

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---Second Year 2016

AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT; APPROVING AN ASSIGNMENT
OF THE USE OF OR REDESIGNATE THE USE OF A LAND WITHDRAWAL OF
43.209 ACRES (40.979 ACRES FOR USE AS A SAND AND GRAVEL PIT AND
2.23 ACRES FOR AN ACCESS ROAD), MORE OR LESS, IN THE FORT
DEFIANCE CHAPTER VICINITY; AND APPROVING A SAND AND GRAVEL LEASE
AND ACCESS ROAD RIGHT-OF-WAY TO FORT DEFIANCE SAND AND GRAVEL,
INC. IN THE FORT DEFIANCE CHAPTER VICINITY, NAVAJO NATION
(APACHE COUNTY, ARIZONA)

BE IT ENACTED:

SECTION ONE. FINDINGS

A. Pursuant to 2 N.N.C. § 501 (B)(2), the Resources and Development Committee of the Navajo Nation Council has authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

B. Herman Billie, the Fort Defiance Grazing Official, made an on-site survey of every house within a three-fourth mile radius of the old gravel pit determined that some grazing permittees and non-grazing permittees within that area were opposed to the gravel pit and others were not opposed. Exhibit B. Esther Kee, Navajo Land Department Right-of-Way Agent said Mr. Billie had identified four grazing permittees. Ms. Kee went to locate the grazing permittees; she was unsuccessful in locating them. Exhibit C. There is no record of Ms. Kee successfully contacting the grazing permittees.

C. Pursuant to ACJA-21-83, the Advisory Committee of the Navajo Nation Council approved the withdrawal of 149.90 acres of land "for the purpose of a dam in the Fort Defiance Community." See ACJA-21-83 attached as Exhibit D.

D. The land was withdrawn for the purpose of constructing the Blue Canyon Dam and Recreational Area. The Resolution does not include a Sand and Gravel Pit as a purpose for the withdrawal. See ACJA-21-83.

E. Grazing permittees' consents were obtained and compensation made at the time of the initial Blue Canyon Dam Project withdrawal. See Agreement to Relinquish Grazing Rights for Proposed Blue Canyon Dam Project attached as Exhibit E.

F. Despite the land being withdrawn for the purpose of a dam and for recreation, the land was never used as for those purposes but remains in a withdrawn state because no particular use of the withdrawn area has been re-identified.

G. Subsequently, in 1988 the Resources Committee recommended the withdrawal of an additional 40.979 acres of land at the Blue Canyon Dam area for the purpose of reopening the Blue Canyon Gravel Pit and the "reopening of the gravel pit at Blue Canyon Dam". See RCJL-85-88 attached as Exhibit F; see also RCJL-87-88 Recommending the Reopening of the Gravel Pit at Blue Canyon Dam and the Amendment of Advisory Committee Resolution ACJA-21-83 attached as Exhibit G.

H. In 1988 at the recommendation of the Resources Committee, the Advisory Committee amended ACJA-21-83 "approving the reopening of the Blue Canyon Dam Gravel Pit as described in Exhibit A" See ACAU-161-88 attached as Exhibit H.

I. Exhibit A in ACAU-161-88, which is a map of the Blue Canyon Dam area, purported to withdraw an additional 40.979 acres for the specific purpose of the gravel pit as originally recommended by the Resources Committee in RCJL-85-88. See Exhibit I.

J. In 1991, the Resources Committee approved a Sand and Gravel Lease Permit for an "existing gravel pit" identified as the Blue Canyon Gravel Pit, the affected land users were determined and consents were obtained, and the applicant was directed to pay the land users for surface damages; this specific project was a six-month Sand and Gravel Lease for Daye Concrete, Inc. where the land users' consents were obtained for the six month term of the sand and gravel lease. See RCAU-126-91 attached as Exhibit J.

K. The Fort Defiance Sand and Gravel has submitted a Sand and Gravel Lease application for use of the Blue Canyon Gravel Pit.

L. The proposed Sand and Gravel Lease consists of 40.979 acres more or less, of Navajo Nation Trust Lands located E ½ & NW ¼ of Section 25, T.28N, R.30E, G&SRM, Apache County, Arizona. Navajo Nation Sand and Gravel Lease and Access Road Right-Of-Way application attached as Exhibit K.

M. Fort Defiance Sand and Gravel has also applied for a right-of-way. The proposed Sand and Gravel Lease right of way is 0.92 miles long, 20 feet wide and consists of 2.23 acres more or less, of Navajo Nation Trust Lands located E ½ & NW ¼ of Section 25, 26, and 35, T.28N, R.30E, G&SRM, Apache County, Arizona. Navajo Nation Sand and Gravel Lease and Access Road Right-Of-Way application.

N. The Fort Defiance Chapter supported the establishment of a Sand and Gravel Pit. See Resolution FD-2012-02-09-06 attached as Exhibit L. The Fort Defiance Chapter has subsequently rescinded FD-2012-02-09-06. Resolution FD-2013-07-14-02 attached as Exhibit M.

O. Fort Defiance Sand & Gravel's application for a right of way pre-existed the delegation of authority in Resolution RDCJN-33-15.

SECTION TWO. APPROVING AN ASSIGNMENT OF THE USE OF OR REDESIGNATE THE USE OF A LAND WITHDRAWAL OF 43.209 ACRES (40.979 ACRES FOR USE AS A SAND AND GRAVEL PIT AND 2.23 ACRES FOR AN ACCESS ROAD), MORE OR LESS, OF NAVAJO TRUST LAND, IN THE FORT DEFIANCE CHAPTER VICINITY

The Navajo Nation Resources and Development Committee hereby approves the land withdrawal of 43.209 acres of which 40.979 acres is for use as a sand and gravel pit and 2.23 acres is for use as an access road. The land description is more particularly described in Exhibit K.

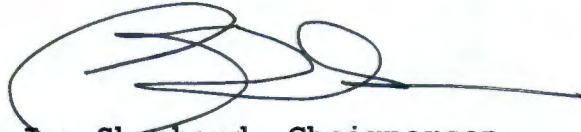
SECTION THREE. APPROVING A SAND AND GRAVEL LEASE AND ACCESS ROAD RIGHT-OF-WAY TO FORT DEFIANCE SAND AND GRAVEL, INC.

The Resources and Development Committee of the Navajo Nation Council hereby approves a sand and gravel lease for 40.979 acres and an access road right-of-way for 2.23 acres to

Fort Defiance Sand and Gravel, Inc. for Navajo Nation Trust Land located in the vicinity of Fort Defiance Chapter, Navajo Nation (Apache County, Arizona). The Lease and Right-of-Way Agreement is attached as Exhibit K.

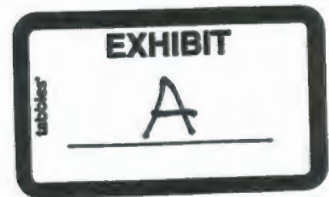
CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at NECA Administration Conference Room, Shiprock (Navajo Nation) New Mexico, at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained this 19th day of January, 2016.

A handwritten signature in dark ink, appearing to read 'Alton Joe Shepherd', with a long horizontal line extending to the right.

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

Motion: Honorable Davis Filfred
Second: Honorable Leonard Tsosie



RDCJN-33-15

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
OF THE 23RD NAVAJO NATION COUNCIL --- FIRST YEAR, 2015

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; DELEGATING AUTHORITY TO THE DIRECTOR OF THE NAVAJO LAND DEPARTMENT TO APPROVE LAND WITHDRAWALS ON THE NAVAJO NATION; AND APPROVING THE ADMINISTRATIVE RULES AND REGULATIONS FOR LAND WITHDRAWALS

BE IT ENACTED:

Section One. Findings

- A. Pursuant to 2 N.N.C. §502(B)(2), the Resources and Development Committee is authorized to give final approval of all land withdrawals; and
- B. Pursuant to 2 N.N.C. §501(B)(3), the Resources and Development Committee is authorized to delegate its powers to appropriate divisions of the Navajo Nation for efficiency and streamlining of government processes provided the Committee first grants final approval of rules and regulations governing such delegations and rescission of such delegations; and
- C. The current system of processing land withdrawals is confusing, time consuming, and inconsistent. It has resulted in delay and loss of development on the Navajo Nation; and
- D. Therefore, there is a need to delegate the authority to approve land withdrawals to the Director of the Navajo Land Department to streamline the land withdrawal process; and
- E. The process of reviewing documents associated with land withdrawals is an administrative task that can be performed by the Director of the Navajo Land Department; and
- F. The Resources and Development Committee finds it is in the best interest of the Navajo Nation to approve the delegation of authority.

Section Two. Delegation to the Director of the Navajo Land Department to Process Land Withdrawals and Approval of the Administrative Rules and Regulations for Land Withdrawals

- A. The Resources Committee of the Navajo Nation Council hereby approves the delegation of authority to the director of the Navajo Land Department, Division of Natural Resources, to approve Land Withdrawals on the Navajo Nation.
- B. The Navajo Nation hereby approves the Administrative Rules and Regulations, attached hereto as Exhibit "A".

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, 0 abstain this 16th day of June, 2015.



Benjamin Bennett, Vice-Chairperson
Resources and Development Committee

Motion: Honorable Davis Filfred
Second: Honorable Leonard Pete
Vote : 3-0 (Vice Chair not voting)



LAND WITHDRAWAL DESIGNATION REGULATIONS

§ 1. Purpose.

The purpose of these Regulations is to clarify and expedite the Land Withdrawal Designation process on the Navajo Nation, and explains that a Land Withdrawal Designation does not authorize development or disturbance on Navajo Nation land. This Land Withdrawal Designation process does not apply to how to get a lease. Prior to any development on the land, a lease must be obtained in addition to the withdrawal. The purpose of a Land Withdrawal Designation is to designate an area of land for future development by,

- a. Ensuring that the rights of grazing permittees, who are in compliance with their grazing permits, are properly addressed as applicable and as required under 16 N.N.C. §§ 1401 *et seq.* and to prevent any subsequent claims to the land; and
- b. Ensuring that the affected Chapter supports the Land Withdrawal Designation and use of the land.

§ 2. Scope.

These regulations apply to all Land Withdrawal Designations on the Navajo Nation.

§ 3. Delegation

- a. The Resources and Development Committee hereby delegates to the Director of the Navajo Land Department the power and authority to give final approval of all Land Withdrawal Designations on the Navajo Nation. The Director may sub-delegate this authority to a person under the Director's supervision, but this delegation of authority shall not be re-delegated to any other Department or Division within the Nation without the consent and approval of the Resources and Development Committee of the Navajo Nation Council.
- b. Resources and Development Committee hereby delegates authority to the Navajo Land Department to administer and manage Land Withdrawal Designations on the Navajo Nation, with the express power to adopt rules to further implement these regulations.

§ 4. Definitions.

- a. **Community Development:** Community Development encompasses infrastructure, economic development projects, installation of public facilities, community centers, housing, public services, businesses, schools, hospitals, government offices, and other similar projects.
- b. **Designation Holder:** Any person or entity who has obtained a Land Withdrawal Designation.
- c. **Industrial Development:** Economic activity concerned with the manufacture, and processing of materials or construction.
- d. **Land Withdrawal Designation:** A formal action used to designate and reserve a parcel of land for:
 - i. Community Development
 - ii. Industrial Development
- e. **The Navajo Nation Business Site Leasing Regulations of 2005 (Business Site Leasing Regulations):** Navajo Nation regulations that make business site leases mandatory for all businesses operating on the Navajo Nation.
- f. **The Navajo Nation General Leasing Regulations of 2013 (General Leasing Regulations):** Navajo Nation regulations that apply to all leases and permits for the use or possession of Navajo Nation trust land, with the exception of business and mineral leases.
- g. **The Navajo Nation Government:** The Navajo Nation Government is comprised of the legislative, executive, and judicial branches, as well as political subdivisions. For the purpose of land use, ownership, and these regulations, enterprises, businesses, housing authorities, or other entities created or owned by the Navajo Nation are not entities of the Navajo Nation Government.
- h. **The Navajo Nation Trust Land Leasing Act of 2000 (Navajo Leasing Act, 25 U.S.C. §415(e)):** A federal law that regulates the leasing of Navajo Nation lands. It allows the Nation to lease certain lands without Secretarial approval.
- i. **Resolution of Support:** A Resolution of Support is a resolution passed by an affected Chapter stating that they are in support of a particular entity or business locating within their chapter on withdrawn land.

§ 5. Use and Occupation of Navajo Nation Land.

A Land Withdrawal Designation does not authorize an entity outside the Navajo Nation Government to use, occupy, or disturb Navajo Nation land. The Navajo Leasing Act, Business Site Leasing Regulations, and General Leasing Regulations apply to all land use on the Navajo Nation. A lease is always required if the land is being developed by any entity outside the Navajo Nation Government.

§ 6. Land Withdrawal Designations for Navajo Nation Government.

The Navajo Leasing Act, Business Site Leasing Regulations, and General Leasing Regulations do not apply to the Navajo Nation Government. The Navajo Nation Government may develop on land designated by a Land Withdrawal Designation without a lease for government purposes only.

§ 7. Procedure to Acquire a Land Withdrawal.

- a. Every individual, chapter, or entity desiring a Land Withdrawal Designation on the Navajo Nation shall submit an Application for Land Withdrawal to the Navajo Land Department (NLD). The Application shall be accompanied by the following supporting documents:
 - i. A letter of application or cover letter;
 - ii. A proposal for the planned use of the land; and
 - iii. A legal survey or GPS land description indicating the location.
- b. An entity requesting a Land Withdrawal Designation shall then submit their proposal to the Chapter to obtain a Resolution of Support.
 - i. All Chapter Resolutions should contain standard language approving a Land Withdrawal for either community development or industrial development.
 - ii. Resolutions of Support for community development Land Withdrawal Designations shall contain the following language: "The _____ Chapter hereby supports and recognizes this land withdrawal for community development, which may include, but is not limited to, the following purposes: housing, education, economic development, healthcare facilities, public use, or governmental use. Industrial development is not supported for this area." To change the use, Chapter approval must be obtained.

- iii. Resolutions of Support for industrial development Land Withdrawal Designations shall contain the following language: "The _____ Chapter hereby supports and recognizes this Land Withdrawal Designation for the sole purpose of industrial development. Industrial development shall be considered the economic activity concerned with the manufacture, and processing of materials or construction." To change the use, Chapter approval must be obtained.
 - iv. Once the Chapter Resolution of Support is passed by the affected Chapter, return the signed Resolution of Support to the NLD.
 - c. The NLD will acquire the necessary consent from all grazing permittees holding a valid grazing permit with an interest in the land as applicable and required under 16 N.N.C. sections 1402 *et seq.* Consent will include infrastructure that supports the development and no additional consents are necessary.
 - d. In the event the grazing permittees will not consent, but the proposed project is in the best interest of the community and the Navajo Nation, the appropriate authorities may undertake eminent domain as allowed pursuant to 16 N.N.C. §§ 1401-1403.
 - e. Approval from NLD.
 - i. If all requirements are met, the NLD will approve the Land Withdrawal Designation. NLD will subsequently record the Land Withdrawal Designation on the Navajo land title recording system.
 - ii. The NLD will not approve and record a Land Withdrawal Designation until all required documents are provided for review.
 - f. If the Designation Holder is not the Navajo Nation Government, they must then begin the leasing process pursuant to The Navajo Leasing Act, Business Site Leasing Regulations, or General Leasing Regulations prior to any development, disturbance, use, or occupation of the land.

