

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

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; AMENDING AND
APPROVING THE PLAN OF OPERATION FOR THE NAVAJO AGRICULTURAL
PRODUCTS INDUSTRY

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council established the Resources and Development Committee as a standing committee of the Navajo Nation Council and has legislative oversight of the Navajo Agricultural Products Industry ("NAPI"). 2 N.N.C §§ 500 (A), 5 N.N.C. §§ 1604. See also CO-45-12.
- B. As oversight committee for NAPI, the Resources and Development Committee has the authority to review, recommend or propose the adoption, amendment or rescission of Plans of Operation. 2 N.N.C. §§ 500 (A), 5 N.N.C. §§ 1604.

SECTION TWO. FINDINGS

- A. The Navajo Agricultural Products Industry ("NAPI") is an enterprise of the Navajo Nation charged with operating and managing a commercial farm on lands held in trust for the Navajo Nation under legislation authorizing the Navajo Indian Irrigation Project.
- B. The NAPI Board requests the Resources and Development Committee amend the plan of operation. See Resolution of NAPI Board of Directors attached hereto as **Exhibit A**.
- C. The Navajo Agricultural Products Industry has submitted a revised Plan of Operation for the Enterprise and is attached hereto as **Exhibit B**.
- D. The Navajo Agricultural Products Industry has provided a clean copy version of the plan of operation and is attached hereto as **Exhibit C**.

- E. The Navajo Department of Justice has reviewed the document and has found it to be legally sufficient. See **Exhibit D**.

SECTION THREE. APPROVING THE AMENDED PLAN OF OPERATION FOR NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

The Resources and Development Committee hereby amends the Plan of Operation for the Navajo Agricultural Products Industry as set forth in the attached **Exhibit B**.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at the Navajo Division of Transportation, Tse Bonito, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 3 in favor, and 0 opposed, on this 31st day of December 2018.



Walter Phelps, Pro Tempore Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Leonard Pete
Second: Honorable Walter Phelps

Pro Tempore Chairperson Walter Phelps not voting.



**RESOLUTION OF THE
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY
BOARD OF DIRECTORS**

Recommending an Amendment to Title 5, Navajo Nation Code and Recommending Revisions to the Plan of Operation of the Navajo Agricultural Products Industry; Approving the Amended and Restated Plan of Operation; and Respectfully Requesting the Navajo Nation President and the Resources and Development Committee to Recommend, and the Navajo Nation Council to Approve, Such Amendments.

WHEREAS:

1. The Navajo Agricultural Products Industry ("NAPI") is an enterprise of the Navajo Nation charged with operating and managing a commercial farm on lands held in trust for the Navajo Nation under legislation authorizing the Navajo Indian Irrigation Project; and

2. The NAPI enabling legislation, at 5 N.N.C. § 1604, provides that "NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council"; and

3. Article 19 of the NAPI Plan of Operation provides that "[t]he Plan of Operation may be amended from time to time by the Economic Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation"; and

4. As stated in Title 5, Navajo Nation Code § 1604 Legislative Oversight: "The Navajo Agricultural Products Industry shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 724 (E). The Economic Development Committee is now the Resources and Development Committee of the Navajo Nation Council. The NAPI Board requests that an amendment be made to rename NAPI's Oversight to the Resources and Development Committee where noted in Title 5 of the Navajo Nation Code and NAPI's Plan of Operation; and

5. Article 5 of the NAPI Plan of Operation describes the current process by which an open position on the Board of Directors may be filled, and also details the minimum requirements for Board Members, the notification procedures required to fill vacancies on the Board and the removal or resignation process required for Board Members. The NAPI Board requests that certain amendments be made to Article 5 in order to update the appointment process for Board Members, amend the qualifications required for the five (5) members of such Board, update the standards for removal of a Board member, and streamline the notification and procedures for filling vacancies on the Board of Directors; and

6. Article 6 of the NAPI Plan of Operation describes the Principal Officers of the NAPI Board of Directors. The NAPI Board requests that an amendment be made to Article 6 in order to remove the discretionary position of Treasurer, include a replacement procedure, and implement a procedure by which the Board may establish standing committees; and

7. Article 7 of the NAPI Plan of Operation details the powers and duties given to the Board of Directors. The NAPI Board requests that certain amendments be made to Article 7 in order to better clarify those powers and duties, streamline the process by which officers and agents shall be selected or appointed, remove a requirement that a prewritten provision shall be included in all contracts signed by NAPI, omit a limited waiver of NAPI's sovereign immunity, and remove a provision regarding limited liability companies and limited partnerships; and

8. Article 8 of the NAPI Plan of Operation provides guidelines for the Board of Directors' Meetings. The NAPI Board requests that certain amendments be made to Article 8 in order to require Directors to be physically present at regular meetings and require such regular meetings to occur quarterly; and

9. Article 16 of the NAPI Plan of Operation describes the circumstances under which immunity from suit may be authorized. The NAPI Board requests that certain amendments be made to Article 16 in order to authorize the Board of Directors to waive the defenses identified in the Plan of Operation in order to further the purposes of NAPI; and.

10. The NAPI Board requests that certain other technical changes be made to the NAPI Plan of Operation in order to update the document for readability and accuracy; and

11. The NAPI Board of Directors has considered the proposed amendment to Title 5 Navajo Nation Code, attached hereto as Exhibit "A" and the Plan of Operation, attached hereto as Exhibit "B", presented by management and deems its adoption to be in the best interest of NAPI and the Navajo Nation.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The NAPI Board of Directors hereby recommends an amendment to Title 5, of the Navajo Nation Code, attached hereto as Exhibit "A" and revisions to the Plan of Operation of the Navajo Agricultural Products Industry, attached hereto as Exhibit "B".

2. The NAPI Board of Directors hereby approves the amended and restated Plan of Operation of the Navajo Agricultural Products Industry, attached hereto as Exhibit "B"; and respectfully requests the President and Resources and Development Committee recommend that the Navajo Nation Council approve such amendments.


3. NAPI Management is authorized and directed to process a proposed resolution for the consideration of the Resources and Development Agreement in accordance with 2 N.N.C. § 164 (2005) to amend the NAPI Plan of Operation.

4. The NAPI Board of Directors hereby authorizes the Chief Executive Officer to take any and all actions necessary to carry out the purpose and intent of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at a special meeting at which a quorum was present at NAPI headquarters near Farmington, New Mexico, and that the same was passed by vote of 3 in favor, 0 opposed, and 0 abstained, this 17th day of October, 2017

Motion: Peter Deswood, III
Second: Veronica D. Tso


Lorenzo J. Begay, PhD, Chairperson
Board of Directors



18-COO-051

November 16, 2018

Hon. Alton Shepherd
Resources and Development Committee
23rd Navajo Nation Council
Navajo Nation Council
P.O. Box 3390
Window Rock, AZ 86515

Re: NAPI's Amendment to Title 5, Navajo Nation Code & Revisions to NAPI's Plan of Operation

Dear Hon. Shepherd,

On behalf of the Board of Directors of the Navajo Agricultural Products Industry (NAPI), we are seeking your support and the Resource Development Committee's approval to NAPI's Amendment to Title 5, Navajo Nation Code and Revisions to NAPI's Plan of Operation. On October 17, 2017, the NAPI Board of Directors approved Resolution No. BDO-30-17 to recommend such amendments to N.N.C. Title 5 and NAPI's Plan of Operation. All parties have collaborated on the revisions and amendments through a work session held by the NAPI Board. The last revision approved and adopted by the Navajo Nation Council was on January 5, 2010, by N.N.C. Resolution CJA-05-10. Pursuant to Article 19 of NAPI's Plan of Operation, NAPI sent a recommendation request letter to the Office of the President and Vice-President of the Navajo Nation on October 18, 2017. Attached for your consideration and approval is NAPI Board Resolution BDO-30-17 (October 17, 2017) and Exhibits "A" and "B".

As requested, we retrieved the 2017 amendments to NAPI's Plan of Operation that the NAPI Board of Directors approved and compared them to the 2015 amendments that were prepared by Tsosie Lewis and Sacks Tierney. Based on our review, we have determined that there were several minor grammatical and formatting changes made to the 2015 amendments and very few substantive changes. The majority of the changes made by the 2015 amendments were carried over into the 2017 amendments and the majority of the 2015 amendments have been preserved. Please review enclosed document titled, "Redline Comparison 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation" for comparison. For any questions or clarifications, please contact me at (505) 947-6625 or email lhaskie@navajopride.com. Enclosed you will find a copy of that letter.

Respectfully,

Lionel Haskie
Interim Chief Executive Officer

Attachments: NAPI BOD Resolution No. BDO-30-17
Exhibit "A" – Title 5, Navajo Nation Code
Exhibit "B" – NAPI Amended & Restated Plan of Operation
Redline Comparison 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation
Letter to President Russell Begay requesting a recommendation dated October 18, 2017

Cc: Hon. LoRenzo Bates, Speaker
NAPI Board of Directors
File



NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

P.O. Drawer 1318
Farmington, NM 87499
Telephone: (505) 566-2600
Fax: (505) 960-9458
www.navajopride.com

October 18, 2017
17-HQ-76

VIA EMAIL: russellbegaye@navajo-nsn.gov

Hon. Russell Begaye, President
The Navajo Nation
P.O. Box 7440
Window Rock, Arizona 86515

RE: NAPI's Amendment to Title 5, Navajo Nation Code & Revisions to NAPI's Plan of Operation

Dear President Begaye:

On behalf of the Board of Directors of the Navajo Agricultural Products Industry ("NAPI"), we are seeking your assistance and support to NAPI's Amendment to Title 5, Navajo Nation Code and revisions to NAPI's Plan of Operation. On October 17, 2017, the NAPI Board of Directors approved Resolution No. BDO-30-17 to recommend such amendments to N.N.C Title 5 and NAPI's Plan of Operation.

As you are aware, NAPI has a new Board in place along with new Management and Legal Counsel. All parties have collaborated on the revisions and amendments through a work session held by the NAPI Board. The last revision approved and adopted by the Navajo Nation Council was on January 5th, 2010, by N.N.C. Resolution CJA-05-10. Attached for your consideration and approval is NAPI Board Resolution BDO-30-17 (Oct. 17, 2017) and Exhibits "A" and "B".

For any questions or clarifications, please contact me at (505) 566-2603 or email WRCharley@navajopride.com.

Sincerely,

Wilton R. Charley, *Chief Executive Officer*
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

Attachment: NAPI BOD Resolution No. BDO-30-17
Exhibit "A" – Title 5, Navajo Nation Code
Exhibit "B" – NAPI Amended & Restated Plan of Operation

c: NAPI Board of Directors
File



Navajo Agricultural Products Industry
Amended and Restated
Plan of Operation

Article 1. Establishment

- A. Pursuant to 5 N.N.C. Section 1601, the Navajo Nation Council established the Navajo Agricultural Products Industry ("NAPI") as an enterprise of the Navajo Nation.
- B. The principal place of business of the enterprise ~~will~~shall be located at NAPI headquarters, Hwy. 10086 N.M. Hwy. 371, Farmington, New Mexico, south of Farmington, New Mexico on lands subject to the jurisdiction of the Navajo Nation.
- C. NAPI may establish offices or subsidiary organizations at such other place or places as the Board of Directors may direct.

Article 2. Seal

The Board of Directors shall approve an official seal for NAPI.

Article 3. Purposes

The mission of NAPI is to continue the legacy of Navajo farming, producing superior products, practicing stewardship and creating value for our people. The vision of NAPI is farming sustainably across generations to cultivate a healthy Nation. The purpose for which NAPI is organized is to operate a profitable commercial farm, separate and distinct from the Navajo Indian Irrigation Project ("NIIP"), in accordance with this plan of operation. ~~Amended and Restated Plan of Operation (the "Plan of Operation") and applicable laws and regulations and, in order to carry out this purpose, NAPI shall:~~

- A. Plan, develop, and promote the ~~use~~usage of agricultural and related resources, including water, which water use shall be in compliance with the Navajo Nation Water Code, ~~or or~~ as shall be available for use by NAPI through the NIIP ~~Navajo Indian Irrigation Project.~~

- B. Utilize real estate withdrawn or leased to the agriculture enterprise for the general purpose of establishing, operating and managing a commercial farm.
- C. ~~Promote agribusiness development, the multiplier effect,~~ Agribusiness Development and related businesses and industries ~~in~~ within the Navajo Nation, and support the vertical and horizontal integration within the Navajo Nation of producing and processing crops into finished food products and derivatives thereof for sale.
- D. Do everything necessary, proper and advisable for the accomplishment of the purposes set forth herein in accordance with this Plan of Operation and applicable laws and regulations for this enterprise of the Navajo Nation.

Article 4. Definitions

- A. "Agribusiness Development" – means the growth of capacity by NAPI for the production, processing and sale of crops. This term shall include derivatives and income from any related business operated by NAPI and from subleasing operations authorized by the Master Agricultural Lease.
- B. "Capital Contribution" – means the land, water, services and money invested, loaned or granted to ~~the Navajo Agricultural Products Industry~~ NAPI by the Navajo Nation to engage in commercial farming and ~~agribusiness development~~ Agribusiness Development.
- C. ~~"CONUS" means the current reimbursement rates for lodging, meals and incidental expenses for travel within the 48 contiguous states and the District of Columbia established by the United States General Services Administration pursuant to 41 CFR, chapters 300-304.~~
- C. "Chapter Official" – means the following public officials elected by the chapter membership: chapter president, chapter vice-president, and chapter secretary/treasurer or such titles given to the officials of a chapter that has adopted an Alternative Form of Government ("AFOG") in accordance with the Local Governance Act ("LGA"), 26 N.N.C. § 101 et seq. Officials of Land Boards or Grazing Committees are not Chapter Officials as defined in this Plan of Operation.
- D. "Master Agricultural Lease" – means the single lease between the Navajo Nation and ~~the Navajo Agricultural Products Industry~~ NAPI to authorize and govern any and all use of Navajo Nation trust and fee lands by NAPI to engage in ~~agribusiness development~~ Agribusiness Development and commercial farming. Said lease may provide subleasing opportunities for NAPI to promote ~~agribusiness development and the multiplier effect.~~ The lease Agribusiness Development. The Master Agricultural Lease shall conform to Federal and Navajo Nation law.

E. ~~“Multiplier Effect” means vertical and horizontal integration of producing and processing crops into finished food products and derivatives thereof for sale. The focus of the multiplier effect shall be to promote such vertical and horizontal integration within the Navajo Nation.~~

F. ~~“Official of the State Government” means a person employed full time by a state government, agency or department thereof, but shall not include persons so employed by a municipality or political subdivision of a state.~~

G. ~~“Substantial Business Experience” means a minimum of ten (10) years of progressively responsible experience in appropriate business activities, of which at least two (2) years were at a senior management section or executive level or of a comparable position.~~

I. ~~“Fiscal Year” means the NAPI Fiscal Year which runs from June 1st to May 31st of each year.~~

F. ~~“Organic Food” means the product of a farming system which avoids the use of man-made fertilizers, pesticides, growth regulators and livestock feed additives. Irradiation and the use of genetically modified organisms (“GMOs”) or products produced from or by GMOs are generally prohibited by organic legislation.~~

H. ~~“Water Use Permit” means the permit mandated by the Navajo Nation Water Code and other applicable Navajo Nation laws to authorize the use and development of the water resources of the Navajo Nation.~~

Article 5. ~~Membership on Authority of Board of Directors; Number; Appointment; Qualifications; Term of Office; Removal or Resignation; and Filling Vacancies; Authority~~

A. ~~NAPI shall be managed by a Board of Directors that that shall provide governance and oversight of the organization, subject to the restrictions of this Plan of Operation and applicable law. The Board shall consist of five (5) seven (7) members from the Western, Chinle, Eastern Agencies. At least one Director shall be educated in the field of agriculture, one Director shall reside withinbe from District 13 and one Director shall reside withinbe from District 19, and one (1) member from District 13 and one (1) member from District 19, must be registered Chapter members in their respective districts.~~

B. ~~Appointment, all of whom shall be appointed by tThe President of the Navajo Nation shall appoint members to serve on the Board of Directors subject to final confirmation by the Economic Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §724(E)(1). The President of the Navajo Nation shall advertise any open positions on the Board of Directors whether based on vacancy or an expired term.~~

A. ~~The conduct of each member of the Board of Directors shall conform to fiduciary standards, and shall, in any event, conform to that required of members of a board of directors of a for-profit corporation under the Navajo Corporation Code, the Navajo Nation Ethics in Government Act, and other applicable Navajo Law~~

B.C. ~~Qualifications. The five members of the Board of Directors (who shall be referred to as Directors) shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee. The President shall appoint individuals with substantial business experience and are from the Western, Chinle and Eastern Agencies. At least three of the Directors~~ Each Director, with the exception of District 13 and 19 representatives, shall have substantial business experience which shall include, but not be limited to in successful agribusiness and/or business marketing, livestock, agricultural economics and finance, irrigation and P.L. 93-638 contracting. It is preferred that each Director shall have knowledge of corporate and/or business financial statements and capital investment planning and shall possess a Bachelor's degree from a recognized and accredited four-year institution of higher learning, commercial farming, provided that such experience shall not be through direct or indirect employment with NAPI. All Directors shall have at least a Bachelor of Science degree except for the Directors representing Districts 13 and 19, who shall not be required to have such degree if no suitable candidate with such degree can be identified residing within such Districts. Preference in the appointment of Directors shall be given to Navajos and, secondarily, to non-Navajos spouses who are legally married to Navajos who meet the minimum qualifications for Board membership; and are legally married to Navajos; however, the procedural and substantive provisions of the Navajo Preference in Employment Act, 15 N.N.C. section 601, et seq., shall not apply to such appointments. No person who has been employed by NAPI will be eligible to become a member of the NAPI Board of Directors until six years after the date of his or her last separation from NAPI. No Director shall be a person who is or was employed by NAPI within the past six (6) years or a current Council delegate or Chapter Official.

C.D. ~~Term of Office~~

1. ~~Directors shall be appointed to serve staggered terms of office and shall hold office until the appointment and confirmation of their successors~~ three (3) years and may be reappointed to serve additional terms.
2. ~~The Chief Executive Officer shall notify the President of the Navajo Nation when the term of a Director is set to end at least thirty (30) days~~ forty-five (45) days prior to the end of such term. The President shall appoint a new member or reappoint an existing member to serve on the Board of Directors in accordance with the process outlined herein. A Director whose term has ended shall hold office until the appointment and confirmation of his/her successor.
2. ~~The initial Board of Directors shall be divided into three groups. The first group of one to serve for one year, the second group of two to serve for two years, and the~~

~~third group of two to serve for three years. Thereafter all terms shall be for three years.~~

D.E. Removal or Resignation.

1. Any member of the Board of Directors may be removed by a simple majority vote of the ~~Economic Resources and Development~~ Committee taken at a lawful meeting if:
 - ~~a. Such member has failed to attend two (2) consecutive meetings of the Board without prior written approval of absence by the Chairperson of the Board. The Secretary shall report to the President of the Navajo Nation when a member has failed to attend two consecutive meetings without prior approval;~~
 - ~~b. Such member has been convicted of any crime reflecting upon such member's honesty or ability to fulfill the fiduciary obligations imposed by law upon such member;~~
 - ~~c. Such member has been adjudged in any action, suit, or other proceeding to be liable, suit, or other proceeding to be liable for gross negligence or misconduct, in the performance of any management duties;~~
 - ~~d. Such member violates the Navajo Nation Ethics in Government Law;~~
 - ~~e. Such member commits malfeasance or misfeasance of office; or Breach of the duties of a director as set forth in Article 5(B).~~
 - f.(a) Such Director has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided that any such violation shall be limited to the last ten (10) years of such person's history and provided that the Resources and Development Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification.
 - (a)(b) Such Director violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 et. seq. as amended, provided that any such violation shall be limited to the last ten (10) years of such person's history.
 - g.(c) Such Director commits malfeasance or misfeasance of office as member of the Board of Directors.
2. ~~The A~~ Directors may resign by giving written notice of resignation to the President of the Navajo Nation, the Chairperson of the Resources and Development Committee, and for the Chairperson of the Board of Directors. Resignation shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Acceptance of resignation shall not be necessary to make such resignation effective. A Director who has failed to

~~B. Duties. All Officers of NAPI shall have the following duties and such other duties as may be determined by the Board of Directors, which shall be consistent with applicable law and this plan of operation:~~

1. *Chairperson of the Board.* The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors, and shall, in general, perform all duties incident to the office of the Chairperson of the Board of Directors and such other duties as may be assigned by the Board of Directors.
2. *Vice Chairperson of the Board.* The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson; and shall discharge any other duties designated by the Chairperson or the Board of Directors.
3. *Secretary of the Board.* The secretary is the recording officer of the Board and the custodian of its records except such as are specifically assigned to others such as the treasurer's books.
4. ~~*Treasurer of the Board.* If elected, the Treasurer shall act as a banker, merely holding the funds deposited with the Board and paying them out on the order of the Board, have direct contact with NAPI's auditors to ensure that the audits are correct and reported to the Board, and submits to the Board a quarterly treasurer's report that provides detailed information on the financial condition of NAPI.~~

~~C.B. Election; Term of Office.~~ The Principal Officers shall be elected annually by the Board of Directors at its annual meeting, or as soon after such annual meeting as newly appointed Directors are confirmed. Each Principal Officer shall hold office until his/her successor is elected, or vacates the position by death, resignation, ~~or~~ removal or replacement.

~~D.C. Removal.~~ Any Principal Officer ~~or agent~~ elected ~~or appointed~~ by the Board of Directors may be removed by a vote of at least three of the five Directors whenever, in the judgment of the Directors, the best interest of NAPI will be served thereby; except in the absence of dereliction in duty, negligence, malfeasance, or misfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons removed.

~~E.D. Resignation.~~ Any Principal Officer may resign from office at any time by giving written notice to the Board of Directors, or to the Chairperson; such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

~~F.E. Replacement.~~ A vacancy in a Principal Officer position may occur when the term of the Principal Officer as a Director has expired, and a new Director has been appointed and confirmed as provided in Article 5 above.

