty be paid.

3 C. Upon the issuance of a notice or order charging that a violation of this Act has
4 occurred, the NSCMP shall inform the operator within 30 days of the proposed
5 amount of said penalty. The person charged with the penalty shall then have 30
6 days to pay the proposed penalty in full or, if the person wishes to contest either
7 the amount of the penalty or the fact of the violation, forward the proposed
8 amount to the NSCMP for placement in an escrow account. Failure to forward
9 the money to the NSCMP within 30 days shall result in a waiver of all legal rights
10 to contest the violation or the amount of the penalty. If through administrative or
11 judicial review of the proposed penalty, it is determined that no violation
12 occurred, or that the amount of the penalty should be reduced, the NSCMP shall
13 within 30 days remit the appropriate amount to the person, with interest at the rate
14 of six percent, or at the prevailing U.S. Department of the Treasury rate,
15 whichever is greater.

16 D. Civil penalties owed under this Act may be recovered in a civil action brought
17 by the Attorney General, at the request of the Program Manager, in the Navajo
18 Nation District Court for the District of Window Rock.

19 E. Any person who willfully and knowingly violates a condition of a permit
20 issued pursuant to the Navajo regulatory program or fails or refuses to comply
21 with any order issued under section 521 or section 526 of this Act, or any order
22 incorporated in a final decision issued by the Program Manager or NNOHA under
23 this Act, except an order incorporated in a decision issued under subsection (B) of
24 this section, shall, upon conviction, be subject to the sanctions and penalties of
25 SMCRA section 518(e). Any criminal actions associated with surface coal
26 mining and reclamation operations on Navajo regulatory program lands are
27 enforced by OSMRE under SMCRA section 518. The NSCMP will notify
28 OSMRE of such potential criminal actions and recommend that OSMRE pursue
29 criminal penalties under SMCRA.

1 F. Whenever a corporate permittee violates a condition of a permit issued
2 pursuant to the Navajo regulatory program or fails or refuses to comply with any
3 order issued under section 521 of this Act, or any order incorporated in a final
4 decision issued by the Program Manager or NNOHA under this Act except an
5 order incorporated in a decision issued under subsection (B) of this section, any
6 director, officer, or agent of such corporation who willfully and knowingly
7 authorized, ordered, or carried out such violation, failure, or refusal shall be
8 subject to the same civil penalties, fines, and imprisonment that may be imposed
9 upon a person under subsections (A) and (E) of this section.

10 G. Whoever knowingly makes any false statement, representation, or certification,
11 or knowingly fails to make any statement, representation, or certification in any
12 application, record, report, plan, or other document filed or required to be
13 maintained pursuant to the Navajo regulatory program or any order of decision
14 issued by the Program Manager or NNOHA under this Act, shall, upon
15 conviction, be subject to the sanctions and penalties of SMCRA section 518(g).
16 Any criminal actions associated with surface coal mining and reclamation
17 operations on Navajo regulatory program lands are enforced by OSMRE under
18 SMCRA section 518. The NSCMP will notify OSMRE of such potential criminal
19 actions and recommend that OSMRE pursue criminal penalties under SMCRA.

20 H. Any operator who fails to correct a violation for which a citation has been
21 issued under section 521(A) of this Act within the period permitted for its
22 correction shall be assessed a civil penalty of not less than \$925 for each day
23 during which such failure or violation continues. The period permitted for such
24 corrections shall not end until (1) the entry of a final order by the NNOHA, in the
25 case of any review proceedings under section 525 of this Act initiated by the
26 operator wherein the NNOHA orders, after an expedited hearing, the suspension
27 of the abatement requirements of the citation after determining that the operator
28 will suffer irreparable loss or damage from the application of those requirements,
29 or (2) the entry of an order of the court, in the case of any review proceedings
30

1 under section 526 of this Act initiated by the operator wherein the court orders the
2 suspension of the abatement requirements of the citation.

3 I. Nothing herein shall be construed to eliminate any additional enforcement
4 rights or procedures which are or may become available to the NSCMP under
5 Navajo Nation law or applicable federal law, but which are not specifically
6 enumerated herein.

7
8 SEC. 519. Release of Performance Bonds or Deposits

9 A. The permittee may file a request with the NSCMP for the release of all or part
10 of a performance bond or deposit. Within 30 days after any application for bond
11 or deposit release has been filed with the NSCMP, the operator shall submit a
12 copy of an advertisement placed at least once a week for four successive weeks in
13 a newspaper of general circulation in the locality of the surface coal mining
14 operation. Such advertisement shall be considered part of any bond release
15 application and shall contain a notification of the precise location of the land
16 affected, the number of acres, the permit and the date approved, the amount of the
17 bond filed and the portion sought to be released, the type and dates of reclamation
18 work performed, and a description of the results achieved as they relate to the
19 operator's approved reclamation plan. In addition, as part of any bond release
20 application, the applicant shall submit copies of letters which he or she has sent to
21 adjoining landowners; planning agencies and other appropriate agencies of the
22 Navajo Nation, federal, state, and local governments; and sewage and water
23 treatment authorities or water companies in the locality in which the surface coal
24 mining and reclamation activities took place, notifying them of his or her
25 intention to seek release from the bond or deposit.

26 B. Upon receipt of the notification and request, the NSCMP shall within 30 days
27 conduct an inspection and evaluation of the reclamation work involved. Such
28 evaluation shall consider, among other things, the degree of difficulty to complete
29 any remaining reclamation, whether pollution of surface water and groundwater is
30 occurring, the probability of such pollution continuing, and the estimated cost of

1 abatement. The NSCMP shall notify the permittee in writing of its decision to
2 release or not to release all or part of the performance bond or deposit within 30
3 days from the inspection and evaluation if no public hearing is held pursuant to
4 section 519(F) of this Act, and if a public hearing is held pursuant to section
5 519(F), such notification shall occur within 30 days thereafter. Any person
6 having an interest which is or may be adversely affected by such decision shall
7 have to right to file an appeal with the NNOHA in accordance with section 525 of
8 this Act.

9 C. The NSCMP may release in whole or in part said bond or deposit if the
10 NSCMP is satisfied the reclamation covered by the bond or deposit or portion
11 thereof has been accomplished as required by this Act according to the following
12 schedule:

13 1. When the operator completes the backfilling, regrading, and drainage control of
14 a bonded area in accordance with his or her approved reclamation plan, the
15 release of up to 60 percent of the bond or collateral for the applicable permit area.
16 2. After revegetation has been established on the regraded, mined lands in
17 accordance with the approved reclamation plan, the release of an amount of bond
18 to be determined by the NSCMP. When determining the amount of bond to be
19 released after successful revegetation has been established, the NSCMP shall
20 retain that amount of bond for the revegetated area which would be sufficient for
21 a third party to cover the cost of reestablishing revegetation and for the period
22 specified for operator responsibility in section 515(B)(20) of this Act. No part of
23 the bond or deposit shall be released under this paragraph so long as the lands to
24 which the release would be applicable are contributing suspended solids to
25 streamflow or runoff outside the permit area in excess of the requirements set by
26 section 515(B)(10) of this Act or until soil productivity for prime farmlands has
27 returned to equivalent levels of yield as nonmined land of the same soil type in
28 the surrounding area under equivalent management practices as determined from
29 the soil survey performed pursuant to section 507(B)(16) of this Act. Where a silt
30 dam is to be retained as a permanent impoundment pursuant to section 515(B)(8)

1 of this Act, a portion of the bond may be released under this paragraph so long as
2 adequate and enforceable written provisions for sound future maintenance by the
3 operator or the landowner have been made with the NSCMP.

4 3. When the operator has completed successfully all surface coal mining and
5 reclamation activities, but not before the expiration of the period specified for
6 operator responsibility in section 515(B)(20) of this Act, the release of the
7 remaining portion of the bond: Provided, however, that no bond shall be fully
8 released until all reclamation requirements of this Act are fully met.