§ 8. Change in purpose.

- a. If the Designation Holder changes the purpose of the Land Withdrawal Designation, they must go back to the affected Chapter to obtain a new Resolution of Support.
- b. If a Chapter, as Designation Holder, wishes to permit an outside entity use of a portion of or the entire Land Withdrawal Designation, the Chapter must relinquish

the Land Withdrawal Designation and the outside entity must apply for their own Land Withdrawal Designation in their name for their specific purpose.

§ 9. Duration and Renewal.

- a. All Land Withdrawals shall be issued for a term of no more than five (5) years, with the possibility of extension of the term every five years thereafter, so long as the Designation Holder is not in violation of any provision set forth in these Regulations. The term shall be determined by NLD on a case-by-case basis.
- b. If the Designation Holder wishes to extend the Land Withdrawal Designation, the Designation Holder shall give written notice to NLD ninety (90) days prior to expiration of the original term. Renewal of the Land Withdrawal Designation will be at the sole discretion of NLD.
- c. A Land Withdrawal Designation will be terminated if any provision set forth in these Regulations is violated by a Designation Holder.
- d. A Land Withdrawal will be removed from the Navajo Nation land title recording system and open to other applicants for Land Withdrawal Designation or other land use at the expiration of the term or if the Land Withdrawal Designation is terminated for any reason. In the case of a Land Withdrawal Designation for a portion of a pre-existing Chapter land withdrawal, the area will revert back to the Chapter withdrawal status prior to the Land Withdrawal Designation application.

§ 10. Environmental Review Process.

- a. No environmental review is required for Land Withdrawal Designations issued to the non-Navajo Nation Government entities; however, when the entity obtains a lease, the General Leasing Regulations require environmental review.
- b. Since the Navajo Nation Government is not required to obtain a lease prior to development on the land, when the Navajo Nation Government obtains a Land Withdrawal Designation for Navajo Nation Governmental use, an environmental review must be completed.
- c. In the event that a Land Withdrawal Designation was done by the Navajo Nation Government, but the Navajo Nation Government relinquished the Land Withdrawal Designation for use by another non-Navajo Nation Governmental entity, the new Designation Holder must still undergo environmental review when a lease is obtained. Each program conducting an environmental review will determine if the use is

consistent with the former environmental review and will determine whether further analysis needs to be conducted.

§ 11. Oversight and Enforcement.

- a. Every department within the Navajo Nation Government that is responsible for such oversight shall work to ensure that all Land Withdrawal Designations are in compliance with these Regulations and other applicable Navajo Nation law.
- b. The Navajo Nation shall have the authority to enforce the provisions set forth in these Regulations in accordance with applicable Navajo Nation and federal law.

§ 12. Penalties.

- a. If a Designation Holder develops or otherwise disturbs the land without first having a valid lease, the Designation Holder is subject to trespass, and a penalty will be assessed by the NLD. 16 N.N.C. §§ 2251 and 2252.

§ 13. Transfer of Land Withdrawal Designations.

The NLD will approve transfers of Land Withdrawal Designations if the following conditions are met:

- a. Consent from the original Designation Holder has been acquired.
- b. The original Designation Holder or the transferee are not in violation of the Land Withdrawal Designation;
- c. No development or disturbance has taken place on the land in question;
- d. The purpose of the new Designation Holder is in accordance with the Resolution of Support, or a new Resolution of Support has been obtained;
- e. The transferee agrees to be bound by the terms of the Land Withdrawal Designation; and
- f. The NLD finds no compelling reason to withhold approval.

§ 14. Review and Amendments.

The scope and administration of this delegation of authority to the Director of the Navajo Land Department and Administrative Regulations may be amended or rescinded by the Resources and Development Committee of the Navajo Nation Council.

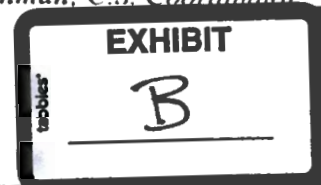
6/16/2015 (3)



**THE NAVAJO NATION
FORT DEFIANCE CHAPTER**

P.O. Box 366 • Ft Defiance, Arizona 86504
Phone: (928) 729-4352 • Fax (928) 729-4353
Email: fdefiance@navajochapters.org

Zondra J. Bitsuie, President
Lorraine W. Nelson, Vice-President
Brenda Wauneka, Secretary/Treasurer
Herman Billie, Grazing Official
Roscoe Smith, Council Delegate
Tony K. Watchman, C.S. Coordinator



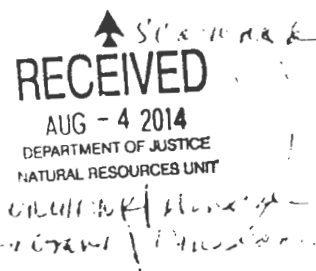
BEN SHELLY
Navajo Nation President

REX LEE JIM
Navajo Nation Vice President

August 1, 2014

To: whom it may concern:

Subject: Survey Pertaining to Blue Canyon Gravel Pit



I, Herman Billie Fort Defiance Chapter Grazing Official made an on-site survey of every house $\frac{3}{4}$ mile radius from the old gravel pit.

Eleanor Yazzie is opposing of reopening of the pit, she has a permit but needs to be probated. Thomas Haskie and Robert Haskie Jr. live side by side are opposing of re-opening of the pit. Thomas has a valid grazing permit with livestock. Fernelia Castrwita id the livestock operator for her mother Verna Mea Cardy, valid grazing permit, this family is also opposing of re-opening of the pit. Harriet S. and Jerry Yazzie living next door to the Castruita's have a valid grazing permit and are opposing the re-opening of the gravel pit. Fannie Yazzie, no grazing permit, yes to the opening of the gravel pit, wants gravel road for Blue Canyon up yo her house.

Sarah, Christina, Glordane and Ronald Cecil live in one area, no grazing permit, Ok with re-opening of the gravel pit, one said long overdue for better roads. Gilbert Williams, no grazing permit, this person is blind and Ok with re-opening of the gravel pit. Needs roads from Ft Defiance -Blue Canyon to Sawmill improved. Edison Billie, no comment- if passed hoping for better roads. Sherri and Debra Wauneka, opposing the re-opening of the gravel pit, no further comment. Regina Tsosie - no contact. Wilbert Wauneka; ok with re-opening of the gravel pit, have gravel roads to homes and Blue Canyon roads improved. Dennis Wauneka; no comment. Mea Billie and Evangeline E. Hoskie; undecided, later changed her mind, ok for re-opening of the gravel pit even the two live closets to the gravel pit. (Westside).

I only took the names of people that are head of house hold and interviewed.

Herman Billie

	NAME:	DATE:	Nb. IN HOUSEH
I.P. / PROBATE	1. Eleanor Yazzie	6-21-14	9
	2. ROBERT HASKIE JR.	6-21-14	6
G.P.	3. THOMAS HASKIE	6-21-14	1
G.P.	4. Fanelia Custreant 194 RA	6-21-14	5
H.S.L	5. FANNIE Yazzie 404 RA	6-21-14	2
	6. Sarah Cecil	6-21-14	3
	7. Christina Cecil	6-21-14	3
	8. Gloriana Cecil	6-21-14	4
	9. Ronald Cecil	6-21-14	4
	10. Gilbert Williams	6-21-14	1
	11. Harriet S Yazzie	06/21/2014	5
	12. MAE BILLIE		2
	13. Kelsey Halona	6-22-14	3
	14. Pearl Yazzie	6-22-14	2
I.P. H.S.L.	15. KENNETH HALONA	6-22-14	2
I.P. H.S.L.	16. CAROL LEFTHAND	6-22-14	1
H.S.L.	17. MARIE HALONA	6-22-14	1
	18. Mary C. Litzen	6-22-14	6

6/28/14

ELEANORA
~~LENNER~~

1. OPPOSING GRAVEL PIT L. YAZZIE

2. THOMAS HASKIE - OPPOSING OF PIT.

3. FENELIA CASTRUITA / VERA MAE CARDY - OPPOSING PIT.

4. N35° 47.098 W109° 05.935 Harriet & Yazzie
OPPOSING GRAVEL PIT

5. MAE BILLIE / Evangeline E. Hoskie
OPPOSING, IF PIT IS OPEN, GRAND KIDS AROUND.
CHANGED HER MIND, YES FOR HER.
N35° 47.272 W109° 06.678

NEAREST HOUSE WEST OF GRAVEL PIT. EVANGELINE
OPPOSED, LATER SHE CHANGED HER MIND FOR OPENING
OF GRAVEL PIT - MAE BILLIE WASN'T HOME. ASKED WHY
CHANGE OF MIND, NO ANSWER.

6. KENNETH HALONA - ~~MAE~~ MARIE ^{HALONA} CAN'T MAKE A DECISION
WAS CONTINGENT ^{FOR} - WAS TOLD BY DELBERT BENALLY,
LATE NOTAH, BEN LYNCH,
CAROL LEFT HAND SAME OPPOSITION.

LEON CHEE N 35° 44.06
W 109°

3250 WL
15.00 FEB

DENNIS W. - NO COMMENT - (ANNIE BOYD)

MAE BILLIE - OK WITH OPENING OF PIT.

FANNIE YAZZIE - " " " " " "

Christina Cecil - ~~Ward~~ - OK with opening the Pit

Sarah Cecil - OK with opening of the Pit

Ronald L. Cecil - " " " "

GILBERT WILLIAMS - O.K. FOR REOPEN

MILEAGE 776 - G. Williams

Edison Billie - NO COMMENT

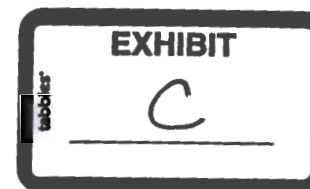
Sherri Wauneka - NO (OPPOSING)

Debra Wauneka - NO (opposing)

RENA BILLIE - NO CONTACT

Regina Tsosie - NO CONTACT

WILBERT WAUNKA - ~~OPPOSE~~ YES TO REOPEN PIT



TO : Howard P. Draper, Supervisor
Project Review Section, NLD

FROM : Esther Kee
Esther Kee, R/W Agent
Project Review Section, NLD

DATE : August 8, 2014

SUBJECT: Field Clearance Status on Blue Canyon Sand & Gravel Lease

Fort Defiance Sand & Gravel, Inc., dba Recon, Post Office Box 1678, Window Rock, Arizona 86515, submitted a Sand & Gravel Lease with haul road in Blue Canyon vicinity, Fort Defiance, Arizona. The sand & gravel lease occupies 15.06 acres, and the haul road consists of 2.23 acres, in Sections 35, 26 & 25, T28N, R30E, Apache County, AZ.

Herman Billie, Fort Defiance Chapter grazing official identified four (4) grazing permittees who will be affected by the proposed request:

Thomas Hoskie (Cecelia Tracy)
Verna M. Cardy
Fanellia Castruita
Harriet S. Yazzie (Jerry Yazzie)

On Friday (8/8/14) afternoon I went out to contact landusers for consent – I met with Robert Hoskie and he informed that Thomas was doing personal business in Gallup, Verna Cardy – nobody home, Fanellia Castruita – out of town, Harriet S. Yazzie – working and will contact Project Review Office next week. I just left my name and phone number with family members I met with.

ACJA-21-83

Class "B" Resolution
Area Approval Required.RESOLUTION OF THE
ADVISORY COMMITTEE OF THE
NAVAJO TRIBAL COUNCILS-ess
9/50

ACAU-161-88

Concurring in the Order of the Chair
Navajo Tribal Council Withdrawing 149
Tribal Land for the Construction of the
and Recreational Area

WHEREAS:

1. Navajo Tribal Council Resolution CJN-24-55 authorizes the Chairman of the Navajo Tribal Council, with the concurrence and recommendation of the Advisory Committee, subject to the approval of the Secretary of the Interior or his authorized representative, to execute orders withdrawing designated tribal land for use in connection with authorized programs of benefit to the Navajo people; and

2. The Fort Defiance Chapter approved and recommended the withdrawal of 149.90 acres of land for the purpose of a dam in the Fort Defiance Community, as shown by the attached resolution marked Exhibit "A"; and

3. The Navajo Tribe entered into a Memorandum of Agreement with the United States of America and the Navajo Engineering and Construction Authority for the construction of the Blue Canyon Dam attached hereto as Exhibit "B"; and

4. The Navajo Tribal Council appropriated funds to be utilized in the Phase I construction of the Blue Canyon Dam by Resolution CF-17-82, attached hereto as Exhibit "C"; and

5. It is necessary to withdraw lands for the construction project area on which this dam and reservoir will be located; and

6. The withdrawal of said land has been approved by the local residents; and

7. Necessary field clearances have been made for said land by the Navajo Land Development Department; and

8. The Chairman of the Navajo Tribal Council has issued an Executive Order withdrawing said land attached hereto as Exhibit "D"; and

9. It is in the best interest of the Fort Defiance Chapter and the Navajo Tribe that said land be withdrawn for the purposes stated herein.

NOW THEREFORE BE IT RESOLVED THAT:

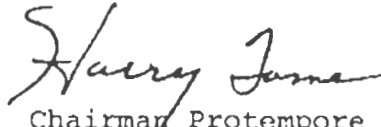
1. The Advisory Committee of the Navajo Tribal Council does hereby concur in and approve the Order of the Chairman of the Navajo Tribal Council withdrawing the land described in Exhibit "C" at Fort Defiance, Navajo Nation (Arizona), for the construction of the Blue Canyon Dam and Recreational Area.

2. The Advisory Committee of the Navajo Tribal Council hereby sets the following policy with reference to these lands withdrawn and/or the lands in the immediate area thereof:

- a. There shall be no fencing of the lands withdrawn without approval of the local grazing permittees.
- b. Roads in the area withdrawn and the immediate area thereof shall be improved and maintained as funds are available.
- c. Electricity will be made available to local residents in the immediate area of this withdrawn land when electric power becomes available.
- d. The future management of the dam and reservoir recreation area and contributory watershed will be conducted by the Tribal Division of Resources in accordance with the Blue Canyon Reservoir and watershed operation and management plan to be adopted by the Resources Committee of the Navajo Tribe.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Advisory Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 11 in favor and 0 opposed, this 10th day of January, 1983.


