

LEGISLATIVE SUMMARY SHEET

Tracking No. 0194-17

DATE: May 24, 2017

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL;
APPROVING THE REPLACEMENT LEASE BETWEEN THE NAVAJO NATION AND SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ARIZONA PUBLIC SERVICE COMPANY, TUCSON ELECTRIC POWER COMPANY, NEVADA POWER COMPANY D/B/A NV ENERGY, AND DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES; LEASE AMENDMENT NO.1 TO EXISTING LEASE; APPROVAL OF RESTRICTIVE COVENANTS RELATED TO ASH DISPOSAL AREA AND SOLID WASTE LANDFILL AND POND SOLIDS; WAIVER OF SOVEREIGN IMMUNITY

PURPOSE: This legislation approves the Replacement Lease for the Navajo Generating Station to take effect December 2019, approves an Amendment to the current, existing lease for the Navajo Generating Station, approves restrictive covenants for the ash disposal area, solid waste landfill and pond solids at the NGS site, and waives the Navajo Nation's sovereign immunity on issues related to court action, and an agreement not to regulate the Lessees.

NOTE: the waiver of Sovereign Immunity will require a 2/3rds vote of the full Council.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: SNOTAH
Website Posting Time/Date: _____
Posting End Date: 5/29/2017
Eligible for Action: 5/30/2017

Health, Education & Human Services Committee

THENCE

Resources & Development Committee

THENCE

Budget & Finance Committee

THENCE

Naa'biik'íyáti' Committee

THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23rd NAVAJO NATION COUNCIL -- Third Year, 2017

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0194-17

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES
AND DEVELOPMENT, BUDGET AND FINANCE, NAABIK'ÍYÁTI'
COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE
REPLACEMENT LEASE BETWEEN THE NAVAJO NATION AND SALT RIVER
PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT,
ARIZONA PUBLIC SERVICE COMPANY, TUCSON ELECTRIC POWER
COMPANY, NEVADA POWER COMPANY D/B/A NV ENERGY, AND
DEPARTMENT OF WATER AND POWER OF CITY OF LOS ANGELES; LEASE
AMENDMENT NO.1 TO EXISTING LEASE; APPROVAL OF RESTRICTIVE
COVENANTS RELATED TO ASH DISPOSAL AREA AND SOLID WASTE
LANDFILL AND POND SOLIDS; WAIVER OF SOVEREIGN IMMUNITY

Section One. Authority

- A. The Navajo Nation established the Health, Education and Human Services Committee (HEHSC) as a Navajo Nation Council standing committee with the power to ensure compliance and implementation of laws and policies of the Navajo Nation relating to health, social services, education, general government services and human services. 2 N.N.C. §§ 400 (A), 401 (B)(2).
- B. The Navajo Nation established the Resources and Development Committee as a Navajo Nation Council standing committee to exercise oversight authority over

1 economic and community development for the following purpose: to oversee
2 regulation of activities on Navajo Nation lands for disposition or acquisition of
3 resources, surface disturbance, or alternation of the natural state of the resource,
4 including the enforcement and administration of application Navajo Nation and
5 federal laws, regulations, guidelines, and administrative procedures in the
6 development and use of resources as a good steward. 2 N.N.C. §§ 500(A), (C)(2).

- 7 C. The Navajo Nation established the Budget and Finance Committee as a standing
8 committee of the Navajo Nation Council and empowered the Committee to coordinate
9 and review all fiscal, financial and investment activities of the Navajo Nation and its
10 enterprises, as well as other agencies, federal, state, regional and private, expending or
11 seeking to expend funds within the Navajo Nation or for the benefit of the Navajo
12 People. 2 N.N.C. §§ 300(A), 301(B)(5).
- 13 D. Pursuant to 2 N.N.C. §164 (A)(9), a proposed resolution that requires final action by
14 the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee before
15 it is heard by the Navajo Nation Council.
- 16 E. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C §102
17 (A).