~~G.F. Filling Vacancies.~~ Any vacancy in ~~any office~~ a Principal Officer position caused by death,

~~resignation, or removal or replacement shall be filled for the unexpired portion of the Principal Officer's term in the manner prescribed herein for election to such Principal Officer's office.~~

Article 7. Board of Directors Powers and Duties

~~Subject to applicable Federal and Navajo Nation laws and regulations, the Board of Directors shall be subject to the laws and regulations applicable to Board of Directors of a corporation under the laws of the Navajo Nation and shall have the following powers and duties: have overall responsibility for the affairs of NAPI, giving usual and essential latitude to the Chief Executive Officer ("CEO") to accomplish the purposes set forth in Article 3 of this Plan of Operation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote. The Board may adopt such rules and regulations for the conduct of their meetings as it deems proper, and not inconsistent with this Plan of Operation. The NAPI Board shall have the following powers and duties to establish policies and procedures, receive reports and provide direction to the CEO and his or her delegated employees, by resolution or directive:~~

- A. ~~To have the authority and responsibility for the management, direction and operation of NAPI; to direct the officers of NAPI in the execution of their duties; and to perform such acts as are necessary, proper and lawful to accomplish the purposes of NAPI.~~ Lobbying. To engage in lobbying activities on behalf of NAPI before local, state and Federal legislative and administrative bodies to achieve the purposes of NAPI.
- B. ~~Facilities~~ Property. ~~To exercise full power and have ultimate responsibility for the custody of inventory; and maintenance of all NAPI property, facilities, and special utilities. To plan, obtain regular reports by the Chief Executive Officer and his or her delegated employees regarding the planning, construct and operate- construction and operation of all facilities, and to take any and all usual, necessary and proper actions incidental thereto including, the consent to the borrowing of funds to accomplish the purposes of NAPI, provided that no assets or funds of the Navajo Nation shall be pledged as security therefore, except upon approval by the Navajo Nation Council, and to make other commitments necessary to accomplish the business purposes of NAPI.~~
- C. ~~Investment of funds. To make investment decisions, subject to the limitations contained herein, or limitations as may be included in any advance of funds, or as may be imposed by the Navajo Nation Council, and to provide for the establishment and maintenance of~~ establish effective investment policies and procedures; and to ensure that investment decisions are consistent with the policies and procedures and are subject to limitations as may be imposed by the Navajo Nation Council.
- D. ~~To exercise its authorized powers in the best interests of the NAPI and within the limits~~

~~of responsible business judgment, with the limitation that it~~ Borrowing. To obtain loans so long as NAPI shall not incur obligations in excess of the ability of NAPI to pay. ~~Nothing in this subchapter or to issue bonds and to secure payment thereof by loan guaranty or pledge of, or lien on, all or any of its fixtures, personal property, revenues, income or contracts of NAPI. Nothing herein shall be construed as authorizing NAPI to mortgage or encumber trust or restricted property, including all water and real property resources of the Navajo Nation, or as providing a consent by the Navajo Nation Council thereto. The Resources and Development Committee of the Navajo Nation Council shall not adopt amendments to this Plan of Operation which limit or alter the rights or powers vested in NAPI necessary to fulfill NAPI's obligations until all such notes or bonds or obligations issues, together with interest thereon, are fully met, paid, and discharged. This subsection shall be interpreted to protect the previously established rights of NAPI creditors or others to whom NAPI owes a legally enforceable obligation.~~

- E. Reports. To report quarterly in writing to the President of the Navajo Nation. Such quarterly report shall include a summary of activities on management, income and expenditures for the current quarter. In addition, ~~Navajo Agricultural Products Industry~~ NAPI shall issue an annual report with fiscal year and the audited financial reports no later than ninety (90) days after the expiration of the fiscal year and a copy of this report shall be provided to the ~~Economic Resources and Development Committee~~ and the President within ten working days after the date on which the annual report is issued.
- F. Operating policies. To establish general operating policies and procedures, such as purchasing, accounting, information technology and personnel procedures, giving usual and essential latitude to the Chief Executive Officer and his or her delegated employees to carry out and implement such policies.
- G. ~~Business and Management Plan. The Board shall annually~~ To develop and submit to the President of the Navajo Nation and ~~Economic Resources and Development Committee of the Navajo Nation Council a business and management plan for NAPI. The pPlan shall set forth the general plan for operating the commercial farm. The Plan shall include cropping patterns, annual total farm budgets, cash flow projections, and investment plans and strategies for the forthcoming years to yield a profit for NAPI. The Plan shall contain sufficient information as to justify the assumptions and conclusions of the Plan, considering market trends and prices, as well as the national economy.~~
- H. Officers and agents. To select or appoint officers, agents, auditors, and such professional consultants as may be deemed necessary and appropriate, and to define their duties and compensation. ~~However unless the Budget and Finance Committee of the Navajo Nation Council by not less than 2/3 vote of the full membership of the Committee shall consent and approve otherwise, the auditors shall be the firm of accountants employed by the Navajo Nation. The Budget and Finance Committee~~

shall first obtain a recommendation from the Economic Development Committee regarding the auditors for NAPI prior to consenting and approving appointment of a firm other than the accountants employed by the Navajo Nation. The hiring of a Chief Executive Officer shall be by the Board of Directors through a contract. The Board of Directors at NAPI's expense, shall require the bonding of aAll officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of NAPI and the Navajo Nation shall be bonded.

I. Agency. ~~To act as agent.~~ To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of NAPI, within the scope of authorized purposes, subject to applicable law.

J. Real property. To establish policies and procedures to utilize, improve, manage, orand operate Navajo Nation lands withdrawn for NIIP pursuant to a ~~m~~Master aAgricultural ~~l~~Lease agreement. The ~~m~~Master aAgricultural ~~l~~Lease agreement shall be subject to renewal at intervals that are economically advantageous to NAPI and the Navajo Nation. ~~The master lease shall be reviewed at least every five years to adjust rent and for other considerations.~~

K. _____

~~L.~~K. ~~Water Use Permit.~~ NAPI shall obtain a water use permit from the Division of Natural Resources for the use of water in connection with the operation of the commercial farm enterprise. Personal property, generally. To acquire (by purchase, exchange, lease, hire, or otherwise), hold, own, mortgage, pledge, exchange, sell, deal in, hedge and dispose of, either alone or in conjunction with others, personal property, any interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth in Article 3, except personal property subject to restrictions on alienation or sale by the United States Government and provided that the approval of the Budget and Finance Committee of the Navajo Nation Council as appropriate is a condition precedent to any such transaction involving restricted or unrestricted property owned by the Navajo Nation.

~~M.~~L. ~~Inventories, Patents, e~~Copyrights, and ~~t~~Trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefore, licenses, formulas, privileges, processes, copyrights, and applications therefore, trademarks and applications therefore, and trade names, and that title of such acquisitions shall be taken in the name of ~~the Navajo Nation~~NAPI.

~~N.~~M. Guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of NAPI, to the extent that such guaranty is made pursuant to the purposes set forth in Article 3 and is subject to the limitations set forth in this ~~subchapter~~ Plan of Operation on the use of trust or

restricted property as security therefore.

~~O.N.~~ Depository. To designate and approve all depositories used for the deposit of funds of NAPI.

~~P.~~

~~Q.O.~~ Contracts. To enter into, make, perform, and carry out, or cancel, or rescind contracts for any lawful purposes set forth in Article 3 and to delegate this authority as may be advisable to the Chief Executive Officer of NAPI, or to the chairperson of the Board of Directors. Any contract for hiring or retaining an attorney is subject to applicable Federal or Navajo Nation laws, rules and regulations. Except as provided in this ~~subchapter~~ Plan of Operation, nothing in this section shall be construed as a waiver of sovereign immunity NAPI and/or the Navajo Nation may by law possess. ~~All contracts of NAPI shall be in writing and contain the following provision:~~

~~NAPI is an entity of the Navajo Nation and is immune from suit. Any waiver of NAPI's immunity must be made explicitly by contract recommended by the NAPI Board of Directors and approved by the Navajo Nation Council. All disputes arising under this contract or in connection with this contract shall be decided in the Courts of the Navajo Nation. This contract will be interpreted pursuant to Navajo law.~~

~~R.P.~~ Navajo Indian Irrigation Project. ~~NAPI shall~~ To work with the Navajo Indian Irrigation Project, the Department of the Interior, Bureau of Indian Affairs, and the appropriate Navajo Nation programs, departments and divisions, to maximize the potential profit and sustainable operation of the NAPI commercial farm.

~~S.O.~~ Grants. To apply for and accept grants and enter into contracts, agreements or other transactions with any Federal Agency, private lending institution, the Government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of NAPI's purposes consistent with the terms and conditions of the awarded contract or grant.

~~T.R.~~ Dividends. To declare a dividend as appropriate out of the net earnings of NAPI to the Navajo Nation as a return on the ~~e~~Capital ~~e~~Contribution of the Nation. NAPI shall report annually to the Navajo Nation Council of its decision regarding its dividends.

~~U.S.~~ Subsidiary Entities. To ~~(1) establish wholly-owned subsidiary corporations with the authority to waive such subsidiary corporations' sovereign immunity and other attributes of Navajo Nation sovereignty and limited liability companies, provided that such subsidiary corporations entities shall always remain wholly owned by NAPI, (2) that such subsidiary corporations entities shall be guided by a Board of Directors~~ Board comprised of three ~~(3)~~ members of the NAPI Board of Directors selected by the NAPI Board of ~~d~~Directors and two ~~(2)~~ members of NAPI management selected by the NAPI Chief Executive Officer, who may include the Chief Executive Officer himself or herself, (3) that ~~all any~~ dividends declared by the Board of ~~Directors~~

~~of the a subsidiary corporations entity~~ be reported as other income by NAPI, (4) that such subsidiary ~~corporations entities~~ be at all times adequately capitalized and insured so as to preserve the corporate shield for the protection of NAPI, and (5) that such subsidiary ~~corporations entities~~ shall periodically and, in any event, upon the request of the ~~Economic Resources and Development~~ Committee of the Navajo Nation Council, give full and complete reports of its operations and finances to such Committee, and (6) NAPI has the authority to establish subsidiary entities to enter into partnership or joint venture with local area communities or their respective farming entities to provide the necessary expertise and technical assistance that the local area communities request; and provided further that such subsidiary ~~corporations entities~~ shall have no authority to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited to the non-trust assets and property of such subsidiary ~~corporations entities~~ and shall not extend to the assets and property of the Navajo Nation itself, and provided further that such subsidiary ~~corporations entities~~ shall not pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.

~~V.T.~~ Ancillary powers. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which NAPI is organized, subject to applicable laws and regulations, and to limitations imposed herein or as may be imposed by the Navajo Nation Council.

~~W. Limited Waiver of NAPI's Sovereign Immunity for Certain Agreements.~~ Notwithstanding anything herein or in Navajo law to the contrary, to enter into contracts for the purchase of equipment and/or vehicles without the inclusion of the provision that would be otherwise required by Article 7 (R), above, which contracts may provide for a limited waiver of NAPI's sovereign immunity to the extent necessary to permit the repossession of such equipment and/or vehicles and permit lenders to recover damages from NAPI to the extent of the amount financed through judicial action in the courts of the Navajo Nation or through compulsory arbitration, provided that such contracts shall not be construed to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited strictly to non-trust asset and property of NAPI and shall not extend to the assets and property of the Navajo Nation itself, and provided further that no such contract shall pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.

~~AA. Limited Liability Companies and Limited Partnerships.~~ To create and/or enter into limited liability companies or limited partnerships, with the authority of NAPI, as a member of any such limited liability company or as a limited partner of any such limited partnership and in no other capacity, to waive sovereign immunity, provided: (1) that NAPI in such capacity shall have no authority to waive the sovereign immunity of the Navajo nation or pledge as security or otherwise, or make any guaranty respecting, any assets, property of funds of the Navajo Nation; (2) that any waiver of immunity from suit shall be limited to the non-trust assets and property of such limited liability company or limited partnership shall be at all times adequately capitalized and insured, so as to

~~preserve the corporate shield of the protection of NAPI.~~

Article 8. Board of Directors' Meetings; Notice; Quorum; Board of Directors Actions; Minutes and Resolutions; Stipend and Reimbursement; Prohibited Contracts and Transactions; Conflict of Interest; Meeting Procedure.

A. Meetings

1. Annual meeting. The annual meeting of the Board of Directors shall be held at 9:00 a.m. on the first Thursday of December at the principal place of business, or at such other time and place as the Board of Directors may fix. Board members shall be physically present at the annual meetings.
2. Regular meetings. The Board of Directors shall meet at least quarterly ~~upon notice fixing the time, place, and agenda, at 9:00 a.m. on the fourth Friday of the month or at such time and place as the Board of Directors may fix, and each annual meeting shall also be considered a regular quarterly meeting. In addition to the annual meeting, Board members need not~~ shall be physically present at 3 of the regular meetings but shall attend regular meetings electronically if not physically present and may appear telephonically at 1 regular meeting.
3. Special meetings. Special meetings may be called by the Chairperson or two members of the Board of Directors. In the event of an emergency, a special meeting may be held upon twenty-four (24) hours' notice. Board members need not be physically present at the special meetings but shall attend special meetings electronically telephonically if not physically present.

B. Notice of Meetings. Notice of meetings stating the date and time, place and proposed agenda shall be given in writing by prepaid letter, facsimile, or e-mail properly addressed to each ~~Board member~~ Director not later than five (5) days immediately preceding the meeting excluding the date of the meeting. Attendance of a Director in person or telephonically shall waive any objection to the notice requirement.

C. Quorum. The presence of three (3) members of the Board of Directors shall constitute a quorum for the transaction of any business. The act of the majority of the quorum shall be the act of the Board of Directors.

D. Board Actions. All substantive action of the Board of Directors shall be taken by written resolution duly certified by the presiding officer.

E. Minutes and Resolutions. Access to minutes of meetings and resolutions of the Board of Directors, and all other records of NAPI shall be governed by the Navajo Nation Privacy Act, 2 NNC section 81, *et seq.*

F. Stipend and Reimbursement. Directors shall be paid a stipend for attendance of Board of

Directors meeting at a rate, not to exceed \$250.00 per day per meeting for all meetings, ~~provided that the member shall attend the meeting for at least four (4) hours; and further provided that the meeting agenda is completed.~~ Board of Directors shall be reimbursed all reasonable mileage and expenses incurred in the execution of Board assignments at the rates established by the United States General Services Administration and CONUS and expenses incurred in execution of Board assignments pursuant to 41 C.F.R. chapters 300-304. ~~Members of the Board of Directors~~ A Director may be provided an advance to cover such expenses. Such advance shall not exceed the amount of reasonable expenses.

- G. Prohibited contracts and Transactions. No contract or other transaction between NAPI and any one of the Directors, or between NAPI and any corporation, partnership, firm or other legal entity in which a Director or Director's immediate and extended family have a direct or indirect personal, family or business interest shall be valid unless the contract or transaction is approved in advance of execution by majority vote of the Board of Directors not having such interest.
- H. Conflict of Interest. No Director shall participate in or vote on any matter in which he or she has a direct or indirect personal, family or business interest. A Director who violates this ~~section provision~~ shall be subject to removal.
- ~~I. Meeting Procedure. The Board of Directors may adopt such rules and regulations as it deems necessary and proper for the orderly and efficient conduct of its meeting or business.~~

Article 9. Chief Executive Officer Powers and Duties

- A. The Chief Executive Officer shall be employed under a written employment contract ~~for a term not to exceed three (3) years~~ approved by the Board of Directors and shall be responsible and accountable to the Board of Directors. The contract shall provide for an annual evaluation of the Chief Executive Officer, based upon the duties outlined, herein, duties set forth in such contract, the purposes for which NAPI was established, and other factors deemed relevant and significant by the Board of Directors. The contract may be renewed if both NAPI and the Chief Executive Officer agree, and other requirements are met, including but not limited to, any applicable requirements imposed by the Navajo Preference in Employment Act ("NEPEA"). The contract shall include a termination for cause provision, and this provision shall state that cause shall include an unsatisfactory annual evaluation and shall limit NAPI's potential liability under such contract, the NEPEA, or other applicable law in the event of termination for cause.
- B. The Chief Executive Officer shall be the chief executive officer of ~~the~~ NAPI and shall direct all operations of NAPI. He or she shall, among other things, execute the general policies approved by the Board of Directors and organize the operation of NAPI into operating units, and assign each unit specific duties and responsibilities, subject at all times to applicable laws and regulations, and to the provisions of this ~~plan of~~

~~operation~~Plan of Operation.

- C. The Chief Executive Officer shall administer and manage the enterprise in accordance with the provisions of the ~~Business Strategic Plan~~ and the annual budget adopted by the Board of Directors. The ~~Manager~~Chief Executive Officer shall proactively manage the enterprise to address changing markets and assumptions upon which the Plan is formulated. The Chief Executive Officer shall report on a quarterly basis the progress of the enterprise under the ~~Business Strategic Plan~~ and ~~draft any~~shall recommend changes to in the Plan for presentation to the Board for its consideration.
- D. The Chief Executive Officer shall have full authority, including appointments, dismissal, and control, over all employees of NAPI and shall be responsible for all operating units ~~or other~~and the implementation of assignments of all executive managers carrying out their assignments.
- E. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets, standards, program inspection, cost control, employee relations, and in-service training. He or she shall formulate and submit to the Board of Directors for its approval, personnel policies, rules, and procedures. The Chief Executive Officer shall be responsible for NAPI's compliance with, and execution of, approved policies, rules and procedures.
- F. The Chief Executive Officer shall employ, under written contract, competent operating unit directors, managers, or consultants for the usual and ordinary functional responsibilities of each operating unit, including any subsidiary organizations.
- G. The Chief Executive Officer shall be responsible for insuring that the activities of NAPI are in compliance with this ~~plan of operation~~Plan of Operation and with applicable laws and regulations and shall report any noncompliance therewith to the Board of Directors.
- H. The Chief Executive Officer shall comply with all laws, regulations and policies of the Navajo Nation including, but not limited to, preference in employment laws and laws related to contracting for with Navajos and other Indian entities.
- I. The Chief Executive Officer shall ~~recommend to the Board of Directors employment~~engage the services of consultants when such ~~employment engagement~~ is required and would be of benefit to NAPI.
- J. The Chief Executive Officer shall furnish clerical and stenographic personnel needed to record minutes; provide notice of meetings and other clerical services as needed by the Board of Directors. Minutes shall be provided to all Board of Directors by the next regular meeting after the meeting to which the minutes pertain.

- K. The Chief Executive Officer shall have and exercise such other authorities as may be granted from time to time by the Board of Directors.
- L. The Chief Executive Officer shall ~~hire under contract a Chief Financial Officer. The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer in~~ conformity with job descriptions established for the ~~employ under contract a Chief Financial Officer and the Chief Executive Officer, and with NAPI's approved policies and procedures. The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer.~~ The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and the Board of Directors simultaneously.

Article 10. Navajo Nation Capital Contribution.

Navajo Nation funds advanced to NAPI or Navajo Nation facilities and property transferred to NAPI shall be regarded as a ~~e~~Capital ~~e~~Contribution to NAPI by the Navajo Nation. NAPI ~~shall~~ The Board of Directors may pay to the Navajo Nation a dividend as appropriate out of the net earnings of NAPI, to be determined by the Board of Directors, as return on this capital contribution at the conclusion of each the fiscal year, as return on this Capital Contribution. See, Article 7(WR).

Article 11. Accounting System; Fiscal Year.

- A. An accounting system conforming with ~~g~~Generally ~~a~~Accepted ~~a~~Accounting ~~p~~Principles ("GAAP") shall be established and maintained under the supervision of the Chief Financial Officer. The accounting system shall ~~insure~~ ensure the availability of information as may be necessary to comply with Federal and Navajo Nation regulatory requirements.
- B. The Fiscal Year of NAPI shall be June 1 to May 31 ~~of each year~~ annually.

Article 12. Books, Records, and Property; Inspection.

- A. The books, records, and property of NAPI shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation. The Navajo Nation shall have the absolute right and authority to review NAPI's books, records, ~~and property, both real and personal, of NAPI property.~~
- B. The books and records of NAPI shall be available at all reasonable times for public inspection; provided, NAPI may impose such limited and reasonable restrictions upon availability or inspection by the public as orderly accounting procedures,

confidentiality, or applicable laws may require.

- C. The books, records, and property of NAPI shall be available for inspection at the principle place of business of NAPI.

Article 13. Audits.

A. The accounts and records of NAPI shall be audited at the close of each fiscal year and an audit report issued no later than ninety (90) days after the expiration of the fiscal year. A copy of the audit report shall be provided to the Economic Resources and Development Committee and the President of the Navajo Nation within ten (10) working days after the date on which the audit report is issued.

~~B. The Board of Directors, in its discretion, may establish an audit committee consisting of two (2) Directors.~~

Article 14. Insurance.

Insurance, including liability, adequate and sufficient to protect the interest of NAPI and the Navajo Nation from any and all liabilities and losses, shall be carried by NAPI.

Article 15. Training of Navajos.

Each operating unit director or manager, and each employee in a management position if a non-Navajo, shall train and otherwise prepare a member of the Navajo Nation to replace him or her. ~~Such replacement shall occur within three (3) years of the non-Navajo's appointment.~~ The Board of Directors and the Chief Executive Officer shall take all steps necessary to effectuate this provision, including but not limited to the establishment of assistant manager positions.

Article 16. Immunity; from Suit Limited Waivers.

A. ~~The Navajo Agricultural Products Industry~~ NAPI is hereby declared to be an enterprise of the Navajo Nation established for the purposes set forth in this plan of operation ~~Plan of Operation~~, and to be established for the benefit of the Navajo people. NAPI is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Plan of Operation. As such, it is vested hereby with such immunity from suit as the Navajo Nation by law possesses.

B. NAPI and its ~~board of Directors, and officers, and employees and agents~~ while acting in their official capacities are immune from suit, and the assets and other property of NAPI are exempt from any levy or execution, ~~except as provided by that, notwithstanding any other provision of law, including but not limited to the~~ Navajo Sovereign Immunity Act (1 N.N.C. §§551 et seq.), the Board of Directors may waive the defenses identified in this Plan of Operation, in conformity with the

procedures established in the Article, in order to further the purposes of NAPI. Any waiver of the defenses identified in this Article must be express and must be agreed to by the Board of Directors prior to the time any alleged cause of action accrues.

- C. NAPI is hereby authorized to waive, as provided in this Article, any defense of sovereign immunity from suit NAPI, its Directors, officers, employees, attorneys or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of NAPI, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal, state and/or federal court.
- D. NAPI is hereby authorized to waive, as provided in this Article, any defense NAPI, its Directors, officers, employees attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against NAPI in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- E. Any waiver by NAPI authorized by Paragraph B, C, or D of this Article shall be in the form of a resolution duly adopted by the Board of Directors, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of NAPI which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall identify the court or courts in which suit against NAPI may be brought. Any waiver shall be limited to claims arising from the acts or omissions of NAPI, its Directors, officers, employees, or agents, and shall be construed only to affect the property and income of NAPI.
- F. Nothing in this Plan of Operation, and no waiver of NAPI's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by NAPI shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of NAPI, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by NAPI. The acts and omission of NAPI, its Directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.
- G. In the event NAPI is sold, dissolved or merged into any other entity of the Navajo Nation, the provisions of this ~~section~~ Article and the rights created hereunder shall survive such sale, dissolution or merger.

Article 17. Compliance with Navajo Nation Law.

NAPI shall comply with all applicable laws and regulations of the Navajo Nation.

Article 18. Indemnification of Officers, Employees and Members of the Board

NAPI shall indemnify any current or former Director, officer, employee or member of the ~~Board of Directors or former officer, employee or member of the Board of Directors or any person who may have served at its request as an officer, employee, or member of the Board of Directors~~agent against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being, or having been such Director, officer, employee, or member of the ~~Board of Directors~~agent except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty, or except in relation to matters in which such Director, officer, ~~member, or employee~~ or agent was acting beyond the scope of his or her employment or authority. NAPI shall also reimburse any Director, officer, employee or member of the ~~Board of Directors~~agent for reasonable costs of settlement of any action, suit, or proceeding if found by a majority of the Board of Directors, not including the Directors involved in the matter of controversy, that it is in the best interest of NAPI and the Navajo Nation that such settlement be made and that such Director, officer, employee, or member of the ~~Board of Directors~~agent was not guilty of gross negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, employee, or member of the ~~Board of Directors~~agent may be entitled to receive. As a condition of such indemnification, the Director, officer, employee or ~~director of NAPI~~agent shall agree to cooperate with legal counsel for NAPI in coordination of any action, suit or proceeding.

Article 19. Amendments

~~The~~ This Plan of Operation may be amended from time to time by the ~~Economic Resources and Development~~ Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation.



***Navajo Agricultural Products Industry
Amended and Restated
Plan of Operation***

Article 1. Establishment

- A. Pursuant to 5 N.N.C. Section 1601, the Navajo Nation Council established the Navajo Agricultural Products Industry ("NAPI") as an enterprise of the Navajo Nation.
- B. The principal place of business of the enterprise will be located at NAPI headquarters, Hwy. 10086 N.M. Hwy. 371, Farmington, New Mexico, on lands subject to the jurisdiction of the Navajo Nation.
- C. NAPI may establish offices or subsidiary organizations at such other place or places as the Board of Directors may direct.

Article 2. Seal

The Board of Directors shall approve an official seal for NAPI.

Article 3. Purposes

The mission of NAPI is to continue the legacy of Navajo farming, producing superior products, practicing stewardship and creating value for our people. The vision of NAPI is farming sustainably across generations to cultivate a healthy Nation. The purpose for which NAPI is organized is to operate a profitable commercial farm, separate and distinct from the Navajo Indian Irrigation Project ("NIIP"), in accordance with this Amended and Restated Plan of Operation (the "Plan of Operation") and applicable laws and regulations and, in order to carry out this purpose, NAPI shall:

- A. Plan, develop, and promote the usage of agricultural and related resources, including water, which water use shall be in compliance with the Navajo Nation Water Code or as shall be available for use by NAPI through the NIIP.
- B. Utilize real estate withdrawn or leased to the agriculture enterprise for the general purpose of establishing, operating and managing a commercial farm.