Chairman Protempore
Advisory Committee

RESOLUTION OF THE FORT DEFIANCE CHAPTER

EXHIBIT "A"

Supporting the Construction of the Blue Canyon
Reservoir near Fort Defiance, Arizona

WHEREAS:

1. The Indian Health Service/Navajo Tribal Utility Authority have conducted extensive engineering studies to determine the feasibility of construction of the Blue Canyon Dam and Reservoir; and
2. The Navajo Tribal Council has appropriated the Phase I construction funds for the project in the amount of \$1,100,000 in the winter Council Session 1982; and
3. That the project is not feasible as a effective water storage reservoir unless the meadow wash reservoir located in the Fort Defiance Chapter (S9, R6W, T1N owned by the Navajo Tribe) is placed into a controlled release management program to pass water to the downstream proposed reservoir where water can be more effectively stored; and
4. The project is not feasible when construction of future reservoirs in the Blue Canyon watershed are subject to tribal approval and possible curtailment if those proposed upstream structures adversely affect the Blue Canyon Reservoir; and
5. The water storage reservoir will provide a major local resource to the Black Creek Valley in improved water supply, recreation benefits, and economic growth potential.

NOW, THEREFORE BE IT RESOLVED THAT:

The Fort Defiance Chapter supports the proposed construction of the Blue Canyon Dam subject to the following stipulations:

1. That the traditional land users in the reservoir construction area are compensated for grazing lands lost due to the project in accordance with Navajo Tribal Regulations.
2. That a concerted effort will be made to provide electric power to local residents in the immediate area of the land withdrawn for the project, when electric power is available.
3. That a concerted effort will be made to improve and maintain roads in the area of the land withdrawn for the project as funds are available.

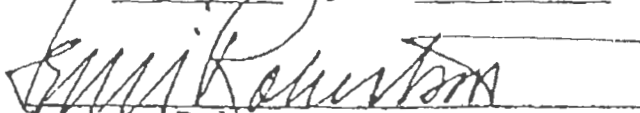
EXHIBIT "A"

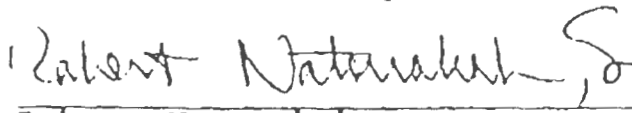
4. That a concerted effort will be made to provide water supply and waste disposal facilities in the area of the land withdrawn for the project as funds are available.
5. That there shall be no fencing of the lands withdrawn except for fencing of areas of danger (vertical cliffs) as determined necessary and intermittent security fencing where necessary.
6. That the future operation of the dam and reservoir will be in accordance with a documented operational plan which will include orderly release of water, planned recreational use of the facilities, maintenance of sanitary facilities, orderly housekeeping of areas open to public use.
7. That the Fort Defiance Chapter officials shall have input into the development of the operational plan and it shall be delegated to the Tribal Division of Resources for implementation.

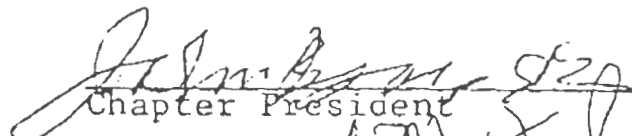
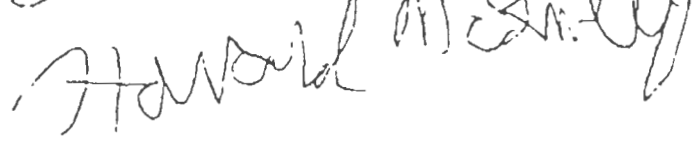
That the Navajo Tribe will provide a method of replacing the stock water supply at the Meadow Wash Reservoir if the future operation of the reservoir under the management program results in adequate water not being available for stock watering.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Fort Defiance Chapter at a duly called meeting at Fort Defiance, Arizona, at which a quorum was present and that same was passed by a vote of 59 in favor and 0 opposed this 27 day of JUNE, 1982.


Lennie Robertson
Council Delegate
Fort Defiance Chapter


Robert Natonabah
Council Delegate
Fort Defiance Chapter


Chapter President

Chapter Vice President


Chapter Secretary

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE NAVAJO TRIBE, NAVAJO NATION
ARIZONA, NEW MEXICO, AND UTAH
AND
THE NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY

Blue Canyon Dam

Ft. Defiance, Arizona
Apache County
Navajo Nation

NA-82-432

Public Law 96-121

THIS AGREEMENT is made between the United States of America, acting through the Indian Health Service, Department of Health and Human Services, under and pursuant to the provisions of Public Law 96-121 (73 Stat. 267); and the Navajo Tribe, Navajo Nation; Arizona, New Mexico, and Utah; hereinafter called the Tribe, acting through the Navajo Tribal Council; and the Navajo Engineering and Construction Authority, an operating agency of the Navajo Tribe, hereinafter called NECA.

WITNESSETH:

WHEREAS, the Tribe is desirous of obtaining satisfactory water supply and adequate waste disposal facilities for the Indians in the Navajo Nation; and

WHEREAS, the Navajo Tribal Council established the Water Development Program and appropriated funds for Phase I Blue Canyon Dam construction through resolution WCF-17-82 on February 6, 1982 to provide a long term water supply for residents of Black Creek Valley on the Navajo Nation; and

WHEREAS, the Indian Health Service is desirous of assisting in the construction of sanitation facilities at the aforementioned location as a means of improving the health of the Indians; and

WHEREAS, the Tribe has reviewed and concurs with the provisions of the referenced Project Summary; and

WHEREAS, the Navajo Tribal Council has appropriated \$1.1 million for Phase I construction which has been reduced to \$700,000 by the Navajo Water Development Board due to funding needs on other Navajo water projects; and

EXHIBIT "B"

WHEREAS, the Navajo Tribal Council anticipates appropriating an additional \$2.2 million in FY 83 and FY 84 to support the Phase II and Phase III Blue Canyon Dam construction effort.

NOW THEREFORE, in order to carry out the project as set forth in the attached Project Summary entitled Blue Canyon Dam, Phase I, Ft. Defiance, Arizona, dated June 1982, hereinafter called facilities, the parties mutually agree:

1. That the Tribe will provide through NECA:
 - A. Necessary support services to procure and install equipment and supplies. NECA shall enter into contracts with outside entities where required due to specialized aspects of dam construction. NECA shall also provide the necessary administrative services to contract with an engineering firm who will provide the dam design and who will furnish construction inspection and monitoring. It is understood that retention of the design engineer by NECA is for administrative purposes only and that technical supervision of the dam designer shall be furnished by the Indian Health Service with periodic review by the engineering personnel of the Navajo Tribe, Division of Community Development.
 - B. Necessary labor, tools, equipment, on-site supervision, and general field construction management necessary to complete Phase I construction.
 - C. Necessary management of the field construction activities for this project in accordance with plans and specifications to be developed by the design engineer.
2. That NECA will make a report to the Chief, Sanitation Facilities Construction Branch, Office of Environmental Health and Engineering, Navajo Area Indian Health Service, in writing, of actual expenditures and project progress at least once each month. All field expenditures shall be certified by the Indian Health Service Project Engineer.
3. That the IRS will provide the Tribe and NECA:
 - A. Technical direction and coordination of the project on behalf of the Navajo Tribe. This shall include the necessary services to direct and coordinate the activities of NECA, the design engineer, and various entities of the Navajo Tribe involved in the project.
 - B. Technical direction in the selection of an engineering firm who shall furnish the actual design of the Blue Canyon Dam. Selection of an engineering firm shall be performed by a selection board composed of representatives of the Indian Health Service and the Navajo Tribe.

- 3
- C. Review and concurrence in the design engineer's proposed plans and specifications for dam construction. Such review is to be conducted in conjunction with the Navajo Tribe, Division of Community Development.
 - D. Coordination of necessary permits, clearances, and approvals for the project.
 - E. On-site technical representation on behalf of the Navajo Tribe during construction. Such on-site technical representation shall include maintenance of an overall project schedule, coordination of the design engineer's activities with NECA, certification of costs incurred under this memorandum of agreement for payment, and maintenance of project cost records, coordination of field layout, liaison with interested entities of the Navajo Tribe, maintenance of change order documentation, field engineering to expedite actual project construction, correspondence with the design engineer and NECA, maintenance of as-built construction data, participation in the selection of outside services necessary for specialized aspects of dam construction, and all other functions necessary as the owner's representative in construction of the dam project.
 - F. Technical assistance in the development of operating guidelines for the proper utilization, maintenance, and protection of the dam facility constructed hereunder, which includes recreational and other aspects of the project.
 - G. Sanitation facilities for four relocation homes.
 - H. A monthly status report on the project will be provided to the Navajo Tribe, Division of Community Development.
 - I. A concerted effort towards seeking additional funding sources for the Phase II and Phase III construction effort.
4. That the Navajo Tribe, Division of Community Development will provide:
- A. Five relocation homes affected by construction of the Blue Canyon Dam. House construction will be coordinated with IHS, for provision of a water supply project to serve four of the homes.
 - B. Approximately \$24,000 will be provided to the Office of Navajo Land Development for grazing permittee compensation for the withdrawal of 150 acres for the project.
5. An engineering firm shall be retained to provide the actual design, plans and specifications of the dam under this agreement. The engineer shall prepare plans and specifications for construction of the project based upon recognized dam engineering

practices. During actual construction, the engineer shall monitor field construction practices to ensure compliance with the plans and specifications. The engineer shall also be responsible for furnishing field layout and other specialized engineering services as are jointly deemed necessary by the engineer and the Indian Health Service. The engineer shall review any proposed deviations from plans and specifications made during the construction process and shall make recommendations in regard to their feasibility and cost effectiveness which will be submitted to IHS for approval in the form of change order request. The engineer shall coordinate and document engineering tests required for quality control during construction. The contract under which the engineer is retained shall include language requiring errors and omission, public liability, and property damage insurance to protect the Tribe, IHS, and NECA from liabilities resulting from the engineering involvement in this project and shall also require the engineer to provide evidence of insurance. The limits of insurance shall be established as agreeable to the parties signatory to this agreement.

The engineer shall prepare preliminary plans and specifications together with detailed cost estimates for the dam which shall be submitted to IHS. IHS and the engineering staff of the Navajo Tribe, Division of Community Development, shall review and comment on the preliminary submittal. Upon concurrence by IHS and the Navajo Tribe, the plans and specifications shall be submitted by the engineer to the U.S. Bureau of Reclamation for approval. The engineer shall incorporate the requirements of the Bureau of Reclamation into final plans and specifications. The final plans and specifications as approved by BOR, IHS, and the Navajo Tribe shall govern actual field construction.

6. That to assist NECA in carrying out its portion of the Project and this Agreement, the Indian Health Service will make a monetary contribution to NECA for the full amount of its non-profit construction costs, including all direct and indirect overhead costs associated with the execution of this project.
7. Upon execution of this agreement the Navajo Tribe will make a contribution to the Phase I project in the amount of \$676,000 from the Tribal Water Development fund. The IHS will make a contribution to the Phase I project in the amount of \$100,000. The Indian Health Service will administer these funds to make contributions to NECA, based on percentage of completion, periodically. The sum of all payments to NECA will not exceed \$620,000, unless agreed upon in advance by the Indian Health Service, and the Navajo Tribe, Division of Community Development.

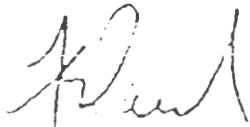
8. This agreement will be modified for the anticipated Phase II and Phase III construction periods.
9. That in consideration of the contributions made and maintenance responsibilities undertaken by the Tribe, upon completion of the Phase I construction, the Indian Health Service will waive all financial interest of the IHS in favor of the Tribe for all community facilities.
10. That in consideration of the contributions made and responsibilities assumed by the Tribe and undertaken by the individual Indian residents participating in this project, upon completion of the project, the Indian Health Service will transfer to the head of each household, without charge, the individual facilities and appurtenances provided on his premises. The proposed complete water well to serve the four families will be transferred in joint ownership.
11. That in the event that the Phase II or Phase III construction funds are not forthcoming, the Indian Health Service will transfer to the Navajo Tribe all facilities, including all design documents, cost analysis, and all facilities completed to that date.
12. That it is important that installation of the facilities provided for herein be completed as soon as is practicable in accordance with the schedule of the Indian Health Service Project Engineer.
13. That each agency will participate as described in the Project Summary. If unexpected circumstances occur which significantly change participation such as inability to perform, greater costs than estimated or changes in scope of work, an Amendment to this Agreement will be initiated.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

FOR THE NAVAJO TRIBE

NOV - 2 1982

Date

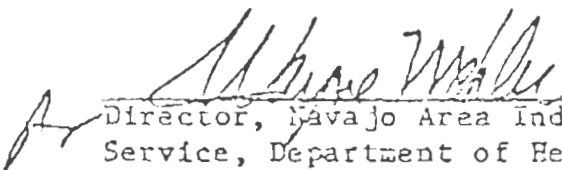

VICE Chairman, Navajo Tribal Council,
having been duly authorized to enter
into this Agreement on behalf of the
Navajo Tribe by Resolution CN-62-59,
passed by the Tribal Council on
November 12, 1959

FOR THE NAVAJO ENGINEERING AND
CONSTRUCTION AUTHORITY


General Manager

FOR THE UNITED STATES OF AMERICA


Date


Director, Navajo Area Indian Health
Service, Department of Health and
Human Services

Class "B" Resolution
Area Approval Pending.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Amending the Fiscal Year 1967
Approved Budget of the Navajo Nation
By Appropriating \$4,853,637.00 From
Unappropriated Surplus Funds for the
Construction of Navajo Water Projects

WHEREAS:

1. The future growth and development of the Navajo Nation is inextricably intertwined with the Navajo Nation's efficient utilization of its water resources; and
2. The current hardships faced by the Navajo people in their daily struggle to survive will be lessened by further development of tribal water resources; and
3. To date, the federal government has substantially neglected its responsibility in providing for water developmental projects in the Navajo Nation; and
4. The lack of a meaningful federal commitment in terms of resources and dollars has had the effect of virtually halting water related economic development on the Navajo reservation; and
5. In light of the current budgetary cutbacks, it is even more doubtful that the Federal government will in the future provide financial support for water developmental projects; and
6. The Navajo Tribal Government must consequently make an immediate multi-year commitment within the limits of its own scarce resources to expend a minimum of \$20 Million over a five year period for programs and projects designed to increase the number of acre feet of water resources utilized by the Tribe; and
7. Section 284 of Title Two of the Navajo Tribal Code vests the Chairman with such authority as is necessary to recommend a comprehensive water development program; and
8. Pursuant to this delegated authority, the Chairman of the Navajo Tribal Council requested the Navajo Water Commission, Navajo Division of Resources, Navajo Division of Community Development, Williams Brothers Engineering Company, Navajo Tribal Utility Authority, the Indian Health Service, and the Bureau of Indian Affairs to coordinate and submit plans for water development projects and cost estimates for such projects; and

9. As a result of the collaboration of the above delineated entities, a proposal containing suggested specific projects for implementation was compiled and is attached hereto as Exhibit "A"; and

10. In order to examine the feasibility, to provide technical review and to initiate implementation of projects such as those contained in Exhibit "A" there is a need to create a Water Development fund; and

11. This action takes on increased urgency because the Navajo Nation faces increased competition from other present and potential users of scarce water resources throughout the Southwest, and because the Navajo Nation is now engaged in litigation in numerous courts in an effort to preserve and protect its water rights; and

12. There is increasing pressure from numerous sources to deprive the Navajo Nation of all present rights to the beneficial use of water not presently in actual use by the Tribe so that the Tribe stands to lose the overwhelming portion of its water rights, unless it embarks on an immediate program of accelerated usage; and

13. There is correspondingly a need by the tribal government to increase the capabilities of the Water Commission of the Tribal Government by authorizing additional funds to enhance the technical and regulatory capability of the Water Commission and to enhance its capacity to assert and protect the tribe's water rights; and

14. The Budget and Finance Committee has studied the proposed Water Development Program and recommended that the Fiscal Year 1982 Navajo Tribal Budget be amended in the amount of \$4,603,637 from unappropriated surplus as set forth below.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby amends the Fiscal Year 1982 Budget of the Navajo Nation by appropriating \$4,653,637.00 from unappropriated surplus funds to be utilized to develop Navajo Water Development Projects such as those contained in Exhibit "A" and to provide technical review and determine feasibility and cost effectiveness in order to utilize tribal water resources more effectively for the benefit of the Navajo people.