18 19 **Section Two. Findings**

- 20 A. The Navajo Generating Station (NGS), located in LeChee Chapter, provides
21 electricity to customers in Arizona and Nevada by operating a 2,250 megawatt
22 power station burning low sulfur bituminous coal from the Peabody Western Coal
23 Company's Kayenta Mine and employs more than 400 full-time employees, more
24 than 90% of whom are Navajo. See www.ngspower.com.
- 25 B. The Navajo Nation entered into a lease for the operation of NGS with Arizona
26 Public Service Company, Department of Water and Power of City of Los Angeles,
27 Nevada Power Company, Salt River Project Agricultural Improvement and Power
28 District, and Tucson Gas and Electric Company, (NGS Partners); the term of the
29 lease begins in 1969 and continues to December, 2019, a period of 50 years. See
30

1 Indenture of Lease, Navajo Units 1, 2 and 3 (September 1969) attached as **Exhibit**
2 **B.**

3 C. In July 2013 the Navajo Nation approved *Amendment No. 1 to the Indenture Lease*
4 *Effective December 23, 1969 Between the Navajo Nation and Arizona Public*
5 *Service Company, Department of Water and Power of City of Los Angeles, Nevada*
6 *Power Company, Salt River Project Agricultural Improvement and Power District*
7 *and Tucson Electric Power Company*, which extended the term of the Existing
8 Lease and consent to renewal or extension of 323 rights-of-way and easements
9 through December 2044. Amendment No. 1 was not executed by the NGS owners.
10 See CJY-40-13 (Rescinding CAP-21-13) attached as **Exhibit C.**

11 D. The Navajo Nation and the NGS Partners have negotiated the Replacement Lease
12 between the Navajo Nation and Salt River Project Agricultural Improvement and Power
13 District, Arizona Public Service Company, Tucson Electric Power Company, Nevada
14 Power Company d/b/a NV Energy, and Department of Water and Power of City of Los
15 Angeles, which address matters related to the retirement of NGS and remediation of the
16 NGS site, the disposition of related buildings, structures, and facilities located on the
17 leased premises, the long-term environmental monitoring of certain facilities on the
18 leased premises and the operation and maintenance of transmission facilities located on
19 the leased premises. The Replacement Lease is attached as **Exhibit A.**

20 E. Retirement means the removal of NGS assets, excluding the Navajo Nation
21 retained assets, and restoration of the surface of the NGS site.

22 F. Remediation means the closure, monitoring and other related activities required
23 to take place on the NGS site, including but not limited to, monitoring and
24 remediation of the perched water; closure in place and monitoring of the Ash
25 Landfill; interim maintenance of repurposed and new ponds; remediation of solid
26 waste, pond solids, and coal combustion residuals as necessary; remediation of
27 specified structures and materials through closure in place; and continuation of
28 remediation and monitoring begun during the NGS Retirement Period.

29 G. The term of the Replacement Lease will begin on December 23, 2019 for 35
30 years, ending on December 22, 2054. The Leased Premises contain two tracts:

1 (1) Tract A is the land associated with NGS and its related facilities; and (2)
2 Tract B is the leased land associated with the NGS transmission facilities. The
3 Replacement Lease allows for a one-time thirty-five (35) year lease renewal for
4 Tract B. No renewal for Tract A is allowed.

5 H. Retirement of the NGS Site shall occur between December 23, 2019 and December 23,
6 2024 (also referred to as the "NGS Retirement Period"). Retirement shall include the
7 removal of NGS assets, excluding any assets the Navajo Nation has the option to keep,
8 and restoration of the surface of the NGS Site. This work shall be done in accordance
9 with the Navajo Project Retirement Guidelines (or "Retirement Guidelines"), which
10 were developed jointly by the Navajo Nation and the NGS Owners to provide the
11 framework for the Retirement activities. The Retirement Guidelines will be used as a
12 basis for a more elaborate Retirement Plan to be developed by the NGS Owners. A
13 joint Consultation Group shall be developed between the NGS Owners and the Navajo
14 Nation that will ensure open communication and information sharing during the
15 retirement process. The Retirement Guidelines are included with the Replacement
16 Lease.