9 D. If the NSCMP disapproves the application for release of the bond or deposit, or
10 portion thereof, the NSCMP shall notify the permittee, in writing, stating the
11 reasons for disapproval and recommending corrective actions necessary to secure
12 said release and allowing opportunity for a public hearing.

13 E. When any application for total or partial release of a bond or deposit is filed
14 with the NSCMP, the NSCMP shall notify the Navajo Nation Chapters in which a
15 surface coal mining operation is located and all appropriate Navajo Nation,
16 federal, state, and local agencies, as determined by the NSCMP. Notification
17 shall occur by certified mail at least 30 days prior to the release of all or a portion
18 of the bond or deposit.

19 F. Any person with a valid legal interest that might be adversely affected by
20 release of the bond or deposit, or the responsible officer or head of any federal,
21 Navajo Nation, state, or local agency that has jurisdiction or special expertise with
22 respect to any environmental, social, or economic impact involved in the
23 operations, or is authorized to develop and enforce environmental standards with
24 respect to such operations, shall have the right to file written objections to the
25 proposed release from bond or deposit to the NSCMP within 30 days after the last
26 publication of the above notice. If written objections are filed, and a hearing
27 requested, the NSCMP shall inform all the interested parties of the time and place
28 of the hearing, and hold a public hearing in the locality of the surface coal mining
29 operation proposed for release of the bond or deposit within 30 days of the request
30 for such hearing. The date, time, and location of such public hearings shall be

1 advertised by the NSCMP in a newspaper of general circulation in the locality for
2 two consecutive weeks. At the option of the objector(s), the NSCMP shall hold a
3 public hearing in the locality of the surface coal mining operation proposed for
4 release of the bond or deposit or at the NSCMP's offices within 30 days of the
5 request for such hearing.

6 G. Without prejudice to the rights of the objector(s), the applicant, or the
7 responsibilities of the NSCMP pursuant to this section, the NSCMP may establish
8 an informal conference as provided in section 513 of this Act to resolve such
9 written objections.

10 H. For the purpose of conducting a hearing under subsection (F) of this section,
11 the NSCMP is hereby authorized and empowered to administer oaths, subpoena
12 witnesses or written or printed materials, compel the attendance of witnesses or
13 production of the materials, and take evidence, including but not limited to
14 inspections of the land affected and other surface coal mining operations carried
15 on by the applicant in the general vicinity. A verbatim record of each public
16 hearing required by this Act shall be made, and a transcript made available on the
17 motion of any party or by order of the NSCMP.

18 19 SEC. 520. Citizen Suits

20 A. Any person having an interest which is or may be adversely affected may
21 commence a civil action in Navajo Nation District Court for the District of
22 Window Rock on his or her own behalf to compel compliance with this Act —

23 1. against the Navajo Nation or any other governmental instrumentality or agency
24 of the Navajo Nation to the extent permitted by section 201(I) of this Act and in
25 accordance with the procedural requirements of paragraph (B)(1) of this section,
26 which is alleged to be in violation of the provisions of SMCRA or this Act or of
27 any rule, regulation, order or permit issued pursuant thereto, or against any person
28 who is alleged to be in violation of any rule, regulation, order, or permit issued
29 pursuant to SMCRA or this Act; or

1 2. against the NSCMP to the extent permitted by section 201(I) of this Act and in
2 accordance the procedural requirements of paragraph (B)(2) of this section where
3 there is alleged a failure of the NSCMP to perform any act or duty under SMCRA
4 or this Act which is not discretionary with the NSCMP.

5 B. No action may be commenced —

6 1. under paragraph (A)(1) of this section —

7 a. until the plaintiff fulfills the jurisdictional condition precedent procedures of the
8 Navajo Sovereign Immunity Act codified at 1 N.N.C. § 555 and any successors
9 thereto and has given notice in writing of the violation to any alleged violator; or

10 b. if the Navajo Nation has commenced and is diligently prosecuting a civil action
11 in the Navajo Nation District Court for the District of Window Rock to require
12 compliance with the provisions of this Act, or any rule, regulation, order, or
13 permit issued pursuant to this Act, but in any such action, such person may
14 intervene as a matter of right; or

15 2. under paragraph (A)(2) of this section until the plaintiff fulfills the
16 jurisdictional condition precedent procedures of the Navajo Sovereign Immunity
17 Act codified at 1 N.N.C. § 555 and any successors thereto except that such action
18 may be brought immediately after the notice is served upon the appropriate
19 Navajo Nation officials as required at 1 N.N.C. § 555 (a)(1) and (2) and any
20 amendments or successors thereto in the case where the violation or order
21 complained of constitutes an imminent threat to plaintiff's health or safety or
22 would immediately affect a legal interest of the plaintiff.

23 C. In any action under this section, the NSCMP, if not a party, may intervene as a
24 matter of right.

25 D. The Navajo Nation District Court, in issuing any final order in any action
26 brought pursuant to subsection (A) of this section, may award costs of litigation
27 (including attorney and expert witness fees) to any party, whenever the court
28 determines such award is appropriate. The Navajo Nation District Court may, if a
29 temporary restraining order or preliminary injunction is sought, require the filing
30

1 of a bond or equivalent security in accordance with the Navajo Rules of Civil
2 Procedure.

3 E. Nothing in this section shall restrict any right which any person (or class of
4 persons) may have under other applicable law to seek enforcement of any of the
5 provisions of this Act and the regulations thereunder or to seek any other relief
6 (including relief against the NSCMP).

7 F. Any person who is injured in his or her person or property through the violation
8 by any operator of any rule, regulation, order, or permit issued pursuant to this
9 Act may bring an action for damages (including reasonable attorney and expert
10 witness fees) in the Navajo Nation District Court for the District of Window
11 Rock. Nothing in this subsection shall affect rights established by or limits
12 imposed under any applicable workers' compensation laws.

13 G. After exhausting all Navajo Nation remedies with respect to a civil action
14 arising under the Navajo regulatory program, an interested party may, pursuant to
15 section 710(j)(4)(A) of SMCRA, file a petition for judicial review of the civil
16 action in the United States Court of Appeals for the circuit in which the surface
17 coal mining operation named in the petition is located, or, for civil actions in
18 which no surface coal mining operation is named in the petition, in the United
19 States Court of Appeals for the Ninth Circuit.

20 21 SEC. 521. Enforcement

22 A. Inspections and enforcement

23 1. Whenever, on the basis of any information available to him or her, including
24 receipt of information from any person, the Program Manager has reason to
25 believe that any person is in violation of any requirement of this Act or any permit
26 condition required by this Act, the Program Manager shall immediately order
27 inspection of the surface coal mining operation at which the alleged violation is
28 occurring unless the information available to the Program Manager was found in a
29 previous inspection of such surface coal mining operation, and the alleged
30 violation was already addressed by the NSCMP. When the inspection results

1 from information provided to the Program Manager by any person, the Program
2 Manager shall notify such person when the inspection is proposed to be carried
3 out and such person shall be allowed to accompany the inspector during the
4 inspection. If the person informing the Program Manager of an alleged violation
5 has provided adequate proof that an imminent danger of significant environmental
6 harm exists, the Program Manager or his or her authorized representative shall
7 immediately inspect the operation. If no inspection is to be conducted, such
8 person shall be notified of the reason(s) for not inspecting.

9 2. When, on the basis of any inspection, the Program Manager or his or her
10 authorized representative determines that any condition or practices exist, or that
11 any permittee is in violation of any requirement of this Act or any permit
12 condition required by this Act, which condition, practice, or violation also creates
13 an imminent danger to public health or safety, or is causing, or can reasonably be
14 expected to cause significant, imminent environmental harm to land, air, or water
15 resources, the Program Manager or his or her authorized representative shall
16 immediately order a cessation of surface coal mining and reclamation operations
17 or the portion thereof relevant to the condition, practice, or violation. Such
18 cessation order shall remain in effect until the Program Manager or his or her
19 authorized representative determines that the condition, practice, or violation has
20 been abated, or until the order is modified, vacated, or terminated by the Program
21 Manager or his or her authorized representative pursuant to paragraph (A)(5) of
22 this section. Where the Program Manager finds that the cessation of surface coal
23 mining and reclamation operations, or any portion thereof, will not completely
24 abate the imminent danger to public health or safety or the significant imminent
25 environmental harm to land, air, or water resources, the Program Manager shall,
26 in addition to the cessation order, impose affirmative obligations on the operator
27 requiring him or her to take whatever steps the Program Manager deems
28 necessary to abate the imminent danger or the significant environmental harm.

