

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - THIRD YEAR, 2017

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, NAABIK'ÍYÁTI' COMMITTEE, AND NAVAJO NATION COUNCIL; APPROVING AND AUTHORIZING THE NAVAJO TRANSITIONAL ENERGY COMPANY TO PLEDGE 100% OF THE MANAGEMENT INTEREST OF THE NAVAJO NATION IN THE NAVAJO TRANSITIONAL ENERGY COMPANY FOR SECURING CREDIT OR FINANCING, CONSENTING TO THE UNITED STATES BUREAU OF INDIAN AFFAIRS' APPROVAL OF THE MORTGAGE AS ALLOWED BY APPLICABLE FEDERAL REGULATIONS, 25 C.F.R. PARTS 162, FOR THE MINE PLANT LEASE AND 211 FOR THE MINE LEASE AND NAVAJO TRANSITIONAL ENERGY COMPANY'S RIGHTS-OF-WAYS.

BE IT ENACTED:

Section One. Authority

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
- B. The Naabik'íyáti' Committee of the Navajo Nation Council is empowered to review all proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).
- C. The Budget and Finance Committee of the Navajo Nation Council is empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds and to coordinate and review all fiscal, financial and investment activities of the Navajo Nation and its enterprises...expending or seeking to expend funds within the Navajo Nation or for the benefit of the Navajo People. 2 N.N.C. §301 (B)(2) and (5).
- D. The Resource Development Committee of the Navajo Nation Council has been empowered to exercise oversight authority over water, land grazing and agriculture and is further empowered to establish Navajo Nation policy with respect to the optimum utilization of all Navajo Nation resources, including the enumerated power to promulgate rules and regulations governing the use and development of Navajo Nation lands. 2 N.N.C. §§ 500 (C) and (C)(1) and 501 (B)(1).

Section Two. Findings

- A. In 2013, the Navajo formed the Navajo Transitional Energy Company, LLC ("NTEC"), a wholly-owned instrumentality of the Navajo Nation, to purchase the Navajo Mine from BHP Billiton New Mexico Coal Company ("BHP NM Coal").
- B. BHP Billiton, the parent company to BHP NM Coal ("BHP"), financed NTEC's acquisition of the Navajo Mine and related assets in the form of a promissory note. As security for the promissory note, the Navajo Nation approved and consented to allow NTEC to pledge 100% of the Navajo Nation's equity interest in NTEC and to grant a mortgage on NTEC's leasehold interest in the Navajo Mine, Mine Plant Lease and related rights-of-way.
- C. NTEC and consortium of lenders, comprised of KeyBank National Association, Sumitomo Mitsui Banking Corporation, and Caterpillar Financial Services Corporation, recently negotiated a credit facility to enable NTEC to pay off the promissory note between NTEC and BHP. As was the case with the promissory note between NTEC and BHP, the new lenders requested to secure the credit facility with the Navajo Nation's equity interest in NTEC and NTEC's leasehold interests in the Navajo Mine, Mine Plant Lease and related right-of-way. A credit facility lets a company take out an umbrella loan for generating capital over an extended period of time.
- D. To facilitate NTEC's performance of the credit facility, the Navajo Nation now reviews the proposal to pledge the management interest of the Navajo Nation as the sole member or owner of NTEC, and agrees to allow NTEC to pledge 100% of its management interest in NTEC to secure the credit facility, including any future management interests the Navajo Nation may receive as a dividend. See Pledge Agreement attached as **Exhibit "A"** with accompany Credit Agreement attached as **Exhibit "B" and Exhibit "C"** attach to Exhibit A (the Pledge) shall state under Paragraph 1 "100% of the shares of NTEC is not part of the pledge collateral," and under Paragraph 2 the word "membership" shall be deleted and replaced with the word "management."
- E. To facilitate NTEC's performance of the credit facility, the Navajo Nation now reviews the Leasehold Mortgage and attendant rights-of-ways (the "Mortgage") and the Nation finds this security measure appropriate and

unobjectionable, as NTEC is required to provide this security measure to provide the lenders added assurances of NTEC's performance under the credit facility. See **Exhibit "C"**.