17 I. The Retirement Guidelines also cover remediation activities related to the NGS Site,
18 which include monitoring and remediation of perched water and the closure,
19 monitoring, and maintaining of certain items that will be closed in place on the NGS
20 Site, which are the Ash Landfill, a solid waste landfill and certain ponds.

21 J. The total rental payments from the NGS Partners to the Navajo Nation shall be
22 \$110,040,989 as inducement for the Navajo Nation to enter into the
23 Replacement Lease term of 35 years for the entire leased premises and to consent
24 to one or more § 323 grants for portions of or the entire leased premises.

25 K. The Navajo Nation has the right to keep certain NGS assets under Exhibit 9 of the
26 Existing Lease. Under the Replacement Lease, the Navajo Nation has the option to also
27 keep additional assets. The Exhibit 9 assets and these additional assets are collectively
28 referred to as the Navajo Nation Retained Assets and the Navajo Nation shall have until
29 December 22, 2018 to determine which assets it wishes to retain. The Navajo Nation
30

1 has pre-identified certain NGS assets it wishes to retain in order to spur economic
2 development. These assets are:

- 3 1. A railroad track and related facilities valued at \$120,000,000;
- 4 2. Lake Pump Facility, electrical distribution lines from the 230kV switchyard
5 and the 230kV Switchyard valued at \$41,000,000;
- 6 3. Fences and equipment making up the Air Monitoring Station; and,
- 7 4. \$18,132,500 to be paid in equal installments over three (3) years beginning
8 January 1, 2020.

9 L. On December 23, 2019 and for 35 years the Navajo Nation will receive 300
10 megawatts of the 500kV transmission use and capacity on the Southern
11 Transmission System and 200 megawatts of the 500kV transmission use and
12 capacity on the Western Transmission System, in addition, the NGS Partners
13 shall fund the operation and maintenance for a 10 year period beginning
14 December 23, 2019 to December 22, 2029.

15 M. The Replacement Lease, attached as **Exhibit A**, requires specific action from the
16 Navajo Nation, including but not limited to:

- 17 1. The Navajo Nation will consent to the NGS Partner's application to the
18 Secretary of the Interior for rights-of-way and easements of tribal lands for the
19 power plant operation and associated operation needs under 25 U.S.C. § 323.
20 *See* Section 2(C).
- 21 2. The Navajo Nation agrees lease rental payments, identified in paragraph J
22 above, are in lieu of all taxes, assessments, levies, imposts, exactions or charges
23 of any kind made or imposed by the Navajo Nation; the Navajo Nation
24 covenants that it will not tax or assess any rights, property or activity associated
25 with the past generation of electricity at the NGS Site. *See* Section 10.
- 26 3. The Navajo Nation will identify and retain certain assets within the leased
27 premise and acknowledges the NGS Partners have not made or will not make
28 any representation of warranty, express or implied, with respect to the identified
29 property; the Navajo Nation accepts the property As-Is. *See* Section 9 & 11(F).
30

- 1 4. The Navajo Nation agrees that 1,500 acre feet of water out of the 50,000 acre
2 feet annually allocated to the State of Arizona, pursuant to Article III(a)(I) of the
3 Upper Colorado River Basin Compact, shall be available to the NGS Partners
4 during the Retirement period. The Salt River Project holds certificates of water
5 right from Arizona and once the NGS water allotment is no longer necessary the
6 Salt River Project will request termination of the certificates of water right. Salt
7 River Project will support the Navajo Nation's efforts to acquire the use of a
8 portion of the 50,000 acre-feet annually allocated to Arizona. Salt River Project
9 will also provide technical assistance to the Navajo Nation to assist the Nation
10 with the diversion of up to 950 acre-feet of water per year from Lake Powell for
11 the benefit of LeChee and other Navajo communities in the vicinity of NGS.
12 *See Section 14.*
- 13 5. The Navajo Nation agrees, should any NGS Partner default on rental payments
14 or other monies due the Navajo Nation, or should the Navajo Nation default for
15 nonpayment of monies owed to the NGS Partners, either party may apply for
16 injunctive relief, collect payment of monies due, and get enforcement of
17 compliance from the defaulting party in a federal or state court. *See Section 17.*
- 18 6. The Navajo Nation agrees, for any claims, disputes or other matters in question
19 not pertaining to default for monies owed, the parties will resolve the claim,
20 dispute or other matter in question through, first, Informal Consultation, next,
21 Mediation, then Judicial Review. Judicial Review shall be in federal or state
22 court. *See Section 18.*
- 23 7. The Navajo Nation agrees that Navajo preference in employment will apply;
24 recognizing the need for critical or specialized skills will require selecting the
25 most qualified person. *See Section 22.*
- 26 8. The Navajo Nation agrees that the Navajo Nation will not directly or indirectly
27 regulate or attempt to regulate the NGS Partners relative to the leased premises
28 or activities that are the subject of the Replacement Lease. *See Section 26.*
29
30