29 3. When, on the basis of any inspection, the Program Manager or his or her
30 authorized representative determines that any permittee is in violation of any

1 requirement of this Act or any permit condition required by this Act, but such
2 violation does not create an imminent danger to public health or safety, or cannot
3 be reasonably expected to cause significant, imminent environmental harm to
4 land, air, or water resources, the Program Manager or his or her authorized
5 representative shall issue a notice to the permittee or his or her agent fixing a
6 reasonable time but not more than 90 days for abating the violation. Such notice
7 shall also provide opportunity for an administrative hearing. If, upon expiration
8 of the period of time as originally fixed or subsequently extended, for good cause
9 shown and upon the written finding of the Program Manager or his or her
10 authorized representative, the Program Manager or his or her authorized
11 representative finds that the violation has not been abated, he or she shall
12 immediately order a cessation of surface coal mining and reclamation operations
13 or the portion thereof relevant to the violation. Such cessation order shall remain
14 in effect until the Program Manager or his or her authorized representative
15 determines that the violation has been abated, or until the order is modified,
16 vacated, or terminated by the Program Manager or his or her authorized
17 representative pursuant to paragraph (A)(5) of this section. In the order of
18 cessation issued by the Program Manager or his or her authorized representative
19 under this subsection, the Program Manager or his or her authorized
20 representative shall determine the steps necessary to abate the violation in the
21 most expeditious manner possible, and shall include the necessary measures in the
22 order.

23 4. When, on the basis of any inspection, the Program Manager or his or her
24 authorized representative determines that a pattern of violations of any
25 requirements of this Act or any permit conditions required by this Act exists or
26 has existed, and if the Program Manager or his or her authorized representative
27 also finds that such violations are caused by the unwarranted failure of the
28 permittee to comply with any requirements of this Act or any permit conditions,
29 or that such violations are willfully caused by the permittee, the Program Manager
30 or his or her authorized representative shall forthwith issue an order to the

1 permittee to show cause as to why the permit should not be suspended or revoked,
2 and shall provide the opportunity for an administrative hearing. If a hearing is
3 requested the NNOHA shall inform all interested parties of the time and place of
4 the hearing. Upon the permittee's failure to show cause as to why the permit
5 should not be suspended or revoked, the NNOHA shall forthwith suspend or
6 revoke the permit.

7 5. Notices and orders issued pursuant to this section shall set forth with reasonable
8 specificity the nature of the violation and the remedial action required, the period
9 of time established for abatement, and a reasonable description of the portion of
10 the surface coal mining and reclamation operation to which the notice or order
11 applies. Each notice or order issued under this section shall be given promptly to
12 the permittee or his or her agent by the Program Manager or his or her authorized
13 representative who issues such notice or order, and all such notices and orders
14 shall be in writing and shall be signed by such authorized representatives or the
15 Program Manager. Any notice or order issued pursuant to this section may be
16 modified, vacated, or terminated by the Program Manager or his or her authorized
17 representative: Provided, that any notice or order issued pursuant to this section
18 which requires cessation of mining by the operator shall expire within 30 days of
19 actual notice to the operator unless an administrative hearing is held at the site or
20 within such reasonable proximity to the site that any viewings of the site can be
21 conducted during the course of the administrative hearing.

22 B. The Program Manager may request the Attorney General to institute a civil
23 action for relief, including a permanent or temporary injunction, restraining order,
24 or any other appropriate order in the Navajo Nation District Court for the District
25 of Window Rock, whenever such permittee or his or her agent —

26 1. violates or fails or refuses to comply with any order or decision issued by the
27 Program Manager or his or her authorized representative under this Act;

28 2. interferes with, hinders, or delays the Program Manager or his or her authorized
29 representatives in carrying out the provisions of this Act;

30 3. refuses to admit such authorized representative to the operation;

1 4. refuses to permit inspection of the operation by such authorized representative;
2 5. refuses to furnish any information or report requested by the Program Manager
3 or his or her authorized representative in furtherance of the provisions of this Act;
4 or
5 6. refuses to permit access to, and copying of, such records as the Program
6 Manager or his or her authorized representative determines necessary in carrying
7 out the provisions of this Act. The Navajo Nation District Court shall have
8 jurisdiction to provide such relief as may be appropriate. Temporary restraining
9 orders shall be issued in accordance with Rule 65 and Rule 65.1 of the Navajo
10 Rules of Civil Procedure. Any relief granted by the Navajo Nation District Court
11 to enforce an order under clause (a) of this section shall continue in effect until
12 the completion or final termination of all proceedings for review of such order
13 under this Act, unless, prior thereto, the Navajo Nation District Court granting
14 such relief sets it aside or modifies it. After exhausting all Navajo Nation
15 remedies with respect to a civil action arising under the Navajo regulatory
16 program, an interested party may, pursuant to section 710(j)(4)(A) of SMCRA,
17 file a petition for judicial review of the civil action in the United States Court of
18 Appeals for the circuit in which the surface coal mining operation named in the
19 petition is located.

20 C. Nothing within this Act shall be construed so as to eliminate any additional
21 enforcement rights or procedures which are available to the NSCMP under
22 Navajo Nation law, but which are not specifically enumerated herein.

23
24 SEC. 522. Land Unsuitable for Surface Coal Mining

25 A. The NSCMP shall establish a planning process.

26 1. This process shall enable objective decisions based upon competent and
27 scientifically sound data and information as to which, if any, areas of Navajo
28 regulatory program lands are unsuitable for all or certain types of surface coal
29 mining operations pursuant to the standards set forth in paragraphs (2) and (3) of
30

1 this subsection, but such designation shall not prevent the mineral exploration
2 pursuant to this Act of any area so designated.

3 2. Upon petition pursuant to subsection (B) of this section, the NSCMP shall
4 designate an area as unsuitable for all or certain types of surface coal mining
5 operations if the NSCMP determines that reclamation, pursuant to the
6 requirements of this Act, is not technologically and economically feasible.

7 3. Upon petition pursuant to subsection (B) of this section, a surface area may be
8 designated unsuitable for certain types of surface coal mining operations if such
9 operations will —

10 a. be incompatible with existing Navajo Nation, BIA, or local land-use plans or
11 programs; or

12 b. affect fragile or historic lands upon which such operations could result in
13 significant damage to important historic, cultural, scientific, and aesthetic values,
14 and natural systems; or

15 c. affect renewable resource lands upon which such operations could result in a
16 substantial loss or reduction of the long-range productivity of the water supply or
17 of food or fiber products, and such lands to include aquifers and aquifer recharge
18 areas; or

19 d. affect natural hazard lands in which such operations could substantially
20 endanger life and property, such lands to include areas subject to frequent
21 flooding and areas of unstable geology.

22 4. The NSCMP is responsible for surface coal mining lands review. The NSCMP
23 shall develop a process which includes —

24 a. a database and an inventory system which will facilitate the proper evaluation
25 of the capacity of different areas of the Navajo Nation to support and permit
26 reclamation of surface coal mining operations;

27 b. a method or methods for implementing land-use planning decisions concerning
28 surface coal mining operations; and

29 c. proper notice and opportunities for public participation, including a public
30 hearing prior to making any designation or redesignation, pursuant to this section;

1 5. Determinations of the unsuitability of land for surface coal mining, as provided
2 for in this section, shall be integrated as closely as possible with present and
3 future land-use planning and regulation processes of federal, Navajo Nation, and
4 local agencies.