- C. Promote Agribusiness Development and related businesses and industries within the Navajo Nation and support the vertical and horizontal integration within the Navajo Nation of producing and processing crops into finished food products and derivatives thereof for sale.
- D. Do everything necessary, proper and advisable for the accomplishment of the purposes set forth herein in accordance with this Plan of Operation and applicable laws and regulations of the Navajo Nation.

Article 4. Definitions

- A. “Agribusiness Development” – means the growth of capacity by NAPI for the production, processing and sale of crops. This term shall include derivatives and income from any related business operated by NAPI and from subleasing operations authorized by the Master Agricultural Lease.
- B. “Capital Contribution” – means the land, water, services and money invested, loaned or granted to NAPI by the Navajo Nation to engage in commercial farming and Agribusiness Development.
- C. “Chapter Official” – means the following public officials elected by the chapter membership: chapter president, chapter vice-president, and chapter secretary/treasurer or such titles given to the officials of a chapter that has adopted an Alternative Form of Government (“AFOG”) in accordance with the Local Governance Act (“LGA”), 26 N.N.C. § 101 *et seq.* Officials of Land Boards or Grazing Committees are not Chapter Officials as defined in this Plan of Operation.
- D. “Master Agricultural Lease” – means the single lease between the Navajo Nation and NAPI to authorize and govern any and all use of Navajo Nation trust and fee lands by NAPI to engage in Agribusiness Development and commercial farming. Said lease may provide subleasing opportunities for NAPI to promote Agribusiness Development. The Master Agricultural Lease shall conform to Federal and Navajo Nation law.
- E. “Fiscal Year” – means the NAPI Fiscal Year which runs from June 1st to May 31st of each year.
- F. “Organic Food” – means the product of a farming system which avoids the use of man-made fertilizers, pesticides; growth regulators and livestock feed additives. Irradiation and the use of genetically modified organisms (“GMOs”) or products produced from or by GMOs are generally prohibited by organic legislation.

Article 5. Authority of Board of Directors; Number; Appointment; Qualifications; Term

of Office; Removal or Resignation; Filling Vacancies; Authority

- A. NAPI shall be managed by a Board of Directors that shall provide governance and oversight of the organization, subject to the restrictions of this Plan of Operation and applicable law. The Board shall consist of seven (7) members from the Western, Chinle, Eastern Agencies. At least one Director shall be from District 13 and one Director shall be from District 19 and one (1) member from District 13 and one (1) member from District 19, must be registered Chapter members in their respective districts.
- B. **Appointment.** The President of the Navajo Nation shall appoint members to serve on the Board of Directors subject to final confirmation by the Resources and Development Committee of the Navajo Nation Council. The President of the Navajo Nation shall advertise any open positions on the Board of Directors whether based on vacancy or an expired term.
- C. **Qualifications.** Each Director, with the exception of District 13 and 19 representatives, shall have substantial business experience which shall include, but not be limited to agribusiness and/or business marketing, livestock, agricultural economics and finance, irrigation and P.L. 93-638 contracting. It is preferred that each Director shall have knowledge of corporate and/or business financial statements and capital investment planning and shall possess a Bachelor's degree from a recognized and accredited four-year institution of higher learning. Preference in the appointment of Directors shall be given to Navajos and, secondarily, to non-Navajos who meet the minimum qualifications and are legally married to Navajos; however, the procedural and substantive provisions of the Navajo Preference in Employment Act, 15 N.N.C. section 601, *et seq.*, shall not apply to such appointments. No Director shall be a person who is or was employed by NAPI within the past six (6) years or a current Council delegate or Chapter Official.
- D. **Term of Office**
 - 1. Directors shall serve staggered terms of three (3) years and may be reappointed to serve additional terms.
 - 2. The Chief Executive Officer shall notify the President of the Navajo Nation when the term of a Director is set to end at least forty-five (45) days prior to the end of such term. The President shall appoint a new member or reappoint an existing member to serve on the Board of Directors in accordance with the process outlined herein. A Director whose term has ended shall hold office until the appointment and confirmation of his/her successor.
- E. **Removal or Resignation.**

1. Any Director may be removed by a simple majority vote of the Resources and Development Committee taken at a lawful meeting if:
 - (a) Such Director has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided that any such violation shall be limited to the last ten (10) years of such person's history and provided that the Resources and Development Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification.
 - (b) Such Director violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 et. seq. as amended, provided that any such violation shall be limited to the last ten (10) years of such person's history.
 - (c) Such Director commits malfeasance or misfeasance of office as member of the Board of Directors.
2. A Director may resign by giving written notice of resignation to the President of the Navajo Nation, the Chairperson of the Resources and Development Committee, and the Chairperson of the Board of Directors. Resignation shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Acceptance of resignation shall not be necessary to make such resignation effective. A Director who has failed to attend two (2) consecutive properly called and noticed meetings of the Board or who fails to attend six Board meetings properly noticed in any fiscal year shall, unless excused from attendance by the Chairperson of the Board, be considered to have resigned.

F. Notification of Procedures for Filling Vacancies

1. A vacancy shall exist from the date of the resignation, death, or removal of a Director by the Resources and Development Committee of the Navajo Nation Council.
2. The Chairperson of the Board of Directors shall promptly notify the President of the Navajo Nation and the Chairperson of the Resources and Development Committee concerning any vacancy to be filled.
3. Upon receipt of notice of a vacancy, the President shall appoint a qualified candidate on or before forty-five (45) days following the vacancy. If more than forty-five (45) days has passed with a vacancy and the President has not nominated a replacement, then the Resources and Development Committee

may both nominate and confirm a replacement Director so long as the proposed replacement Director meets the qualifications stated herein. The appointment is effective upon communication of the appointment by the Chairperson of the Resources and Development Committee to the Chairperson of the NAPI Board.

4. Any vacancy shall be filled for the unexpired portion of the term.

Article 6. Principal Officers Duties; Election; Term of Office; Removal; Resignation; Vacancies.

- A. The Principal Officers. The Principal Officers of NAPI Board of Directors shall consist of the Chairperson, Vice Chairperson and Secretary.
 1. *Chairperson of the Board.* The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors, and shall, in general, perform all duties incident to the office of the Chairperson of the Board of Directors and such other duties as may be assigned by the Board of Directors.
 2. *Vice Chairperson of the Board.* The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson and shall discharge any other duties designated by the Chairperson or the Board of Directors.
 3. *Secretary of the Board.* The secretary is the recording officer of the Board and the custodian of its records except such as are specifically assigned to others such as the treasurer's books.
- B. Election; Term of Office. The Principal Officers shall be elected annually by the Board of Directors at its annual meeting, or as soon after such annual meeting as newly appointed Directors are confirmed. Each Principal Officer shall hold office until his/her successor is elected, or vacates the position by death, resignation, removal or replacement.
- C. Removal. Any Principal Officer elected by the Board of Directors may be removed by a vote of at least three of the five Directors whenever, in the judgment of the Directors, the best interest of NAPI will be served thereby; except in the absence of dereliction in duty, negligence, malfeasance, or misfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the person removed.
- D. Resignation. Any Principal Officer may resign from office at any time by giving written notice to the Board of Directors, or to the Chairperson; such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

- E. Replacement. A vacancy in a Principal Officer position may occur when the term of the Principal Officer as a Director has expired, and a new Director has been appointed and confirmed as provided in Article 5 above.
- F. Filling Vacancies. Any vacancy in a Principal Officer position caused by death, resignation, removal or replacement shall be filled for the unexpired portion of the Principal Officer's term in the manner prescribed herein for election to such Principal Officer's office.

Article 7. Board of Directors Powers and Duties

Subject to applicable Federal and Navajo Nation laws and regulations, the Board of Directors shall have overall responsibility for the affairs of NAPI, giving usual and essential latitude to the Chief Executive Officer ("CEO") to accomplish the purposes set forth in Article 3 of this Plan of Operation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote. The Board may adopt such rules and regulations for the conduct of their meetings as it deems proper, and not inconsistent with this Plan of Operation. The NAPI Board shall have the following powers and duties to establish policies and procedures, receive reports and provide direction to the CEO and his or her delegated employees, by resolution or directive:

- A. Lobbying. To engage in lobbying activities on behalf of NAPI before local, state and Federal legislative and administrative bodies to achieve the purposes of NAPI.
- B. Property. To exercise ultimate responsibility for the custody of inventory and maintenance of all NAPI property, facilities, and special utilities. To obtain regular reports by the Chief Executive Officer and his or her delegated employees regarding the planning, construction and operation of all facilities, and to take any and all usual, necessary and proper actions incidental thereto including, the consent to the borrowing of funds to accomplish the purposes of NAPI, provided that no assets or funds of the Navajo Nation shall be pledged as security therefore, except upon approval by the Navajo Nation Council, and to make other commitments necessary to accomplish the business purposes of NAPI.
- C. Investment of funds. To establish effective investment policies and procedures and to ensure that investment decisions are consistent with the policies and procedures and are subject to limitations as may be imposed by the Navajo Nation Council.
- D. Borrowing. To obtain loans so long as NAPI shall not incur obligations in excess of the ability of NAPI to pay or to issue bonds and to secure payment thereof by loan guaranty or pledge of, or lien on, all or any of its fixtures, personal property, revenues, income or contracts of NAPI. Nothing herein shall be construed as authorizing NAPI to mortgage or encumber trust or restricted property, including all

water and real property resources of the Navajo Nation, or as providing consent by the Navajo Nation Council thereto. The Resources and Development Committee of the Navajo Nation Council shall not adopt amendments to this Plan of Operation which limit or alter the rights or powers vested in NAPI necessary to fulfill NAPI's obligations until all such notes or bonds or obligations issues, together with interest thereon, are fully met, paid, and discharged. This subsection shall be interpreted to protect the previously established rights of NAPI creditors or others to whom NAPI owes a legally enforceable obligation.

- E. Reports. To report quarterly in writing to the President of the Navajo Nation. Such quarterly report shall include a summary of activities on management, income and expenditures for the current quarter. In addition, NAPI shall issue an annual report with fiscal year and the audited financial reports no later than ninety (90) days after the expiration of the fiscal year and a copy of this report shall be provided to the Resources and Development Committee and the President within ten working days after the date on which the annual report is issued.
- F. Operating policies. To establish general operating policies and procedures, such as purchasing, accounting, information technology and personnel procedures, giving usual and essential latitude to the Chief Executive Officer and his or her delegated employees to carry out and implement such policies.
- G. Business Plan. To develop and submit to the President of the Navajo Nation and Resources and Development Committee of the Navajo Nation Council a business plan for NAPI. The Plan shall set forth the general plan for operating the commercial farm. The Plan shall include cropping patterns, annual total farm budgets, cash flow projections, and investment plans and strategies for the forthcoming years to yield a profit for NAPI. The Plan shall contain sufficient information as to justify the assumptions and conclusions of the Plan, considering market trends and prices, as well as the nationaleconomy.
- H. Officers and agents. To select or appoint officers, agents, auditors, and such professional consultants as may be deemed necessary and appropriate, and to define their duties and compensation. All officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of NAPI and the Navajo Nation shall be bonded.
- I. Agency. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of NAPI, within the scope of authorized purposes, subject to applicable law.
- J. Real property. To establish policies and procedures to utilize, improve, manage, and operate Navajo Nation lands withdrawn for NIIP pursuant to a Master Agricultural Lease. The Master Agricultural Lease shall be subject to renewal at intervals that are economically advantageous to NAPI and the Navajo Nation.

- K. Personal property, generally. To acquire (by purchase, exchange, lease, hire, or otherwise), hold, own, mortgage, pledge, exchange, sell, deal in, hedge and dispose of, either alone or in conjunction with others, personal property, any interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth in Article 3, except personal property subject to restrictions on alienation or sale by the United States Government and provided that the approval of the Budget and Finance Committee of the Navajo Nation Council as appropriate is a condition precedent to any such transaction involving restricted or unrestricted property owned by the Navajo Nation.
- L. Patents, Copyrights, and Trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefore, licenses, formulas, privileges, processes, copyrights, and applications therefore, trademarks and applications therefore, and trade names, and that title of such acquisitions shall be taken in the name of NAPI.
- M. Guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of NAPI, to the extent that such guaranty is made pursuant to the purposes set forth in Article 3 and is subject to the limitations set forth in this Plan of Operation on the use of trust or restricted property as security therefore.
- N. Depository. To designate and approve all depositories used for the deposit of funds of NAPI.
- O. Contracts. To enter into contracts for any lawful purposes set forth in Article 3 and to delegate this authority as may be advisable to the Chief Executive Officer of NAPI, or to the chairperson of the Board of Directors. Any contract for hiring or retaining an attorney is subject to applicable Federal or Navajo Nation laws, rules and regulations. Except as provided in this Plan of Operation, nothing in this section shall be construed as a waiver of sovereign immunity NAPI and/or the Navajo Nation may by law possess.
- P. Navajo Indian Irrigation Project. To work with the Navajo Indian Irrigation Project, the Department of the Interior, Bureau of Indian Affairs, and the appropriate Navajo Nation programs, departments and divisions, to maximize the potential profit and sustainable operation of the NAPI commercial farm.
- Q. Grants. To apply for and accept grants and enter into contracts, agreements or other transactions with any Federal Agency, private lending institution, the Government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of NAPI's purposes consistent with the terms and conditions of the awarded contract or

grant.

- R. Dividends. To declare a dividend as appropriate out of the net earnings of NAPI to the Navajo Nation as a return on the Capital Contribution of the Nation. NAPI shall report annually to the Navajo Nation Council of its decision regarding its dividends.
- S. Subsidiary Entities. To (1) establish wholly-owned subsidiary corporations and limited liability companies, provided that such subsidiary entities shall always remain wholly owned by NAPI, (2) that such subsidiary entities shall be guided by a Board comprised of three (3) members of the NAPI Board of Directors selected by the NAPI Board of Directors and two (2) members of NAPI management selected by the NAPI Chief Executive Officer, who may include the Chief Executive Officer himself or herself, (3) that any dividends declared by the Board of a subsidiary entity be reported as other income by NAPI, (4) that such subsidiary entities be at all times adequately capitalized and insured so as to preserve the shield for the protection of NAPI, (5) that such subsidiary entities shall periodically and, in any event, upon the request of the Resources and Development Committee of the Navajo Nation Council, give full and complete reports of its operations and finances to such Committee, and (6) NAPI has the authority to establish subsidiary entities to enter into partnership or joint venture with local area communities or their respective farming entities to provide the necessary expertise and technical assistance that the local area communities request; and provided further that such subsidiary entities shall have no authority to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited to the non-trust assets and property of such subsidiary entities and shall not pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.
- T. Ancillary powers. To have and exercise all powers necessary or convenient to affect any or all of the purposes for which NAPI is organized, subject to applicable laws and regulations, and to limitations imposed herein or as may be imposed by the Navajo Nation Council.

Article 8. Board of Directors' Meetings; Notice; Quorum; Board of Directors Actions; Minutes and Resolutions; Stipend and Reimbursement; Prohibited Contracts and Transactions; Conflict of Interest; Meeting Procedure.

A. Meetings

- 1. Annual meeting. The annual meeting of the Board of Directors shall be held at 9:00 a.m. on the first Thursday of December at the principal place of business, or at such other time and place as the Board of Directors may fix. Board members shall be physically present at the annual meetings.
- 2. Regular meetings. The Board of Directors shall meet at least quarterly at 9:00 a.m. on the fourth Friday of the month or at such time and place as the Board

of Directors may fix, and each annual meeting shall also be considered a regular quarterly meeting. In addition to the annual meeting, Board members shall be physically present at 3 of the regular meetings and may appear telephonically at 1 regular meeting.

3. Special meetings. Special meetings may be called by the Chairperson or two members of the Board of Directors. In the event of an emergency, a special meeting may be held upon twenty-four (24) hours' notice. Board members need not be physically present at the special meetings but shall attend special meetings telephonically if not physically present.
- B. Notice of Meetings. Notice of meetings stating the date and time, place and proposed agenda shall be given in writing by prepaid letter, facsimile, or e-mail properly addressed to each Director not later than five (5) days immediately preceding the meeting excluding the date of the meeting. Attendance of a Director in person or telephonically shall waive any objection to the notice requirement.
- C. Quorum. The presence of three (3) members of the Board of Directors shall constitute a quorum for the transaction of any business. The act of the majority of the quorum shall be the act of the Board of Directors.
- D. Board Actions. All substantive action of the Board of Directors shall be taken by written resolution duly certified by the presiding officer.
- E. Minutes and Resolutions. Access to minutes of meetings and resolutions of the Board of Directors, and all other records of NAPI shall be governed by the Navajo Nation Privacy Act, 2 NNC section 81, *et seq.*
- F. Stipend and Reimbursement. Directors shall be paid a stipend for attendance of Board of Directors meeting at a rate, not to exceed \$250.00 per day per meeting for all meetings, attended. Board of Directors shall be reimbursed all reasonable mileage and expenses incurred in the execution of Board assignments at the rates established by the United States General Services Administration pursuant to 41 C.F.R. chapters 300-304. A Director may be provided an advance to cover such expenses. Such advance shall not exceed the amount of reasonable expenses.
- G. Prohibited contracts and Transactions. No contract or other transaction between NAPI and any one of the Directors, or between NAPI and any corporation, partnership, firm or other legal entity in which a Director or Director's immediate and extended family have a direct or indirect personal, family or business interest shall be valid unless the contract or transaction is approved in advance of execution by majority vote of the Board of Directors not having such interest.
- H. Conflict of Interest. No Director shall participate in or vote on any matter in which he or she has a direct or indirect personal, family or business interest. A Director who violates

this provision shall be subject to removal.

Article 9. Chief Executive Officer Powers and Duties

- A. The Chief Executive Officer shall be employed under a written employment contract approved by the Board of Directors and shall be responsible and accountable to the Board of Directors. The contract shall provide for an annual evaluation of the Chief Executive Officer, based upon the duties outlined, herein, duties set forth in such contract, the purposes for which NAPI was established, and other factors deemed relevant and significant by the Board of Directors. The contract may be renewed if both NAPI and the Chief Executive Officer agree, and other requirements are met, including but not limited to, any applicable requirements imposed by the Navajo Preference in Employment Act ("NPEA"). The contract shall include a termination for cause provision, and this provision shall state that cause shall include an unsatisfactory annual evaluation and shall limit NAPI's potential liability under such contract, the NPEA, or other applicable law in the event of termination for cause.
- B. The Chief Executive Officer shall be the chief executive officer of NAPI and shall direct all operations of NAPI. He or she shall, among other things, execute the general policies approved by the Board of Directors and organize the operation of NAPI into operating units, and assign each unit specific duties and responsibilities, subject at all times to applicable laws and regulations, and to the provisions of this Plan of Operation.
- C. The Chief Executive Officer shall administer and manage the enterprise in accordance with the provisions of the Strategic Plan and the annual budget adopted by the Board of Directors. The Chief Executive Officer shall proactively manage the enterprise to address changing markets and assumptions upon which the Plan is formulated. The Chief Executive Officer shall report on a quarterly basis the progress of the enterprise under the Strategic Plan and shall recommend changes in the Plan to the Board for its consideration.
- D. The Chief Executive Officer shall have full authority, including appointment, dismissal, and control, over all employees of NAPI and shall be responsible for all operating units and the implementation of assignments of all executive managers.
- E. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets, standards, program inspection, cost control, employee relations, and in-service training. He or she shall formulate and submit to the Board of Directors for its approval, personnel policies, rules, and procedures. The Chief Executive Officer shall be responsible for NAPI's compliance with, and execution of, approved policies, rules and procedures.
- F. The Chief Executive Officer shall employ, under written contract, competent

operating unit directors, managers, or consultants for the usual and ordinary functional responsibilities of each operating unit, including any subsidiary organizations.

- G. The Chief Executive Officer shall be responsible for insuring that the activities of NAPI are in compliance with this Plan of Operation and with applicable laws and regulations and shall report any noncompliance therewith to the Board of Directors.
- H. The Chief Executive Officer shall comply with all laws, regulations and policies of the Navajo Nation including, but not limited to, preference in employment laws and laws related to contracting with Navajo and other Indian entities.
- I. The Chief Executive Officer shall engage the services of consultants when such engagement is required and would be of benefit to NAPI.
- J. The Chief Executive Officer shall furnish clerical and stenographic personnel needed to record minutes; provide notice of meetings and other clerical services as needed by the Board of Directors. Minutes shall be provided to all Board of Directors by the next regular meeting after the meeting to which the minutes pertain.
- K. The Chief Executive Officer shall have and exercise such other authorities as may be granted from time to time by the Board of Directors.
- L. The Chief Executive Officer shall employ under contract a Chief Financial Officer. The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer. The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and the Board of Directors simultaneously.

Article 10. Navajo Nation Capital Contribution.

Navajo Nation funds advanced to NAPI or Navajo Nation facilities and property transferred to NAPI shall be regarded as a Capital Contribution to NAPI by the Navajo Nation. The Board of Directors may pay the Navajo Nation a dividend out of the net earnings of NAPI at the conclusion of the fiscal year, as return on this Capital Contribution. *See*, Article 7(R).

Article 11. Accounting System; Fiscal Year.

- A. An accounting system conforming with Generally Accepted Accounting Principles ("GAAP") shall be established and maintained under the supervision of the Chief Financial Officer. The accounting system shall ensure the availability of information as may be necessary to comply with Federal and Navajo Nation regulatory requirements.

- B. The Fiscal Year of NAPI shall be June 1 to May 31 annually.

Article 12. Books, Records, and Property; Inspection.

- A. The books, records, and property of NAPI shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation. The Navajo Nation shall have the absolute right and authority to review NAPI's books, records, real and personal property.
- B. The books and records of NAPI shall be available at all reasonable times for public inspection; provided, NAPI may impose such limited and reasonable restrictions upon availability or inspection by the public as orderly accounting procedures, confidentiality, or applicable laws may require.
- C. The books, records, and property of NAPI shall be available for inspection at the principle place of business of NAPI.

Article 13. Audits.

The accounts and records of NAPI shall be audited at the close of each fiscal year and an audit report issued no later than ninety (90) days after the expiration of the fiscal year. A copy of the audit report shall be provided to the Resources and Development Committee and the President of the Navajo Nation within ten (10) working days after the date on which the audit report is issued.

Article 14. Insurance.

Insurance, including liability, adequate and sufficient to protect the interest of NAPI and the Navajo Nation from any and all liabilities and losses, shall be carried by NAPI.

Article 15. Training of Navajos.

Each operating unit director or manager, and each employee in a management position if a non-Navajo, shall train and otherwise prepare a member of the Navajo Nation to replace him or her. The Board of Directors and the Chief Executive Officer shall take all steps necessary to effectuate this provision, including but not limited to the establishment of assistant manager positions.

Article 16. Immunity; Limited Waivers.

- A. NAPI is hereby declared to be an enterprise of the Navajo Nation established for the purposes set forth in this Plan of Operation, and to be established for the benefit of the Navajo people. NAPI is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Plan of Operation. As such, it is vested hereby with such immunity from suit as the Navajo Nation by law possesses.

- B. NAPI and its Directors, officers, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of NAPI are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act (1 N.N.C. §§551 et seq.), the Board of Directors may waive the defenses identified in this Plan of Operation, in conformity with the procedures established in the Article, in order to further the purposes of NAPI. Any waiver of the defenses identified in this Article must be express and must be agreed to by the Board of Directors prior to the time any alleged cause of action accrues.
- C. NAPI is hereby authorized to waive, as provided in this Article, any defense of sovereign immunity from suit NAPI, its Directors, officers, employees, attorneys or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of NAPI, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal, state and/or federal court.
- D. NAPI is hereby authorized to waive, as provided in this Article, any defense NAPI, its Directors, officers, employees attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against NAPI in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- E. Any waiver by NAPI authorized by Paragraph B, C, or D of this Article shall be in the form of a resolution duly adopted by the Board of Directors, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of NAPI which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall identify the court or courts in which suit against NAPI may be brought. Any waiver shall be limited to claims arising from the acts or omissions of NAPI, its Directors, officers, employees, or agents, and shall be construed only to affect the property and income of NAPI.
- F. Nothing in this Plan of Operation, and no waiver of NAPI's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by NAPI shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of NAPI, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by

NAPI. The acts and omission of NAPI, its Directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.