1 9. The Navajo Nation consents to a waiver of sovereign immunity for any action in
2 any court of the United States or in any Arizona court for default or other claims
3 or disputes. *See* Section 19.

4 10. The Navajo Nation waives any right to a trial by jury in litigation directly or
5 indirectly arising out of, under or in connection to the Replacement Lease. *See*
6 Section 46.

7 11. The Navajo Nation agrees to waive and release each of the NGS Partners of any
8 claim or claims the Navajo Nation has, or may have, under the Existing Lease
9 for damage resulting from the NGS Partner's operation or ownership of the
10 Navajo Generating Station; however, the Navajo Nation reserves and retains the
11 right to bring certain claims under the Comprehensive Environmental Response,
12 Compensation, and Liability Act, also known also as Superfund, and the
13 Resource Conservation and Recovery Act, in federal court for response cost or
14 equitable relief but not for resource damage related to the closures in place. *See*
15 Section 36.

16 N. The Parties must also execute, and the Secretary must approve, Restrictive
17 Covenants related to the "closures in place" located on the NGS site, which are the
18 Ash Disposal Area, the solid waste landfill and pond solids.

19 O. The parties to the Replacement Lease are not bound by the Replacement Lease until
20 all parties have signed and delivered the lease; however, the Replacement Lease and
21 Supplemental Agreement are void if not signed by the Navajo Nation on or before
22 July 1, 2017. *See* Section 31.

23 24 **Section Three. Amendment No. 1 to Existing Lease**

25 A. The Existing Lease is amended to state that any removal and restoration activities
26 (as those terms are used in the Existing Lease) related to NGS, all related facilities
27 and the equipment of the Lessees, shall be governed exclusively by the Retirement
28 Guidelines.

29 B. The Navajo Nation agrees that, among other things, it will not, directly or indirectly,
30 regulate or attempt to regulate the Lessees in the construction, maintenance,

1 operation, removal, restoration, remediation, or monitoring of NGS, any related
2 facilities and equipment or the transmission systems. *See* Amendment No. 1 to
3 Existing Lease, Section 26.

- 4 C. The Lessees, except for Los Angeles who sold its NGS ownership interest in NGS
5 to Salt River Project, have agreed to provide assurances of a minimum coal royalty
6 payment due to the Navajo Nation. The total assurances being guaranteed to the
7 Nation for the 2018 and 2019 calendar years will be \$39,012,562.

8
9 **Section Four. Restrictive Covenant**

- 10 A. There will be two Restrictive Covenants in relation to the NGS site: The Restrictive
11 Covenant for the Ash Disposal Areas addresses the fact that the Lessees will close
12 in place material on, in and under an Ash Disposal Area located within the leased
13 premises. The Restrictive Covenant for the solid waste landfill and the pond solids
14 addresses the fact that the Lessees will close in place material on, in and under a
15 solid waste landfill and certain ponds located on the NGS site. There will be certain
16 restrictions as to the use of the lands covered under these Restrictive Covenants in
17 perpetuity whereby use of the lands shall not disturb the integrity of the final cover,
18 liner(s), or any other component, or monitoring system related to these closures in
19 place.

- 20 B. The Lessees will have the right to enforce the Restrictive Covenants on any person
21 who is found to be in violation of its terms. The Lessees agree to first notify the
22 Navajo Nation government of any alleged violation and the Navajo Nation
23 government will have ninety (90) days to cure the violation, unless the violation
24 poses an imminent threat to health, safety or the environment. If the Navajo Nation
25 government fails to cure the violation, the Lessees may then take action in
26 accordance with the terms of the Restrictive Covenant.