5 6. The requirements of this section shall not apply to lands on which surface coal
6 mining operations are being conducted under a permit issued by the NSCMP
7 pursuant to this Act or by OSMRE under the Federal Program for Indian Lands,
8 or where substantial legal and financial commitments in such operation were in
9 existence prior to January 4, 1977.

10 B. Any person having an interest which is or may be adversely affected shall have
11 the right to petition the NSCMP to have an area designated as unsuitable for
12 surface coal mining operations, or to have such a designation terminated. Such
13 petition shall contain allegations of facts with supporting evidence which would
14 tend to establish the allegations. Within ten months after receipt of a petition, the
15 NSCMP shall hold a public hearing in the locality of the affected area, after
16 appropriate notice and publication of the date, time, and location of such hearing.
17 After a person having an interest which is or may be adversely affected has filed a
18 petition and before the hearing, as required by this subsection, any person may
19 intervene by filing allegations of facts with supporting evidence which would tend
20 to establish the allegations. Within 60 days after such hearing, the NSCMP shall
21 issue and furnish to the petitioner and any other party to the hearing, a written
22 decision regarding the petition, and the reasons therefor. Any person having an
23 interest which is or may be adversely affected by such decision shall have the
24 right to file an appeal with the Navajo Nation Supreme Court in accordance with
25 section 126(A)(2) of this Act. In the event that all the petitioners stipulate
26 agreement prior to the requested hearing, and withdraw their requests, such
27 hearing need not be held.

28 C. Prior to designating any land areas as unsuitable for surface coal mining
29 operations, the NSCMP shall prepare a detailed statement on (i) the potential coal
30

1 resources of the area, (ii) the demand for coal resources, and (iii) the impact of
2 such designation on the environment, the economy, and the supply of coal.

3 D. Subject to valid existing rights, no surface coal mining operations except those
4 which existed on August 3, 1977 shall be permitted —

5 1. on any lands within the boundaries of units of the National Park System, the
6 National Wildlife Refuge System, the National System of Trails, the National
7 Wilderness Preservation System, the Wild and Scenic Rivers System, including
8 study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, and
9 National Recreation Areas designated by Act of Congress;

10 2. on any federal lands within the boundaries of any national forest: Provided,
11 however, that surface coal mining operations may be permitted on such lands if
12 the Secretary finds that there are no significant recreational, timber, economic, or
13 other values which may be incompatible with such surface mining operations and
14 —

15 a. surface operations and impacts are incident to an underground coal mine; or
16 b. where the Secretary of Agriculture determines, with respect to lands which do
17 not have significant forest cover, that surface mining is in compliance with the
18 Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing
19 Amendments Act of 1976, the National Forest Management Act of 1976, and the
20 provisions of SMCRA;

21 3. which will adversely affect any publicly owned park or place included in, or
22 eligible for inclusion in, the National Register of Historic Places, unless approved
23 jointly by the NSCMP, the Navajo Nation Chapter(s) within which the park or
24 place is located, and the federal, Navajo Nation, state, or local agency with
25 jurisdiction over the park or the historic place;

26 4. within 100 feet of the outside right-of-way line of any public road, except
27 where mine access roads or haulage roads join such right-of-way line and except
28 that the NSCMP may permit such roads to be relocated or the area affected to lie
29 within 100 feet of such road, if after public notice and opportunity for public
30 hearing in the locality a written finding is made that the interests of the public, the

landowners, and authorized land users who may be affected thereby will be protected;

5. within 300 feet from any occupied dwelling, unless knowingly and voluntarily waived in writing by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery; or

6. on any lands designated by the Navajo Nation Council as sacred, historical, cultural, park, wilderness, or wildlife refuge.

SEC. 523. Reserved

SEC. 524. Public agencies, Public Utilities, and Public Corporations

Any agency, unit, or instrumentality of federal, Navajo Nation, state, or local government, including any publicly-owned utility or publicly-owned corporation of federal, Navajo Nation, state, or local government, which proposes to engage in surface coal mining operations on Navajo regulatory program lands shall comply with the provisions of this Act.

SEC. 525. Administrative Review

A. Procedures for review.

1. A permittee issued a notice or order by the Program Manager or his or her authorized representative pursuant to the provisions of paragraph (A)(2) or (3) of section 521 of this Act or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the NSCMP for review of the notice or order within 30 days of receipt thereof, or within 30 days of its modification, vacation, or termination. Upon receipt of such application, the NSCMP shall cause such investigation to be made as he or she deems appropriate. Such investigation shall provide an opportunity for an administrative hearing by the NNOHA, at the request of the applicant or the person having an interest which

1 is or may be adversely affected, to enable the applicant or such person to present
2 information relating to the issuance and continuance of such notice or order or the
3 modification, vacation, or termination thereof. The filing of an application for
4 review under this subsection shall not operate as a stay of any order or notice.

5 2. The permittee and other interested persons shall be given written notice of the
6 time and place of the hearing at least five days prior thereto. Any such hearing
7 shall be of record and conducted in conformity with the regulations for
8 administrative hearings promulgated pursuant to section 201(C)(2) of this Act.

9 B. Upon receiving the report of such investigation, the NNOHA shall make
10 findings of fact, and shall issue a written decision, incorporating therein an order
11 vacating, affirming, modifying, or terminating the notice or order, or the
12 modification, vacation, or termination of such notice or order complained of, and
13 shall incorporate his or her findings therein. Where the application for review
14 concerns an order for cessation of surface coal mining and reclamation operations
15 issued pursuant to the provisions of paragraph (A)(2) or (A)(3) of section 521 of
16 this Act, the NNOHA shall issue the written decision within 30 days of the receipt
17 of the application for review unless temporary relief has been granted by the
18 NNOHA pursuant to subsection (C) of this section or by the court pursuant to
19 subsection (C) of section 526 of this Act.

20 C. Pending completion of the investigation and hearing required by this section,
21 the applicant may file with the NNOHA a written request that the NNOHA grant
22 temporary relief from any notice or order issued under section 521 of this Act,
23 together with a detailed statement giving reasons for granting such relief. The
24 NNOHA shall issue an order or decision granting or denying such relief
25 expeditiously: Provided, that where the applicant requests relief from an order for
26 cessation of coal mining and reclamation operations issued pursuant to paragraph
27 (A)(2) or (A)(3) of section 521 of this Act, the order or decision on such a request
28 shall be issued within five days of its receipt. The NNOHA may grant such relief,
29 under such conditions as he or she may prescribe, if —
30

1 1. a hearing on the request for temporary relief, in which all parties were given an
2 opportunity to be heard, has been held in the locality of the permit area;

3 2. the applicant shows that there is substantial likelihood that the findings of the
4 NNOHA will be favorable to him or her; and

5 3. such relief will not adversely affect public health or safety or cause significant,
6 imminent environmental harm to land, air, or water resources.

7 D. Following the issuance of an order to show cause as to why a permit should
8 not be suspended or revoked pursuant to section 521 of this Act, the NNOHA
9 shall hold an administrative hearing after giving written notice of the time, place,
10 and date thereof. Any such hearing shall be of record and conducted in
11 conformity with the regulations for administrative hearings promulgated pursuant
12 to section 201(C)(2) of this Act. Within 60 days following the administrative
13 hearing, the NNOHA shall issue and furnish to the permittee and all other parties
14 to the hearing a written decision, and the reasons therefor, concerning suspension
15 or revocation of the permit. If the NNOHA revokes the permit, the permittee
16 shall immediately cease surface coal mining operations on the permit area and
17 shall complete reclamation within a period specified by the NNOHA, or the
18 NSCMP shall declare as forfeited the performance bond(s) for the operation.