- G. In the event NAPI is sold, dissolved or merged into any other entity of the Navajo Nation, the provisions of this Article and the rights created hereunder shall survive such sale, dissolution or merger.

Article 17. Compliance with Navajo Nation Law.

NAPI shall comply with all applicable laws and regulations of the Navajo Nation.

Article 18. Indemnification of Officers, Employees and Members of the Board

NAPI shall indemnify any current or former Director, officer, employee or agent against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being, or having been such Director, officer, employee, or agent except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty, or except in relation to matters in which such Director, officer, employee or agent was acting beyond the scope of his or her employment or authority. NAPI shall also reimburse any Director, officer, employee or agent for reasonable costs of settlement of any action, suit, or proceeding if found by a majority of the Board of Directors, not including the Directors involved in the matter of controversy, that it is in the best interest of NAPI and the Navajo Nation that such settlement be made and that such Director, officer, employee, or agent was not guilty of gross negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, employee, or agent may be entitled to receive. As a condition of such indemnification, the Director, officer, employee or agent shall agree to cooperate with legal counsel for NAPI in coordination of any action, suit or proceeding.

Article 19. Amendments

This Plan of Operation may be amended from time to time by the Resources and Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation.



NAVAJO NATION DEPARTMENT OF JUSTICE



REQUEST FOR SERVICES



DOJ
11/20/18 @ 1156
DATE / TIME
RFS #: 18-2773
UNIT: NM

☐ RESUBMITTAL

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE			
DATE OF REQUEST: 11/20/2018		ENTITY/DIVISION: Resources and Development Committee & Legislative Branch	
CONTACT NAME: Alton Shepherd		DEPARTMENT: Click here to enter text.	
PHONE NUMBER: 928 871 6380		E-MAIL: Click here to enter text.	
COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents): NAPI's Amendment to Title 5, Navajo Nation Code & Revisions to NAPI's Plan of Operation			
DEADLINE:	Click here to enter a date.	REASON:	
DOJ SECRETARY TO COMPLETE			
DATE/TIME IN UNIT: 11/20/18 1:00 pm		REVIEWING ATTORNEY/ADVOCATE: Veronica B.	
DATE TIME OUT OF UNIT: 11/12/4/18 4:45		PREPARED BY (initial): MM	
DOJ ATTORNEY / ADVOCATE COMMENTS			
See Memo			
REVIEWED BY: (PRINT) VBlackhat		DATE / TIME: 12/4/18 3:24 pm	
DOJ Secretary Called: Mariah		for Document Pick Up on 12.4.18 at 435 By: BJ	
PICKED UP BY: (PRINT)		DATE / TIME:	

NNDOJ/DRRF-July 2013

Hon. Shepherd's COPY COMPLETED



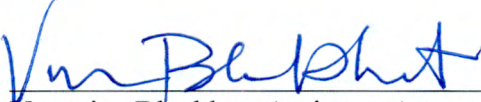
NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

CHERIE ESPINOSA
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Honorable Alton Joe Shepherd, Chairperson
Resources and Development Committee

FROM: 
Veronica Blackhat, Assistant Attorney General
Natural Resources Unit, NNDOJ

DATE: December 4, 2018

SUBJECT: **RFS 18-2773: Request for Review of Revisions to Navajo Agricultural Products Industry's (NAPI) Plan of Operation**

The Navajo Nation Department of Justice (NNDOJ) has reviewed the above-mentioned document and has the following comments:

1. Article 3, second sentence, page one of strikethrough version. I believe this is a typo. Correct "health" to read "healthy".
2. Article 4(C), page two of strikethrough version. NNDOJ recommends a revision to the definition of chapter official so that it is consistent with 26 N.N.C. §2(11). Revise Article 4(C) to read: "Chapter official" means the following public officials elected by the chapter membership: chapter president, chapter vice-president, and chapter secretary/treasurer or such titles given to the officials of a chapter that has adopted an Alternative Form of Government (AFOG) in accordance with the Local Governance Act (LGA), 26 N.N.C. §101 *et seq.* Officials of Land Boards or Grazing Committees are not Chapter Officials as defined in this Plan of Operation."
3. Article 5 (A)(1), page 3 of strikethrough version. The first sentence states that President can advertise open positions that are based on vacant or expired terms. The third sentence then states that "if more than thirty (30) days has passed with a vacancy as a result of death, resignation, or removal and the President has not nominated a replacement, then the Resources and Development Committee may both nominate and confirm a replacement..." So based on the way this has been drafted, is the intent only to fill open positions due to vacancies, not expired terms?

Memorandum to: Honorable Alton Joe Shepherd

RE: **RFS 18-2773: Request for Review of Revisions to NAPI's Plan of Operation**

December 4, 2018

Page 2 of 2

What happens in situations where a Board of Director's term has expired? How will expired terms be addressed?

4. Article 5. The numbering is not consistent between the clean and the strikethrough versions. For example, Article 5 of clean version goes from A-E, whereas, the strikethrough version goes from A(1)-(5).

5. Article 6(E), page 8 of strikethrough version. References are inconsistent between the clean and strikethrough versions. Article 6(E) of the clean version makes reference to Article 5(A), whereas the strikethrough version for Article 6(E) makes reference to Article 5(B). As such, references to Article 5 will need to be corrected to be consistent with the numbering format chosen.

6. Page 8 of strikethrough version, Article 6(E) and (F) seem to contradict each other. Article 6(E) states: "Replacement. A vacancy in a Principal Officer position may occur when the term of the Principal Officer as a Director has expired and a new Director has been appointed by the Nation as provided in Article 5(B) above." However, Article 6(F) makes reference to "replacement" to also include unexpired portions of the Principal Officer's term. Also, keep in mind that any references to Article 5 will need to be corrected to be consistent with the numbering format chosen.

7. Article 9(C), page 16 of strikethrough version. References are inconsistent between the clean and strikethrough versions. Article 9(C) of the clean version makes reference to a Business Plan, whereas the strikethrough version for Article 9(C) makes reference to a Strategic Plan.

8. Article 9(L), first sentence, page 17 of strikethrough version. believe this is a typo. Correct reference from "Chief Executive Officer" to "Chief Financial Officer".

9. Lastly, NNDOJ recommends that NAPI thoroughly review the clean and strikethrough versions to make sure the: (A) amendments are consistent between the two versions, (B) numbering is consistent between the two versions, and (C) that the document has been formatted to properly reflect amendments, i.e. new language is underlined and deleted language is stricken.

If you have any questions, please contact me at 871-6347. Thank you.



18-COO-051

November 16, 2018

Hon. Alton Shepherd
Resources and Development Committee
23rd Navajo Nation Council
Navajo Nation Council
P.O. Box 3390
Window Rock, AZ 86515

Re: NAPI's Amendment to Title 5, Navajo Nation Code & Revisions to NAPI's Plan of Operation

Dear Hon. Shepherd,

On behalf of the Board of Directors of the Navajo Agricultural Products Industry (NAPI), we are seeking your support and the Resource Development Committee's approval to NAPI's Amendment to Title 5, Navajo Nation Code and Revisions to NAPI's Plan of Operation. On October 17, 2017, the NAPI Board of Directors approved Resolution No. BDO-30-17 to recommend such amendments to N.N.C. Title 5 and NAPI's Plan of Operation. All parties have collaborated on the revisions and amendments through a work session held by the NAPI Board. The last revision approved and adopted by the Navajo Nation Council was on January 5, 2010, by N.N.C. Resolution CJA-05-10. Pursuant to Article 19 of NAPI's Plan of Operation, NAPI sent a recommendation request letter to the Office of the President and Vice-President of the Navajo Nation on October 18, 2017. Attached for your consideration and approval is NAPI Board Resolution BDO-30-17 (October 17, 2017) and Exhibits "A" and "B".

As requested, we retrieved the 2017 amendments to NAPI's Plan of Operation that the NAPI Board of Directors approved and compared them to the 2015 amendments that were prepared by Tsosie Lewis and Sacks Tierney. Based on our review, we have determined that there were several minor grammatical and formatting changes made to the 2015 amendments and very few substantive changes. The majority of the changes made by the 2015 amendments were carried over into the 2017 amendments and the majority of the 2015 amendments have been preserved. Please review enclosed document titled, "Redline Comparison 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation" for comparison. For any questions or clarifications, please contact me at (505) 947-6625 or email lhaskie@navajopride.com. Enclosed you will find a copy of that letter.

Respectfully,

Lionel Haskie
Interim Chief Executive Officer

Attachments: NAPI BOD Resolution No. BDO-30-17
Exhibit "A" – Title 5, Navajo Nation Code
Exhibit "B" – NAPI Amended & Restated Plan of Operation
Redline Comparison 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation
Letter to President Russell Begay requesting a recommendation dated October 18, 2017

Cc: Hon. LoRenzo Bates, Speaker
NAPI Board of Directors
File



**RESOLUTION OF THE
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY
BOARD OF DIRECTORS**

Recommending an Amendment to Title 5, Navajo Nation Code and Recommending Revisions to the Plan of Operation of the Navajo Agricultural Products Industry; Approving the Amended and Restated Plan of Operation; and Respectfully Requesting the Navajo Nation President and the Resources and Development Committee to Recommend, and the Navajo Nation Council to Approve, Such Amendments.

WHEREAS:

1. The Navajo Agricultural Products Industry ("NAPI") is an enterprise of the Navajo Nation charged with operating and managing a commercial farm on lands held in trust for the Navajo Nation under legislation authorizing the Navajo Indian Irrigation Project; and
2. The NAPI enabling legislation, at 5 N.N.C. § 1604, provides that "NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council"; and
3. Article 19 of the NAPI Plan of Operation provides that "[t]he Plan of Operation may be amended from time to time by the Economic Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation"; and
4. As stated in Title 5, Navajo Nation Code § 1604 Legislative Oversight; "The Navajo Agricultural Products Industry shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 724 (E). The Economic Development Committee is now the Resources and Development Committee of the Navajo Nation Council. The NAPI Board requests that an amendment be made to rename NAPI's Oversight to the Resources and Development Committee where noted in Title 5 of the Navajo Nation Code and NAPI's Plan of Operation; and
5. Article 5 of the NAPI Plan of Operation describes the current process by which an open position on the Board of Directors may be filled, and also details the minimum requirements for Board Members, the notification procedures required to fill vacancies on the Board and the removal or resignation process required for Board Members. The NAPI Board requests that certain amendments be made to Article 5 in order to update the appointment process for Board Members, amend the qualifications required for the five (5) members of such Board, update the standards for removal of a Board member, and streamline the notification and procedures for filling vacancies on the Board of Directors; and
6. Article 6 of the NAPI Plan of Operation describes the Principal Officers of the NAPI Board of Directors. The NAPI Board requests that an amendment be made to Article 6 in order to remove the discretionary position of Treasurer, include a replacement procedure, and implement a procedure by which the Board may establish standing committees; and
7. Article 7 of the NAPI Plan of Operation details the powers and duties given to the Board of Directors. The NAPI Board requests that certain amendments be made to Article 7 in order to better clarify those powers and duties, streamline the process by which officers and agents shall be selected or appointed, remove a requirement that a prewritten provision shall be included in all contracts signed by NAPI, omit a limited waiver of NAPI's sovereign immunity, and remove a provision regarding limited liability companies and limited partnerships; and

8. Article 8 of the NAPI Plan of Operation provides guidelines for the Board of Directors' Meetings. The NAPI Board requests that certain amendments be made to Article 8 in order to require Directors to be physically present at regular meetings and require such regular meetings to occur quarterly; and

9. Article 16 of the NAPI Plan of Operation describes the circumstances under which immunity from suit may be authorized. The NAPI Board requests that certain amendments be made to Article 16 in order to authorize the Board of Directors to waive the defenses identified in the Plan of Operation in order to further the purposes of NAPI; and.

10. The NAPI Board requests that certain other technical changes be made to the NAPI Plan of Operation in order to update the document for readability and accuracy; and

11. The NAPI Board of Directors has considered the proposed amendment to Title 5 Navajo Nation Code, attached hereto as Exhibit "A" and the Plan of Operation, attached hereto as Exhibit "B", presented by management and deems its adoption to be in the best interest of NAPI and the Navajo Nation.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The NAPI Board of Directors hereby recommends an amendment to Title 5, of the Navajo Nation Code, attached hereto as Exhibit "A" and revisions to the Plan of Operation of the Navajo Agricultural Products Industry, attached hereto as Exhibit "B".

2. The NAPI Board of Directors hereby approves the amended and restated Plan of Operation of the Navajo Agricultural Products Industry, attached hereto as Exhibit "B"; and respectfully requests the President and Resources and Development Committee recommend that the Navajo Nation Council approve such amendments.

3. NAPI Management is authorized and directed to process a proposed resolution for the consideration of the Resources and Development Agreement in accordance with 2 N.N.C. § 164 (2005) to amend the NAPI Plan of Operation.

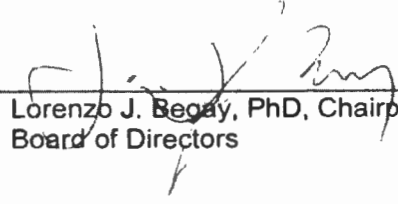
4. The NAPI Board of Directors hereby authorizes the Chief Executive Officer to take any and all actions necessary to carry out the purpose and intent of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at a special meeting at which a quorum was present at NAPI headquarters near Farmington, New Mexico, and that the same was passed by vote of 3 in favor, 0 opposed, and 0 abstained, this 17th day of October, 2017

Motion: Peter Deswood, III

Second: Veronica D. Tso


Lorenzo J. Begay, PhD, Chairperson
Board of Directors

Title 5. NAVAJO NATION CODE

Subchapter 5. Navajo Agricultural Products Industry

§ 1601. Establishment

There is hereby established the Navajo Agricultural Products Industry (NAPI), as an enterprise of the Navajo Nation.

§ 1602. Purpose

NAPI is organized to operate a profitable commercial farm in accordance with its plan of operation and applicable laws and regulations, separate and distinct from the Navajo Indian Irrigation Project.

§ 1603. Organization

- A. A Board of Directors for NAPI shall be appointed by the President of the Navajo Nation and confirmed by the Resources and Development Committee of the Navajo Nation Council.
- B. The Board of Directors shall set policy including, but not limited to, establishing personnel policies, procurement policies and financial policies for NAPI. The Board of Directors shall hire and supervise the Chief Executive Officer, shall hire under contract a Chief Financial Officer. The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer in conformity with job descriptions established for the Chief Financial Officer and the Chief Executive Officer, and with Navajo Agricultural Products Industry's approved policies and procedures. The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and Board of Directors simultaneously.
- C. The Chief Executive Officer shall administer the daily operations of NAPI. The Chief Executive Officer shall be responsible and accountable to the Board of Directors and shall employ necessary personnel in accordance with personnel policies applicable to NAPI.
- D. No elected official of the federal, state or Navajo Nation government shall be a member of the Board of Directors. No employee of the federal, state or Navajo Nation government shall be a member of the Board of Directors.

EXHIBIT A

§ 1604. Legislative Oversight

The Navajo Agricultural Products Industry shall operate under the legislative oversight of the Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 724(E). NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the Resources and Development Committee of the Navajo Nation Council.

§ 1605. Amendments.

Sections 1601 through 1605 may be amended from time to time by the Navajo Nation Council upon the recommendation of the Resources and Development Committee of the Navajo Nation Council after consultation with the Navajo Agricultural Products Industry Board of Directors and the President of the Navajo Nation.

§ 1606 - 1636 [Reserved].

Title 5. NAVAJO NATION CODE

Subchapter 5. Navajo Agricultural Products Industry

§ 1601. Establishment

There is hereby established the Navajo Agricultural Products Industry (NAPI), as an enterprise of the Navajo Nation.

§ 1602. Purpose

NAPI is organized to operate a profitable commercial farm in accordance with its plan of operation and applicable laws and regulations, separate and distinct from the Navajo Indian Irrigation Project.

§ 1603. Organization

- A. A Board of Directors for NAPI shall be appointed by the President of the Navajo Nation and confirmed by the ~~Economic~~ Resources and Development Committee of the Navajo Nation Council.
- B. The Board of Directors shall set policy including, but not limited to, establishing personnel policies, procurement policies and financial policies for NAPI. The Board of Directors shall hire and supervise the Chief Executive Officer, shall hire under contract a Chief Financial Officer. The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer in conformity with job descriptions established for the Chief Financial Officer and the Chief Executive Officer, and with Navajo Agricultural Products Industry's approved policies and procedures. The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and Board of Directors simultaneously.
- C. The Chief Executive Officer shall administer the daily operations of NAPI. The Chief Executive Officer shall be responsible and accountable to the Board of Directors and shall employ necessary personnel in accordance with personnel policies applicable to NAPI.
- D. No elected official of the federal, state or Navajo Nation government shall be a member of the Board of Directors. No employee of the federal, state or Navajo Nation government shall be a member of the Board of Directors.

§ **1604. Legislative Oversight**

The Navajo Agricultural Products Industry shall operate under the legislative oversight of the ~~Economic-Resources and Development~~ Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 724(E). NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the ~~Economic-Resources and Development~~ Committee of the Navajo Nation Council.

§ **1605. Amendments.**

Sections 1601 through 1605 may be amended from time to time by the Navajo Nation Council upon the recommendation of the ~~Economic-Resources and Development~~ Committee of the Navajo Nation Council after consultation with the Navajo Agricultural Products Industry Board of Directors and the President of the Navajo Nation.

§ **1606 - 1636 [Reserved].**



***Navajo Agricultural Products Industry
Amended and Restated
Plan of Operation***

Article 1. Establishment.

- A. Pursuant to 5 N.N.C. Section 1601, the Navajo Nation Council established the Navajo Agricultural Products Industry ("NAPI") as an enterprise of the Navajo Nation.
- B. The principal place of business of the enterprise will be located at NAPI headquarters, Hwy. 10086 N.M. Hwy. 371, Farmington, New Mexico, on lands subject to the jurisdiction of the Navajo Nation.
- C. NAPI may establish offices or subsidiary organizations at such other place or places as the Board of Directors may direct.

Article 2. Seal.

The Board of Directors shall approve an official seal for NAPI.

Article 3. Purpose.

The mission of NAPI is to continue the legacy of Navajo farming, producing superior products, practicing stewardship and creating value for our people. The vision of NAPI is farming sustainably across generations to cultivate a health Nation. The purpose for which NAPI is organized is to operate a profitable commercial farm, separate and distinct from the Navajo Indian Irrigation Project ("NIIP"), in accordance with this Amended and Restated Plan of Operation (the "Plan of Operation") and applicable laws and regulations and, in order to carry out this purpose, NAPI shall:

- A. Plan, develop, and promote the usage of agricultural and related resources, including water, which water use shall be in compliance with the Navajo Nation Water Code or as shall be available for use by NAPI through the NIIP.
- B. Utilize real estate withdrawn or leased to the agriculture enterprise for the general purpose of establishing, operating and managing a commercial farm.

- C. Promote Agribusiness Development and related businesses and industries within the Navajo Nation and support the vertical and horizontal integration within the Navajo Nation of producing and processing crops into finished food products and derivatives thereof for sale.
- D. Do everything necessary, proper and advisable for the accomplishment of the purposes set forth herein in accordance with this Plan of Operation and applicable laws and regulations of the Navajo Nation.

Article 4. Definitions.

- A. “Agribusiness Development” – means the growth of capacity by NAPI for the production, processing and sale of crops. This term shall include derivatives and income from any related business operated by NAPI and from subleasing operations authorized by the Master Agricultural Lease.
- B. “Capital Contribution” – means the land, water, services and money invested, loaned or granted to the NAPI by the Navajo Nation to engage in commercial farming and Agribusiness Development.
- C. “Chapter Officials” - means the President, Vice President and Secretary-Treasurer of a Chapter or such titles given to the officials of a chapter that has adopted an Alternative Form of Government (“AFOG”) in accordance with the Local Governance Act (“LGA”) 26 N.N.C §101 *et seq.* Officials of Land Boards or Grazing Committees are not Chapter Officials as defined in this Plan of Operation.
- D. “Master Agricultural Lease” – means the single lease between the Navajo Nation and the NAPI to authorize and govern any and all use of Navajo Nation trust and fee lands by NAPI to engage in Agribusiness Development and commercial farming. Said lease may provide subleasing opportunities for NAPI to promote Agribusiness Development. The Master Agricultural Lease shall conform to Federal and Navajo Nation law.
- E. “Fiscal Year” – NAPI Fiscal Year which runs from June 1st to May 31st of each year.
- F. “Organic food” – means the product of a farming system which avoids the use of man-made fertilizers, pesticides; growth regulators and livestock feed additives. Irradiation and the use of genetically modified organisms (“GMOs”) or products produced from or by GMOs are generally prohibited by organic legislation.

Article 5. Authority of Board of Directors; Number; Appointment; Qualifications; Term of Office; Removal or Resignation; Filling Vacancies; Authority.

NAPI shall be managed by a Board of Directors that shall provide governance and oversight of the organization, subject to the restrictions of this Plan of Operation and applicable law. The Board shall consist of five (5) members from the Western, Chinle and Eastern Agencies of the Navajo Nation. At least one Director shall be from District 13 and one Director shall be from District 19.

- A. Appointment. The President's Office of the Navajo Nation shall advertise any open positions on the Board of Directors whether based on vacancy or an expired term. Each Director of the Board of Directors shall be nominated by the President of the Navajo Nation and confirmed by the Resources and Development Committee (RDC). However, if more than thirty (30) days has passed with a vacancy as a result of death, resignation or removal and the President has not nominated a replacement, then the Resources and Development Committee may both nominate and confirm a replacement Director so long as the proposed replacement Director meets the qualifications stated herein. The appointment is effective upon communication of the appointment by the Chairperson of the Resources and Development Committee to the Chairperson of the NAPI Board.
- B. Qualifications.
 - 1. Each Director shall have substantial business experience in business and shall possess substantial knowledge, understanding, and competency in such disciplines and skills as agribusiness agricultural marketing, livestock, agricultural economics, agricultural finance, irrigation and P.L. 93-638 contracting. It is preferred that each Director shall have knowledge of corporate financial statements and capital investment planning and shall possess a Bachelor's degree from a recognized and accredited four-year institution of higher learning. Preference in the appointment of Directors shall be given to Navajos and, secondarily, to non-Navajos who meet the minimum qualifications and are legally married to Navajos; however, the procedural and substantive provisions of the Navajo Preference in Employment Act, 15 N.N.C. section 601, *et seq.*, shall not apply to such appointments.
 - 2. No Director shall be: (a) a person who is or was employed by NAPI within the past six (6) years; or (b) a current Council delegate or Chapter Official.
- C. Term of Office. Directors shall serve staggered terms of three (3) years and may be reappointed to serve additional terms.
- D. Removal or Resignation.
 - 1. Any Director may be removed by a simple majority vote of the Resources and Development Committee taken at a lawful meeting if:
 - a. Such Director has been convicted or entered a plea of *nolo contendere* to any

felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided that any such violation shall be limited to the last ten (10) years of such person's history and provided that the Resources and Development Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification.

- b. Such Director violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et. seq.* as amended, provided that any such violation shall be limited to the last ten (10) years of such person's history.
 - c. Such Director commits malfeasance or misfeasance of office as member of the Board of Directors.
2. A Director may resign by giving written notice of resignation to the President of the Navajo Nation, the Chairperson of the Resources and Development Committee and the Chairperson of the Board of Directors. Resignation shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Acceptance of resignation shall not be necessary to make such resignation effective. A Director who has failed to attend two (2) consecutive properly called and noticed meetings of the Board or who fails to attend six Board meetings properly noticed in any fiscal year shall, unless excused from attendance by the Chairperson of the Board, be considered to have resigned.