27
28 **Section Five. Waiver of Sovereign Immunity, Agreement Not to Regulate,**
29 **Applicable Law**
30

1 A. Waiver of Sovereign Immunity. The Replacement Lease, the Restrictive Covenant
2 for the Ash Disposal Area and the Restrictive Covenant for the Solid Waste Landfill
3 and Pond Solids each contain a waiver of sovereign immunity. In approving these
4 documents, the Navajo Nation will be agreeing to the waiver of sovereign immunity
5 for any action in any court of the United States or in any Arizona court for default or
6 other claims or disputes that arise between the Parties in accordance with the terms
7 of these documents.

8 B. Navajo Nation's Agreement Not to Regulate Lessees. The Replacement Lease, the
9 Restrictive Covenant for the Ash Disposal Area and the Restrictive Covenant for the
10 Solid Waste Landfill and Pond Solids each contain language that the Navajo Nation
11 agrees that the Navajo Nation will not directly or indirectly regulate or attempt to
12 regulate the Lessees relative to the leased premises or activities that are the subject
13 of Section 26 of the Replacement Lease.

14 C. Applicable Law. The activities covered under the Replacement Lease, the
15 Restrictive Covenant for the Ash Disposal Area and the Restrictive Covenant for the
16 Solid Waste Landfill and Pond Solids shall be governed exclusively by federal law
17 or, if federal law does not apply, the laws of the State of Arizona.

18
19 **Section Six. Rescinding CJY-40-13**

20 The Navajo Nation hereby rescinds CJY-40-13, *Rescinding CAP-21-13 and*
21 *Recommending and Approving Amendment No. 1 to the Indenture of Lease Effective*
22 *December 23, 1969 Between the Navajo Nation and Arizona Public Service Company,*
23 *Department of Water and Power of City of Los Angeles, Nevada Power Company, Salt*
24 *River Project Agricultural Improvement and Power District.*

25
26 **Section Seven. Approval**

27 A. The Navajo Nation approves the Replacement Lease between the Navajo Nation
28 and Salt River Project Agricultural Improvement and Power District, Arizona Public
29 Service Company, Tucson Electric Power Company, Nevada Power Company dba
30

1 NV Energy, and Department of Water and Power of City of Los Angeles in the form
2 attached as **Exhibit A**.

3 B. The Navajo Nation hereby recommends and approves the Amendment No. 1 to the
4 Existing Lease between the Navajo Nation and APS, Los Angeles, Nevada, Salt
5 River Project, and Tucson and deems it in the best interest of the Navajo Nation to
6 approve the Amendment No. 1 to the Existing Lease.

7 C. The Navajo Nation hereby approves the Restrictive Covenant for the Ash Disposal
8 Area and deems it in the best interest of the Navajo Nation to approve this
9 restrictive covenant.

10 D. The Navajo Nation hereby approves the Restrictive Covenant for the Solid Waste
11 Landfill and Pond Solids and deems it in the best interest of the Navajo Nation to
12 approve this restrictive covenant.

13 E. The Navajo Nation hereby recognizes that the Navajo Nation Division of Economic
14 Development shall incur costs related to economic development of the NGS site and
15 in the vicinity of the NGS site prior to the Effective Date of the Replacement Lease.
16 These costs are related to the hiring of a Commercial Developer and
17 interns/temporary workers. The Navajo Nation Division of Economic Development
18 shall be reimbursed up to \$257,500 related to this economic development to be paid
19 within 60 days after the Nation receives its first lease payment under the
20 Replacement Lease.

21 F. Any Surrender under the Replacement Lease shall be approved by the Navajo
22 Nation President in accordance with the Replacement Lease terms and in
23 consultation with appropriate Navajo Nation departments and programs, including
24 the Division of Natural Resources and the Navajo Nation Environmental Protection
25 Agency.