19 E. Whenever an order is issued under this section, or as a result of any
20 administrative proceeding under this Act, at the request of any person, a sum
21 equal to the aggregate amount of all costs and expenses (including attorney fees)
22 as determined by the NNOHA to have been reasonably incurred by such person
23 for or in connection with his or her participation in such proceedings, including
24 any judicial review of agency actions, may be assessed against either party as the
25 court, resulting from judicial review, or the NNOHA, resulting from
26 administrative proceedings, deems proper.

27
28 SEC. 526. Judicial Review

29 A. Procedures.
30

1 1. After exhausting available administrative remedies, any action constituting
2 rulemaking under this Act shall be subject to judicial review by the Navajo Nation
3 District Court for the District of Window Rock, with a right of appeal to the
4 Navajo Nation Supreme Court. Any action subject to judicial review under this
5 subsection shall be affirmed unless the court concludes that such action is
6 arbitrary, capricious, or otherwise inconsistent with law. A petition for review of
7 any action subject to judicial review under this subsection shall be filed in the
8 Navajo Nation District Court for the District of Window Rock within 60 days
9 from the date of such action, or after such date if the petition is based solely on
10 grounds arising after the sixtieth day. Any such petition may be made by any
11 person who participated in the administrative proceedings and who is aggrieved
12 by the action of the Program Manager or the NSCMP.

13 2. Any order or decision issued by the NNOHA in a civil penalty proceeding or
14 any other adjudicatory administrative proceeding conducted by the NNOHA or
15 the NSCMP pursuant to this Act shall be subject to judicial review on or before
16 30 days from the date of such order or decision in accordance with paragraph (B)
17 of this section in the Navajo Nation Supreme Court. In the case of a proceeding
18 to review an order or decision issued by the NNOHA under the penalty section of
19 this Act, the Court shall have jurisdiction to enter an order requiring payment of
20 any civil penalty assessment enforced by its judgment.

21 B. The Court shall hear such petition or complaint solely on the record made
22 before the Program Manager, the NSCMP, or the NNOHA. Except as provided in
23 subsection (A)(1), the findings of the Program Manager, the NSCMP, or the
24 NNOHA, if supported by substantial evidence on the record considered as a
25 whole, shall be conclusive. The Court may affirm, vacate, or modify any order or
26 decision or may remand the proceedings to the Program Manager, the NSCMP, or
27 the NNOHA for such further action as it may direct. Pursuant to SMCRA section
28 710(j)(4)(i), after exhausting all remedies with respect to a civil action arising
29 under the Navajo regulatory program, an interested party may file a petition for
30 judicial review of the civil action in the United States Court of Appeals for the

1 circuit in which the surface coal mining operation named in the petition is located,
2 or, for civil actions in which no surface coal mining operation is named in the
3 petition, in the United States Court of Appeals for the Ninth Circuit.

4 C. In the case of a proceeding to review any rulemaking or any order or decision
5 issued by the NSCMP or NNOHA under this Act, including an order or decision
6 issued pursuant to subsection (C) or (D) of section 525 of this Act pertaining to
7 any order issued under paragraph (A)(2), (A)(3), or (A)(4) of section 521 of this
8 Act for cessation of coal mining and reclamation operations, the Court may, under
9 such conditions as it may prescribe, grant such temporary relief as it deems
10 appropriate pending final determination of the proceedings if —

11 i. all parties to the proceedings have been notified and given an opportunity to be
12 heard on a request for temporary relief;

13 ii. the person requesting such relief shows that there is a substantial likelihood that
14 he or she will prevail on the merits of the final determination of the proceeding;
15 and

16 iii. such relief will not adversely affect the public health or safety or cause
17 significant, imminent environmental harm to land, air, or water resources.

18 D. The commencement of a proceeding under this section shall not, unless
19 specifically ordered by the Court, operate as a stay of rulemaking or of the action,
20 order, or decision of the NSCMP or the NNOHA.

21 E. The availability of judicial review under this section shall not be construed to
22 limit the operation of the rights established in section 520 of this Act except as
23 provided therein.

24
25 SEC. 527. Reserved

26
27 SEC. 528. Surface Mining Operations Not Subject To This Act

28 The provisions of this Act shall not apply to the extraction of coal as an incidental
29 part of federal, Navajo Nation, state, or local government-financed highway or
30 other construction under regulations established by the NSCMP.

1
2 SEC. 529. Reserved

3
4 SUBCHAPTER 6 - RESERVED

5
6 CHAPTER 23– ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

7
8 SEC. 601. Reserved

9
10 SEC. 602. Cooperation of Other Navajo Nation Agencies

11 To the greatest extent practicable, each Navajo Nation agency shall cooperate
12 with the NSCMP in carrying out the provisions of this Act.

13
14 SEC. 603. Reserved

15
16 SEC. 604. Reserved

17
18 SEC. 605. Reserved

19
20 SEC. 606. Reserved

21
22 SEC. 607. Severability

23 If any provision of this Act or the applicability thereof to any person or
24 circumstance is held invalid, the remainder of this Act and the application of such
25 provision to other persons or circumstances shall not be affected thereby.

26
27 SEC. 608. Reserved

28
29 SEC. 609. Reserved

1 SEC. 610. Reserved

3 SEC. 611. Experimental Practices

4 In order to encourage advances in coal mining and reclamation practices or to
5 allow postmining land use for industrial, commercial, residential, or public use
6 (including recreational facilities), the NSCMP, with approval by the OSMRE
7 Director, may authorize departures in individual cases, on an experimental basis,
8 from the environmental protection performance standards promulgated under
9 sections 515 and 516 of this Act. Such departures may be authorized if (i) the
10 experimental practices are potentially more or at least as environmentally
11 protective, during and after coal mining operations, as those required by
12 promulgated standards; (ii) the coal mining operations approved for particular
13 land use or other purposes are not larger or more numerous than necessary to
14 determine the effectiveness and economic feasibility of the experimental
15 practices; and (iii) the experimental practices do not reduce the protection
16 afforded public health and safety below that provided by promulgated standards.

18 SEC. 612. Reserved

20 SEC. 613. Reserved

22 SEC. 614. Reserved

24 SEC. 615. Reserved

26 SEC. 616. Reserved

28 SEC. 617. Water Rights and Replacement

29 (a) Nothing in this Act shall be construed as affecting in any way the right of any
30 person, or the Navajo Nation, to enforce or protect, under applicable law, their

1 interest in water resources affected by a surface coal mining operation regulated
2 under this Act.

3 (b) The operator of a surface coal mine shall replace immediately with water of at
4 least equal quality and quantity the water supply of a landowner or a water user
5 who obtains all or part of his or her supply of water for domestic, agricultural,
6 industrial, or other legitimate use from an underground or surface source where
7 such supply has been affected by contamination, diminution, or interruption
8 proximately resulting from such surface coal mine operation.

9
10 SEC. 268. Reserved

11
12 SEC. 619. Certification of Blasters

13 In accordance with this Act, the NSCMP shall promulgate regulations requiring
14 the examination, training, and certification of persons engaging in or directly
15 responsible for blasting or the use of explosives in surface coal mining operations.

16
17 SEC. 620. Subsidence

18 Underground coal mining operations shall comply with each of the following
19 requirements:

20 A. Promptly repair, or compensate for, material damage resulting from subsidence
21 caused to any occupied residential dwelling and structures related thereto, or to
22 any non-commercial building, due to underground coal mining operations. Repair
23 of damage shall include rehabilitation, restoration, or replacement of the damaged
24 occupied residential dwelling and structures related thereto, or non-commercial
25 building. Compensation shall be provided to the owner of the damaged occupied
26 residential dwelling and structures related thereto, or non-commercial building,
27 and shall be in the full amount of the diminution in value resulting from the
28 subsidence. Compensation may be accomplished by the purchase, prior to
29 mining, of a non-cancelable premium prepaid insurance policy.
30

1 B. Promptly replace any drinking, domestic, or residential water supply from a
2 well or spring in existence prior to the application for a surface or underground
3 coal mining and reclamation permit, which has been affected by contamination,
4 diminution, or interruption resulting from underground coal mining operations.
5 Nothing in this section shall be construed to prohibit or interrupt underground
6 coal mining operations.