E. Notification and Procedures for Filling Vacancies

- 1. A vacancy shall exist from the date of the resignation, death, or removal of a Director by the Resources and Development Committee of the Navajo Nation Council.
- 2. The Chairperson of the Board shall promptly notify the President of the Navajo Nation and the Chairperson of the Resources and Development Committee concerning any vacancy to be filled. Vacancies shall be filled for the unexpired portion of the term of the vacant Director in accordance with the procedures established in Article 6 of this Plan of Operation. Any vacancy shall be filled for the unexpired portion of the term.

Article 6. Principal Officers Duties; Election; Term of Office; Removal; Resignation; Vacancies.

- A. The Principal Officers. The Principal Officers of NAPI Board of Directors shall consist of the following: Chairperson, Vice Chairperson and Secretary.

1. *Chairperson of the Board.* The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors, and shall, in general, perform all duties incident to the office of the Chairperson of the Board of Directors and such other duties as may be assigned by the Board of Directors.
 2. *Vice Chairperson of the Board.* The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson, and shall discharge any other duties designated by the Chairperson or the Board of Directors.
 3. *Secretary of the Board.* The secretary is the recording officer of the Board and the custodian of its records except such as are specifically assigned to others such as the treasurer's books.
- B. Election; Term of Office. The Principal Officers shall be elected annually by the Board of Directors at its annual meeting, or as soon after such annual meeting as newly appointed Directors are confirmed. Each Principal Officer shall hold office until his/her successor is elected, or vacates the position by death, resignation, removal or replacement.
- C. Removal. Any Principal Officer elected by the Board of Directors may be removed by a vote of at least three of the five Directors whenever, in the judgment of the Directors, the best interest of NAPI will be served thereby; except in the absence of dereliction in duty, negligence, malfeasance, or misfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the person removed.
- D. Resignation. Any Principal Officer may resign from office at any time by giving written notice to the Board of Directors, or to the Chairperson; such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- E. Replacement. A vacancy in a Principal Officer position may occur when the term of the Principal Officer as a Director has expired and a new Director has been appointed by the Nation as provided in Article 5(A) above.
- F. Filling Vacancies. Any vacancy in a Principal Officer position caused by death, resignation, removal or replacement shall be filled for the unexpired portion of the Principal Officer's term in the manner prescribed herein for election to such Principal Officer position.
- G. Standing Committees. The Board may establish standing committees to address the ongoing issues of NAPI and special ad hoc task groups to work for a specified time to accomplish a specific assignment.

Article 7. Board of Directors Powers and Duties.

Subject to applicable Federal and Navajo Nation laws and regulations, the Board of Directors shall have overall responsibility for the affairs of NAPI, giving usual and essential latitude to the Chief Executive Officer ("CEO") to accomplish the purpose set forth in Article 3 of this Plan of Operation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote. The Board may adopt such rules and regulations for the conduct of their meetings as it deems proper, and not inconsistent with this Plan of Operation. The NAPI Board shall have the following powers and duties to establish policies and procedures, receive reports and provide direction to the CEO and his or her delegated employees, by resolution or directive:

- A. **Lobbying.** To engage in lobbying activities on behalf of NAPI before local, state and Federal legislative and administrative bodies to achieve the purposes of NAPI.
- B. **Property.** To exercise ultimate responsibility for the custody of inventory and maintenance of all NAPI property, facilities, and special utilities. To obtain regular reports by the Chief Executive Officer and his or her delegated employees regarding the planning, construction and operation of all facilities, and to take any and all usual, necessary and proper actions incidental thereto including, the consent to the borrowing of funds to accomplish the purposes of NAPI, provided that no assets or funds of the Navajo Nation shall be pledged as security therefore, except upon approval by the Navajo Nation Council, and to make other commitments necessary to accomplish the business purposes of NAPI.
- C. **Investment of funds.** To establish effective investment policies and procedures and to ensure that investment decisions are consistent with the policies and procedures and are subject to limitations as may be imposed by the Navajo Nation Council.
- D. **Borrowing.** To obtain loans so long as NAPI shall not incur obligations in excess of the ability of NAPI to pay or to issue bonds and to secure payment thereof by loan guaranty or pledge of, or lien on, all or any of its fixtures, personal property, revenues, income or contracts of NAPI. Nothing herein shall be construed as authorizing NAPI to mortgage or encumber trust or restricted property, including all water and real property resources of the Navajo Nation, or as providing consent by the Navajo Nation Council thereto. The Resources and Development Committee of the Navajo Nation Council shall not adopt amendments to this Plan of Operation which limit or alter the rights or powers vested in NAPI necessary to fulfill NAPI's obligations until all such notes or bonds or obligations issues, together with interest thereon, are fully met, paid, and discharged. This subsection shall be interpreted to protect the previously established rights of NAPI creditors or others to whom NAPI owes a legally enforceable obligation.
- E. **Reports.** To report quarterly in writing to the President of the Navajo Nation. Such quarterly report shall include a summary of activities on management, income and

expenditures for the current quarter. In addition, NAPI shall issue an annual report with fiscal year and the audited financial reports no later than ninety (90) days after the expiration of the fiscal year and a copy of this report shall be provided to the Resources and Development Committee and the President within ten working days after the date on which the annual report is issued.

- F. Operating policies. To establish general operating policies and procedures, such as purchasing, accounting, information technology and personnel procedures, giving usual and essential latitude to the Chief Executive Officer and his or her delegated employees to carry out and implement such policies.
- G. Business Plan. To develop and submit to the President of the Navajo Nation and the Chairperson of the Resources and Development Committee of the Navajo Nation Council a business plan for NAPI. The Plan shall set forth the general plan for operating the commercial farm. The Plan shall include cropping patterns, annual total farm budgets, cash flow projections, and investment plans and strategies for the forthcoming years to yield a profit for NAPI. The Plan shall contain sufficient information as to justify the assumptions and conclusions of the Plan, considering market trends and prices, as well as the national economy.
- H. Officers and agents. To select or appoint officers, agents, auditors, and such professional consultants as may be deemed necessary and appropriate, and to define their duties and compensation. All officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of NAPI and the Navajo Nation shall be bonded.
- I. Agency. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of NAPI, within the scope of authorized purposes, subject to applicable law.
- J. Real property. To establish policies and procedures to utilize, improve, manage, and operate Navajo Nation lands withdrawn for NIIP pursuant to a Master Agricultural Lease. The Master Agricultural Lease shall be subject to renewal at intervals that are economically advantageous to NAPI and the Navajo Nation.
- K. Personal property, generally. To acquire (by purchase, exchange, lease, hire, or otherwise), hold, own, mortgage, pledge, exchange, sell, deal in, hedge and dispose of, either alone or in conjunction with others, personal property, any interest therein and commodities of every kind, character and description necessary or incidental to the purpose set forth in Article 3, except personal property subject to restrictions on alienation or sale by the United States Government and provided that the approval of the Budget and Finance Committee of the Navajo Nation Council as appropriate is a condition precedent to any such transaction involving restricted or unrestricted property owned by the Navajo Nation.

- L. **Patents, Copyrights and Trademarks.** To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefore, licenses, formulas, privileges, processes, copyrights, and applications therefore, trademarks and applications therefore, and trade names, and that title of such acquisitions shall be taken in the name of the NAPI.
- M. **Guaranties.** To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of NAPI, to the extent that such guaranty is made pursuant to the purpose set forth in Article 3 and is subject to the limitations set forth in this Plan of Operation on the use of trust or restricted property as security therefore.
- N. **Depository.** To designate and approve all depositories used for the deposit of funds of NAPI.
- O. **Contracts.** To enter into contracts for any lawful purpose set forth in Article 3 and to delegate this authority as may be advisable to the Chief Executive Officer of NAPI, or to the Chairperson of the Board of Directors. Any contract for hiring or retaining an attorney is subject to applicable Federal or Navajo Nation laws, rules and regulations. Except as provided in this Plan of Operation, nothing in this section shall be construed as a waiver of sovereign immunity NAPI and/or the Navajo Nation may by law possess.
- P. **Navajo Indian Irrigation Project.** To work with the Navajo Indian Irrigation Project, the Department of the Interior, Bureau of Indian Affairs, and the appropriate Navajo Nation programs, departments and divisions, to maximize the potential profit and sustainable operation of the NAPI commercial farm.
- Q. **Grants.** To apply for and accept grants and enter into contracts, agreements or other transactions with any Federal Agency, private lending institution, the Government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of NAPI's purposes consistent with the terms and conditions of the awarded contract or grant.
- R. **Dividends.** To declare a dividend as appropriate out of the net earnings of NAPI to the Navajo Nation as a return as a return on the Capital Contribution of the Nation. NAPI shall report annually to the Navajo Nation Council of its decision regarding its dividends.
- S. **Subsidiary Entities.** To (1) establish wholly-owned subsidiary corporations and limited liability companies, provided that such subsidiary entities shall always remain wholly owned by NAPI, (2) that such subsidiary entities shall be guided by a board comprised of three (3) members of the NAPI Board of Directors selected by the NAPI

Board of Directors and two (2) members of NAPI management selected by the NAPI Chief Executive Officer, who may include the Chief Executive Officer himself or herself, (3) that any dividends declared by the Board of a subsidiary entity be reported as other income by NAPI, (4) that such subsidiary entities be at all times adequately capitalized and insured so as to preserve the shield for the protection of NAPI and (5) that such subsidiary entities shall periodically and, in any event, upon the request of the Resources and Development Committee of the Navajo Nation Council, give full and complete reports of its operations and finances to such Committee; and provided further that such subsidiary entities shall have no authority to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited to the non-trust assets and property of such subsidiary entities and shall not extend to the assets and property of the Navajo Nation itself, and provided further that such subsidiary entities shall not pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.

- T. Ancillary powers. To have and exercise all powers necessary or convenient to affect any or all of the purposes for which NAPI is organized, subject to applicable laws and regulations, and to limitations imposed herein or as may be imposed by the Navajo Nation Council.

Article 8. Board of Directors' Meetings; Notice; Quorum; Board of Directors Actions; Minutes and Resolutions; Stipend and Reimbursement; Prohibited Contracts and Transactions; Conflict of Interest; Meeting Procedure.

A. Meetings

1. Annual meeting. The annual meeting of the Board of Directors shall be held at 9:00 a.m. on the first Thursday of December at the principal place of business, or at such other time and place as the Board of Directors may fix. Board members shall be physically present at the annual meetings.
1. Regular meetings. The Board of Directors shall meet at least quarterly at 9:00 a.m. on the fourth Friday of the month or at such time and place as the Board of Directors may fix, and each annual meeting shall also be considered a regular quarterly meeting. In addition to the annual meeting, Board members shall be physically present at 3 of the regular meetings and may appear telephonically at 1 regular meeting.
2. Special meetings. Special meetings may be called by the Chairperson or two members of the Board of Directors. In the event of an emergency, a special meeting may be held upon twenty-four (24) hours' notice. Board members need not be physically present at the special meetings, but shall attend special meetings telephonically if not physically present.

- B. Notice of Meetings. Notice of meetings stating the date and time, place and proposed agenda shall be given in writing by prepaid letter, facsimile, or e-mail properly addressed to each Board member not later than five (5) days immediately preceding the meeting excluding the date of the meeting. Attendance of a Board member in person or telephonically shall waive any objection to the notice requirement.
- C. Quorum. The presence of three (3) members of the Board of Directors shall constitute a quorum for the transaction of any business. The act of the majority of the quorum shall be the act of the Board of Directors.
- D. Board Actions. All substantive action of the Board of Directors shall be taken by written resolution duly certified by the presiding officer.
- E. Minutes and Resolutions. Access to minutes of meetings and resolutions of the Board of Directors, and all other records of NAPI shall be governed by the Navajo Nation Privacy Act, 2 N.N.C. § 81, *et seq.*
- F. Stipend and Reimbursement. Directors shall be paid a stipend for attendance of Board of Directors meeting at a rate, not to exceed \$250.00 per day per meeting for all meetings, attended. Board of Directors shall be reimbursed all reasonable mileage and expenses incurred in the execution of Board assignments at the rates established by the United States General Services Administration pursuant to 41 CFR chapters 300-304. A Director may be provided an advance to cover such expenses. Such advance shall not exceed the amount of reasonable expenses.
- G. Prohibited contracts and Transactions. No contract or other transaction between NAPI and any one of the Directors, or between NAPI and any corporation, partnership, firm or other legal entity in which a Director or Director's immediate and extended family have a direct or indirect personal, family or business interest shall be valid unless the contract or transaction is approved in advance of execution by majority vote of the Board of Directors not having such interest.
- H. Conflict of Interest. No Director shall participate in or vote on any matter in which he or she has a direct or indirect personal, family or business interest. A Director who violates this provision shall be subject to removal.

Article 9. Chief Executive Officer Powers and Duties.

- A. The Chief Executive Officer shall be employed under a written employment contract approved by the Board of Directors and shall be responsible and accountable to the Board of Directors. The contract shall provide for an annual evaluation of the Chief Executive Officer, based upon the duties outlined, herein, duties set forth in such contract, the purposes for which NAPI was established, and other factors deemed relevant and significant by the Board of Directors. The contract may be renewed if both NAPI and the Chief Executive Officer agree and other requirements are met,

including but not limited to, any applicable requirements imposed by the Navajo Preference in Employment Act ("NPEA"). The contract shall include a termination for cause provision, and this provision shall state that cause shall include an unsatisfactory annual evaluation and shall limit NAPI's potential liability under such contract, the NPEA, or other applicable law in the event of termination for cause.

- B. The Chief Executive Officer shall be the chief executive officer of NAPI and shall direct all operations of NAPI. He or she shall, among other things, execute the general policies approved by the Board of Directors and organize the operation of NAPI into operating units, and assign each unit specific duties and responsibilities, subject at all times to applicable laws and regulations, and to the provisions of this Plan of Operation.
- C. The Chief Executive Officer shall administer and manage the enterprise in accordance with the provisions of the Business Plan and the annual budget adopted by the Board of Directors. The Chief Executive Officer shall proactively manage the enterprise to address changing markets and assumptions upon which the Plan is formulated. The Chief Executive Officer shall report on a quarterly basis the progress of the enterprise under the Business Plan and shall recommend changes in the Plan to the Board for its consideration.
- D. The Chief Executive Officer shall have full authority, including appointment, dismissal, and control, over all employees of NAPI and shall be responsible for all operating units and the implementation of assignments of all executive managers.
- E. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets, standards, program inspection, cost control, employee relations, and in-service training. He or she shall formulate and submit to the Board of Directors for its approval, personnel policies, rules, and procedures. The Chief Executive Officer shall be responsible for NAPI's compliance with, and execution of, approved policies, rules and procedures.
- F. The Chief Executive Officer shall employ, under written contract, competent operating unit directors, managers, or consultants for the usual and ordinary functional responsibilities of each operating unit including any subsidiary organizations.
- G. The Chief Executive Officer shall be responsible for insuring that the activities of NAPI are in compliance with this Plan of Operation and with applicable laws and regulations and shall report any noncompliance therewith to the Board of Directors.
- H. The Chief Executive Officer shall comply with all laws, regulations and policies of the Navajo Nation including, but not limited to, preference in employment laws and laws related to contracting with Navajo and other Indian entities.

- I. The Chief Executive Officer shall engage the services of consultants when such engagement is required and would be of benefit to NAPI.
- J. The Chief Executive Officer shall furnish clerical and stenographic personnel needed to record minutes; provide notice of meetings and other clerical services as needed by the Board of Directors. Minutes shall be provided to all Board of Directors by the next regular meeting after the meeting to which the minutes pertain.
- K. The Chief Executive Officer shall have and exercise such other *authorities* as may be granted from time to time by the Board of Directors.
- L. The Chief Executive Officer shall employ under contract a Chief Executive Officer. The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer. The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and Board of Directors simultaneously.

Article 10. Navajo Nation Capital Contribution.

Navajo Nation funds advanced to NAPI or Navajo Nation facilities and property transferred to NAPI shall be regarded as a Capital Contribution to NAPI by the Navajo Nation. The Board of Directors may pay the Navajo Nation a dividend out of the net earnings of NAPI at the conclusion of the fiscal year, as return on this Capital Contribution. *See, Article 7(R).*

Article 11. Accounting System; Fiscal Year.

- A. An accounting system conforming with Generally Accepted Accounting Principles ("GAAP") shall be established and maintained under the supervision of the Chief Financial Officer. The accounting system shall ensure the availability of information as may be necessary to comply with Federal and Navajo Nation regulatory requirements.
- B. The Fiscal Year of NAPI shall be June 1 to May 31 annually.

Article 12. Books, Records, and Property; Inspection.

- A. The books, records, and property of NAPI shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation. The Navajo Nation shall have the absolute right and authority to review NAPI's books, records real and personal property.
- B. The books and records of NAPI shall be available at all reasonable times for public inspection; provided, NAPI may impose such limited and reasonable restrictions upon

availability or inspection by the public as orderly accounting procedures, confidentiality, or applicable laws may require.

- C. The books, records, and property of NAPI shall be available for inspection at the principle place of business of NAPI.

Article 13. Audits.

The accounts and records of NAPI shall be audited at the close of each fiscal year and an audit report issued no later than ninety (90) days after the expiration of the fiscal year. A copy of the audit report shall be provided to the Resources and Development Committee and the President of the Navajo Nation within ten (10) working days after the date on which the audit report is issued.

Article 14. Insurance.

Insurance, including liability, adequate and sufficient to protect the interest of NAPI and the Navajo Nation from any and all liabilities and losses, shall be carried by NAPI.

Article 15. Training of Navajos.

Each operating unit director or manager, and each employee in a management position if a non-Navajo, shall train and otherwise prepare a member of the Navajo Nation to replace him or her. The Board of Directors and the Chief Executive Officer shall take all steps necessary to effectuate this provision, including but not limited to the establishment of assistant manager positions.

Article 16. Immunity; Limited Waivers.

- A. NAPI is hereby declared to be an enterprise of the Navajo Nation established for the purposes set forth in this Plan of Operation, and to be established for the benefit of the Navajo people. NAPI is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Plan of Operation. As such, it is vested hereby with such immunity from suit as the Navajo Nation by law possesses.
- B. NAPI and its Directors, officers, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of NAPI are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act (1 N.N.C. §§551 et seq.), the Board of Directors may waive the defenses identified in this Plan of Operation, in conformity with the procedures established in this Article, in order to further the purposes of NAPI. Any waiver of the defenses identified in this Article must be express and must be agreed to by the Board of Directors prior to the time any alleged cause of action accrues.

- C. NAPI is hereby authorized to waive, as provided in this Article, any defense of sovereign immunity from suit NAPI, its Directors, officers, employees, attorneys or agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of NAPI, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal, state and/or federal court.
- D. NAPI is hereby authorized to waive, as provided in this Article, any defense NAPI, its Directors, officers, employees attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against NAPI in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- E. Any waiver by NAPI authorized by Paragraph B, C, or D of this Article shall be in the form of a resolution duly adopted by the Board of Directors, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of NAPI which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall identify the court or courts in which suit against NAPI may be brought. Any waiver shall be limited to claims arising from the acts or omissions of NAPI, its Directors, officers, employees, or agents, and shall be construed only to affect the property and income of NAPI.
- F. Nothing in this Plan of Operation, and no waiver of NAPI's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by NAPI shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of NAPI, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by NAPI. The acts and omission of NAPI, its Directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.
- G. In the event NAPI is sold, dissolved or merged into any other entity of the Navajo Nation, the provisions of this Article and the rights created hereunder shall survive such sale, dissolution or merger.

Article 17. Compliance with Navajo Nation Law.

NAPI shall comply with all applicable laws and regulations of the Navajo Nation.

Article 18. Indemnification of Officers, Employees and Members of the Board.

NAPI shall indemnify any current or former Director, officer, employee or agent against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being, or having been such Director, officer, employee, or agent except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty, or except in relation to matters in which such Director, officer, employee or agent was acting beyond the scope of his or her employment or authority. NAPI shall also reimburse any Director, officer, employee or agent for reasonable costs of settlement of any action, suit, or proceeding if found by a majority of the Board of Directors, not including the Directors involved in the matter of controversy, that it is in the best interest of NAPI and the Navajo Nation that such settlement be made and that such Director, officer, employee, or agent was not guilty of gross negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, employee, or agent may be entitled to receive. As a condition of such indemnification, the Director, officer, employee or agent shall agree to cooperate with legal counsel for NAPI in coordination of any action, suit or proceeding.

Article 19. Amendments.

This Plan of Operation may be amended from time to time by the Resources and Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation.



Navajo Agricultural Products Industry Amended and Restated Plan of Operation

Article 1. Establishment

- A. Pursuant to 5 N.N.C. Section 1601, the Navajo Nation Council established the Navajo Agricultural Products Industry ("NAPI") as an enterprise of the Navajo Nation.
- B. The principal place of business of the enterprise ~~will~~ shall be located at NAPI headquarters, Hwy. 10086 N.M. Hwy. 371, Farmington, New Mexico, south of Farmington, New Mexico on lands subject to the jurisdiction of the Navajo Nation.
- C. NAPI may establish offices or subsidiary organizations at such other place or places as the Board of Directors may direct.

Article 2. Seal

The Board of Directors shall approve an official seal for NAPI.

Article 3. Purposes

healthy?

The mission of NAPI is to continue the legacy of Navajo farming, producing superior products, practicing stewardship and creating value for our people. The vision of NAPI is farming sustainably across generations to cultivate a health Nation. The purpose for which NAPI is organized is to operate a profitable commercial farm, separate and distinct from the Navajo Indian Irrigation Project (NIIP), in accordance with this ~~plan of operation~~ Amended and Restated Plan of Operation (the "Plan of Operation") and applicable laws and regulations and, in order to carry out this purpose, NAPI shall:

- A. Plan, develop, and promote the ~~use~~ usage of agricultural and related resources, including water, which water use shall be in compliance with the Navajo Nation Water Code, ~~or or as~~ shall be available for use by NAPI through the ~~(NIIP) Navajo Indian Irrigation Project.~~

- B. Utilize real estate withdrawn or leased to the agriculture enterprise for the general purpose of establishing, operating and managing a commercial farm.
- C. ~~Promote agribusiness development, the multiplier effect, Agribusiness Development and related businesses and industries in within the Navajo Nation, and support the vertical and horizontal integration within the Navajo Nation of producing and processing crops into finished food products and derivatives thereof for sale.~~
- ~~D.~~ D. Do everything necessary, proper and advisable for the accomplishment of the purposes set forth herein in accordance with this Plan of Operation and applicable laws and regulations for this enterprise of the Navajo Nation.

Article 4. Definitions

- ~~A.~~ A. "Agribusiness Development" – means the growth of capacity by NAPI for the production, processing and sale of crops. This term shall include derivatives and income from any related business operated by NAPI and from subleasing operations authorized by the Master Agricultural Lease.
- ~~B.~~ B. "Capital Contribution" – means the land, water, services and money invested, loaned or granted to the ~~Navajo Agricultural Products Industry~~ NAPI by the Navajo Nation to engage in commercial farming and ~~agribusiness development.~~ Agribusiness Development.
- ~~C.~~ "CONUS" – ~~means the current reimbursement rates for lodging, meals and incidental expenses for travel within the 48 contiguous states and the District of Columbia established by the United States General Services Administration pursuant to 41 CFR, chapters 300-304.~~
- ~~C.~~ "Chapter Officials" - means the President, Vice President and Secretary-Treasurer of a Chapter or such titles given to the officials of a chapter that has adopted an Alternative Form of Government (AFOG) in accordance with the Local Governance Act (LGA) 26 N.N.C §101 et seq. Officials of Land Boards or Grazing Committees are not Chapter Officials as defined in this Plan of Operation.
- ~~D.~~ "Master Agricultural Lease" – means the single lease between the Navajo Nation and the ~~Navajo Agricultural Products Industry~~ NAPI to authorize and govern any and all use of Navajo Nation trust and fee lands by NAPI to engage in ~~agribusiness development.~~ Agribusiness Development and commercial farming. Said lease may provide subleasing opportunities for NAPI to promote ~~agribusiness development and the multiplier effect.~~ The lease Agribusiness Development. The Master Lease shall conform to Federal and Navajo Nation law.