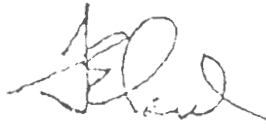
2. The funds appropriated here shall not lapse at the end of Fiscal Year 1982 but shall be available as no-year funds until feasible water projects are completed.

3. The Navajo Tribal Council hereby directs the Chairman to submit a water projects proposal for Fiscal Year 1983 prior to approval of the Fiscal Year 1983 budget of the Navajo Nation so that funding for these programs may be incorporated into the budget.

BEST AVAILABLE

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 67 in favor and 2 opposed, this 17th day of February, 1967.



Vice Chairman
Navajo Tribal Council

EXECUTIVE ORDER

Pursuant to the authority vested in me by the Navajo Tribal Council Resolution CJ-24-55 (16 N.T.C. § 1101), 149.90 acres, more or less, of Navajo Tribal land located at Fort Defiance, Navajo Nation, (Arizona), in the SE 1/4, Sec. 22, T1N, R6W, surveyed by the Office of Environmental Health and Engineering, Navajo Area Office, Public Health Service, Indian Health Service as described herein is hereby withdrawn for a dam site purpose, as authorized by the Fort Defiance Chapter.

Navajo land so reserved shall remain in a withdrawn status for so long as used for the purposes authorized and all land and improvements will revert to the Navajo Tribe when the dam and other related facilities ceases to exist for the purposes authorized.

TRACT DESCRIPTION

A certain tract or parcel of land lying and being situate within Township 1 North, Range 6 West, County of Apache, State of Arizona, being more particularly bounded and described as follows to wit:

Beginning at a point being the most southerly point of said tract or parcel of land, said same beginning point having Arizona (East Zone) State Plane Coordinate Values $X=815,442.00$ (scaled), $Y=1,740,450.00$ (scaled) said point being 50 feet from the apparent centerline of Navajo Route No. 73 and from whence the East side monument B.C. as set by William Pettit & Associates bears a grid bearing of $N 17^{\circ} 27' 04'' W$,

a distance of 1491.28 feet; thence on a grid bearing of $N 31^{\circ} 43' 54'' E$
a distance of 332.85 feet; thence on a grid bearing of $N 14^{\circ} 42' 22'' W$,
a distance of 311.30 feet; thence on a grid bearing of $N 36^{\circ} 44' 13'' E$,
a distance of 516.78 feet; thence on a grid bearing of $N 00^{\circ} 43' 10'' E$,
a distance of 637.27 feet; thence on a grid bearing of $N 26^{\circ} 31' 47'' E$,
a distance of 727.86 feet; thence on a grid bearing of $N 35^{\circ} 16' 52'' W$,
a distance of 259.79 feet; thence on a grid bearing of $N 15^{\circ} 08' 18'' E$,
a distance of 517.12 feet; thence on a grid bearing of $N 87^{\circ} 47' 51'' W$,
a distance of 442.48 feet; thence on a grid bearing of $N 10^{\circ} 15' 15'' E$,
a distance of 404.60 feet; thence on a grid bearing of $N 08^{\circ} 56' 26'' W$,
a distance of 740.24 feet; thence on a grid bearing of $N 24^{\circ} 45' 35'' W$,
a distance of 781.04 feet; thence on a grid bearing of $N 80^{\circ} 53' 19'' W$,
a distance of 859.13 feet; thence on a grid bearing of $N 11^{\circ} 06' 08'' E$,
a distance of 649.37 feet; thence on a grid bearing of $N 43^{\circ} 50' 40'' W$,
a distance of 491.00 feet; thence on a grid bearing of $S 23^{\circ} 27' 52'' W$,
a distance of 537.62 feet; thence on a grid bearing of $S 01^{\circ} 54' 41'' W$,
a distance of 809.73 feet; thence on a grid bearing of $S 52^{\circ} 48' 47'' E$,
a distance of 723.26 feet; thence on a grid bearing of $S 16^{\circ} 58' 43'' W$,
a distance of 846.16 feet; thence on a grid bearing of $S 16^{\circ} 58' 43'' W$,
a distance of 514.47 feet; thence on a grid bearing of $S 62^{\circ} 52' 22'' E$,
a distance of 733.04 feet; thence on a grid bearing of $S 00^{\circ} 32' 51'' W$,
a distance of 314.12 feet; thence on a grid bearing of $S 43^{\circ} 19' 33'' W$,
a distance of 677.93 feet; thence on a grid bearing of $S 63^{\circ} 40' 49'' W$,
a distance of 313.61 feet; thence on a grid bearing of $S 33^{\circ} 11' 22'' E$,
a distance of 508.03 feet; thence on a grid bearing of $S 25^{\circ} 58' 36'' E$,

Executive Order
Page Two

A distance of 609.79 feet to a point 50 feet North, of the apparent centerline of Navajo Route No. 73; thence on a grid bearing of S 48° 09' 13" E, a distance of 1028.64 feet to the true point and place of beginning.

Containing 149.90 acres more or less.
Surveyed May 06, 1982.

Peter MacDonald, Chairman
Navajo Tribal Council

Dated this _____ day of _____, 1982.

AGREEMENT TO RELINQUISH GRAZING RIGHTS
FOR THE PROPOSED BLUE CANYON DAM PROJECT
IN FORT DEFIANCE, NAVAJO NATION (ARIZONA)



We, the undersigned, representing members of the Haskie family living in the geographic area of the Fort Defiance Chapter, who hold valid and legal grazing permits in the area of the proposed Blue Canyon Dam Project, which is more particularly shown on the preliminary right-of-way map dated March 12, 1982 (Project NA-82-432), hereby agree to relinquish all grazing and legal rights to said land if the following compensation is paid and the following conditions are met. It is understood that no more than 92.6 acres, more or less, of our land will be withdrawn for the purpose of the dam.

The consent to the relinquishment of grazing rights in the above-described land is subject to the following conditions:

1. Authorized Grazing permittees will receive \$160.00 per acre for the loss of grazing land. ~~AND \$1,000.00 per acre for the loss of riparian rights~~

~~PERMANENT~~

2. Electrical service will be provided to affected families, as per the attached letter of commitment dated May 20, 1982 from the Navajo Tribal Utility Authority.

3. A new home will be constructed for the one family that will require relocation as a result of the dam project, as per the attached letter of commitment dated May 21, 1982 from the Division of Community Development.

NAME	CENSUS NUMBER	DATE
<u>Ronaldah Haskie</u>	<u>CH</u>	<u>5-24-82</u>
<u>Spencer Haskie</u>	<u>CH</u>	<u>5-21-82</u>
<u>Bill Haskie</u>	<u>CH</u>	<u>5-24-82</u>
<u>L. Haskie</u>		<u>5-21-82</u>

Exhibit D

(be)

Hc

CONSENT TO USE

NAVAJO TRIBAL LANDS

WHOM IT MAY CONCERN:

Nanabah Haskie

Census #

General Delivery, Fort Defiance, Arizona 86504

Key Watchman

Census #

General Delivery, Fort Defiance, Arizona 86504

Lennie Robertson

Census #

General Delivery, Fort Defiance, AZ 86504

Dorothy H. Belone

Census #

Box Fort Defiance, AZ 86504

hereby grant consent to the Navajo Tribe, the Bureau of Indian Affairs, Window Rock, Arizona to permit.

Indian Health Services, Navajo Tribal Utility Authority, and Division of Community Development

Window Rock, Arizona to use a portion of my (our) authorized customary Use Area, as drawn on the back, for the following purpose (s):

for the withdrawal of land for construction of Blue Canyon Dam, Project No. NA-82-432, subject to the attach agreement and letters of commitments.

Permittee, Grazing Permit # Unit

Witness:

5-24-82 1. Nanabah Haskie 18-520
Permittee, Grazing Permit # Unit

Witness:

5-21-82 2. Key Watchman 18-520
Permittee, Grazing Permit # Unit

Witness:

5-24-82 3. Lennie Robertson 18-520
Permittee, Grazing Permit # Unit

Witness:

5-21-82 4. Dorothy Belone 18-03-78
Permittee, Grazing Permit # Unit

Witness

6-21 5. Debet L. Benah 18
Grazing Committee Member District Number

6/25/82 6. Branch of Land Operations Agency
Natural Resource Center

REMARKS: Our records verify that Kee Watchman and Dorothy Belone have valid grazing permits, and Permit No. 18-520 belonged to Robert Hoskie, who is deceased, and his permit has not been probated to anyone yet. However, Nonabah Hoskie and Lenny Robertson claim their interest in the permit.

R E L E A S E

For and in consideration of the sum of Three Thousand Six Hundred
Thirty-Two Dollars

(\$3,632.00) paid to the undersigned by the The Navajo Tribe, Division of
Community Development

the undersigned for (~~herself/herselves~~) and (~~her/their~~) heirs,

distributees, executors, administrators, and assigns, does remise release

and forever discharge the THE NAVAJO TRIBE, its successors and

assigns, from any and every claim or cause of action arising out of the

withdrawal of Tribal land for Construction of Blue Canyon Dam and Recreational Area,

IHS Project No. NA-82432, pursuant to Advisory Committee Resolution No. ACJA-21-83 and

pursuant to Memorandum of Agreement between Indian Health Services (U.S.), Navajo Tribe

and Navajo Engineering and Construction Authority (NECA)

In witness whereof, ~~we~~/I have hereunder set (~~my/our~~) hand(s)

this 27th day of April 19 83

WITNESSES:

[Signature]

Nanabah Hoskie
Payee, Nanabah Hoskie C#

Grazing Permit # 18-520
~~XXXXX~~ ~~XX~~

Pd. by Check No. 829462
\$3,632.00

Dated 04/26/83

R E L E A S E

For and in consideration of the sum of "Three Thousand Six Hundred
Thirty-Two Dollars"

(\$3,632.00) paid to the undersigned by the THE NAVAJO TRIBE, Division of
Community Development
the undersigned for (herself/~~themselves~~) and (her/~~their~~ heirs,
distributees, executors, administrators, and assigns, does remise release
and forever discharge the NAVAJO TRIBE, its successors and
assigns, from any and every claim or cause of action arising out of the
withdrawal of Tribal land for Construction of Blue Canyon Dam and Recreational Area,
IHS Project No. NA-82432, pursuant to Advisory Committee Resolution No. ACJA-21-83 and
pursuant to Memorandum of Agreement between Indian Health Services (U.S.), Navajo Tribe
and Navajo Engineering and Construction Authority (NECA).

In witness whereof, (~~me~~/I) have hereunder set (my/~~my~~) hand(s)

this 27th day of April 19 83

WITNESSES:

Ami Rahatm

Kee Watchman
Payee, Kee Watchman C#

Grazing Permit # 18-560

Payee,

OK

Pd. by Check No. 829465
\$3,632.00

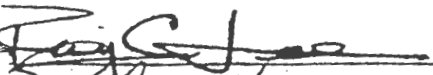
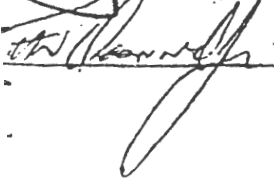
Dated 04/26/83


R E L E A S E

For and in consideration of the sum of "Three Thousand Six Hundred
Thirty-Two Dollars"
(\$3,632.00) paid to the undersigned by the THE NAVAJO TRIBE, Division of
Community Development
the undersigned for (himself/~~themselves~~) and (his/~~their~~) ~~heirs~~,
distributees, executors, administrators, and assigns, does remise release
and forever discharge the NAVAJO TRIBE, its successors and
assigns, from any and every claim or cause of action arising out of the
withdrawal of Tribal land for Construction of Blue Canyon Dam and Recreational Area,
HS Project No. NA-82432, pursuant to Advisory Committee Resolution No. ACJA-21-83 and
pursuant to Memorandum of Agreement between Indian Health Services (U.S.), Navajo Tribe
and Navajo Engineering and Construction Authority (NECA).

In witness whereof, (~~we~~/I) have hereunder set (my/~~our~~) hand(s)
his 27th day of April 19 83

WITNESSES:


Payee, Lennie Robertson C#

Grazing Permit # 18-520

~~XXXXXX~~

~~XX~~

Pd. by Check No. 829464
\$3,632.00

Dated 04/26/83

R E L E A S E

For and in consideration of the sum of "Three Thousand Six Hundred
Thirty-Two Dollars"

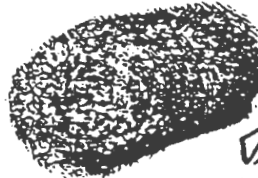
(\$3,632.00) paid to the undersigned by the THE NAVAJO TRIBE, Division of
Community Development
the undersigned for (~~herself/herselves~~) and (~~her/their~~) heirs,
distributees, executors, administrators, and assigns, does remise release
and forever discharge the Navajo Tribe, its successors and
assigns, from any and every claim or cause of action arising out of the
withdrawal of Tribal land for Construction of Blue Canyon Dam and Recreational Area,
IHS Project No. NA-83432, pursuant to Advisory Committee Resolution No. ACJA-21-83 and
pursuant to Memorandum of Agreement between Indian Health Services (U.S.), Navajo Tribe
and Navajo Engineering and Construction Authority (NECA).

In witness whereof, (~~we~~/I) have hereunder set (my/~~our~~) hand(s)

this 27th day of April 19 83

WITNESSES:

Wm. Lakator
Regina D. Smith / grand-m.
Larry A. Smith



*left thumb print
THUMB PRINT FOR
DOROTHY BELONE Signature*

Payee, Dorothy H. Belone C#

Grazing Permit # 18-03-78

Payee, C#

Pd. by Check No. 829460
\$3,632.00

Dated 04/26/83

12/21/83
18-05-86-150
12-53 814
15
B. Landusers within the North Portion of the Withdrawn Area. Permit list

1. Nanabah Hoskie, C
General Delivery
Fort Defiance, Arizona 86504

2. Kee Watchman, C#
General Delivery
Fort Defiance, Arizona 86504 6-560 (15)

3. Lennie Robertson, C
General Delivery
Fort Defiance, Arizona 86504

4. Dorothy H. Belone, C#
General Delivery
Fort Defiance, Arizona 86504

Per attached agreement, the above authorized grazing permittees will receive \$160.00 per acre for lands below and above waterline.