- F. The Leasehold Mortgage, Exhibit C, at paragraph 19, refers to Governing Law that shall be the State of New York; and the Credit Agreement, Exhibit B, at Article XV, generally provides a waiver of sovereign immunity by NTEC, consent to the jurisdiction of New York and agreement to arbitration governed by the American Arbitration Association's Commercial Arbitration Rules for any disputes with NTEC.
- G. NTEC's is authorized and empowered by its enabling legislation, Navajo Nation Council Resolution CAP-20-13 as amended by Navajo Nation Council Resolution CO-58-13, and its Operating Agreement to borrow funds to further and accomplish the purpose and interests of NTEC.

Section Three. Approvals, Waiver, Authorizations, and Directives.

- A. The Navajo Nation hereby approves and authorizes the Navajo Transitional Energy Company, LLC, through its' Management Committee (the "Management Committee") and on behalf of the Navajo Nation, to pledge 100% of its present, and any future, management interests of the Navajo Nation in NTEC or NTEC's subsidiaries for further securing a credit facility. See **Exhibit A** and **B. Exhibit C** attach to Exhibit A (the Pledge) shall state under Paragraph 1 "100% of the shares of NTEC is not part of the pledged collateral," and under Paragraph 2 the word "membership" shall be deleted and replaced with the word "management.""
- B. As the lessor of the Navajo Mine lease, the Mine Plant lease and grantor of the rights-of-ways, the Nation approves of NTEC granting added assurances to Key Bank National Association, Sumitomo Mitsui Banking Corporation, and Caterpillar Financial Services Corporation, through the security measures provided by the Mortgage. See **Exhibit C**.
- C. The Navajo Nation Council consents to the United States Bureau of Indian Affairs' approval of Mortgage, as required by applicable federal regulations, 25 C.F.R Parts 162 (for the Mine Plant Lease) and 211 (for the Mine Lease).

- D. The Navajo Nation also consents to the application of the Mortgage to NTEC's rights-of-ways to the extent allowed by law. See **Exhibit C**.
- E. The Navajo Nation Council authorizes the NTEC Management Committee to amend its Operating Agreement to be consistent with this legislation

Section C. Savings, Severability, and Survivability.

Should any provision herein be determined invalid by the Navajo courts or other court of competent jurisdiction, all other provisions of this legislation not determined to be invalid shall remain in full force and effect.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 11 in Favor and 03 Opposed, this 15th day of September, 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council

10-18-17

Date

Motion: Honorable Lee Jack, Sr.
Second: Honorable Tuchoney Slim, Jr.



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

RODGERICK T. BEGAY
DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Levon Henry, Chief Legislative Counsel
Office of Legislative Counsel

FROM:


Rodgerick T. Begay, Deputy Attorney General
Office of the Attorney General/NNDOJ

DATE: July 12, 2017

SUBJECT: **Exhibits for Proposed Legislation 0254-17**

Generally, exhibits to legislations are posted online for public view. However, pursuant to 2 N.N.C. §164(A)(6), "[a]ny matters or exhibits determined by the Navajo Nation Department of Justice to be confidential shall be properly marked 'confidential' and shall not be placed on the website or otherwise released." There are three exhibits (A, B, and C) for the above referenced legislation in which DOJ deems confidential.

The Navajo Nation Privacy and Access to Information Act, 2 N.N.C. sec. 81 et seq. (the "Privacy Act"), defines certain records as private or otherwise protected documents, and provides such protected records shall not be disclosed except pursuant to certain procedures, which are not at issue here. The Privacy Act prohibits the disclosure of records that describe "the negotiating position of the Navajo Nation before a contract, lease or other agreement is entered into." 2 N.N.C. sec 85(7). Until an agreement is formally executed, all drafts of such agreements are subject to continued negotiation. The proposed NTEC legislation has attachments for a Pledge Agreement, a Leasehold Mortgage, and a Credit Agreement. These three attachments are in draft form. The public disclosure of these three documents is prohibited under the Privacy Act, and shall not be attached to the public distribution of the proposed legislation.

23rd Navajo Nation Council

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Special Session

Friday, September 15, 2017

Legislation No: 0254-17 (Main Motion)

Motion: Lee Jack, Sr.

Second: Tuchoney Slim, Jr.


ALL DELEGATES:

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

GRAND TOTAL

11 3

CERTIFICATION:



Honorable LoRenzo C. Bates

Speaker