26 NNC § 2(11)

~~E. "Multiplier Effect" — means vertical and horizontal integration of producing and processing crops into finished food products and derivatives thereof for sale. The focus of the multiplier effect shall be to promote such vertical and horizontal integration within the Navajo Nation.~~

~~F. "Official of the State Government" — means a person employed full time by a state government, agency or department thereof, but shall not include persons so employed by a municipality or political subdivision of a state.~~

~~G. "Substantial Business Experience" — means a minimum of ten (10) years of progressively responsible experience in appropriate business activities, of which at least two (2) years were at a senior management section or executive level or of a comparable position.~~

~~H.~~

~~E. "Fiscal Year" — NAPI Fiscal Year which runs from June 1st to May 31st of each year.~~

F. "Organic food" — means the product of a farming system which avoids the use of man-made fertilizers, pesticides; growth regulators and livestock feed additives. Irradiation and the use of genetically modified organisms (GMOs) or products produced from or by GMOs are generally prohibited by organic legislation.

~~"Water Use Permit" — means the permit mandated by the Navajo Nation Water Code and other applicable Navajo Nation laws to authorize the use and development of the water resources of the Navajo Nation.~~

Article 5. Membership on Authority of Board of Directors; Number; Appointment; Qualifications; Term of Office; Removal or Resignation; and Filling Vacancies; Authority

A. A. NAPI shall be managed by a Board of Directors that ~~which~~ that shall provide governance and oversight of the organization, subject to the restrictions of this Plan of Operation and applicable law. The Board shall consist of five (5) members from the Western, Chinle and Eastern Agencies of the Navajo Nation. At least One Director shall ~~shall~~ reside within be from District 13 and one Director shall be from reside within District 19. Aall of whom shall be appointed by the President of the Navajo Nation subject to confirmation by the Economic Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §724(E)(1).

1. Appointment

The President's Office of the Navajo Nation shall advertise any open positions on the Board of Directors whether based on vacancy or an expired term. Each Director of the Board of Directors shall be nominated by the President of the Navajo Nation

Numbering is different under clean version so cross referencing in document needs to be corrected.
expired terms

and confirmed by the Resources and Development Committee (RDC): However, if more than thirty (30) days has passed with a vacancy as a result of death, resignation or removal and the President has not nominated a replacement, then the Resources and Development Committee may both nominate and confirm a replacement Director so long as the proposed replacement Director meets the qualifications stated herein. The appointment is effective upon communication of the appointment by the Chairperson of the Resources and Development Committee to the Chairperson of the NAPI Board.

A. 2. Qualifications.

~~B. The conduct of each member of the Board of Directors shall conform to fiduciary standards, and shall, in any event, conform to that required of members of a board of directors of a for-profit corporation under the Navajo Corporation Code, the Navajo Nation Ethics in Government Act, and other applicable Navajo Law~~

~~C. Qualifications~~

~~The five members of the Board of Directors (who shall be referred to as Directors) shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee. The President shall appoint individuals with substantial business experience and are from the Western, Chinle and Eastern Agencies. At least three of the Directors shall have substantial experience in successful agribusiness commercial farming, provided that such experience shall not be through direct or indirect employment with NAPI. At least one Director shall be educated in the field of agriculture, one a. One Director shall reside within District 13 and one Director shall reside within District 19. All Directors shall have at least a Bachelor of Science degree except for the Directors representing Districts 13 and 19, who shall not be required to have such degree if no suitable candidate with such degree can be identified residing within such Districts. Each Director shall have substantial business experience in business; and the Board of Directors as a whole shall possess substantial knowledge, understanding, and competency in such disciplines and skills as agribusiness agricultural marketing, livestock, agricultural economics, agricultural finance, irrigation and P.L. 93-638 contracting. It is preferred that each Director (i) shall have knowledge of corporate financial statements and capital investment planning and shall possess a Bachelor's degree from a recognized and accredited four-year institution of higher learning. Preference in the appointment of Directors shall be given to Navajos and, secondarily, to non-Navajo spouses who are legally married to non-Navajos who meet the minimum qualifications for Board membership; and are legally married to Navajos; however, the procedural and substantive provisions of the Navajo Preference in Employment Act, 15 N.N.C. section 601, et seq., shall not apply to such appointments. No person who has been~~

~~employed by NAPI will be eligible to become a member of the NAPI Board of Directors until six years after the date of his or her last separation from NAPI.~~

b. No Director shall be: (a) a person who is or was employed by NAPI within the past six (6) years; or (b) a current Council delegate or Chapter Official.

3.D. Term of Office

~~1. Directors shall be appointed to serve staggered terms of office and shall hold office until the appointment and confirmation of their successors. three (3) years and may be reappointed to serve additional terms.~~

~~2. The initial Board of Directors shall be divided into three groups. The first group of one to serve for one year, the second group of two to serve for two years, and the third group of two to serve for three years. Thereafter all terms shall be for three years.~~

4.E. Removal or Resignation.

~~1. Any member of the Board of Directors~~ a. Any Director may be removed by a simple majority vote of the Economic Resources and Development Committee taken at a lawful meeting if:

- ~~a. Such member has failed to attend two (2) consecutive meetings of the Board without prior written approval of absence by the Chairperson of the Board. The Secretary shall report to the President of the Navajo Nation when a member has failed to attend two consecutive meetings without prior approval;~~
- ~~b. Such member has been convicted of any crime reflecting upon such member's honesty or ability to fulfill the fiduciary obligations imposed by law upon such member;~~
- ~~c. Such member has been adjudged in any action, suit, or other proceeding to be liable, suit, or other proceeding to be liable for gross negligence or misconduct, in the performance of any management duties;~~
- ~~d. Such member violates the Navajo Nation Ethics in Government Law;~~
- ~~e. Such member commits malfeasance or misfeasance of office; or~~
- ~~f. Breach of the duties of a director as set forth in Article 5(B).~~

(i) Such Director has been convicted or entered a plea of *nolo contendere* to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided that any such violation shall be limited to the last then (10) years of such person's history and provided that the Resources and Development

Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification.

(ii) Such Director violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 et. seq. as amended, provided that any such violation shall be limited to the last then (10) years of such person's history.

~~2. The Directors may resign by giving written notice of resignation to the President of the Navajo Nation and/or the Chairperson~~ (iii) Such Director commits malfeasance or misfeasance of office as member of the Board of Directors.

b. A Director may resign by giving written notice of resignation to the President of the Navajo Nation, the Chairperson of the Resources and Development Committee and the Chairperson of the Board of Directors. Resignation shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Acceptance of resignation shall not be necessary to make such resignation effective. A Director who has failed to attend two (2) consecutive properly called and noticed meetings of the Board or who fails to attend six Board meetings properly noticed in any fiscal year shall, unless excused from attendance by the Chairperson of the Board, be considered to have resigned.

5. Notification and Procedures for Filling Vacancies

~~1-a.~~ A vacancy shall exist from the date of the resignation, death, or removal of a Director by the Economic Resources and Development Committee of the Navajo Nation Council.

~~2. Upon creation of a vacancy,~~ b. The Chairperson of the Board shall promptly notify the President of the Navajo Nation shall appoint a qualified candidate on or before thirty (30) working days. The Economic Development Committee of the Navajo Nation Council shall fill vacancies where the President has not made an appointment within thirty (30) working days by appointing and confirming a candidate that meets the qualifications stated above Navajo Nation and the Chairperson of the Resources and Development Committee concerning any vacancy to be filled. Vacancies shall be filled for the unexpired portion of the term of the vacant Director in accordance with the procedures established in Article V of this Plan of Operation. ~~3.—Any vacancy shall be filled for the unexpired portion of the term.~~

~~4. All Director vacancies shall be advertised.~~

Article 6. Principal Officers Duties; Election; Term of Office; Removal; Resignation;

in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the ~~persons~~ person removed.

~~D. E.~~ Resignation. Any Principal ~~Officer~~ may resign from office at any time by giving written notice to the Board of Directors, or to the Chairperson; such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

E. Replacement. A vacancy in an Principal ~~Officer~~ position may occur when the term of the Principal ~~Officer as a Director has expired and a new Director has been appointed by the Nation as provided in Article 5(B) above.~~ ** numbering off.*

~~F. F.~~ Filling Vacancies. Any vacancy in any a Principal ~~Officer~~ position caused by death, resignation, or removal or replacement shall be filled for the unexpired portion of the Principal Officer's term in the manner prescribed herein for election to such Principal ~~Officer position.~~

G. Standing Committees. The Board shall establish an Audit Committee as a standing committee of the Board and may establish other standing committees to address the ongoing issues of NAPI and special ad hoc task groups to work for a specified time to accomplish a specific assignment.

Article 7. Board of Directors Powers and Duties

Subject to applicable Federal and Navajo Nation laws and regulations, the Board of Directors shall ~~be subject to the laws and regulations applicable to Board of Directors of a corporation under the laws of the Navajo Nation and shall have the following powers and duties:~~ have overall responsibility for the affairs of NAPI, giving usual and essential latitude to the Chief Executive Officer (CEO) to accomplish the purposes set forth in Article 3 of this Plan of Operation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote. The Board may adopt such rules and regulations for the conduct of their meetings as it deems proper, and not inconsistent with this Plan of Operation. The NAPI Board shall have the following powers and duties to establish policies and procedures, receive reports and provide direction to the CEO ~~Chief Executive Officer~~ and his or her delegated employees, by resolution or directive:

~~A. To have the authority and responsibility for the management, direction and operation of NAPI; to direct the officers of NAPI in the execution of their duties; and to perform such acts as are necessary, proper and lawful to accomplish the purposes of NAPI. Lobbying.~~

~~B. To engage in lobbying activities on behalf of NAPI before local, state and Federal legislative and administrative bodies to achieve the purposes of NAPI.~~

Vacancies; Other Officers and Agents.

A. The Principal Officers. The Principal Officers of NAPI Board of Directors shall consist of the following: Chairperson, Vice Chairperson and Secretary.

~~1. Chairperson, Secretary and Vice Chairperson of the Board of Directors.~~

~~2. In the discretion of the Board, there may be a Treasurer.~~

B. ~~Duties.~~ All Officers of NAPI shall have the following duties and such other duties as may be determined by the Board of Directors, which shall be consistent with applicable law and this plan of operation:

1. *Chairperson of the Board.* The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors, and shall, in general, perform all duties incident to the office of the Chairperson of the Board of Directors and such other duties as may be assigned by the Board of Directors.

2. *Vice Chairperson of the Board.* The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson, and shall discharge any other duties designated by the Chairperson or the Board of Directors.

3. *Secretary of the Board.* The secretary is the recording officer of the Board and the custodian of its records except such as are specifically assigned to others such as the treasurer's books.

~~4. *Treasurer of the Board.* If elected, the Treasure shall act as a banker, merely holding the funds deposited with the Board and paying them out on the order of the Board, have direct contact with NAPI's auditors to ensure that the audits are correct and reported to the Board, and submits to the Board a quarterly treasurer's report that provides detailed information on the financial condition of NAPI.~~

B. ~~C.~~ Election; Term of Office.

The Principal ~~o~~Officers shall be elected annually by the Board of Directors at its annual meeting, or as soon after such annual meeting as newly appointed Directors are confirmed. Each Principal ~~o~~Officer shall hold office until his/her successor is elected, or vacates the position by death, resignation, ~~or~~ removal or replacement.

C. ~~D.~~ Removal. Any Principal ~~o~~Officer ~~or agent~~ elected ~~or appointed~~ by the Board of Directors may be removed by a vote of at least three of the five Directors whenever, in the judgment of the Directors, the best interest of NAPI will be served thereby; except in the absence of dereliction in duty, negligence, malfeasance, or misfeasance

~~C. To direct the operation of NAPI to accomplish the purpose set forth in Article 3 and to exercise the powers set forth in this Plan of Operation.~~

~~B.D. Facilities. Property.~~ To exercise full power and have ultimate responsibility for the custody of inventory; and maintenance of all NAPI property, facilities, and special utilities. To plan, obtain regular reports by the Chief Executive Officer and his or her delegated employees regarding the planning, construct and operate construction and operation of all facilities, and to take any and all usual, necessary and proper actions incidental thereto including, the consent to the borrowing of funds to accomplish the purposes of NAPI, provided that no assets or funds of the Navajo Nation shall be pledged as security therefore, except upon approval by the Navajo Nation Council, and to make other commitments necessary to accomplish the business purposes of NAPI.

~~C.E. Investment of funds. To make investment decisions, subject to the limitations contained herein, or limitations as may be included in any advance of funds, or as may be imposed by the Navajo Nation Council, and to provide for the establishment and maintenance of~~ establish effective investment policies and procedures, and to ensure that investment decisions are consistent with the policies and procedures and are subject to limitations as may be imposed by the Navajo Nation Council.

~~D.F. To exercise its authorized powers in the best interests of the NAPI and within the limits of responsible business judgment, with the limitation that it~~ Borrowing. To obtain loans so long as NAPI shall not incur obligations in excess of the ability of NAPI to pay. Nothing in this subchapter or to issue bonds and to secure payment thereof by loan guaranty or pledge of, or lien on, all or any of its fixtures, personal property, revenues, income or contracts of NAPI. Nothing herein shall be construed as authorizing NAPI to mortgage or encumber trust or restricted property, including all water and real property resources of the Navajo Nation, or as providing a ~~consent~~ consent by the Navajo Nation Council thereto.

The Resources and Development Committee of the Navajo Nation Council shall not adopt amendments to this Plan of Operation which limit or alter the rights or powers vested in NAPI necessary to fulfill NAPI's obligations until all such notes or bonds or obligations issues, together with interest thereon, are fully met, paid, and discharged. This subsection shall be interpreted to protect the previously established rights of NAPI creditors or others to whom NAPI owes a legally enforceable obligation.

~~E.G. Reports.~~ To report quarterly in writing to the President of the Navajo Nation. Such quarterly report shall include a summary of activities on management, income and expenditures for the current quarter. In addition, ~~Navajo Agricultural Products Industry~~ NAPI shall issue an annual report with fiscal year and the audited financial reports no later than ninety (90) days after the expiration of the fiscal year and a copy

of this report shall be provided to the ~~Economic~~ Resources and Development Committee and the President within ten working days after the date on which the annual report is issued.

F. H. Operating policies. To establish general operating policies and procedures, such as purchasing, accounting, information technology and personnel procedures, giving usual and essential latitude to the Chief Executive Officer and his or her delegated employees to carry out and implement such policies.

G. I. ~~Business and Management Plan. The Board shall annually~~ To develop and submit to the President of the Navajo Nation and ~~Economic~~ the Chairperson of the Resources and Development Committee of the Navajo Nation Council a ~~business and management~~ business plan for NAPI. The ~~p~~Plan shall set forth the general plan for operating the commercial farm. The Plan shall include cropping patterns, annual total farm budgets, cash flow projections, and investment plans and strategies for the forthcoming years to yield a profit for NAPI. The Plan shall contain sufficient information as to justify the assumptions and conclusions of the Plan, considering market trends and prices, as well as the national economy.

H. J. Officers and agents. To select or appoint officers, agents, auditors, and such professional consultants as may be deemed necessary and appropriate, and to define their duties and compensation. ~~However unless the Budget and Finance Committee of the Navajo Nation Council by not less than 2/3 vote of the full membership of the Committee shall consent and approve otherwise, the auditors shall be the firm of accountants employed by the Navajo Nation. The Budget and Finance Committee shall first obtain a recommendation from the Economic Development Committee regarding the auditors for NAPI prior to consenting and approving appointment of a firm other than the accountants employed by the Navajo Nation. The hiring of a Chief Executive Officer shall be by the Board of Directors through a contract. The Board of Directors at NAPI's expense, shall require the bonding of all~~ All officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of NAPI and the Navajo Nation shall be bonded.

I. K. ~~To act as agent.~~ Agency. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of NAPI, within the scope of authorized purposes, subject to applicable law.

J. L. Real property. To establish policies and procedures to utilize, improve, manage, or ~~and~~ operate Navajo Nation lands withdrawn for NIIP pursuant to a ~~master agricultural lease agreement. The master agricultural lease agreement~~ Master Agricultural Lease. The Master Agricultural Lease shall be subject to renewal at intervals that are economically advantageous to NAPI and the Navajo Nation. The ~~master lease~~ Master Agricultural Lease shall be reviewed at least every five years to

~~adjust rent and for other considerations.~~

~~M. Water Use Permit. NAPI shall obtain a water use permit from the Division of Natural Resources for the use of water in connection with the operation of the commercial farm enterprise.~~

~~K. N.~~ Personal property, generally. To acquire (by purchase, exchange, lease, hire, or otherwise), hold, own, mortgage, pledge, exchange, sell, deal in, hedge and dispose of, either alone or in conjunction with others, personal property, any interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth in Article 3, except personal property subject to restrictions on alienation or sale by the United States Government and provided that the approval of the Budget and Finance Committee of the Navajo Nation Council as appropriate is a condition precedent to any such transaction involving restricted or unrestricted property owned by the Navajo Nation.

~~L. O.~~ ~~Inventories, Patents, copyrights, and trademarks~~ Copyrights and Trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefore, licenses, formulas, privileges, processes, copyrights, and applications therefore, trademarks and applications therefore, and trade names, and that title of such acquisitions shall be taken in the name of the ~~Navajo Nation~~ NAPI.

~~MP.~~ Guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of NAPI, to the extent that such guaranty is made pursuant to the purposes set forth in Article 3 and is subject to the limitations set forth in this ~~subchapter~~ Plan of Operation on the use of trust or restricted property as security therefore.

~~N. Q.~~ Depository. To designate and approve all depositories used for the deposit of funds of NAPI.

~~O. R.~~ Contracts. To enter into, ~~make, perform, and carry out, or cancel, or rescind~~ contracts for any lawful purposes set forth in Article 3 and to delegate this authority as may be advisable to the Chief Executive Officer of NAPI, or to the chairperson of the Board of Directors. Any contract for hiring or retaining an attorney is subject to applicable Federal or Navajo Nation laws, rules and regulations. Except as provided in this ~~subchapter~~ Plan of Operation, nothing in this section shall be construed as a waiver of sovereign immunity NAPI and/or the Navajo Nation may by law possess. ~~All contracts of NAPI shall be in writing and contain the following provision:~~

~~NAPI is an entity of the Navajo Nation and is immune from suit. Any waiver of NAPI's immunity must be made explicitly by contract recommended by the NAPI Board of Directors and approved by the Navajo Nation Council. All disputes arising under this contract or in connection with this contract shall be decided in the Courts of the Navajo Nation. This contract will be interpreted pursuant to Navajo law.~~

P. S. Navajo Indian Irrigation Project. NAPI shall To work with the Navajo Indian Irrigation Project, the Department of the Interior, Bureau of Indian Affairs, and the appropriate Navajo Nation programs, departments and divisions, to maximize the potential profit and sustainable operation of the NAPI commercial farm.

~~T. To obtain loans, make and issue bonds and notes. Obligations of NAPI for any of its purposes, and to secure payment thereof by loan guaranty or pledge of, or lien on, all or any of its fixtures, personal property, revenues, income or contracts of NAPI.~~

Q. U. Grants. To apply for and accept grants and enter into contracts, agreements or other transactions with any Federal Agency, private lending institution, the Government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of NAPI's purposes consistent with the terms and conditions of the awarded contract or grant.

~~V. Liability. The Economic Development Committee of the Navajo Nation Council shall not adopt amendments to this plan of operation which limit or alter the rights or powers vested in NAPI necessary to fulfill NAPI's obligations until all such notes or bonds or obligations issued, together with interest thereon, are fully met, paid and discharged. This subsection shall be interpreted to protect the previously established rights of NAPI creditors or others to whom NAPI owes a legally enforceable obligation.~~

R. W. Dividends. To declare a dividend as appropriate out of the net earnings of NAPI to the Navajo Nation as a return on the capital contribution Dividends. To declare a dividend as appropriate out of the net earnings of NAPI to the Navajo Nation as a return as a return on the Capital Contribution of the Nation. NAPI shall report annually to the Navajo Nation Council of its decision regarding its dividends.

S.

~~X. To~~ Subsidiary Entities. To (1) establish wholly-owned subsidiary corporations with the authority to waive such subsidiary corporations' sovereign immunity and other attributes of Navajo Nation sovereignty and limited liability companies, provided that such subsidiary corporations entities shall always remain wholly owned by NAPI, (2) that such subsidiary corporations entities shall be guided by a Board of Directors board

comprised of three (3) members of the NAPI Board of Directors selected by the NAPI Board of directors and two (2) members of NAPI management selected by the NAPI Chief Executive Officer, who may include the Chief Executive Officer himself or herself, (3) that ~~all any~~ dividends declared by the Board of Directors of the ~~a~~ subsidiary corporations entity be reported as other income by NAPI, (4) that such subsidiary corporations entities be at all times adequately capitalized and insured so as to preserve the corporate shield for the protection of NAPI and (5) that such subsidiary corporations entities shall periodically and, in any event, upon the request of the ~~Economic Resources and~~ Development Committee of the Navajo Nation Council, give full and complete reports of its operations and finances to such Committee; and provided further that such subsidiary corporations entities shall have no authority to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited to the non-trust assets and property of such subsidiary corporations entities and shall not extend to the assets and property of the Navajo Nation itself, and provided further that such subsidiary corporations entities shall not pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.

I.

~~Y.~~ Ancillary powers. To have and exercise all powers necessary or convenient to ~~effect~~affect any or all of the purposes for which NAPI is organized, subject to applicable laws and regulations, and to limitations imposed herein or as may be imposed by the Navajo Nation Council.

~~Z. Limited Waiver of NAPI's Sovereign Immunity for Certain Agreements. Notwithstanding anything herein or in Navajo law to the contrary, to enter into contracts for the purchase of equipment and/or vehicles without the inclusion of the provision that would be otherwise required by Article 7 (R), above, which contracts may provide for a limited waiver of NAPI's sovereign immunity to the extent necessary to permit the repossession of such equipment and/or vehicles and permit lenders to recover damages from NAPI to the extent of the amount financed through judicial action in the courts of the Navajo Nation or through compulsory arbitration, provided that such contracts shall not be construed to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited strictly to non-trust asset and property of NAPI and shall not extend to the assets and property of the Navajo Nation itself, and provided further that no such contract shall pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.~~

~~AA. Limited Liability Companies and Limited Partnerships. To create and/or enter into limited liability companies or limited partnerships, with the authority of NAPI, as a member of any such limited liability company or as a limited partner of any such~~

~~limited partnership and in no other capacity, to waive sovereign immunity, provided: (1) that NAPI in such capacity shall have no authority to waive the sovereign immunity of the Navajo nation or pledge as security or otherwise, or make any guaranty respecting, any assets, property of funds of the Navajo Nation; (2) that any waiver of immunity from suit shall be limited to the non-trust assets and property of such limited liability company or limited partnership shall be at all times adequately capitalized and insured, so as to preserve the corporate shield of the protection of NAPI.~~

Article 8. Board of Directors' Meetings; Notice; Quorum; Board of Directors Actions; Minutes and Resolutions; Stipend and Reimbursement; Prohibited Contracts and Transactions; Conflict of Interest; Meeting Procedure.

A. Meetings

1. Annual meeting. The annual meeting of the Board of Directors shall be held at 9:00 a.m. on the first Thursday of December at the principal place of business, or at such other time and place as the Board of Directors may fix. Board members shall be physically present at the annual meetings.
2. Regular meetings. The Board of Directors shall meet at least quarterly ~~upon notice fixing the time, place, and agenda~~ monthly at 9:00 a.m. on the fourth Friday of the month or at such time and place as the Board of Directors may fix,; and each annual meeting shall also be considered a ~~quarterly~~ monthly ~~regular~~ quarterly meeting. In addition to the annual meeting, Board members need not shall be physically present at 53 of the regular meetings but shall attend regular meetings electronically if not physically present and may appear telephonically at 61 regular meeting.
3. Special meetings. Special meetings may be called by the Chairperson or two members of the Board of Directors. In the event of an emergency, a special meeting may be held upon twenty-four (24) hours' notice. Board members need not be physically present at the special meetings but shall attend special meetings ~~electronically~~ telephonically if not physically present.