7
8 SEC. 621. Annual Reclamation Reports

9 A. The NSCMP shall promulgate rules and regulations to require permittees under
10 this Act to file with the NSCMP an annual reclamation report.

11 B. Annual reclamation reports shall be submitted to the NSCMP on or before
12 April 1 of each year. Annual reclamation reports shall be prepared and submitted
13 in the format required by the NSCMP and shall describe the reclamation
14 completed during previous calendar year and proposed reclamation activities for
15 the current calendar year and subsequent calendar year.

16 C. Annual reclamation reports shall identify and describe:

17 1. areas for which Phase I, II, or III bond release was approved during the
18 previous calendar year and within Phase III release areas, the areas of each
19 postmining land use;

20 2. areas newly bonded for disturbance during the previous calendar year;

21 3. areas that were reclaimed and the extent to which they were reclaimed during
22 the previous calendar year and any problems or exceptional successes
23 encountered;

24 4. areas to be reclaimed during the current calendar year and subsequent calendar
25 year and the specific types of reclamation to be conducted;

26 5. seeding mixtures used during the previous calendar year and intended to be
27 used during the current calendar year and subsequent calendar year and the
28 reasons for the choice of specific mixtures;

29 6. anticipated problem areas and mitigation measures intended to be used; and

30 7. all other information that the NSCMP may require.

1 D. All reclamation activities proposed to be conducted during the current calendar
2 year and subsequent calendar year must conform to the schedule and
3 specifications of the reclamation plan in the permit application approved by the
4 NSCMP pursuant to section 510 of this Act.

5
6 SUBCHAPTER 7 – RESERVED

7
8 ****

9 **Section Four. Effective Date**

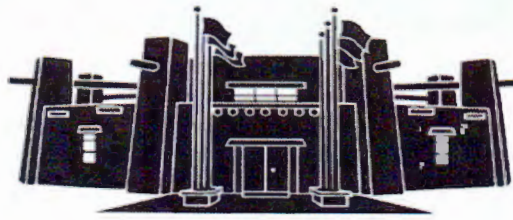
10 The Act enacted herein shall be effective upon its approval pursuant to 2 N.N.C.
11 §221.

12
13 **Section Five. Codification**

14 The provisions of the Act which amend or adopt new sections of the Navajo
15 Nation Code shall be codified by the Office of Legislative Counsel. The Office of
16 Legislative Counsel shall renumber sections of this legislation such that the
17 legislation conforms to the standard form of the Navajo Nation Code. The Office
18 of Legislative Counsel shall incorporate such amended provisions in the next
19 codification of the Navajo Nation Code.

20
21 **Section Six. Savings Clause**

22 Should any provision of this Act be determined invalid by the Navajo Nation
23 Supreme Court, or the District Court of the Navajo Nation, without appeal to the
24 Navajo Nation Supreme Court, or any other court of competent jurisdiction, those
25 portions of this Act which are not determined invalid shall remain the law of the
26 Navajo Nation.



MEMORANDUM

TO: Honorable Ben Bennett
Crystal, Fort Defiance, Red Lake, Sawmill Chapters

Honorable Walter Phelps
Cameron, Coalmine Canyon, Birdsprings, Leupp, Tolani Lake Chapters

FROM:

Mariana Kahn

Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: January 14, 2016

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION, AN ACT RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; WAIVING THE SOVEREIGN IMMUNITY OF THE NAVAJO NATION WITH RESPECT TO THE NAVAJO NATION SURFACE COAL MINING AND RECLAMATION ACT; ENACTING THE NAVAJO NATION SURFACE COAL MINING AND RECLAMATION ACT, ESTABLISHING NEW SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 ET SEQ.

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting.

There is a two-thirds vote requirement for this legislation which will waive the sovereign immunity of the Navajo Nation with respect to "citizen suits."

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. §§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).

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0025-16_____

SPONSOR: Ben Bennett; Walter Phelps

TITLE: An Action Relating To Law And Order, Resources And Development, Naabik'iyati' Committees And Navajo Nation Council; Waiving The Sovereign Immunity Of The Navajo Nation With Respect To The Navajo Nation Surface Coal Mining And Reclamation Act; Establishing New Sections In Title 18 At 18 N.N.C. §§ 1701 Et. Seq.

Date posted: January 14, 2016 at 7:40pm

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.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0025-16

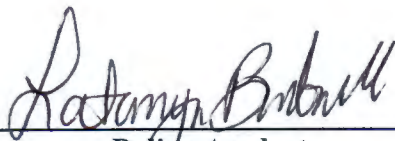
SPONSOR: Honorable Benjamin Bennett

TITLE: Relating To Law And Order, Resources And Development, Naabik'iyati' Committees And Navajo Nation Council; Waiving The Sovereign Immunity Of The Navajo Nation With Respect To The Navajo Nation Surface Coal Mining And Reclamation Act; Establishing New Sections In Title 18 At 18 N.N.C. §§ 1701 Et. Seq.

Posted: January 14, 2016 at 7:40pm

5 DAY Comment Period Ended: January 19, 2015

Digital Comments received: *No Comments received.*



Policy Analyst
Office of Legislative Services

1/20/16 8:54am
Date/Time

**LAW AND ORDER COMMITTEE
23RD NAVAJO NATION COUNCIL**

SECOND YEAR 2016

COMMITTEE REPORT

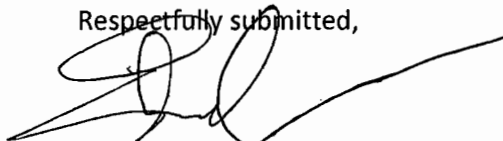
Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

Legislation No. 0025-16: Relating to Law and Order, Resources and Development, Naabik'iyati' Committees and Navajo Nation Council; Waiving the Sovereign Immunity of the Navajo Nation with Respect to the Navajo Nation Surface Coal Mining and Reclamation Act; Enacting the Navajo Nation Surface Coal Mining and Reclamation Act, Establishing New Sections in Title 18 N.N.C. §§ 1701 ET SEQ.

Has had it under consideration and report the same with a **DO PASS** with no amendments; thereafter referred to Resources and Development Committee

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Edmund Yazzie', written over a horizontal line.

Edmund Yazzie, Chairperson
Law and Order Committee
23rd Navajo Nation Council

Date: March 7, 2016
Motion: Honorable Otto Tso
Second: Honorable Kee Allen Begay, Jr.
Vote: 2-0 (Chair not voting)

**RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL**

SECOND YEAR 2016


COMMITTEE REPORT

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

Legislation # 0025-16: An Act Relating to Law and Order, Resources and Development, Naabik'Iyati Committees and Navajo Nation Council; Waiving the Sovereign Immunity of the Navajo Nation with Respect to the Navajo Nation Surface Coal Mining and Reclamation Act; Enacting the Navajo Nation Surface Coal Mining and Reclamation Act, Establishing New Sections in Title 18 at 18 N.N.C. §§1701 Et Seq. *Sponsor: Honorable Benjamin Bennett*

Has had it under consideration and reports the same that the Legislation recommended to be tabled; however, the Chairman voted to break the tie vote, therefore the matter is now referred to Naabik'Iyati Committee for their consideration.


Honorable Alton Joe Shepherd, Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Date: March 8, 2016

Main Motion: Walter Phelps

Second: Leonard Pete

Vote: 3-2-0

Motion to Table: Honorable Leonard Tsosie (**FAILED**)

Second: Honorable Leonard Pete

Vote: 2-3-0

(Not Voting: Honorable Davis Filfred left the meeting to participate in a conference call.)