26 G. The Navajo Nation provides its consent to any modifications of any 323 Grant
27 related to any relevant Surrender that may be done under the Replacement Lease, as
28 long as the Surrender has been done in accordance with the Replacement Lease.
29
30

1 **Section Eight. Navajo Nation Requests for BIA Waivers and Exceptions under 25**
2 **C.F.R. Part 162 and Part 169**

3 A. In accordance with 25 C.F.R. § 162.426(b) and 25 C.F.R. § 169.118(b), the Navajo
4 Nation has determined that the varying compensation and non-monetary
5 compensation the Navajo Nation will receive under the Replacement Lease in
6 relation to both the Leased Premises and in providing the Navajo Nation's consent
7 for any § 323 Grants Lessees shall obtain in relation to the Replacement Lease is in
8 the Navajo Nation's best interest.

9 B. The Navajo Nation hereby requests a waiver by the Secretary, pursuant to 25 C.F.R.
10 §1.2, of the application of the following: 25 C.F.R. §§162.014(a)(2) and 162.014(b)
11 and 25 C.F.R. 169.9(b), finding such waivers to be in the Navajo Nation's best
12 interest and hereby stating:

- 13 1. The Navajo Nation affirmatively waives the application of the laws of the
14 Navajo Nation, and agrees to the application of federal law and, where
15 federal law does not apply, the laws of the State of Arizona. *See*
16 Replacement Lease, Section 3.
- 17 2. The Navajo Nation affirmatively waives the jurisdiction of the Navajo
18 Nation courts and agrees that: (1) the remedies in Sections 17 and 18 of the
19 Replacement Lease are the exclusive remedies to address Disputes among
20 the Parties and claimed breaches of the Replacement Lease; and (2) the
21 federal courts, and, where federal law does not apply, the Arizona state
22 courts, and no other courts, shall have exclusive jurisdiction to consider and
23 decide Disputes or claimed breaches of the Replacement Lease, as provided
24 in Sections 17 and 18 of the Replacement Lease.
- 25 3. The Navajo Nation affirmatively waives and consents to the waiver of
26 sovereign immunity from suit by the Lessees. *See* Replacement Lease at
27 Section 19.
- 28 4. The Nation affirmatively covenants that it will not, directly or indirectly,
29 Regulate or attempt to Regulate the Lessees. *See* Replacement Lease at
30 Section 26.

1 C. The Nation hereby gives its consent to the Secretary's waiver and making of
2 exceptions to the following, which the Navajo Nation determines to be in its best
3 interest:

4 1. The waiver by the Secretary, pursuant to 25 C.F.R. §1.2, of the application
5 of the following, in relation to the Replacement Lease and the Navajo
6 Nation's consent for the 323 Grants contained in the Replacement Lease:

- 7 a. 162.413(d)(1): The Navajo Nation deems the waiver of the
8 requirement that the Replacement Lease require Lessees to hold the
9 United States and the Navajo Nation harmless from any loss,
10 liability, or damages resulting from the Lessees' use or occupation of
11 the Leased Premises to be in the Navajo Nation's best interest.
- 12 b. 162.413(d)(2): The Navajo Nation deems the waiver of the
13 requirement that the Replacement Lease require Lessees indemnify
14 the United States and the Navajo Nation against all liabilities or costs
15 relating to the use, handling, treatment, removal, storage,
16 transportation, or disposal of hazardous materials, or the release or
17 discharge of any hazardous material from the Leased Premises that
18 occurs during the Lease Term, regardless of fault, with the exception
19 that the Lessees are not required to indemnify the Navajo Nation for
20 liability or cost arising from the Navajo Nation's negligence or
21 willful misconduct is in the Navajo Nation's best interest.
- 22 c. 162.449(b): The Navajo Nation has determined that the waiver of the
23 consent requirements or obtaining BIA's approval of any assignment
24 of the Replacement Lease is in the Navajo Nation's best interest.
- 25 d. 169.120(b): The Navajo Nation has determined that waiver of the
26 requirement that NGS Owners be required to pay for all damages to
27 the land for which the right-of-way is granted is in the Navajo
28 Nation's best interest.
- 29 e. 169.125(c)(5)(iii): The Navajo Nation has determined that the
30 requirement that the NGS Owners restore the land related to the

1 rights-of-ways as nearly as may be possible to its original condition,
2 to the extent compatible with the purpose for which the right-of-way
3 was granted, or reclaim the land if agreed to by the Navajo Nation is
4 in its best interest.