~~B. Notice of Meetings.~~

- B. 1. —Notice of Meetings. Notice of meetings stating the date and time, place and proposed agenda shall be given in writing by prepaid letter, facsimile, or e-mail properly addressed to each ~~Board member~~ Director not later than five (5) days immediately preceding the meeting excluding the date of the meeting. Attendance of a Director in person or telephonically shall waive any objection to the notice requirement.

- ~~2. Actions by the Board of Directors without substantial compliance with notice requirements shall be void, and beyond the scope of the Board's authority unless subsequently ratified by the Board by resolution at a meeting for which notice of such proposal ratification is provided in accordance with this Article.~~
 - ~~3. In the event of an emergency, a special meeting may be held upon twenty-four (24) hours notice.~~
 - ~~4. To call a special emergency meeting, the chairperson must determine whether an emergency exists. Further, the members of the Board attending the meeting will document the existence of such emergency in its meeting minutes and resolutions.~~
- C. Quorum. The presence of three (3) members of the Board of Directors shall constitute a quorum for the transaction of any business. The act of the majority of the quorum shall be the act of the Board of Directors.
- D. Board Actions. All substantive action of the Board of Directors shall be taken by written resolution duly certified by the presiding officer.
- E. Minutes and Resolutions. Access to minutes of meetings and resolutions of the Board of Directors, and all other records of NAPI shall be governed by the Navajo Nation Privacy Act, 2 NNC section 81, *et seq.*
- F. Stipend and Reimbursement. Directors shall be paid a stipend for attendance of Board of Directors meeting at a rate, not to exceed \$250.00 per day per meeting for all meetings, ~~provided that the member shall attended the meeting for at least four (4) hours; and further provided that the meeting agenda is completed.~~ Board of Directors shall be reimbursed all reasonable mileage and expenses incurred in the execution of Board assignments at the rate rates established by the United States General Services Administration and CONUS and expenses incurred in execution of Board assignments pursuant to 41 CFR chapters 300-304. ~~Members of the Board of Directors~~ A Director may be provided an advance to cover such expenses. Such advance shall not exceed the amount of reasonable expenses.
- G. Prohibited contracts and Transactions. No contract or other transaction between NAPI and any one of the Directors, or between NAPI and any corporation, partnership, firm or other legal entity in which a Director or Director's immediate and extended family have a direct or indirect personal, family or business interest shall be valid unless the contract or transaction is approved in advance of execution by majority vote of the Board of Directors not having such interest.
- H. Conflict of Interest. No Director shall participate in or vote on any matter in which

he or she has a direct or indirect personal, family or business interest. A Director who violates this ~~section~~ provision shall be subject to removal.

- ~~I. Meeting Procedure. The Board of Directors may adopt such rules and regulations as it deems necessary and proper for the orderly and efficient conduct of its meeting or business.~~

Article 9. Chief Executive Officer Powers and Duties

- A. The Chief Executive Officer shall be employed under a written employment contract ~~for a term not to exceed three (3) years~~ approved by the Board of Directors and shall be responsible and accountable to the Board of Directors. The contract shall provide for an annual evaluation of the Chief Executive Officer, based upon the duties outlined, herein, duties set forth in such contract, the purposes for which NAPI was established, and other factors deemed relevant and significant by the Board of Directors. The contract may be renewed if both NAPI and the Chief Executive Officer agree and other requirements are met, including but not limited to, any applicable requirements imposed by the Navajo Preference in Employment Act (~~"NEPA"~~ "NPEA"). The contract shall include a termination for cause provision, and this provision shall state that cause shall include an unsatisfactory annual evaluation and shall limit NAPI's potential liability under such contract, the ~~NEPANPEA~~, or other applicable law in the event of termination for cause.
- B. The Chief Executive Officer shall be the chief executive officer of ~~the~~ NAPI and shall direct all operations of NAPI. He or she shall, among other things, execute the general policies approved by the Board of Directors and organize the operation of NAPI into operating units, and assign each unit specific duties and responsibilities, subject at all times to applicable laws and regulations, and to the provisions of this ~~plan of operation~~ Plan of Operation.
- C. The Chief Executive Officer shall administer and manage the enterprise in accordance with the provisions of the Business Strategic Plan and the annual budget adopted by the Board of Directors. The ~~Manager~~ Chief Executive Officer shall proactively manage the enterprise to address changing markets and assumptions upon which the Plan is formulated. The Chief Executive Officer shall report on a quarterly basis the progress of the enterprise under the Business Strategic Plan and ~~draft any~~ shall recommend changes to in the Plan for presentation to the Board for its consideration.
- D. The Chief Executive Officer shall have full authority, including appointments ~~appointment~~, dismissal, and control, over all employees of NAPI and shall be responsible for all operating units ~~or other and the implementation of assignments of all executive managers carrying out their assignments~~.

E. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved budgets, standards, program inspection, cost control, employee relations, and in-service training. He or she shall formulate and submit to the Board of Directors for its approval, personnel policies, rules, and procedures. The Chief Executive Officer shall be responsible for NAPI's compliance with, and execution of, approved policies, rules and procedures.

~~F. The Chief Executive Officer shall render regular reports concerning NAPI finances and operations to the Board of Director and perform all other functions and duties specified in this plan of operation for the Chief Executive Officer.~~

F.G. The Chief Executive Officer shall employ, under written contract, competent operating unit directors, managers, or consultants for the usual and ordinary functional responsibilities of each operating unit including any subsidiary organizations.

G.H. The Chief Executive Officer shall be responsible for insuring that the activities of NAPI are in compliance with this ~~plan of operation~~ Plan of Operation and with applicable laws and regulations and shall report any noncompliance therewith to the Board of Directors.

H. I. The Chief Executive Officer shall comply with all laws, regulations and policies of the Navajo Nation including, but not limited to, -preference in employment laws and laws related to contracting for Navajos with Navajo and other Indian entities.

I. J. The Chief Executive Officer shall ~~recommend to the Board of Directors~~ employment engage the services of consultants when such employment engagement is required and would be of benefit to NAPI.

~~E.J.K.~~ The Chief Executive Officer shall furnish clerical and stenographic personnel needed to record minutes; provide notice of meetings and other clerical services as needed by the Board of Directors. Minutes shall be provided to all Board of Directors by the next regular meeting after the meeting to which the minutes pertain.

~~E.K. I.~~ The Chief Executive Officer shall have and exercise such other authorities as may be granted from time to time by the Board of Directors.

~~G.L. M.~~ The Chief Executive Officer shall ~~hire under contract a Chief Financial Officer. The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer in conformity with job descriptions established for the Chief Financial Officer and the employ under contract a Chief Executive Officer, and with NAPP's approved~~

~~policies and procedures.~~ The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer. The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and the Board of Directors simultaneously.

Article 10. Navajo Nation Capital Contribution.

Navajo Nation funds advanced to NAPI or Navajo Nation facilities and property transferred to NAPI shall be regarded as a ~~capital contribution~~ Capital Contribution to NAPI by the Navajo Nation. ~~NAPI shall~~ The Board of Directors may pay to the Navajo Nation a dividend as appropriate out of the net earnings of NAPI, to be determined by the Board of Directors, as return on this capital contribution at the conclusion of each the fiscal year, as return on this Capital Contribution. See, Article ~~7(W)~~ 7(R).

Article 11. Accounting System; Fiscal Year.

A. An accounting system conforming with Generally Accepted Accounting Principles (GAAP) shall be established and maintained under the supervision of the Chief Financial Officer. The accounting system shall ~~insure~~ ensure the availability of information as may be necessary to comply with Federal and Navajo Nation regulatory requirements.

B. The Fiscal Year of NAPI shall be June 1 to May 31 annually ~~of each year~~.

Article 12. Books, Records, and Property; Inspection.

A. The books, records, and property of NAPI shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation. The Navajo Nation shall have the absolute right and authority to review NAPI's books, records ~~and property, both real and personal, of NAPI property.~~

B. The books and records of NAPI shall be available at all reasonable times for public inspection; provided, NAPI may impose such limited and reasonable restrictions upon availability or inspection by the public as orderly accounting procedures, confidentiality, or applicable laws may require.

C. The books, records, and property of NAPI shall be available for inspection at the principle place of business of NAPI.

Article 13. Audits.

~~A.~~ The accounts and records of NAPI shall be audited at the close of each fiscal year and an audit report issued no later than ninety (90) days after the expiration of the fiscal year. A copy of the audit report shall be provided to the Economic Resources and Development Committee

and the President of the Navajo Nation within ten (10) working days after the date on which the audit report is issued.

~~B. The Board of Directors, in its discretion, may shall establish an a financial/audit committee consisting of two (2) as a standing committee of the Board of Directors; see Article 6(G).~~

Article 14. Insurance.

Insurance, including liability, adequate and sufficient to protect the interest of NAPI and the Navajo Nation from any and all liabilities and losses, shall be carried by NAPI.

Article 15. Training of Navajos.

Each operating unit director or manager, and each employee in a management position if a non-Navajo, shall train and otherwise prepare a member of the Navajo Nation to replace him or her. ~~Such replacement shall occur within three (3) years of the non-Navajo's appointment.~~ The Board of Directors and the Chief Executive Officer shall take all steps necessary to effectuate this provision, including but not limited to the establishment of assistant manager positions.

Article 16. Immunity from Suit; Limited Waivers

~~A. The Navajo Agricultural Products Industry~~ NAPI is hereby declared to be an enterprise of the Navajo Nation established for the purpose purposes set forth in this plan of operation Plan of Operation, and to be established for the benefit of the Navajo people. NAPI is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Plan of Operation. As such, it is vested hereby with such immunity from suit as the Navajo Nation by law possesses.

~~B.A.~~ NAPI and its board of Directors and officers and, employees and agents while acting in their official capacities are immune from suit, and the assets and other property of NAPI are exempt from any levy or execution, except as provided by that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act (1 N.N.C. §§551 et seq.), the Board of Directors may waive the defenses identified in this Plan of Operation, in conformity with the procedures established in the Article, in order to further the purposes of NAPI. Any waiver of the defenses identified in this Article must be express and must be agreed to by the Board of Directors prior to the time any alleged cause of action accrues.

C. NAPI is hereby authorized to waive, as provided in this Article, any defense of sovereign immunity from suit NAPI, its Directors, officers, employees, attorneys or agents may otherwise enjoy under applicable federal, state or tribal law, arising from

any particular agreement, matter or transaction as may be entered into to further the purposes of NAPI, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal, state and/or federal court.

D. NAPI is hereby authorized to waive, as provided in this Article, any defense NAPI, its Directors, officers, employees attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against NAPI in a state or federal court otherwise having jurisdiction over the subject matter and the parties.

E. Any waiver by NAPI authorized by Paragraph B, C, or D of this Article shall be in the form of a resolution duly adopted by the Board of Directors, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of NAPI which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall identify the court or courts in which suit against NAPI may be brought. Any waiver shall be limited to claims arising from the acts or omissions of NAPI, its Directors, officers, employees, or agents, and shall be construed only to affect the property and income of NAPI.

F. Nothing in this Plan of Operation, and no waiver of NAPI's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by NAPI shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of NAPI, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by NAPI. The acts and omission of NAPI, its Directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.

~~B. An approved waiver of immunity from suit shall be limited to the non-trust assets and property of NAPI and shall not extend to the assets and property of the Navajo Nation.~~

~~G.~~ G. In the event NAPI is sold, dissolved or merged into any other entity of the Navajo Nation, the provisions of this section Article and the rights created hereunder shall survive such sale, dissolution or merger.

Article 17. Compliance with Navajo Nation Law.

NAPI shall comply with all applicable laws and regulations of the Navajo Nation.

Article 18. Indemnification of Officers, Employees and Members of the Board

NAPI shall indemnify any current or former Director, officer, employee or member of the ~~Board of Directors or former officer, employee or member of the Board of Directors~~ or any person who may have served at its request as an officer, employee, or member of the ~~Board of Directors~~ agent against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being, or having been such Director, officer, employee, or ~~member of the Board of Directors~~ agent except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty, or except in relation to matters in which such Director, officer, ~~member, or employee~~ or agent was acting beyond the scope of his or her employment or authority. NAPI shall also reimburse any Director, officer, employee or ~~member of the Board of Directors~~ agent for reasonable costs of settlement of any action, suit, or proceeding if found by a majority of the Board of Directors, not including the Directors involved in the matter of controversy, that it is in the best interest of NAPI and the Navajo Nation that such settlement be made and that such Director, officer, employee, or ~~member of the Board of Directors~~ agent was not guilty of gross negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, employee, or ~~member of the Board of Directors~~ agent may be entitled to receive. As a condition of such indemnification, the Director, officer, employee or ~~director of NAPI~~ agent shall agree to cooperate with legal counsel for NAPI in coordination of any action, suit or proceeding.

Article 19. Amendments

~~The~~ This Plan of Operation may be amended from time to time by the Economic Resources and Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation.

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation



Navajo Agricultural Products Industry Amended and Restated Plan of Operation

Article 1. Establishment.

- A. Pursuant to 5 N.N.C. Section 1601, the Navajo Nation Council established the Navajo Agricultural Products Industry ("~~C~~"NAPI") as an enterprise of the Navajo Nation.
- B. The ~~principle~~principal place of business of the enterprise ~~shall~~will be located at NAPI headquarters, ~~south of Hwy. 10086 N.M. Hwy. 371, Farmington, New Mexico,~~ on lands subject to the jurisdiction of the Navajo Nation.
- C. NAPI may establish offices or subsidiary organizations at such other place or places as the Board of Directors may direct.

Article 2.- Seal.

The Board of Directors shall approve an official seal for NAPI.

Article 3. ~~Purposes~~ Purpose.

The mission of NAPI is to continue the legacy of Navajo farming, producing superior products, practicing stewardship and creating value for our people. The vision of NAPI is farming sustainably across generations to cultivate a health Nation. The purpose for which NAPI is organized is to operate a profitable commercial farm, separate and distinct from the Navajo Indian Irrigation Project, ("NIIP"), in accordance with this Amended and Restated Plan of Operation (the "Plan of Operation") and applicable laws and regulations and, in order to carry out this purpose, NAPI shall:

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

- A. Plan, develop, and promote the ~~use~~usage of agricultural and related resources, including water, which water use shall be in compliance with the Navajo Nation Water Code or as shall be available for use by NAPI through the ~~Navajo Indian Irrigation Project~~.NIIP.
- ~~A.~~
- ~~A.~~B. Utilize real estate withdrawn or leased to the agriculture enterprise for the general purpose of establishing, operating and managing a commercial farm.
- C. Promote Agribusiness Development and related businesses and industries within the Navajo Nation and support the vertical and horizontal integration within the Navajo Nation of producing and processing crops into finished food products and derivatives thereof for sale.
- ~~B.~~
- ~~C.~~D. Do everything necessary, proper and advisable for the accomplishment of the purposes set forth herein in accordance with this Plan of Operation and applicable laws and regulations of the Navajo Nation.

Article 4.- Definitions.

"

- A. "Agribusiness Development"— means the growth of capacity by ~~NAPI~~NAPI for the production, processing and sale of crops. This term shall include derivatives and income from any related ~~businesses~~business operated by NAPI and from subleasing operations authorized by the Master Agricultural Lease.
- "
- B. "Capital Contribution"— means the land, water, services and money invested, loaned or granted to the NAPI by the Navajo Nation to engage in commercial farming and Agribusiness Development.
- "
- C. "Chapter Officials" - means the President, Vice President and Secretary-Treasurer of a Chapter or such titles given to the officials of a chapter that has adopted an Alternative Form of Government ("AFOG") in accordance with the Local Governance Act ("LGA") 26 N.N.C §101 *et seq.* Officials of Land Boards or Grazing Committees are not Chapter Officials as defined in this Plan of Operation.
- ~~C.~~D. "Master Agricultural Lease"— means the single lease between the Navajo Nation and the NAPI to authorize and govern any and all use of Navajo Nation trust and fee lands by NAPI to engage in Agribusiness Development and commercial farming. -Said lease may provide subleasing opportunities for NAPI to promote Agribusiness Development. The Master Agricultural Lease shall conform to Federal and Navajo Nation law.

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

D. ~~"Substantial Business Experience" - a minimum of ten (10) years of progressively responsible experience in appropriate agribusiness activities, of which at least two (2) years were at a senior management section or executive level or of a comparable position.~~

"Water Use Permit" means the permit mandated by the Navajo Nation Water Code and other applicable Navajo Nation laws to authorize the use and development of the water resources of the Navajo Nation.

E. "Fiscal Year" – NAPI Fiscal Year which runs from June 1st to May 31st of each year.

F. "Organic food" – means the product of a farming system which avoids the use of man-made fertilizers, pesticides; growth regulators and livestock feed additives. Irradiation and the use of genetically modified organisms ("GMOs") or products produced from or by GMOs are generally prohibited by organic legislation.

Article 5. Authority of Board of Directors; Number; Appointment; Qualifications; Term of Office; Removal or Resignation; Filling Vacancies; Authority.

A. NAPI shall be managed by a Board of Directors ~~which~~that shall provide governance and oversight of the organization, subject to the restrictions of this Plan of Operation and applicable law. The Board shall consist of five (5) ~~members.~~ members from the Western, Chinle and Eastern Agencies of the Navajo Nation. At least one Director shall be from District 13 and one Director shall be from District 19.

1. Appointment.

A. The President's ~~office~~Office of the Navajo Nation shall advertise any open positions on the Board of Directors whether based on vacancy or an expired term. Each Director of the Board of Directors shall be nominated by the President of the Navajo Nation and confirmed by the Resources and Development Committee. (RDC) However, if more than thirty (30) days has passed with a vacancy as a result of death, resignation or removal and the President has not nominated a replacement, then the Resources and Development Committee may both nominate and confirm a replacement Director so long as the proposed replacement Director meets the qualifications stated herein. The appointment is effective upon communication of the appointment by the Chairperson of the Resources and Development Committee to the Chairperson of the NAPI Board.

2.B. Qualifications.

~~a.~~

1. Each Director shall have ~~Substantial Business Experience in~~ substantial

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

~~business experience, which shall include, but not be limited to agribusiness, and the Board of Directors as a whole shall possess substantial knowledge, understanding, and competency in agribusiness, or agricultural marketing, livestock, agricultural economics, agricultural and finance, irrigation and P.L. 93-638 contracting. It is preferred that each Director shall have knowledge of corporate and/or business financial statements and capital investment planning. Each director and shall possess at least a Bachelor's degree from a recognized and accredited four-year institution of higher learning; agricultural and business degrees and advanced degrees are preferred.~~ Preference in the appointment of Directors shall be given to Navajos and, secondarily, to non-Navajo spouses who are legally married to Navajos who meet the minimum qualifications and are legally married to Navajos; however, the procedural and substantive provisions of the Navajo Preference in Employment Act, 15-N.N.C. section 601, *et seq.*, shall not apply to such appointments.

~~b.~~

2. No Director shall be: -(a) a person who is or was employed by NAPI within the past six (6) years; or (b) a current Council delegate or Chapter ~~official~~ Official.

3. Term of Office

C. Directors shall serve staggered terms of three (3) years and may be reappointed to serve additional terms.

4.D. Removal or Resignation.

~~a.~~

1. Any Director may be removed by a simple majority vote of the Resources and Development Committee taken at a lawful meeting if:

(i)

a. Such Director has been convicted or entered a plea of *nolo contendere* to any felony or gross misdemeanor in any court, including without limitation ~~the~~ those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided that any such violation shall be limited to the last ten (10) years of such person's history and provided that the Resources and Development Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification.

(ii)

b. Such Director violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. §-3741 *et seq.* as amended, - provided that any such violation shall be limited to the last ten (10) years of such person's

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

history.

~~(iii)~~

c. Such Director commits malfeasance or misfeasance of office as member of the Board of Directors.

~~b.~~

2. A Director may resign by giving written notice of resignation to the President of the Navajo Nation, the Chairperson of the Resources and Development Committee and the Chairperson of the Board of Directors. Resignation shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Acceptance of resignation shall not be necessary to make such resignation effective. A Director who has failed to attend two (2) consecutive properly called and noticed meetings of the Board or who fails to attend six Board meetings properly noticed in any fiscal year shall, unless excused from attendance by the Chairperson of the Board, be considered to have resigned.

5.E. Notification and Procedures for Filling Vacancies

~~a.~~

1. A vacancy shall exist from the date of the resignation, death, or removal of a Director by the Resources and Development Committee of the Navajo Nation Council.

~~b.~~

2. The Chairperson of the Board shall promptly notify the President of the Navajo Nation and the Chairperson of the Resources and Development Committee concerning any vacancy to be filled. Vacancies shall be filled for the unexpired portion of the term of the vacant Director in accordance with the procedures established in Article ~~5~~6 of this Plan of Operation. Any vacancy shall be filled for the unexpired portion of the term.

Article 6.- Principal Officers; Duties; Election; Term of Office; Removal; Resignation; Vacancies.

A. The Principal Officers. The Principal Officers of NAPI Board of Directors shall consist of the following: Chairperson, Vice Chairperson and Secretary.

A.

1. *Chairperson of the Board.* The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors, and shall, in general, perform all duties incident to the office of the Chairperson of the Board of Directors and such other duties as may be assigned by the Board of Directors.

2. *Vice-Chairperson of the Board.* The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson, and shall discharge any other duties

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

designated by the Chairperson or the Board of Directors.

3. *Secretary of the Board.* The secretary is the recording officer of the Board and the custodian of its records except such as ~~are~~are specifically assigned to others such as the treasurer's books.

~~B.~~—*Election; Term of Office.*

- B. ~~The officers~~The Principal Officers shall be elected annually by the Board of Directors at its annual meeting, or as soon after such annual meeting as newly appointed Directors are confirmed. ~~Each officer~~Each Principal Officer shall hold office until his/her successor is elected, or vacates the position by death, resignation, removal or replacement.
- C. **Removal.** Any ~~officer~~Principal Officer elected by the Board of Directors may be removed by a vote of at least three of the five Directors whenever, in the judgment of the Directors, the best interest of NAPI will be served thereby; except in the absence of dereliction in duty, negligence, malfeasance, or misfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the person removed.
- D. **Resignation.** Any ~~officer~~Principal Officer may resign from office at any time by giving written notice to the Board of Directors, or to the Chairperson; such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- E. **Replacement.** A vacancy in ~~an officer~~a Principal Officer position may occur when the term of the ~~officer~~Principal Officer as a Director has expired and a new Director has been appointed by the Nation as provided in Article 5(~~BA~~) above.
- F. **Filling Vacancies.** ~~Any vacancy in any office~~Any vacancy in a Principal Officer position caused by death, resignation, removal or replacement shall be filled for the unexpired portion of the Principal Officer's term in the manner prescribed herein for election to such ~~office~~Principal Officer position.
- G. **Standing Committees.** ~~The Board shall establish an Audit Committee as a standing committee of the Board and~~ may establish other standing committees to address the ongoing issues of NAPI and special ad hoc task groups to work for a specified time to accomplish a specific assignment.

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

Article 7.- Board of Directors Powers and Duties.