23rd NAVAJO NATION COUNCIL
Naabik'íyáti' Committee
Second Year 2016

Mr. Speaker:

The **Naabik'íyáti' Committee** to whom has been assigned:

NAVAJO LEGISLATIVE BILL #0025-16

An Action Relating to Law and Order, Resources and Development, and Naabik'iyati' Committees and Navajo Nation Council; Waiving the Sovereign Immunity of the Navajo Nation with Respect to the Navajo Nation Surface Coal Mining and Reclamation Act; Establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 *Et. Seq.*

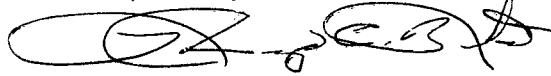
Sponsored by: Honorable Benjamin Bennett

Co-Sponsored by: Honorable Walter Phelps

Has had it under consideration and reports the same with the recommendation that legislation
LOST A QUORUM at 5:29 PM

And therefore, remains with the **NAABIK'İYATI' COMMITTEE**

Respectfully Submitted,



Honorable LoRenzo C. Bates, Chairman
Naabik'íyáti' Committee

7 APRIL 2016

MAIN MOTION:

Motioned: Honorable Seth Damon

Seconded: Honorable Lee Jack, Sr.

VOTE:

23rd NAVAJO NATION COUNCIL
Naabik'iyáti' Committee
Second Year 2016

Mr. Speaker:

The **Naabik'iyáti' Committee** to whom has been assigned:

NAVAJO LEGISLATIVE BILL #0025-16

An Action Relating to Law and Order, Resources and Development, and Naabik'iyati' Committees and Navajo Nation Council; Waiving the Sovereign Immunity of the Navajo Nation with Respect to the Navajo Nation Surface Coal Mining and Reclamation Act; Establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 *Et. Seq.*

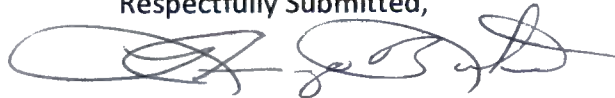
Sponsored by: Honorable Benjamin Bennett

Co-Sponsored by: Honorable Walter Phelps

Has had it under consideration and reports the same with the recommendation that legislation was **TABLED**

And therefore, remains with the **NAABIK'IYATI' COMMITTEE**

Respectfully Submitted,



*Honorable LoRenzo C. Bates, Chairman
Naabik'iyáti' Committee*

13 APRIL 2016

MOTION TO TABLE:

Motioned: Honorable Leonard Tsosie

Seconded: Honorable Tso

Vote: 13 in Favor, 00 Opposed (Chairman Bates not voting)

MAIN MOTION:

Motioned: *Honorable Seth Damon*

Seconded: *Honorable Lee Jack, Sr.*

VOTE:

22nd Navajo Nation Council - Naabik'iyati' Committee

Naabik'iyati' Committee

Wednesday, April 13, 2016

0025-16 - Table Motion - M: Tsosie; S: Tso

ALL DELEGATES:

| | Yea | Nay |
|----------------------|-----|-----|
| BATES, LoRenzo | | |
| BEGAY, Kee Allen Jr. | | |
| BEGAY, Mel R. | | |
| BEGAY, Norman M. | 1 | |
| BEGAYE, Nelson | 1 | |
| BENNETT, Benjamin L. | | |
| BROWN, Nathaniel | | |
| CHEE, Tom T. | 1 | |
| CROTTY, Amber K. | | |
| DAMON, Seth | 1 | |
| DANIELS, Herman Jr. | 1 | |
| FILFRED, Davis | 1 | |
| HALE, Jonathan L. | 1 | |
| JACK, Lee Sr. | 1 | |
| PERRY, Jonathan | | |
| PETE, Leonard H. | | |
| PHELPS, Walter | 1 | |
| SHEPHERD, Alton Joe | | |
| SLIM, Tuchoney Jr. | 1 | |
| SMITH, Raymond Jr. | | |
| TSO, Otto | 1 | |
| TSOSIE, Leonard | 1 | |
| WITHERSPOON, Dwight | 1 | |
| YAZZIE, Edmund | | |

GRAND TOTAL

13 0

BY COMMITTEE:

BFC:

| | Yea | Nay | TOTAL |
|---------------------|-----|-----|-------|
| BEGAY, Mel R. | 0 | 0 | |
| CHEE, Tom T. | 1 | 0 | |
| DAMON, Seth | 1 | 0 | |
| JACK, Lee Sr. | 1 | 0 | |
| SLIM, Tuchoney | 1 | 0 | |
| WITHERSPOON, Dwight | 1 | 0 | 5 |

HEHSC:

| | Yea | Nay | TOTAL |
|--------------------|-----|-----|-------|
| BEGAY, Norman M. | 1 | 0 | |
| BEGAYE, Nelson | 1 | 0 | |
| BROWN, Nathaniel | 0 | 0 | |
| CROTTY, Amber K. | 0 | 0 | |
| DANIEL, Herman Jr. | 1 | 0 | |
| HALE, Jonathan L. | 1 | 0 | 4 |

LOC:

| | Yea | Nay | TOTAL |
|----------------------|-----|-----|-------|
| BEGAY, Kee Allen Jr. | 0 | 0 | |
| PERRY, Jonathan | 0 | 0 | |
| SMITH, Raymond Jr. | 0 | 0 | |
| TSO, Otto | 1 | 0 | |
| YAZZIE, Edmund | 0 | 0 | 1 |

RDC:

| | Yea | Nay | TOTAL |
|----------------------|-----|-----|-------|
| BENNETT, Benjamin L. | 0 | 0 | |
| FILFRED, Davis | 1 | 0 | |
| PETE, Leonard H. | 0 | 0 | |
| PHELPS, Walter | 1 | 0 | |
| SHEPHERD, Alton Joe | 0 | 0 | |
| TSOSIE, Leonard | 1 | 0 | 3 |

SPEAKER:

| | Yea | Nay | TOTAL |
|----------------|-----|-----|-------|
| BATES, LoRenzo | 0 | 0 | |
| | 13 | 0 | |

CERTIFICATION:



Honorable LoRenzo Bates
Speaker

23rd NAVAJO NATION COUNCIL
Naabik'iyáti' Committee
Second Year 2016

Mr. Speaker:

The **Naabik'iyáti' Committee** to whom has been assigned:

NAVAJO LEGISLATIVE BILL #0025-16

An Action Relating to Law and Order, Resources and Development, and Naabik'iyati' Committees and Navajo Nation Council; Waiving the Sovereign Immunity of the Navajo Nation with Respect to the Navajo Nation Surface Coal Mining and Reclamation Act; Establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 *Et. Seq.*

Sponsored by: Honorable Benjamin Bennett

Co-Sponsored by: Honorable Walter Phelps

Has had it under consideration and reports the same with the recommendation that legislation was **TABLED FOR THIRTY DAYS FOR A SPECIAL SESSION**

And therefore, referred to the **NAVAJO NATION COUNCIL**

Respectfully Submitted,



Honorable LoRenzo C. Bates, Chairman
Naabik'iyáti' Committee

14 APRIL 2016

RECALL MOTION:

Motioned: Honorable Walter Phelps

Seconded: Honorable Dwight Withespoon

VOTE: 07 in Favor, 06 Opposed (Chairman Bates not voting)

MOTION TO TABLE: Table for 30 days for a special session

Motioned: Honorable Jonathan L. Hale

Seconded: Honorable Davis Filfred

Vote: 08 in Favor, 05 Opposed (Chairman Bates not voting)

MAIN MOTION:

Motioned: Honorable Seth Damon
Seconded: Honorable Lee Jack, Sr.