- a. Land above waterline, 42.21 Ac. x \$160.00 = \$ 6,753.60
b. Land below waterline, 48.59 Ac. x \$150.00 = \$ 7,774.40

90.80 Ac. TOTAL: \$14,528.00

Summary:

\$14,528.00 ÷ 4 = \$3,632.00 to be issued to each individual listed above.

C. Landuse Right Holder with Agricultural Use Permit
Located within the North Portion of the Withdrawn Area.

1. Harriet Yazzie, C#
P.O. Box
Fort Defiance, Arizona 86504

Land Use Permit #18-12-78 for
Agricultural Use for a total
of 6.0 Acres, issued on Dec.
11, 1978.

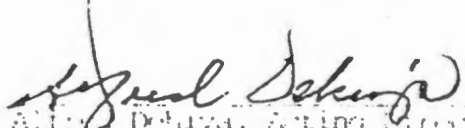
As appraised and determined by the Office of Navajo Land Development
the farm land situated within the withdrawn area comprising of 6.0 acres,
will be compensated for at a dollar value of \$500.00 per acre.

a. Farm Land, 6.0 Ac. x \$500.00 = \$3,000.00

6.0 Ac. TOTAL: \$3,000.00

to be paid to each permit holder listed above for just compensation.

As determined by the Office of Navajo Land Development, Navajo Division of Resources


Alfred Deloya, Acting Director
Office of Navajo Land Development
Navajo Division of Resources

RESOLUTION OF THE
RESOURCES COMMITTEE OF
THE NAVAJO TRIBAL COUNCIL



Recommending the Withdrawal of an Additional 40.979 Acres of
Land at Blue Canyon Dam and
the Amendment of Advisory Committee Resolution ACJA-21-83

WHEREAS:

1. Pursuant to CJA-1-81, the Resources Committee of the Navajo Tribal Council, a Standing Committee, has been authorized to investigate matters relating to lands and resources of the Navajo Tribe; and

2. Pursuant of Resolution ACMA-35-84, the Resources Committee of the Navajo Tribal Council is authorized to oversee the regulation of all activities within ;the Tribal ranch lands, including recommending approval or disapproval of lease, acquisitions and all actions which may involve disposition or acquisition of resources, surface disturbances, or alteration of the natural resources; and

3. The Advisory Committee of the Navajo Tribal Council approved a land withdrawal of 149.90 acres, more or less, for the construction of the Blue Canyon Dam and Recreational Area by Resolution ACJA-21-83, attached hereto as Exhibit "B" and made a part hereof; and

4. The Fort Defiance Chapter has requested for an amendment of the withdrawal of an additional 40.979 acres, more or less, which is adjacent to the withdrawn area, the location is more particularly described on the survey plat marked as Exhibit "A", attached hereto and made a part hereof;and

5. By Resolution attached hereto as Exhibit "C", the Fort Defiance Chapter recommended to reopen the Blue Canyon Gravel Pit, so that a vendor can use the gravel pit for the construction of the Highway 264 from Arizona/New Mexico State Line to Ya-Ta-Hey Junction, McKinley County, New Mexico; and

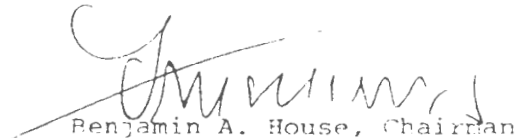
6. It is in the best interest of the Navajo Nation that the said land be withdrawn for the purpose of reopening the Blue Canyon Gravel Pit.

NOW THEREFORE BE IT RESOLVED THAT:

The Resources Committee of the Navajo Tribal Council does hereby recommend the amendment of Advisory Committee Resolution ACJA-21-83, by withdrawing an additional 40.979 acres along with the original 149.90 acre tract, for a total withdrawal of 190.879 acres.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was considered by the Resources Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present, and that same was passed by a vote of 4 in favor and 0 opposed, and 1 abstaining, this 28th day of July, 1988.



Benjamin A. House, Chairman
Resources Committee

MOTIONED: Walter Atene
SECONDED: Alfred L. Yazzie

RESOLUTION OF THE
RESOURCES COMMITTEE OF THE
NAVAJO TRIBAL COUNCIL



Recommending the Reopening of the Gravel Pit
at Blue Canyon Dam and
the Amendment of Advisory Committee Resolution ACJA-21-83

WHEREAS:

1. Pursuant to Resolution CJA-1-81, the Resources Committee of the Navajo Tribal Council was reaffirmed as a Standing Committee of the Navajo Tribal Council; and

2. Pursuant to Resolution ACMA-35-84, the Resources Committee is authorized to make recommendations concerning the disposition of lands to the Advisory Committee of the Navajo Tribal Council; and

3. The Advisory Committee of the Navajo Tribal Council approved a land withdrawal of 149.90 acres, more or less, for the construction of the Blue Canyon Dam and Recreational Area by Resolution ACJA-21-83, attached hereto as Exhibit "B" and made a part hereof; and

4. By Resolution attached hereto as Exhibit "C", the Fort Defiance Chapter recommended the reopening of the Blue Canyon Gravel Pit, so that a vendor can use the gravel pit materials for the construction of the additional lanes for Highway 264 from the Arizona/New Mexico State Line to Ya-Ta-Hey Junction, McKinley County, New Mexico; and

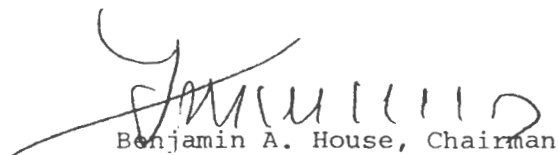
5. It is in the best interest of the Navajo Nation that the Blue Canyon gravel pit be reopened.

NOW THEREFORE BE IT RESOLVED THAT:

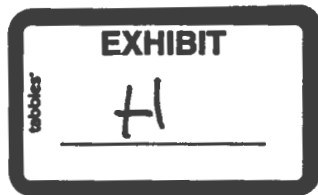
The Resources Committee of the Navajo Tribal Council hereby recommends to the Advisory Committee of the Navajo Tribal Council the reopening of the Blue Canyon Dam gravel pit and the amendment of Resolution ACJA-21-83.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present, and that same was passed by a vote of 4 in favor and 0 opposed, this 29th day of July, 1988.


Benjamin A. House, Chairman
Resources Committee

MOTIONED: Alfred L. Yazzie
SECONDED: Robert E. Ahkeah



ACAU-161-88

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
ADVISORY COMMITTEE OF THE
NAVAJO TRIBAL COUNCIL

Approving the Reopening of the Blue Canyon Dam
Gravel Pit and the Amendment of Resolution ACJA-21-83

WHEREAS:

1. Pursuant to Resolution CJA-1-81, the Advisory Committee of the Navajo Tribal Council is authorized to give final approval of withdrawals of Navajo lands; and

2. By Resolution ACJA-21-83, attached hereto as Exhibit "B" and made a part hereof, the Advisory Committee of the Navajo Tribal Council approved a land withdrawal of 149.90 acres, more or less, for the construction of the Blue Canyon Dam and Recreational Area; and

3. By Resolution, attached hereto as Exhibit "C", the Fort Defiance Chapter recommended the reopening of the Blue Canyon Gravel Pit as described in Exhibit "A" so that a vendor can use the gravel pit for the construction of the additional lanes for Highway 264 from the Arizona/New Mexico State Line to Ya-Ta-Hey Junction, McKinley County, New Mexico; and


4. It is in the best interest of the Navajo Nation that the Blue Canyon gravel pit be reopened.

NOW THEREFORE BE IT RESOLVED THAT:

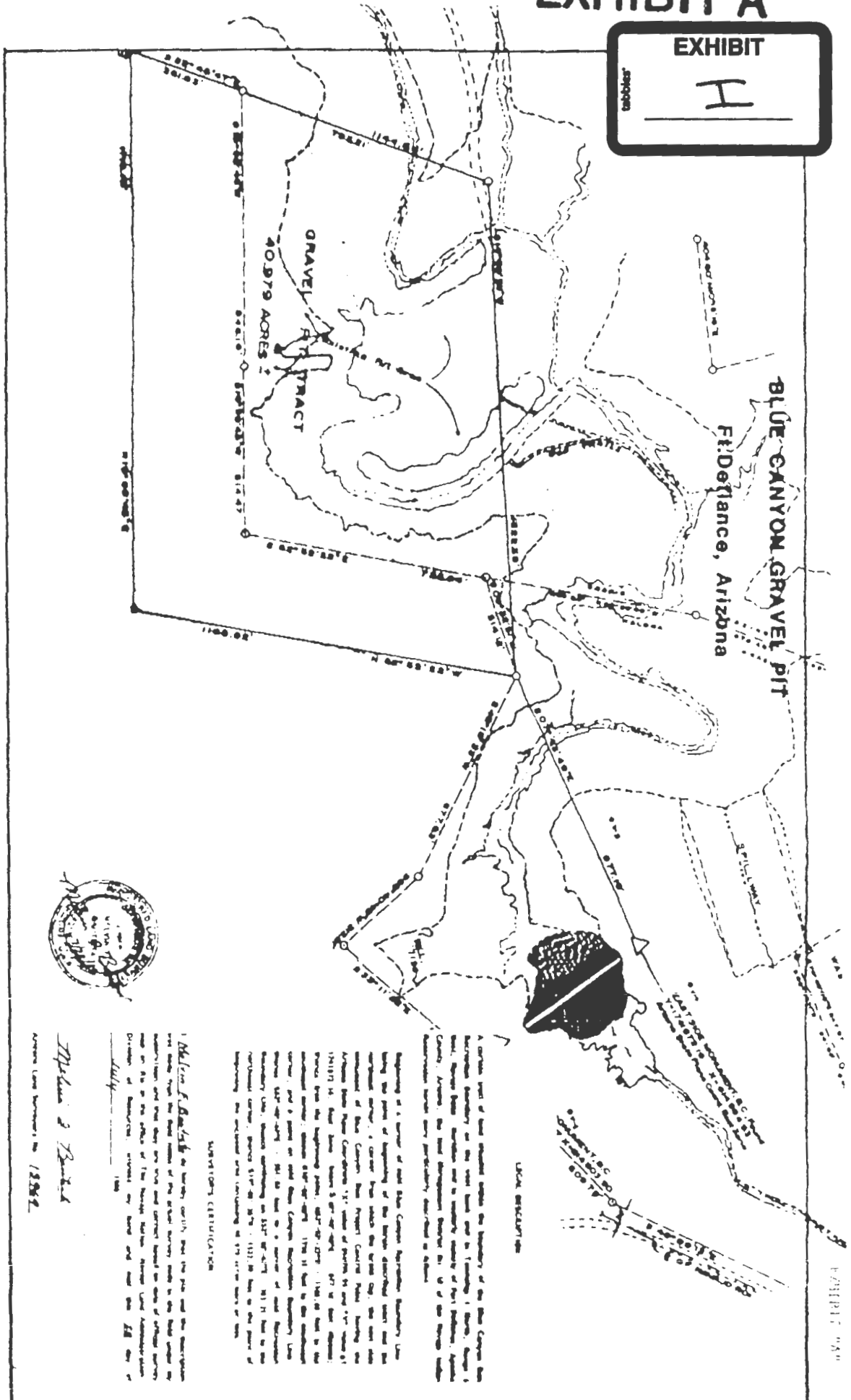
The Advisory Committee of the Navajo Tribal Council hereby approves the reopening of the Blue Canyon Dam gravel pit as described in Exhibit "A", and amends Resolution ACJA-21-83 accordingly.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Advisory Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 12 in favor and 0 opposed, this 1st day of August, 1988.


Vice Chairman
Navajo Tribal Council

I



BEST AVAILABLE

[illegible]

Medusa 3 Banks
Antena (long barometer) No 18862

Answers (and answers) to: No 12262

EXHIBIT "B"

ACJA-21-83

Class "B" Resolution
Area Approval Required.

RESOLUTION OF THE ADVISORY COMMITTEE OF THE NAVAJO TRIBAL COUNCIL

Concurring in the Order of the Chairman of the Navajo Tribal Council Withdrawing 149.90 Acres of Tribal Land for the Construction of the Blue Canyon Dam and Recreational Area

WHEREAS:

1. Navajo Tribal Council Resolution CJN-24-55 authorizes the Chairman of the Navajo Tribal Council, with the concurrence and recommendation of the Advisory Committee, subject to the approval of the Secretary of the Interior or his authorized representative, to execute orders withdrawing designated tribal land for use in connection with authorized programs of benefit to the Navajo people; and
2. The Fort Defiance Chapter approved and recommended the withdrawal of 149.90 acres of land for the purpose of a dam in the Fort Defiance Community, as shown by the attached resolution marked Exhibit "A"; and
3. The Navajo Tribe entered into a Memorandum of Agreement with the United States of America and the Navajo Engineering and Construction Authority for the construction of the Blue Canyon Dam attached hereto as Exhibit "B"; and
4. The Navajo Tribal Council appropriated funds to be utilized in the Phase I construction of the Blue Canyon Dam by Resolution CF-17-82, attached hereto as Exhibit "C"; and
5. It is necessary to withdraw lands for the construction project area on which this dam and reservoir will be located; and
6. The withdrawal of said land has been approved by the local residents; and
7. Necessary field clearances have been made for said land by the Navajo Land Development Department; and
8. The Chairman of the Navajo Tribal Council has issued an Executive Order withdrawing said land attached hereto as Exhibit "D"; and
9. It is in the best interest of the Fort Defiance Chapter and the Navajo Tribe that said land be withdrawn for the purposes stated herein.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Advisory Committee of the Navajo Tribal Council does hereby concur in and approve the Order of the Chairman of the Navajo Tribal Council withdrawing the land described in Exhibit "C" at Fort Defiance, Navajo Nation (Arizona), for the construction of the Blue Canyon Dam and Recreational Area.

2. The Advisory Committee of the Navajo Tribal Council hereby sets the following policy with reference to these lands withdrawn and/or the lands in the immediate area thereof:

- a. There shall be no fencing of the lands withdrawn without approval of the local grazing permittees.
- b. Roads in the area withdrawn and the immediate area thereof shall be improved and maintained as funds are available.
- c. Electricity will be made available to local residents in the immediate area of this withdrawn land when electric power becomes available.
- d. The future management of the dam and reservoir recreation area and contributory watershed will be conducted by the Tribal Division of Resources in accordance with the Blue Canyon Reservoir and watershed operation and management plan to be adopted by the Resources Committee of the Navajo Tribe.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Advisory Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 11 in favor and 0 opposed, this 10th day of January, 1983.