5 f. 169.125(c)(5)(xii): The Navajo Nation has determined that waiver of
6 the valuation requirements of 169.105 is in the Navajo Nation's best
7 interest.

8 g. 169.125(c)(6)(i): The Navajo Nation deems the waiver of the
9 requirement that the grant of right-of-way require the NGS Owners
10 to hold the United States and the Navajo Nation harmless from any
11 loss, liability, or damages resulting from the use or occupation of the
12 premises to be in the Navajo Nation's best interest.

13 h. 169.125(c)(6)(ii): The Navajo Nation deems the waiver of the
14 requirement that the NGS Owners indemnify the United States and
15 the Navajo Nation against all liabilities or costs relating to the use,
16 handling, treatment, removal, storage, transportation, or disposal of
17 hazardous materials, or the release or discharge of any hazardous
18 material from the premises that occurs during the term of the grant,
19 regardless of fault, with the exception that the NGS Owners are not
20 required to indemnify the Navajo Nation for liability or cost arising
21 from the Navajo Nation's negligence or willful misconduct is in the
22 Navajo Nation's best interest.

23 2. The making of exceptions by the Secretary to the application of the
24 following, in relation to the Replacement Lease and the Navajo Nation's
25 consent for the 323 Grants contained in the Replacement Lease:

26 a. 162.417(c): The Navajo Nation has determined that waiver of the
27 due diligence requirements related to permanent improvements in
28 this subsection is in the best interest of the Navajo Nation.

29 b. 162.428(a): The Navajo Nation has determined that not having
30 compensation reviews and/or adjustments in relation to the

1 compensation received under the Replacement Lease is in the Navajo
2 Nation's best interest.

- 3 c. 162.413(a)(9) & 162.434(f)(2): The Navajo Nation has determined
4 that the waiver of a performance bond or alternative form of security
5 is in its best interest.
- 6 d. 162.437(c): The Navajo Nation has determined that the waiver of the
7 requirement for insurance in this subsection is in the Navajo Nation's
8 best interest.
- 9 e. 162.420(a): The Navajo Nation hereby states that it has negotiated
10 compensation satisfactory to the Navajo Nation, the Navajo Nation
11 waives valuation and that the Navajo Nation has determined that
12 accepting such negotiated compensation and waiving valuation is in
13 its best interest.
- 14 f. 169.102(b)(6): The Navajo Nation has determined that a waiver of a
15 valuation required under 169.114 is in the Navajo Nation's best
16 interest.
- 17 g. 169.102(b)(3) & 169.103(f)(2): The Navajo Nation has determined
18 that the waiver of a bond, insurance or alternative form of security is
19 in its best interest.
- 20 h. 169.105(c): Waiver of the due diligence requirements required in
21 169.105 is in the Navajo Nation's best interest.
- 22 i. 169.110(a): The Navajo Nation has agreed to compensation that is
23 satisfactory to the Navajo Nation, the Navajo Nation hereby waives
24 valuation, and the Navajo Nation has determined that accepting such
25 agreed-upon compensation and waiving valuation is in its best
26 interest.

27 D. Amendment No. 1 to the Existing Lease

- 28 1. The Navajo Nation affirmatively covenants that it will not, directly or
29 indirectly, Regulate or attempt to Regulate the Lessees. *See* Section 4 of
30 Amendment No. 1 to the Existing Lease.

1 2. The Navajo Nation gives its consent to the waiver by the Secretary, pursuant
2 to 25 C.F.R. §1.2, of the application of the following regulations in Title 25,
3 Code of Federal Regulations, Part 162: 162.014 (a)(2) and 162.014(b) and
4 deems such a waiver as being in the best interest of the Navajo Nation.

5
6 **Section Nine. Authorization**

7 The Navajo Nation authorizes the Navajo Nation President to execute any and all
8 documents related to the Replacement Lease.