VOTE:

22nd Navajo Nation Council - Naabik'iyati' Committee

Naabik'iyati' Committee

Thursday, April 14, 2016

RECALL MOTION - 0025-16 - M: Phelps; S: Filfred

ALL DELEGATES:

| | Yea | Nay |
|----------------------|-----|-----|
| BATES, LoRenzo | | |
| BEGAY, Kee Allen Jr. | | |
| BEGAY, Mel R. | | |
| BEGAY, Norman M. | 1 | |
| BEGAYE, Nelson | | 1 |
| BENNETT, Benjamin L. | 1 | |
| BROWN, Nathaniel | | |
| CHEE, Tom T. | | |
| CROTTY, Amber K. | | |
| DAMON, Seth | | 1 |
| DANIELS, Herman Jr. | 1 | |
| FILFRED, Davis | 1 | |
| HALE, Jonathan L. | 1 | |
| JACK, Lee Sr. | | |
| PERRY, Jonathan | | 1 |
| PETE, Leonard H. | | |
| PHELPS, Walter | 1 | |
| SHEPHERD, Alton Joe | | |
| SLIM, Tuchoney Jr. | | 1 |
| SMITH, Raymond Jr. | | |
| TSO, Otto | 1 | |
| TSOSIE, Leonard | | 1 |
| WITHERSPOON, Dwight | | 1 |
| YAZZIE, Edmund | | |

GRAND TOTAL

7 6

BY COMMITTEE:

BFC:

| | Yea | Nay | TOTAL |
|---------------------|-----|-----|-------|
| BEGAY, Mel R. | 0 | 0 | |
| CHEE, Tom T. | 0 | 0 | |
| DAMON, Seth | 0 | 1 | |
| JACK, Lee Sr. | 0 | 0 | |
| SLIM, Tuchoney | 0 | 1 | |
| WITHERSPOON, Dwight | 0 | 1 | 3 |

HEHSC:

| | Yea | Nay | TOTAL |
|--------------------|-----|-----|-------|
| BEGAY, Norman M. | 1 | 0 | |
| BEGAYE, Nelson | 0 | 1 | |
| BROWN, Nathaniel | 0 | 0 | |
| CROTTY, Amber K. | 0 | 0 | |
| DANIEL, Herman Jr. | 1 | 0 | |
| HALE, Jonathan L. | 1 | 0 | 4 |

LOC:

| | Yea | Nay | TOTAL |
|----------------------|-----|-----|-------|
| BEGAY, Kee Allen Jr. | 0 | 0 | |
| PERRY, Jonathan | 0 | 1 | |
| SMITH, Raymond Jr. | 0 | 0 | |
| TSO, Otto | 1 | 0 | |
| YAZZIE, Edmund | 0 | 0 | 2 |

RDC:

| | Yea | Nay | TOTAL |
|----------------------|-----|-----|-------|
| BENNETT, Benjamin L. | 1 | 0 | |
| FILFRED, Davis | 1 | 0 | |
| PETE, Leonard H. | 0 | 0 | |
| PHELPS, Walter | 1 | 0 | |
| SHEPHERD, Alton Joe | 0 | 0 | |
| TSOSIE, Leonard | 0 | 1 | 4 |

SPEAKER:

| | Yea | Nay | TOTAL |
|----------------|-----|-----|-------|
| BATES, LoRenzo | 0 | 0 | |
| | 7 | 6 | |

CERTIFICATION:



Honorable LoRenzo Bates
Speaker

22nd Navajo Nation Council - Naabik'iyati' Committee

Naabik'iyati' Committee

Thursday, April 14, 2016

TABLE MOTION - 0025-16 - M: Hale; S: Filfred

ALL DELEGATES:

| | Yea | Nay |
|----------------------|-----|-----|
| BATES, LoRenzo | | |
| BEGAY, Kee Allen Jr. | | |
| BEGAY, Mel R. | | |
| BEGAY, Norman M. | | 1 |
| BEGAYE, Nelson | 1 | |
| BENNETT, Benjamin L. | 1 | |
| BROWN, Nathaniel | | |
| CHEE, Tom T. | 1 | |
| CROTTY, Amber K. | | |
| DAMON, Seth | | 1 |
| DANIELS, Herman Jr. | | |
| FILFRED, Davis | 1 | |
| HALE, Jonathan L. | 1 | |
| JACK, Lee Sr. | | |
| PERRY, Jonathan | | 1 |
| PETE, Leonard H. | | |
| PHELPS, Walter | | 1 |
| SHEPHERD, Alton Joe | | |
| SLIM, Tuchoney Jr. | | 1 |
| SMITH, Raymond Jr. | | |
| TSO, Otto | 1 | |
| TSOSIE, Leonard | 1 | |
| WITHERSPOON, Dwight | 1 | |
| YAZZIE, Edmund | | |

GRAND TOTAL

8 5

BY COMMITTEE:

BFC:

| | Yea | Nay | TOTAL |
|---------------------|-----|-----|-------|
| BEGAY, Mel R. | 0 | 0 | |
| CHEE, Tom T. | 1 | 0 | |
| DAMON, Seth | 0 | 1 | |
| JACK, Lee Sr. | 0 | 0 | |
| SLIM, Tuchoney | 0 | 1 | |
| WITHERSPOON, Dwight | 1 | 0 | 4 |

HEHSC:

| | Yea | Nay | TOTAL |
|--------------------|-----|-----|-------|
| BEGAY, Norman M. | 0 | 1 | |
| BEGAYE, Nelson | 1 | 0 | |
| BROWN, Nathaniel | 0 | 0 | |
| CROTTY, Amber K. | 0 | 0 | |
| DANIEL, Herman Jr. | 0 | 0 | |
| HALE, Jonathan L. | 1 | 0 | 3 |

LOC:

| | Yea | Nay | TOTAL |
|----------------------|-----|-----|-------|
| BEGAY, Kee Allen Jr. | 0 | 0 | |
| PERRY, Jonathan | 0 | 1 | |
| SMITH, Raymond Jr. | 0 | 0 | |
| TSO, Otto | 1 | 0 | |
| YAZZIE, Edmund | 0 | 0 | 2 |

RDC:

| | Yea | Nay | TOTAL |
|----------------------|-----|-----|-------|
| BENNETT, Benjamin L. | 1 | 0 | |
| FILFRED, Davis | 1 | 0 | |
| PETE, Leonard H. | 0 | 0 | |
| PHELPS, Walter | 0 | 1 | |
| SHEPHERD, Alton Joe | 0 | 0 | |
| TSOSIE, Leonard | 1 | 0 | 4 |

SPEAKER:

| | Yea | Nay |
|----------------|-----|-----|
| BATES, LoRenzo | 0 | 0 |
| | 8 | 5 |

CERTIFICATION:



Honorable LoRenzo Bates
Speaker

23rd NAVAJO NATION COUNCIL Second Year 2016

The NAVAJO NATION COUNCIL to whom has been assigned:

NAVAJO LEGISLATIVE BILL #0025-16

An Action Relating to Law and Order, Resources and Development, Naabik'iyati' Committees and Navajo Nation Council; Waiving the Sovereign Immunity of the Navajo Nation with Respect to the Navajo Nation Surface Coal Mining and Reclamation Act; Establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 *Et. Seq.*

Sponsored by: Honorable Benjamin Bennett

Co-Sponsored by: Honorable Walter Phelps

Has had it under consideration and reports the same with the recommendation that legislation
FAILED (NEEDED 16 IN FAVOR VOTES)

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'LoRenzo C. Bates', written over a horizontal line.

Honorable LoRenzo C. Bates, Speaker
NAVAJO NATION COUNCIL

19 JULY 2016

MAIN MOTION:

Motioned: Honorable Jonathan L. Hale

Seconded: Honorable Lee Jack, Sr.

VOTE: 11 in Favor, 10 Opposed (Speaker Bates not voting)

NAVAJO NATION

RCS# 519

Summer Session

7/19/2016

04:37:52 PM

Amd# to Amd#

Legislation No. 0025-16

FAILED

MOT Hale

NN Surface Coal Mining &

SEC Jack

Reclamation Act, Establishing

New Sections in Title 18

Yea : 11

Nay : 10

Not Voting : 1

Yea : 11

Begay, K
Bennett
Brown

Chee
Damon
Filfred

Jack
Phelps
Smith

Tso
Yazzie

Nay : 10

BeGaye, N
Crotty
Daniels

Hale
Perry
Pete

Shepherd
Slim

Tsosie
Witherspoon

Not Voting : 1

Bates

Begay, NM