Chairman Protempore
Advisory Committee

RESOLUTION OF THE
PORT DEFIANCE CHAPTER

008 - FDC - GE - 0520

Requesting the Resources Committee of the Navajo Tribal Council to Reopen Port Defiance Chapter's Blue Canyon Gravel Pit.

WHEREAS:

EXHIBIT "C"

1. The Port Defiance Chapter is a certified local government of the Navajo Nation pursuant to 2 NTC 4001., vested with the authority to address and act on the needs and concerns of its community; and
2. The Port Defiance Community Chapter has withdrawn 149.9 acres of Navajo Tribal Land for Blue Canyon Dam by the Advisory Committee Resolution, ACJA-21-83; and
3. The Port Defiance Community Chapter Planning Committee approved and recommended to the chapter to reopen the Blue Canyon Gravel Pit, so the vendor will be able to move his equipment (Crusher) to the location as soon as possible to crush the amount of gravel needed for the Highway 264 Project in phase I, II and III as stated in the Specification; and
4. The Port Defiance Community Chapter will enter a written agreement with the vendor to initiate special stipulations for all work executed under the agreement to have the contractor be responsible for any malfunctions and will not hold the Port Defiance Community Chapter responsible; and
5. That all necessary field clearance has been made for the landsite for the gravel pit by the Navajo Land Development Department; and
6. The project is in the best interest of the Port Defiance Community Chapter and the Navajo Tribe in reopening the gravel pit for the stated purpose.

NOW THEREFORE BE IT RESOLVED THAT:


The Port Defiance Chapter requests the Resources Committee of the Navajo Tribal Council to approve the reopening of the Port Defiance Blue Canyon Gravel Pit for it will serve a very beneficial purpose to the Navajo Tribe by implementing the improvement of Highway 264.

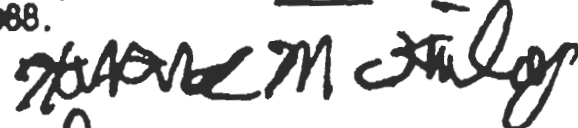
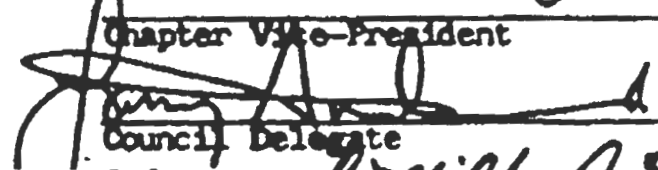
The Port Defiance Community Chapter further requests the Resources Committee of the Navajo Tribal Council to direct BIA and Navajo Tribal Inspectors to be present at the gravel pit site for the inspection of the project for accountability of the safety purposes.

C E R T I F I C A T I O N

We hereby certify that the foregoing resolution was considered at a duly called chapter meeting at Port Defiance, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of 36 in favor, and 0 opposed, this 21 day of MAY, 1988.


Chapter President


Chapter Secretary


Chapter Vice-President

Council Delegate

EXHIBIT

J

RESOLUTION OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving a Sand and Gravel Permit for Daye Concrete Inc. of Houck, Arizona to Utilize 35.62 Acres of Navajo Tribal Trust Lands at the Fort Defiance Blue Canyon Gravel Pit, within Apache County, State of Arizona

WHEREAS:

1. Pursuant to 2 NTC § 695(2) as amended by CD-68-89, the Resources Committee of the Navajo Nation Council has been delegated authority to give final approval of Sand and Gravel Permits in accordance with applicable federal and Navajo Nation Laws; and

2. Daye Concrete Inc., of Box 168, Houck, Arizona, 86506, has applied for a Sand and Gravel Permit, attached hereto as Exhibit "A" and made a part hereof, to utilize an existing pit along with an access road which consist of 35.62 acres of Navajo Tribal Trust lands to excavate, process and remove aggregate materials to be used for the maintenance of Routes N30 and N302 to the Air Route Surveillance Radar (ARSR) Facility access road at Washington Pass and various construction, resurfacing projects and highway projects for Bureau of Indian Affairs (BIA), State Highway, County Roads and other construction projects; and

3. The proposed pit is 22.89 acres, identified as the Blue Canyon Gravel Pit and the haul road is 31 feet wide, 3.38 miles in length, consisting of 12.72 acres, more or less, located within Section 22, Township 01 North, Range 06 West, Navajo Baseline, Apache County, Arizona. The location is more particularly described on the map marked Exhibit "B", attached hereto and made a part hereof; and

4. The Project Review Office with the Division of Natural Resources has determined who the affected land users (grazing permittees) are and has obtained consents from the land users. The applicant will pay the land users for surface damages; and

5. The applicant has paid a sum of \$500.00 for filing and processing fees; and

6. All environmental and archaeological studies have been completed and have received appropriate clearances.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council hereby approves the Sand and Gravel Permit for Daye Concrete Inc., to utilize an existing pit and haul road consisting of 35.62 acres, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

2. The Resources Committee of the Navajo Nation Council hereby approves the Sand and Gravel Permit, subject to, the terms and conditions of the Navajo Nation contained herein as follows:

- a) The quantity of material that can be removed pursuant this permit is limited to five thousand (5,000) tons.

ARCHIVE COPY

- b) This permit does not allow the permittee to conduct any blasting operations.
- c) The grantee shall comply with applicable federal and tribal antiquities regulations and legislation; and
- d) The grantee shall comply with all applicable regulations contained in 25 Code of Federal Regulation, Part 169; and
- e) The grantee shall comply with all Navajo Labor laws and regulations; and
- f) The grantee shall pay a royalty of \$0.90 per ton for the materials; and
- g) The grantee shall pay a minimum advance royalty of \$450.00; and
- h) The grantee shall notify the Director of Navajo Environmental Protection Administration immediately upon completion of the operation so that site inspection can be made; and
- i) The grantee shall pay a right-of-way consideration of \$2,010.00 for a six (6) month term; and
- j) The grantee shall ensure that the air quality of the Navajo Nation is not jeopardize due to violation of applicable law(s) by its operation pursuant to this right-of-way; and

The grantee, his agent, contractor and subcontractor shall comply with the air pollution control practices for minimizing emissions as specified in 40 Code of Federal Regulations, Part 60 Subpart I, Performance for Asphalt Concrete Plants, and shall submit all applicable permits and information to the Navajo Air Quality Regulatory Program, Navajo Nation Water Resources Management Administration, Post Office Box 308, Window Rock, Arizona 86515; and

- k) The grantee, his agent, contractor, and subcontractor shall comply with the Navajo Nation Water Code and shall apply for and submit all applicable permits and information to the Navajo Nation Environmental Protection Administration, Post Office Box 308, Window Rock, Arizona 86515; and
- l) The grantee shall comply with the Navajo Business Preference Act provisions, Rules and Regulations of the Navajo Nation Commerce Department as specified in Title Five, Navajo Nation Code, Chapter Two, as amended;
- m) The permittee must notify the Minerals Department prior to the start of the operation in order that the Department make site inspections and acquaint his worker with Tribal Mine Safety and Health requirements; and
- n) The permittee must abide by the Tribal Mine Safety Code and the provisions of 30 CFR, Part 48, 50 and 56; and
- o) The grantee will be responsible to promptly pay for all damages as they

ARCHIVE COPY

may be sustained; and

- p) The grantee shall post a performance and reclamation bond in the amount of \$5,000.00. This bond shall be in addition to any bond the permittee may have posted for past permit(s).
- q) The term of the permit shall be for six (6) months effective the date of approval by the Navajo Nation.
- r) The grantee, his agent, contractor and subcontract shall implement the mitigation measures on page 4 of the 'Addendum to the Environmental Assessment for the Blue Canyon Borrow Pit, Fort Defiance, Arizona' prepared by SWCA June 1991, and the Surface Restoration Plan of the 'Environmental Assessment, Blue Canyon Borrow Pit' prepared by Daye Concrete, 9 August 1988.
- s) Prior to the start of the operation, all workers shall be trained as required by 30CFR, Part 48. In addition, the workers must undergo a training in "Job Safety Analysis" and "Alcohol and Substance Abuse"; and
- t) All surplus gravel belongs to the Navajo Nation; and
- u) Production reports, truck run tickets and payments shall be submitted to the Minerals Department on a monthly basis.

3. The operation shall not commence unless the permittee pays all past dues to the Navajo Nation.

4. The Resources Committee of the Navajo Nation Council hereby authorize the President of the Navajo Nation to execute any and all documents necessary to effect the intent and purpose of this resolution.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 05 in favor, 00 opposed and 00 abstained, this 1st day of August, 1991.


Elmer L. Milford, Chairman

MOTIONED BY: Irving Billy
SECONDED BY: Norman John II

ARCHIVE COPY

may be sustained; and

- p) The grantee shall post a performance and reclamation bond in the amount of \$5,000.00. This bond shall be in addition to any bond the permittee may have posted for past permit(s).
- q) The term of the permit shall be for six (6) months effective the date of approval by the Navajo Nation.
- r) The grantee, his agent, contractor and subcontract shall implement the mitigation measures on page 4 of the 'Addendum to the Environmental Assessment for the Blue Canyon Borrow Pit, Fort Defiance, Arizona' prepared by SWCA June 1991, and the Surface Restoration Plan of the 'Environmental Assessment, Blue Canyon Borrow Pit' prepared by Daye Concrete, 9 August 1988.
- s) Prior to the start of the operation, all workers shall be trained as required by 30CFR, Part 48. In addition, the workers must undergo a training in "Job Safety Analysis" and "Alcohol and Substance Abuse"; and
- t) All surplus gravel belongs to the Navajo Nation; and
- u) Production reports, truck run tickets and payments shall be submitted to the Minerals Department on a monthly basis.

3. The operation shall not commence unless the permittee pays all past dues to the Navajo Nation.

4. The Resources Committee of the Navajo Nation Council hereby authorize the President of the Navajo Nation to execute any and all documents necessary to effect the intent and purpose of this resolution.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 05 in favor, 00 opposed and 00 abstained, this 1st day of August, 1991.


Elmer L Milford, Chairman

MOTIONED BY: Irving Billy
SECONDED BY: Norman John II

ARCHIVE COPY

In Witness Whereof, the said parties have hereunto subscribed their names and affixed their seal on the day and year first above mentioned.

Two witnesses to execution by Permittee:

Permitter,

SAVAIO TRUONG

P. O. _____

P. O. _____

John Yellowhorse
4/10/91
(Permittee)

Two witnesses to execution by Permittee:

P. O. _____

P. O. _____

The within permit is _____ approved.

_____, 19____

Superintendent, _____ Agency

RECOMMENDED FOR APPROVAL BY
DELEGATES OF DIST. NO.

PERMITTEE'S CALLUP

Charles J. Melfo 4/10/91
J. A. A 04/10/91

ARCHIVE COPY

5. *Prevention of Damage.*—The Permittee shall conduct all operations authorized in this permit with due regard to preventing unnecessary damages to vegetation, timber, soil, roads, bridges, cattle guards, fences, and other improvements, and on termination of operations under this permit, shall make provisions for conservation and protection of the property and leave all of the areas on which the Permittee has worked in a condition that will not be hazardous to life or limb, and will be to the satisfaction of the superintendent. All damages shall be repaired or paid for at appraised value.

6. *Liquor.*—The Permittee further agrees that it will not use or permit to be used any part of said premises for any unlawful conduct or purpose whatsoever; that it will not use or permit to be used any part of said premises for the manufacture, sale, gift, transportation, drinking, or storage of intoxicating liquors or beverages in violation of existing laws relating thereto, and that any violation of this clause by the Permittee or with his knowledge, shall render this permit voidable at the option of the superintendent.

7. *Assignment.*—The Permittee agrees not to assign the Permit or any interest therein by an operating agreement or otherwise, nor to sublet any portion of the permitted premises, except with the approval of the Secretary of the Interior or his authorized representative.

8. *Regulations.*—The Permittee agrees to abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such permits: *Provided*, That no regulation hereafter approved shall effect a change in the rate of royalty without the written consent of the parties to this permit.

9. *Inspection.*—The Permittee agrees that the permitted premises and producing operations, improvements, machinery, and fixtures thereon and connected therewith shall be open at all times for inspection by any duly authorized officer or agent of the Secretary of the Interior.

10. *Surrender and Termination.*—The Permittee may, at any time, during the time hereof, surrender this permit in writing upon the performance of all the Permittee's obligations hereunder, upon the payment of \$5 and upon a showing satisfactory to the Secretary of the Interior or his authorized representative; that full provision has been made for the conservation and protection of the property. If this permit has been recorded, Permittee shall file a recorded release with its application for surrender.

11. *Bond.*—Before this permit shall become effective, Permittee shall furnish to the superintendent of the Fort Defiance Agency, ~~a copy of current collective~~
Five Thousand 5000.00
an acceptable surety bond in the amount of Five Thousand Dollars (\$5000.00).
This bond shall be in addition to any bond furnished for past permits.

12. *Cancellation and Forfeiture.*—When, in the opinion of the Secretary of the Interior or his authorized representative, there has been a violation of any of the terms and conditions of this permit, or the applicable regulations, the Secretary or his authorized representative shall have the right at any time after 30 days' notice to the Permittee specifying the violations, and after a hearing if the Permittee shall so request within 30 days of receipt of notice, to declare this permit null and void.

Paragraphs No. 13, 14, 15, and 16 attached hereto are made a part of this permit.

ARCHIVE COPY

BEST COPY AVAILABLE

NAVAJO NATION SAND AND GRAVEL LEASE
AND ACCESSROAD RIGHT-OF-WAY (ROW)

THIS AGREEMENT for a Sand and Gravel Lease (Lease) is made and entered by and between the Navajo Nation and whose address is at P.O. Box 7440, Window Rock, Arizona 86515 called the Lessor and Fort Defiance Sand and Gravel, Inc. whose address is at P.O. Box 1678, Window Rock, Arizona 86515. herein called the Lessee.

Definitions:

Sand & Gravel means: Earth Borrow, Sand and Natural or Processed Gravel

Department means the Navajo Nation Minerals Department.

Navajo Nation (Nation) means the Navajo Tribe of Indians.

Secretary means the Secretary of the U.S. Department of Interior or his/her designated representative.

Performance bond means a surety bond, collateral bond or self-bond or a combination thereof, by which a lessee assures faithful performance of all the requirements this lease and mining and reclamation plan.

Reclamation means those actions taken to restore mined land as required to a post-mining land use approved by the Department.

Resources and Development Committee means the Resources and Development Committee of the Navajo Nation Council.

Slope means average inclination of a surface, measured from the horizontal normally expressed as a unit of horizontal distance to vertical distance.

Stabilize means to control movement of soil, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

Ton means 2,000 pounds.

Water table means the upper surface of a zone of saturation.

Lessee, Permittee & Operator means the lessee of the sand and gravel lease/permit,

The Navajo Nation hereby grants Lessee a Lease right to extract sand and gravel from E ½ NW, Section 25, Township 28 North, Range 30 East, Apache County, Navajo Nation, Arizona. The area encompassed by the lease is 40.979 acres, more or less. The location and legal description are shown in Exhibits "A". The access road is in Sections 25, 26, and 35, T28N, R30C. It is 0.92 miles long, 20 feet wide country of 2.23 acres, more or less. The location and legal description is shown on Exhibit "B".