Subject to applicable Federal and Navajo Nation laws and regulations, the Board of Directors shall have overall responsibility for the affairs of NAPI, giving usual and essential latitude to the Chief Executive Officer ("~~CEO~~") to accomplish the ~~purposes~~purpose set forth in Article 3 of this Plan of Operation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote. The Board may adopt such rules and regulations for the conduct of their meetings as it deems proper, and not inconsistent with this Plan of ~~Operations~~Operation. The NAPI Board shall have the following powers and duties to establish policies and procedures, receive reports and provide direction to the ~~Chief Executive Officer~~CEO and his or her delegated employees, by resolution or directive:

- A. Lobbying. To engage in lobbying activities on behalf of NAPI before local, state and Federal legislative and administrative bodies to achieve the purposes of NAPI.
- B. Property. To exercise ultimate responsibility for the custody of inventory and maintenance of all NAPI property, facilities, and special utilities. -To obtain regular reports by the Chief Executive Officer and his or her delegated employees regarding the planning, construction and operation of all facilities, and to take any and all usual, necessary and proper actions incidental thereto including, the consent to the borrowing of funds to accomplish the purposes of NAPI, provided that no assets or funds of the Navajo Nation shall be pledged as security therefore, except upon approval by the Navajo Nation Council, and to make other commitments necessary to accomplish the business purposes of NAPI.
- C. Investment of Funds~~funds~~. To establish effective investment policies and procedures and to ensure that investment decisions are consistent with the policies and procedures and are subject to limitations as may be imposed by the Navajo Nation Council.
- D. Borrowing. To obtain loans so long as NAPI shall not incur obligations in excess of the ability of NAPI to pay or to issue bonds and to secure payment thereof by loan guaranty or pledge of, or lien on, all or any of its fixtures, personal property, revenues, income or contracts of NAPI~~-. Nothing herein shall be construed as authorizing NAPI to mortgage or encumber trust or restricted property, including all water and real property resources of the Navajo Nation, or as providing a consent by the Navajo Nation Council thereto.~~ The Resources and Development Committee of the Navajo Nation Council shall not adopt amendments to this Plan of Operation which limit or alter the rights or powers vested in NAPI necessary to fulfill ~~NAPI's~~NAPI's obligations until all such notes or bonds or obligations ~~issued~~issues, together with interest thereon, are fully met, paid, and discharged. This subsection shall be interpreted to protect the previously established rights of NAPI creditors or others to whom NAPI owes a legally enforceable obligation.

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

- E. Reports. To report quarterly in writing to the President of the Navajo Nation.– Such quarterly report shall include a summary of activities on management, income and expenditures for the current quarter. In addition, NAPI shall issue an annual report with fiscal year and the audited financial reports no later than ninety (90) days after the expiration of the fiscal year and a copy of this report shall be provided to the Resources and Development Committee and the President within ten working days after the date on which the annual report is issued.
- F. Operating Policies~~polices~~. To establish general operating policies and procedures, such as purchasing, accounting, information technology and personnel procedures, giving usual and essential latitude to the Chief Executive Officer and his or her delegated employees to carry out and implement such policies.
- G. Business Plan. To develop and submit to the President of the Navajo Nation and the Chairperson of the Resources and Development Committee of the Navajo Nation Council a ~~strategie~~^{Strategie}business plan for NAPI. The Plan shall set forth the general plan for operating the commercial farm. The Plan shall include cropping patterns, annual total farm budgets, cash flow projections, and investment plans and strategies for the forthcoming years to yield a profit for NAPI. The Plan shall contain sufficient information as to justify the assumptions and conclusions of the Plan, considering market trends and prices, as well as the national economy.
- H. Officers and Agents~~agents~~. To select or appoint officers, agents, auditors, and such professional consultants as may be deemed necessary and appropriate, and to define their duties and compensation. All officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of NAPI and the Navajo Nation shall be bonded.
- I. Agency. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of NAPI, within the scope of authorized purposes, subject to applicable law.
- J. Real Property~~property~~. To establish policies and procedures to utilize, improve, manage, and operate Navajo Nation lands withdrawn for NIIP pursuant to a ~~master agricultural lease agreement. The master agricultural lease agreement~~Master Agricultural Lease. The Master Agricultural Lease shall be subject to renewal at intervals that are economically advantageous to NAPI and the Navajo Nation. ~~The master lease shall be reviewed at least every five years to adjust rent and for other considerations.~~
- K. Personal Property~~property~~, generally. To acquire (by purchase, exchange, lease, hire,

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

or otherwise), hold, own, mortgage, pledge, exchange, sell, deal in, hedge, and dispose of, either alone or in conjunction with others, personal property, any interest therein and commodities of every kind, character and description necessary or incidental to the ~~purposes~~purpose set forth in Article-3, except personal property subject to restrictions on alienation or sale by the United States Government and provided that the approval of the Budget and Finance Committee of the Navajo Nation Council as appropriate is a condition precedent to any such transaction involving restricted or unrestricted property owned by the Navajo Nation.

- L. Patents, Copyrights and Trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefore, licenses, formulas, privileges, processes, copyrights, and applications therefore, trademarks and applications therefore, and trade names, and that title of such acquisitions shall be taken in the name of the NAPI.
- M. Guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of NAPI, to the extent that such guaranty is made pursuant to the ~~purposes~~purpose set forth in Article-3 and is subject to the limitations set forth in this Plan of Operation on the use of trust or restricted property as security therefore.
- N. Depository. To designate and approve all depositories used for the deposit of funds of NAPI.
- O. Contracts. To enter into contracts for any lawful ~~purposes~~purpose set forth in Article-3 and to delegate this authority as may be advisable to the Chief Executive Officer of NAPI, or to the ~~chairperson~~Chairperson of the Board of Directors.- Any contract for hiring or retaining an attorney is subject to applicable Federal or Navajo Nation laws, rules and regulations. -Except as provided in this Plan of Operation, nothing in this section shall be construed as a waiver of sovereign immunity NAPI and/or the Navajo Nation may by law possess.
- P. Navajo Indian Irrigation Project. To work with the Navajo Indian Irrigation Project, the Department of the Interior, Bureau of Indian Affairs, and the appropriate Navajo Nation programs, departments and divisions, to maximize the potential profit and sustainable operation of the NAPI commercial farm.
- Q. Grants. To apply for and accept grants and enter into contracts, agreements or other transactions with any Federal Agency, private lending institution, the Government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

~~NAPI's~~NAPI's purposes consistent with the terms and conditions of the awarded contract or grant.

R. Dividends. To declare a dividend as appropriate out of the net earnings of NAPI to the Navajo Nation as a return as a return on the Capital Contribution of the Nation. -NAPI shall report annually to the Navajo Nation Council of its decision regarding its dividends.

S. Subsidiary Entities. To (1)-establish wholly-owned subsidiary corporations and limited liability companies, provided that such subsidiary ~~corporations~~entities shall always remain wholly owned by NAPI, (2) that such subsidiary entities shall be guided by a board comprised of ~~two~~three (3) members of the NAPI Board of Directors selected by the NAPI Board of Directors and two (2) members of NAPI management selected by the NAPI Chief Executive Officer, who may include the Chief Executive Officer himself or herself, (3)-that any dividends declared by the Board of a subsidiary entity be reported as other income by NAPI, (4) that such subsidiary entities be at all times adequately capitalized and insured so as to preserve the shield for the protection of NAPI and (5)-that such subsidiary entities shall periodically and, in any event, upon the request of the Resources and Development Committee of the Navajo Nation Council, give full and complete reports of its operations and finances to such Committee; and provided further that such subsidiary entities shall have no authority to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited to the non-trust assets and property of such subsidiary ~~corporations~~entities and shall not extend to the assets and property of the Navajo Nation itself, and provided further that such subsidiary ~~corporations~~entities shall not pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.

T. Ancillary ~~Powers~~ powers. To have and exercise all powers necessary or convenient to affect any or all of the purposes for which NAPI is organized, subject to applicable laws and regulations, and to limitations imposed herein or as may be imposed by the Navajo Nation Council.

Article 8. Board of Directors' Meetings; Notice; Quorum; Board of Directors Actions; Minutes and Resolutions; Stipend and Reimbursement; Prohibited Contracts and Transactions; Conflict of Interest; Meeting Procedure.

A. Meetings

1. Annual meeting. The annual meeting of the Board of Directors shall be held at 9:00 a.m. on the first Thursday of December at the principal place of business, or

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

at such other time and place as the Board of Directors may fix. Board members shall be physically present at the annual meetings.

1. Regular meetings. The Board of Directors shall meet at least ~~monthly~~quarterly at 9:00 a.m. on the fourth Friday of the month or at such ~~other~~ time and place as the Board of Directors may fix, and each annual meeting shall also be considered a ~~monthly~~regular quarterly meeting. In addition to the annual meeting, Board members need not~~shall~~ be physically present at 3 of the regular meetings but shall attend regular meetings and may appear telephonically if not physically present at 1 regular meeting.
2. Special meetings. ~~Special meetings may be called by the Chairperson or two members of the Board of Directors or by the Chief Executive Officer.~~ In the event of an emergency, a special meeting may be held upon twenty-four (24) hours' notice. Board members need not be physically present at the special meetings, but shall attend special meetings telephonically if not physically present.

~~B.~~ *Notice of Meetings.*

~~1.B.~~ Notice of meetings stating the date and time, place and proposed agenda shall be given in writing by prepaid letter, facsimile, or e-mail properly addressed to each ~~Director~~Board member not later than five (5) days immediately preceding the meeting excluding the date of the meeting. Attendance of a ~~Director~~Board member in person or telephonically shall waive any objection to the notice requirement.

~~2. To call a special emergency meeting, the chairperson must determine whether an emergency exists. Further, the members of the Board attending the meeting will document the existence of such emergency in its meeting minutes and resolutions.~~

C. Quorum.— The presence of three (3) members of the Board of Directors shall constitute a quorum for the transaction of any business. —The act of the majority of the quorum shall be the act of the Board of Directors.

D. Board Actions.— All substantive action of the Board of Directors shall be taken by written resolution duly certified by the presiding officer.

E. Minutes and Resolutions. —Access to minutes of meetings and resolutions of the Board of Directors, and all other records of NAPI shall be governed by the Navajo Nation Privacy Act, 2 N.N.C. §-81, *et seq.*

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

- F. Stipend and Reimbursement.- Directors shall be paid a stipend for attendance of Board of Directors meeting at a rate, not to exceed \$250.00 per day per meeting for all meetings, ~~provided that the member shall be physically present for the entire meeting attended.~~ Board of Directors shall be reimbursed all reasonable mileage and expenses incurred in the execution of Board assignments at the rates established by the United States General Services Administration pursuant to 41 CFR chapters 300-304. A Director may be provided an advance to cover such expenses. Such advance shall not exceed the amount of reasonable expenses.
- G. Prohibited ~~Contracts~~contracts and Transactions. No contract or other transaction between NAPI and any one of the Directors, or between NAPI and any corporation, partnership, firm or other legal entity in which a Director or ~~Director's~~Director's immediate and extended family have a direct or indirect personal, family or business interest shall be valid unless the contract or transaction is approved in advance of execution by majority vote of the Board of Directors not having such interest.
- H. Conflict of Interest.- No Director shall participate in or vote on any matter in which he or she has a direct or indirect personal, family or business interest. A Director who violates this provision shall be subject to removal.

Article 9. Chief Executive Officer Powers and Duties.

- A. The Chief Executive Officer shall be employed under a written employment contract approved by the Board of Directors and shall be responsible and accountable to the Board of Directors. -The contract shall provide for an annual evaluation of the Chief Executive Officer, based upon the duties outlined, herein, duties set forth in such contract, the purposes for which NAPI was established, and other factors deemed relevant and significant by the Board of Directors. The contract may be renewed if both NAPI and the Chief Executive Officer agree and other requirements are met, including but not limited to, any applicable requirements imposed by the Navajo Preference in Employment Act ~~("NPEA").~~ The contract shall include a termination for cause provision, and this provision shall state that cause shall include an unsatisfactory annual evaluation and shall limit ~~NAPI's~~NAPI's potential liability under such contract, the NPEA, or other applicable law in the event of termination for cause.
- B. The Chief Executive Officer shall be the chief executive officer of NAPI and shall direct all operations of NAPI. He or she shall, among other things, execute the general policies approved by the Board of Directors and organize the operation of NAPI into operating units, and assign each unit specific duties and responsibilities, subject at all times to applicable laws and regulations, and to the provisions of this Plan of Operation.

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

- C. The Chief Executive Officer shall administer and manage the enterprise in accordance with the provisions of the ~~Strategic~~Business Plan and the annual budget adopted by the Board of Directors. The Chief Executive Officer shall proactively manage the enterprise to address changing markets and assumptions upon which the Plan is formulated. The Chief Executive Officer shall report on a quarterly basis the progress of the enterprise under the ~~Strategic~~Business Plan and shall recommend changes in the Plan to the Board for its consideration.
- ~~C.~~
- D. The Chief Executive Officer shall have full authority, including appointment, dismissal, and control, over all employees of NAPI and shall be responsible for all operating units and the implementation of assignments of all executive managers.
- E. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff in respect to all such matters as conformance to approved ~~budgets~~budgets, standards, program inspection, cost control, employee relations, and in-service training.- He or she shall formulate and submit to the Board of Directors for its approval, personnel policies, rules, and procedures. -The Chief Executive Officer shall be responsible for ~~NAPI's~~NAPI's compliance with, and execution of, approved policies, rules, and procedures.
- ~~E.~~
- F. The Chief Executive Officer shall employ, under written contract, competent operating unit directors, managers, or consultants for the usual and ordinary functional responsibilities of each operating unit including any subsidiary organizations.
- G. The Chief Executive Officer shall be responsible for insuring that the activities of NAPI are in compliance with this Plan of Operation and with applicable laws and regulations and shall report any noncompliance therewith to the Board of Directors.
- H. The Chief Executive Officer shall comply with all laws, regulations and policies of the Navajo Nation including, but not limited to, preference in employment laws and laws related to contracting with Navajo and other Indian entities.
- I. The Chief Executive Officer shall ~~recommend to engage~~ engage the ~~Board of Directors~~ engagement services of consultants when such engagement is required and would be of benefit to NAPI.
- J. The Chief Executive Officer shall furnish clerical and stenographic personnel needed to record minutes, ~~to~~ provide notice of meetings, and other clerical services as needed by the Board of Directors.- Minutes shall be provided to all Board of Directors by the next regular meeting after the meeting to which the minutes pertain.

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

- K. The Chief Executive Officer shall have and exercise such other authorities as may be granted from time to time by the Board of Directors.
- L. The Chief Executive Officer shall employ under contract a Chief ~~Financial~~Executive Officer.- The Chief Financial Officer shall be accountable to the Board of Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer. The Chief Financial Officer shall submit all monthly, quarterly, and annual reports to the Chief Executive Officer and ~~the~~ Board of Directors simultaneously.-

Article 10. Navajo Nation Capital Contribution.

Navajo Nation funds advanced to NAPI or Navajo Nation facilities and property transferred to NAPI shall be regarded as a Capital Contribution to NAPI by the Navajo Nation. ~~NAPI shall~~The Board of Directors may pay to the Navajo Nation a dividend as appropriate out of the net earnings of NAPI, to be determined by at the Board conclusion of Directors the fiscal year, as return on this Capital Contribution at the conclusion of each fiscal year. See, Article 7(R).

Article 11. Accounting System; Fiscal Year.

- A. An accounting system conforming ~~to generally accepted accounting principles~~with Generally Accepted Accounting Principles ("GAAP") shall be established and maintained under the supervision of the Chief Financial Officer. The accounting system shall ensure the availability of information as may be necessary to comply with Federal and Navajo Nation regulatory requirements.
- B. The Fiscal Year of NAPI shall be June 1 to May 31 of each year annually.

Article 12. Books, Records, and Property; Inspection.

- A. The books, records, and property of NAPI shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation. The Navajo Nation shall have the absolute right and authority to review NAPI'sNAPI's books, records, real and personal property.
- ~~A.~~
B. The books and records of NAPI shall be available at all reasonable times for public inspection; provided, NAPI may impose such limited and reasonable restrictions upon availability or inspection by the public as orderly accounting procedures, confidentiality, or applicable laws may require.
- C. The books, records, and property of NAPI shall be available for inspection at the principle place of business of NAPI.

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

Article 13. Audits.

~~A.~~ The accounts and records of NAPI shall be audited at the close of each fiscal year and an audit report issued no later than ninety (90) days after the expiration of the fiscal year. A copy of the audit report shall be provided to the Resources and Development Committee and the President of the Navajo Nation within ten (10-) working days after the date on which the audit report is issued.

~~The Board of Directors, in its discretion, may establish a financial/audit committee consisting of three (3) Directors.~~

Article 14. Insurance.

Insurance, including liability, adequate and sufficient to protect the interest of NAPI and the Navajo Nation from any and all liabilities and losses, shall be carried by NAPI.

Article 15. Training of Navajos.

Each operating unit director or manager, and each employee in a management position if a non-Navajo, shall train and otherwise prepare a member of the Navajo Nation to replace him or her. The Board of Directors and the Chief Executive Officer shall take all steps necessary to effectuate this provision, including but not limited to the establishment of assistant manager positions.

Article 16. Immunity; Limited Waivers.

A. NAPI is hereby declared to be an enterprise of the Navajo Nation established for the purposes set forth in this Plan of Operation, and to be established for the benefit of the Navajo people. NAPI is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation, except as provided in this Plan of Operation. As such, it is vested hereby with such immunity from suit as the Navajo Nation by law possesses.

~~A.B.~~ NAPI and its Directors, officers, employees and agents while acting in their official capacities ~~are~~are immune from suit, and the assets and other property of NAPI are exempt from any levy or execution, provided that, notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act-(1-N.N.C. §§551 et seq.), the Board of Directors may waive the defenses identified in this Plan of Operation, in conformity with the procedures established in ~~the~~this Article, in order to further the purposes of NAPI. Any waiver of the defenses identified in this Article must be express and must be agreed to by the Board of Directors prior to the time any alleged cause of action accrues.

~~A.C.~~ NAPI is hereby authorized to waive, as provided in this Article, any defense of sovereign immunity from suit NAPI, its Directors, officers, employees, attorneys or

Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

agents may otherwise enjoy under applicable federal, state or tribal law, arising from any particular agreement, matter or transaction as may be entered into to further the purposes of NAPI, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal, state and/or federal court.

D. NAPI is hereby authorized to waive, as provided in this Article, any defense NAPI, its Directors, officers, employees attorneys or agents may otherwise assert that federal, state or tribal law requires exhaustion of tribal court remedies prior to suit against NAPI in a state or federal court otherwise having jurisdiction over the subject matter and the parties.

E. Any waiver by NAPI authorized by Paragraph B, C, or D of this Article shall be in the form of a resolution duly adopted by the Board of Directors, upon thirty (30) days written notice to the Navajo Nation Council of the Board's intention to adopt the resolution. The resolution shall identify the party or parties for whose benefit the waiver is granted, the agreement or transaction and the claims or classes of claims for which the waiver is granted, the property of NAPI which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall identify the court or courts in which suit against NAPI may be brought. Any waiver shall be limited to claims arising from the acts or omissions of NAPI, its Directors, officers, employees, or agents, and shall be construed only to affect the property and income of NAPI.

D.F. Nothing in this Plan of Operation, and no waiver of NAPI's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of the Navajo Nation or any other instrumentality of the Navajo Nation, and no such waiver by NAPI shall create any liability on the part of the Navajo Nation or any other instrumentality of the Navajo Nation for the debts and obligations of NAPI, or shall be construed as a consent to the encumbrance or attachment of any property of the Navajo Nation or any other instrumentality of the Navajo Nation based on any action, adjudication or other determination of liability of any nature incurred by NAPI. The acts and ~~omissions~~omission of NAPI, its Directors, officers, employees and agents shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation.

E.G. In the event NAPI is sold, dissolved, or merged into any other entity of the Navajo Nation, the provisions of this Article and the rights created hereunder shall survive such sale, dissolution, or merger.

Article 17. Compliance with Navajo Nation Law.

NAPI shall comply with all applicable ~~laws~~laws and regulations of the Navajo Nation.

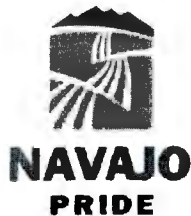
Redline Comparison of 2015 Draft TLewis and 2017 Amended and Restated Plan of Operation

Article 18. Indemnification of Officers, Employees and Members of the Board.

NAPI shall indemnify any current or former Director, officer, employee or agent against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being, or having been such Director, officer, employee, or agent except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty, or except in relation to matters in which such Director, officer, employee or agent was acting beyond the scope of his or her employment or authority. NAPI shall also reimburse any Director, officer, employee or agent for reasonable costs of settlement of any action, suit, or proceeding if found by a majority of the Board of Directors, not including the Directors involved in the matter of controversy, that it is in the best interest of NAPI and the Navajo Nation that such settlement be made and that such Director, officer, employee, or agent was not guilty of gross negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such Director, officer, employee, or agent may be entitled to receive. As a condition of such indemnification, the Director, officer, employee or agent shall agree to cooperate with legal counsel for NAPI in coordination of any action, suit or proceeding.

Article 19. Amendments.

This Plan of Operation may be amended from time to time by the Resources and Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation.



NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

P.O. Drawer 1318
Farmington, NM 87499
Telephone: (505) 566-2600
Fax: (505) 960-9458
www.navajopride.com

October 18, 2017
17-HQ-76

VIA EMAIL: russellbegaye@navajo-nsn.gov

Hon. Russell Begaye, President
The Navajo Nation
P.O. Box 7440
Window Rock, Arizona 86515

RE: NAPI's Amendment to Title 5, Navajo Nation Code & Revisions to NAPI's Plan of Operation

Dear President Begaye:

On behalf of the Board of Directors of the Navajo Agricultural Products Industry ("NAPI"), we are seeking your assistance and support to NAPI's Amendment to Title 5, Navajo Nation Code and revisions to NAPI's Plan of Operation. On October 17, 2017, the NAPI Board of Directors approved Resolution No. BDO-30-17 to recommend such amendments to N.N.C Title 5 and NAPI's Plan of Operation.

As you are aware, NAPI has a new Board in place along with new Management and Legal Counsel. All parties have collaborated on the revisions and amendments through a work session held by the NAPI Board. The last revision approved and adopted by the Navajo Nation Council was on January 5th, 2010, by N.N.C. Resolution CJA-05-10. Attached for your consideration and approval is NAPI Board Resolution BDO-30-17 (Oct. 17, 2017) and Exhibits "A" and "B".

For any questions or clarifications, please contact me at (505) 566-2603 or email WRCharley@navajopride.com.

Sincerely,

Wilton R. Charley, *Chief Executive Officer*
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

Attachment: NAPI BOD Resolution No. BDO-30-17
Exhibit "A" – Title 5, Navajo Nation Code
Exhibit "B" – NAPI Amended & Restated Plan of Operation

c: NAPI Board of Directors
File

RESOURCES AND DEVELOPMENT COMMITTEE

**Special Meeting
December 31, 2018**

**ROLL CALL
VOTE TALLY SHEET:**

Legislation # 0445-18: An Action Relating to Resources and Development Committee; Amending and Approving the Plan of Operation for the Navajo Agricultural Products Industry *Sponsor: Honorable Alton Joe Shepherd*

Date: December 31, 2018 – Special Meeting

Meeting Location: Navajo Department of Transportation (NDOT), Tse Bonito, NM

MAIN MOTION:

M: Leonard Pete S: Walter Phelps V: 3-0-1 (Pro TempCNV)

YEAS: Davis Filfred, Leonard Pete, Alton Joe Shepherd

EXCUSED: Benjamin Bennett and Jonathan Perry

AMENDMENT # 1:

Motion: Alton Joe Shepherd S: Davis Filfred V: 3-0-1(Pro TempCNV)

YEAS: Davis Filfred, Leonard Pete, Walter Phelps

EXCUSED: Benjamin Bennett and Jonathan Perry

December 31, 2018 - MOTION TO RECONSIDER:

Motion: Davis Filfred: S: Leonard Pete V: 3-0-1(CNV)

YEAS: Davis Filfred, Leonard Pete, Walter Phelps

EXCUSED: Benjamin Bennett and Jonathan Perry

December 27, 2018: NNC Chambers, Window Rock, AZ

MOTION TO TABLE:


M: Davis Filfred S: Jonathan Perry Vote: 5-0-1 (VCNV)

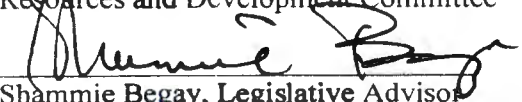
YEAS: Davis Filfred, Jonathan Perry, Leonard Pete, Walter Phelps and Alton Joe Shepherd

NAYS:

EXCUSED:

MAIN MOTION: Leonard Pete S: Walter Phelps


Honorable Walter Phelps, Presiding Pro Temp Chairman
Resources and Development Committee


Shammie Begay, Legislative Advisor
Office of Legislative Services