1. The Lease and the Access Road shall be valid for a period of five (5) years (with 5 year option to renew) effective the date it is approved by the Secretary. This date shall be known as the Effective Date of the Lease.

2. Payments to the Nation by the Lessee:

(i) The Lessee shall pay an annual advance royalty for each lease year. The first payment in the amount of sixty-four thousand dollars (\$64,000.00) is due within ten (10) days of the Effective Date. Subsequent annual advance royalty payments are due on or before each anniversary of the Effective Date. The annual advance royalty payment shall be credited against production royalties only during the year for which the advance royalty has been paid.

(ii) A royalty at the rates of \$2.50 per ton for sand and gravel material removed from the Lease premises. The royalty payment shall be made on a monthly basis within fifteen (15) days following the month for which the royalty is due.

(iii) The subsequent annual advance payments and the royalty rate shall be subject to annual adjustments on each anniversary of the Effective Date. The adjustments shall be based upon the increase in the Consumer Price Index (CPI), US. City Average for All Urban Consumers. The CPI for May 2014 shall be used as the base for all adjustments.

(iv) Lessee shall make a lump sum payment in the amount of (\$7,360.00) for the access road right-of way.

3. Mining and Reclamation Plan: The Lessee shall abide by all the requirements of the mining plan and reclamation plan attached as Exhibit "C" to this lease. The U.S. Department of the Interior (DOI) may require additional conditions. The majority of the revegetated species will be native to the area. The Lessee shall ensure that no poisonous and noxious vegetation are allowed to grow in the leased area. The Lessee shall ensure that the final post-mining topographic plan does not allow water to collect in the leased area. No water shall be discharged off the leased area without written authorization from the Navajo Nation and all federal agencies having jurisdiction.

4. Bond: Lessee shall furnish a performance and reclamation bond for two hundred and fifty thousand dollars (\$20,000) with the DOI's Navajo Region, Bureau of Indian Affairs. The Lessee shall maintain this bond at all times even if the Lease has expired or is terminated. The bond shall only be released with the written consent of the Navajo Nation. The bond may also be increased by the Navajo Nation and/or the DOI. The Lessee shall request a bond release to DOI only after the expiration or termination of the Lease and Lessee has fulfilled all its obligations, including payments to the Navajo Nation and reclamation of site under the terms and conditions of this Lease.

5. The Lessee shall comply with the requirements of the Blasting Plan attached as Exhibit

"D" to this lease and all applicable federal regulations including but not limited to 30 CFR, Part 56, Subpart E - Explosives.

6. Water Use Permit: Lessee shall not use water from the Navajo Nation unless a water use permit is approved by the Navajo Nation Water Resources Department.

7. Records and Reports: The Lessee shall maintain accurate records of all sand and gravel material extracted, stockpiled, sold and removed from the Lease and the royalty due and paid to the Navajo Nation. A copy of the records shall be provided to the DOI and the Navajo Nation Minerals Department (P.O. Box 1910, Window Rock, AZ 86515) on a monthly basis within fifteen (15) days following the sale month. Monthly production reports must be filed even if there was no sale of material. All material removed from the site shall be weighed and all records pertaining to the sale shall be kept for audit purposes for a term required under 30CFR 1212.200, Subpart E, Section (a).

8. Method of Payments: All required payments under Section 2 of this Lease shall be made to the Department, in lawful money of the United States. A copy of the payments shall be provided to the DOI.

9. Diligence: The Lessee shall exercise diligence in the conduct of its mining operation and the land described herein shall not be held for speculative purposes, but in good faith for the extraction of sand and gravel and shall begin operation within one (1) month of the Effective Date.

10. No work shall commence until the mandatory mine health and safety training has been provided to the workers pursuant to 30 CFR, Part 46. The Lessee shall maintain the required training plan pursuant to the provisions of 30 CFR, Part 46 and a copy of minutes trained.

11. The Lessee shall obtain a mine identification number from the U. S. Mine Safety and Health Administration prior to the start of the operation.

12. The Lessee may develop, use and occupy the area under the Lease for the purpose of removing sand and gravel material. The Lessee may not develop, use or occupy the area under the Lease for any other purpose without the prior written approval of the Nation and the Secretary. Such approval of the Nation may be granted upon conditions or withheld at the sole discretion of the Nation. The Lessee may not develop, use or occupy the area under the permit for any unlawful purpose. Any unlawful use of the land within the Lease shall render the Lease void at the option of the Nation and/or the Secretary.

13. Lessee shall maintain an emergency evaluation plan to address emergencies such as possible flooding. All workers must be thoroughly familiar with the emergency plan.

14. In all activities conducted by the Lessee within the Navajo Nation, the Lessee shall abide by all laws and regulations of the Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:

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

b. Title 30, Code of Federal Regulations, Parts 46 and 56;

c. The Navajo Nation Mine Safety Code 18 N.C. § 401;

d. All applicable federal and Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein,

“discovery” means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practice;

e. To the extent allowed by applicable law, the Navajo Preference in Employment Act, 15 N.C. §§ 601 et seq., the Navajo Nation Business Opportunity Act, 5 N.C. §§ 201 et seq.; and

f. The Navajo Nation Water Code, 22 N.C. et seq., Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

g. Applicable section of the Navajo Nation Tax Code.

15. The Lessee shall ensure that the air quality of the Nation is not unduly degraded during operations by violating federal and Nations applicable laws and regulations.

16. The Lessee shall clear and keep clear the lands within the Lease area to the extent compatible with the purpose of the Lease, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

17. The Lessee shall at all times during the term of the Lease and at the Lessee's sole cost and expense, maintain the land subject to the Lease and all improvements located thereon and make all necessary reasonable repairs.

18. The Lessee shall obtain prior written permission to cross an existing permit or lease areas, if any, from the appropriate parties.

19. The Lessee shall be responsible for and promptly pay all damages when they are sustained, from actions the Lessee causes.

20. The Lessee shall indemnify and hold harmless the Nation and the Secretary and their respective authorized agents, employees, land users and occupants against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of area under the Lease by the Lessee.

21. The Lessee shall not assign, convey, transfer or sublet in any manner whatsoever, the lease or any interest therein, or in or to any of the improvements on the land subject to the lease, without the prior written consent of the Nation and the Secretary. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no

effect. The consent of the Nation may be granted, granted upon conditions or withheld at the sole discretion of the Nation.

22. The Nation may recommend termination of the Lease by DOI for violation of any of the terms and conditions stated herein.

23. At the termination of the Lease, the Lessee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request from the Nation, the Lessee shall provide the Navajo, at the Lessee's sole cost and expense, with an environmental audit assessment of the premises at least thirty (30) days after completion and notification to the Nation that all required reclamation has been performed.

24. Holding over by the Lessee after the termination of the Lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder or in to the land subject to the Lease or to any improvements located thereon.

25. The Nation and the Secretary shall have the right, at any reasonable time during the term of the permit, to enter upon the premises, or any part thereof, to inspect the same and any improvements located therein. The Nation and Secretary have further right to audit all payments due to the Nation.

26. By acceptance of the grant of Lease, the Lessee consents to the full territorial legislative, executive and judicial jurisdiction of the Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Lessee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Nation.

27. By acceptance of the grant of the Lease, the Lessee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Nation on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the Lease or to the Nation.

28. Any action or proceeding brought by the Lessee against the Nation in connection with or arising out of the terms and conditions of the Lease shall be brought only in the Courts of the Nation, and no such action or proceeding shall be brought by the Lessee against the Nation in any court of any State.

29. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

30. Except as prohibited by applicable federal law, the law of the Nation shall govern the performance and enforcement of the terms and conditions contained herein.

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

32. There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Lease and all lands burdened by the Lease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Lease and all lands burdened by the Lease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

33. The Lessee is required to maintain and submit a certificate issued by an insurance company authorized to do business in the United States, and on the Navajo Nation, certifying that the applicant has a public liability insurance policy in force for the mining and reclamation operations pursuant to this Lease. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any person injured or property damaged as a result of the mining and reclamation operations, including the use of explosives. Minimum insurance coverage for bodily injury and property damage shall be \$500,000 for each occurrence and \$1,000,000 aggregate.

(a) The policy shall be maintained in full force during the term of the Lease and the liability period necessary to complete all reclamation requirements under the Plan.

(b) The policy shall include a rider requiring that the insurer notify the Department and DOI whenever substantive changes are made in the policy including any termination or failure to renew.

THE NAVAJO NATION, Lessor

BY _____

Date

Russell Begay, President
The Navajo Nation

FORT DEFIANCE SAND AND
GRAVEL, INC., Lessee

BY _____

Date

ACKNOWLEDGEMENT OF LESSOR

State of Arizona)
) ss.
County of Apache)

Before me, a Notary Public, on this _____ day of _____, 2015, personally appeared Ben Shelly, who executed the foregoing lease in his official capacity as President of the Navajo Nation for and on behalf of the Navajo Nation.

Notary Public

My Commission Expires:

ACKNOWLEDGEMENT OF LESSEE

State of Arizona)
) ss.
County of Apache)

Before me, a Notary Public, on this _____ day of _____, 2015, personally appeared, who executed the foregoing lease in his official capacity on behalf of Fort Defiance Sand and Gravel, Inc.

Notary Public

My Commission Expires:



**THE NAVAJO NATION
FORT DEFIANCE CHAPTER**

P.O. BOX 366 • Fort Defiance, Arizona 86504

Phone: (928) 729-4352 • Fax: (928) 729-4353

E-mail: fidefiance@navajochapters.org

EXHIBIT

tabler

L

Ben Bennett, President

Aaron Sam, Vice-President

Eva D. Platero, Secretary/Treasurer

Dorothy Upshaw, Community Service Coordinator

Roscoe Smith, Council Delegate

Stanley Denetdeed, Grazing Official

BEN SHELLY

Navajo Nation President

REX LEE JIM

Navajo Nation Vice President

RESOLUTION OF THE FORT DEFIANCE CHAPTER

FD-2012-02-09-06

**SUPPORTING AND APPROVING FOR RECON OIL COMPANY, INC. TO
ESTABLISH SAND AND GRAVEL PIT AND TO PERFORM A SURVEY REQUEST
FOR ALL STUDIES NEEDED AS TO PROVIDE NEEDED COMMUNITY SERVICE
PROJECTS FOR THE BENEFICIAL USE OF THE COMMUNITY.**

WHEREAS:

1. Pursuant to "Local Governance Act" Title 26 of the Navajo Tribal Code, chapter 1, section 39(a) the Fort Defiance ("The Chapter") is continued as certified local governmental entity of the Navajo Nation, by the Navajo Nation Council Resolution Number CAP=3498; and
2. Pursuant to 26 N.N.C. 3 (A) and 1 (B)(2), the Fort Defiance Chapter is vested with authority to review all matters affecting and to make appropriate recommendations to the Navajo Nation and other Federal, State and Local Agencies; and
3. The Fort Defiance Chapter has had a long time need for sand and gravel pit and other related earth projects for services in the community to meet the needs of our local service area; and
4. The Fort Defiance Chapter request upon proper clearances,, approval and establishment of the Sand and Gravel Pit, also requesting to utilize gravel for Community Road Improvement with technical assistance of Recon Oil Company, Inc.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Fort Defiance Chapter, hereby, approves the request for Recon Oil Company, Inc. to establish a Sand and Gravel Pit and perform a survey request for all studies needed as to provide needed community service projects for beneficial use of the community.

CERTIFICATION

We hereby certify that the forgoing resolution was duly consider by the Fort Defiance Chapter at a duly called meeting at Fort Defiance, Arizona, at which a quorum was present and that the same was passed by a vote 28 in favor, 0 opposed, and 1 abstained, the 9th day of February, 2012.

Motion by: Alice Toppie

Second by: Bernard Kinliskee



Ben Bennett, Chapter President



**THE NAVAJO NATION
FORT DEFIANCE CHAPTER**

P.O. Box 366 • Ft Defiance, Arizona 86504
Phone: (928) 729-4352 • Fax (928) 729-4353
Email: ftdefiance@navajochapters.org

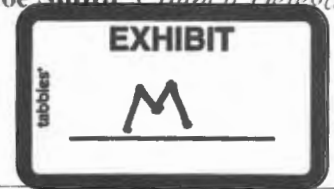
Zondra J. Bitsuie, President

Lorraine W. Nelson, Vice-President

Brenda Wauneka, Secretary Treasurer

Herman Billie, Grazing Official

Roscoe Smith, Council Delegate



BEN SHELLY
Navajo Nation President

REX LEE JIM
Navajo Nation Vice President

FDC-2013-07-14-01

RESOLUTION OF THE FT. DEFIANCE CHAPTER

Ft. Defiance Agency District #18

**Resolution to RESCIND Resolution # FD-2011-10-06-03 Supporting and Approving the
Reopening of the Blue Canyon Gravel Pit/Mining Permit.**

WHEREAS:

1. Pursuant to Title 26 N.N.C., Section 3 (A), the Fort Defiance Chapter is a duly recognized chapter of the Navajo Nation Government, as listed at Title 11 N.N.C., part 1, section 10; and
2. Pursuant to Title 26 N.N.C., Section 1 (B) Fort Defiance Chapter is vested with the authority to review all matters affecting the community and to make appropriate corrections when necessary and make recommendations to the Navajo Nation and other local agencies for appropriate actions; and
3. Pursuant to Title 26, N.N.C. Local Governance Act (LGA) which directs local chapters to promote all matters that affect the local community members and to make appropriate decisions, recommendations, and advocate on their behalf; and
4. The Ft. Defiance Chapter has been made aware that the Blue Canyon community besides the "Watch Family" utilize the area of the existing sand and gravel for grazing and land use purposes; and
5. The Blue Canyon Community has expressed that the Watch Family is not the only family that is a grazing and/or land user permit holder in the area surrounding the existing sand and gravel pit; and
6. The Blue Canyon Community has also submitted a formal request and a signed petition with signatures from the community members that live with-in the general area of the sand and gravel pit that are opposing the re-opening the Blue Canyon Gravel Pit/Mining Permit; and

NOW, THEREFORE, BE IT RESOLVED:


1. That the Ft. Defiance Community rescinds Resolution # FD-2011-10-06-03 Supporting and Approving the Reopening of the Blue Canyon Gravel Pit/Mining Permit, and;
2. The Ft. Defiance Chapter has been made aware of the opposition of the re-opening of the existing sand and gravel pit by certain community members that live in the surrounding area of the existing sand and gravel pit, and
3. The Ft. Defiance Chapter needs to consider every aspect of a business venture of any type if there are any disagreements whether it is from the community or the chapter itself Ft Defiance Chapter cannot in good conscience move forward in making a decision that is contrary to the harmony of the community.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by the Ft. Defiance Chapter community meeting in Ft. Defiance, Navajo Nation, Arizona at which registered Chapter voters was present and that the same was passed by a vote of 26 in Favor, 0 Opposed and 4 Abstained this 14th day of July, 2013.

MOTIONED: _____ Jimmie Bitsuie

SECONDED: _____ Irene Watchman


Zondra Bitsuie, Ft. Defiance Chapter President




NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HARRISON TSOSIE
ATTORNEY GENERAL

DANA L. BOBROFF
DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Heather Clah, Legal Counsel
Office of the President/Vice President

FROM: 
Bidtah N. Becker, Assistant Attorney General
Natural Resources Unit, Department of Justice

DATE: September 5, 2014

SUBJECT: 164 Review Document No. 000893: Sand and Gravel Lease – THT Enterprise, Inc.

The Department of Justice (DOJ) has reviewed the above referenced resolution and lease packet which is a proposed commercial sand and gravel operation to be operated by Fort Defiance Sand and Gravel Inc. DOJ finds the packet legally insufficient for the following reasons.

Land Users' Consents

The Division of Natural Resources (DNR), through Robert Allan, has indicated that the resolution is legally insufficient because the land user consents have not been obtained. See Executive Official Review Sheet No. 863 signature dated 4/4/2014 and additional note dated 8/19/2014. Under 16 N.N.C. § 1403, a lessee shall not "make any change in the grade or contour" of Navajo Nation lands or "remove any surface vegetation thereon until the damages to the improvements thereon or the customary use rights of the individuals affected thereby have been estimated by the Navajo Land Department." Typically, the Navajo Land Department fulfills its section 1403 duties by obtaining the consent of land users whose customary use rights will be affected, such as land users who hold valid grazing permits. There are situations wherein the grazing permittee whose customary use rights are affected does not consent and is compensated for the damages to surface vegetation as required under section 1403, but it is more common for the grazing permittee, also referred to as the land user, to provide his/her consent. DOJ agrees with DNR that 16 N.N.C. § 1403 must be fulfilled before any sand and gravel lessee makes any change in the grade or contour of the land or removes any surface vegetation. Currently, the packet contains a list of individuals who live within three-quarter miles of the proposed sand and gravel operation. See Memorandum by Herman Billie, Grazing Official, dated August 2, 2014. The Navajo Land Department, through the Right of Way Agent Esther Kee, has reduced that list to only those individuals who claim to hold a valid grazing permit. See Memorandum by Esther Kee, Right of Way Agent, Project Review Office, Navajo Land Department, dated August 18, 2014. In her memorandum, Ms. Kee indicates that no land users consent to the sand and gravel operations. DNR has indicated that the proceedings under 16 N.N.C. §§ 1401 - 1403 must be met.

Memorandum to: Heather Clah, Legal Counsel, Office of the President/Vice President
RE: 164 Review Document No. 000893: Sand and Gravel Lease – THT Enterprise, Inc.
September 5, 2014
Page 2

DOJ met with Ms. Kee to determine if the Navajo Land Department has begun to determine damages as required under section 1403. Ms. Kee indicated that she needs verification from the Bureau of Indian Affairs (BIA) as to who holds grazing permits before she can continue to fulfill the requirements of section 1403. The Grazing Official has requested the information from BIA. See Memorandum of Herman Billie dated August 22, 2014. In an attempt to ensure that this packet is legally sufficient by the time the Resources and Development Committee considers the proposed sand and gravel operation, DOJ, through Irvin Chee, is continuing to work with the Navajo Land Department and the Grazing Official Billie to obtain from BIA the a list of valid grazing permit holders.

DOJ also points out for the reviewers' edification that who the affected land users are has been difficult to ascertain because the sand and gravel project *partially* falls within an area of land that was withdrawn for the Blue Canyon Dam and Recreational Area through Resolution No. ACJA-21-83 titled *Concurring in the Order of the Chairman of the Navajo Tribal Council Withdrawing 149.90 Acres of Tribal Land for the Construction of the Blue Canyon Dam and Recreational Area*. See attached map labeled Blue Canyon Dam Land Withdrawal 05/06/1982. According to the Land Department, this map shows in red outline the area of land that the proposed sand and gravel operation would utilize and shows the land withdrawal for the Blue Canyon Dam and Recreation Area. The dam failed and therefore the recreational area was not constructed and this area is not being used for a dam and recreational area. DOJ has participated in many conversations with many entities including the Office of the President, the Bureau of Indian Affairs, the Land Department, the Grazing Official, and Recon Oil Company concerning whether or not land user consents must be obtained for that portion of the sand and gravel operation that falls within the land withdrawal. While at first blush, this question might seem like a purely legal question, there are important facts that must be obtained and considered, including but not limited to whether there are valid grazing permit holders. At this time, due to the lack of facts, DOJ cannot provide legal advice to the Navajo Nation on the specific question of whether or not land user consents must be obtained for that portion of the sand and gravel operation that falls within the land withdrawal.

Please note that according to the map attached hereto, the proposed sand and gravel operation falls on land that is outside of the withdrawn area. Please note that the access road of .92 miles that is part of proposed lease is not shown on the map. There may be an additional effect on land users by the contemplated access road. It needs to be determined whether or not there are land users who will be affected by the operation in the land area that area that falls outside of the withdrawal. As mentioned above, DOJ, through Irvin Chee, is working with the Navajo Land Department and the local Grazing Official to request from the Bureau of Indian Affairs a list of affected grazing permit holders.

Mining within the Land Withdrawal

If the Resources and Development Committee chooses to approve the current proposed sand and gravel operation, DOJ advises that the Resources and Development Committee amend Resolution No. ACJA-21-83 to include as one of the purposes of the land withdrawal sand and gravel mining.

Other Documents not attached or referenced in Proposed Resolution

A map referenced in the proposed resolution and referred to as Exhibit A is not in the packet. There are no environmental or archaeological clearances in the packet. The necessary environmental and

Memorandum to: Heather Clah, Legal Counsel, Office of the President/Vice President
RE: 164 Review Document No. 000893: Sand and Gravel Lease – THT Enterprise, Inc.
September 5, 2014
Page 3

archaeological studies and associated clearances need to be referenced in the proposed resolution and attached to the proposed resolution in order to be legally sufficient.

Lease

DOJ has marked some edits and concerns on the Lease that will need to be fixed or addressed and should be addressed before the RDC considers the packet.

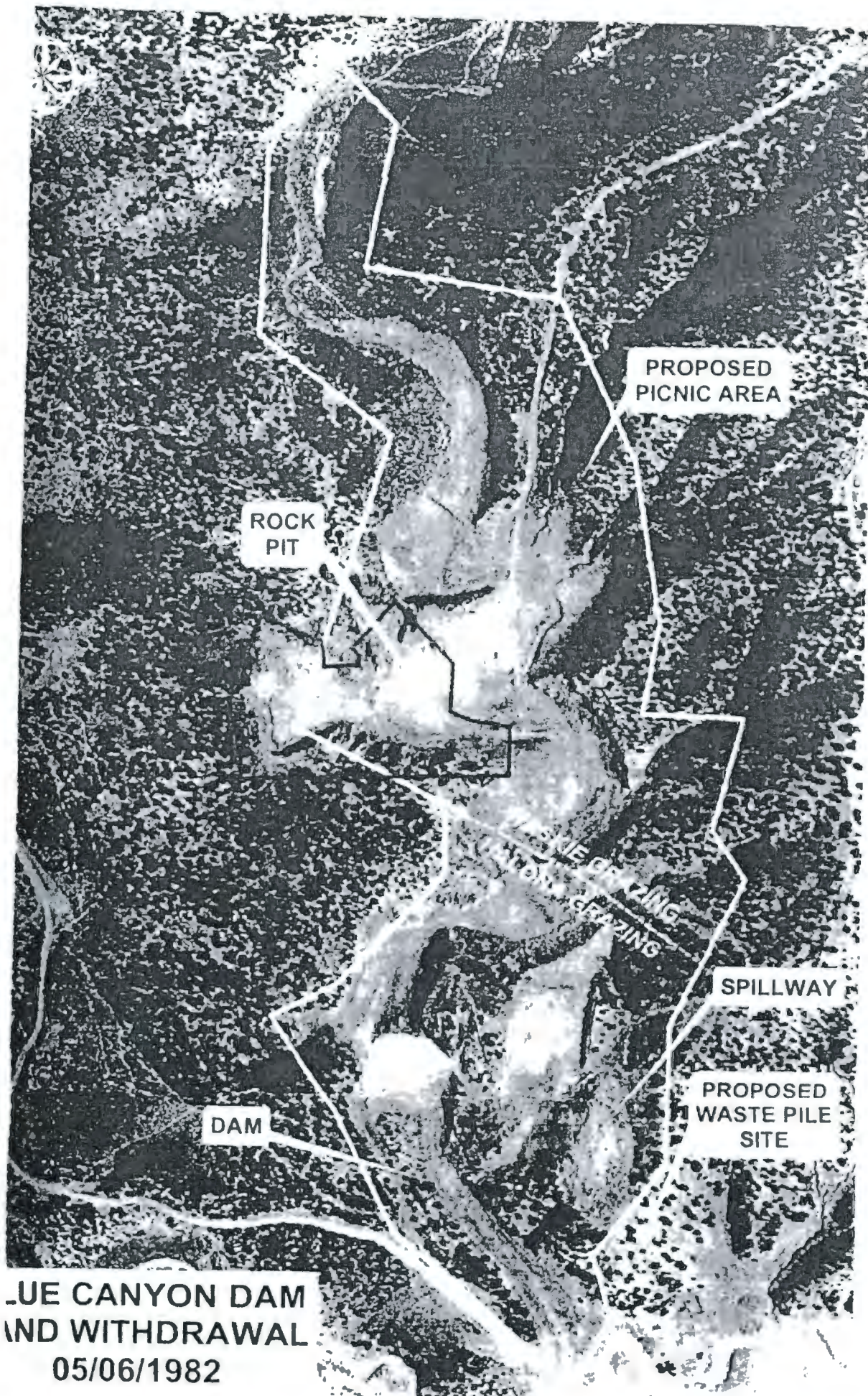
Other Considerations

The Navajo Land Department noted that the resolution is insufficient because there is no Chapter resolution supporting a commercial sand and gravel operation by Recon Oil. There are two resolutions in the packet. The first resolution is Resolution No. FD-2012-02-09-0 (note that this is the number shown on the copy of the resolution contained in the packet) titled *Supporting and Approving for Recon Oil Company, Inc. to Establish Sand and Gravel Pit and to perform a Survey Request for All Studies Needed as to Provide Needed Community Service Projects for the Beneficial Use of the Community*. This Resolution indicates Chapter support for a company named Recon Oil, not for Fort Defiance Sand and Gravel, Inc. This Resolution also indicates Chapter support for “needed community service projects for beneficial use of the community,” and not commercial mining operations. See Chapter Resolution No. FD-2012-02-09-0 at Resolved Clause 1. The second resolution is Resolution No. FDC-2014-07-06-06 titled *Opposing the Proposed Blue Canyon Gravel Pit because of Failure to Get Consensus and Approval by All Local Residents*.

The Executive Review form needs to be corrected to reflect who the actual applicant for the sand and gravel operation is. The applicant listed on Executive Review Form No. 893 is THT Enterprise, Co. DOJ understands that the applicant is now Fort Defiance Sand and Gravel, Inc.

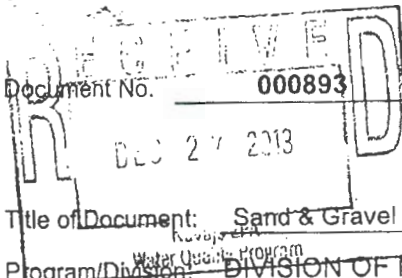
As always, please contact me with any questions or concerns about this memorandum. I can be reached at bbecker@nndoj.org or at extension 6347.

xc: Robert Allan, Attorney, Division of Natural Resources
Levon Henry, Chief Legal Counsel, Office of Legislative Counsel
Mariana Kahn, Attorney, Office of Legislative Counsel
W. Mike Halona, Director, Navajo Land Department
Esther Kee, Right-of-Right Agent, Navajo Land Department
Irvin Chee, Tribal Court Advocate, Natural Resources Unit, NNDJOJ



BLUE CANYON DAM
AND WITHDRAWAL

05/06/1982

Document No. **000893**Date Issued: **10/28/2013****EXECUTIVE OFFICIAL REVIEW**Title of Document: **Sand & Gravel Use. THT Enterprise, Inc**Contact Name: **DRAPER, HOWARD**Program/Division: **Water Quality Program**
DIVISION OF NATURAL RESOURCESEmail: **howarddraper@frontiernet.net**Phone Number: **928-871-6447**

			Sufficient	Insufficient
<input type="checkbox"/>	Business Site Lease			
	1. Division:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)			
	3. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions			
	1. Division:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications			
	1. Office of Management and Budget:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Navajo Housing Authority Request for Release of Funds			
	1. NNEPA:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Lease Purchase Agreements			
	1. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	(recommendation only)			
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Grant Applications			
	1. Office of Management and Budget:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Controller:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval			
	1. Division:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Relinquishment of Navajo Membership			
	1. Land Department:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. Elections:	Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. Office of the Attorney General:	Date:	<input type="checkbox"/>	<input type="checkbox"/>

☐ Land Withdrawal or Relinquishment for Commercial Purposes

Signature: insufficient

1. Division: _____ Date: _____
2. Office of the Attorney General: _____ Date: _____

☐ Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases

1. NLD _____ Date: _____
2. F&W _____ Date: _____
3. HPD _____ Date: _____
4. Minerals _____ Date: _____
5. NNEPA _____ Date: _____
6. DNR _____ Date: _____
7. DOJ _____ Date: _____

☐ Rights of Way

1. NLD _____ Date: _____
2. F&W _____ Date: _____
3. HPD _____ Date: _____
4. Minerals _____ Date: _____
5. NNEPA _____ Date: _____
6. Office of the Attorney General: _____ Date: _____
7. OPVP _____ Date: _____

☐ Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease

1. Minerals _____ Date: _____
2. OPVP _____ Date: _____
3. NLD _____ Date: _____

☐ Assignment of Mineral Lease

1. Minerals _____ Date: _____
2. DNR _____ Date: _____
3. DOJ _____ Date: _____

☐ ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)

1. NLD _____ Date: _____
2. F&W _____ Date: _____
3. HPD _____ Date: _____
4. Minerals _____ Date: _____
5. NNEPA _____ Date: _____
6. DNR _____ Date: _____
7. DOJ _____ Date: _____
8. OPVP _____ Date: _____

☒ OTHER:

1. NLD ☒ _____ Date: 21 Nov 13
2. F&W _____ Date: 12/03/13
3. HPD _____ Date: 12-5-13
4. Minerals ☒ _____ Date: 12/16/13
5. NNEPA ☒ _____ Date: 01-10-14
6. DNR _____ Date: 4/8/14
7. DOJ _____ Date: 9/5/14
8. P/VP _____ Date: 9/5/14

Pursuant to 25 N.M.C. § 194 and Executive Order Number 07-2013

Check
Resolution
for Res
FI
land use
consent
mining