

**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0005-16

**DATE:** January 5, 2016

**TITLE OF RESOLUTION:** AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING CERTAIN MODIFICATIONS TO THE LOAN BETWEEN THE NAVAJO NATION AND NAVAJO NATION GAMING ENTERPRISE AND APPROVING THE DOCUMENTS RELATED TO THE MODIFICATION OF THE GAMING LOAN

**PURPOSE:** This resolution, if approved, will approve a modification of the loan agreement between the Navajo Nation and the Navajo Nation Gaming Enterprise.

**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: 11/11/2016  
Website Posting Time/Date: 4:12pm 11/11/16  
Posting End Date: 11/11/2016  
Eligible for Action: 11/12/2016

Resources & Development Committee

THENCE

Budget & Finance Committee

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Naa'bik'íyáti' Committee

THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23<sup>rd</sup> NAVAJO NATION COUNCIL – Second Year, 2016

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0005-16

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE AND  
NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING  
CERTAIN MODIFICATIONS TO THE LOAN BETWEEN THE NAVAJO NATION AND  
NAVAJO NATION GAMING ENTERPRISE AND APPROVING THE DOCUMENTS  
RELATED TO THE MODIFICATION OF THE GAMING LOAN

**Section One. Findings.**

- A. Pursuant to 2 N.N.C. §102(A), the Navajo Nation Council shall be the governing body of the Navajo Nation.
- B. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee before it is heard by the Navajo Nation Council.
- C. Pursuant to 2 N.N.C. § 300 (C)(1)(3) the Budget and Finance Committee is authorized to recommend adoption of resolutions designed to strengthen the fiscal and financial position of the Navajo Nation.
- D. Pursuant to 2 N.N.C. § 501 (C)(1), the Resources and Development Committee exercises oversight authority over gaming for the purpose of establishing Navajo Nation policy with respect to the optimum utilization of all Navajo Nation resources and to protect the rights, interests, sacred sites and freedoms of the Navajo Nation and People to such resources, now and for future generations.

- 1 E. Pursuant to 12 N.N.C. §901(A), the Navajo Nation Permanent Fund was established by  
2 the Navajo Nation Council.
- 3 F. Pursuant to 16 N.N.C. §201, the Navajo Nation Land Acquisition Trust Fund was  
4 established by the Navajo Nation Council.
- 5 G. Pursuant to 5 N.N.C. §1701, the Navajo Nation Gaming Enterprise was established as a  
6 tribal gaming enterprise of the Navajo Nation;
- 7 H. The Navajo Nation Gaming Enterprise is authorized by the Navajo Nation to develop  
8 and operate Navajo casinos within the Navajo Nation, which include: Fire Rock Navajo  
9 Casino ("FRNC"), Flowing Water Navajo Casino ("FWNC"), Northern Edge Navajo  
10 Casino ("NENC") and Twin Arrows Navajo Casino Resort ("TANCR" and collectively  
11 with FRNC, FWNC and NENC, the "Navajo Casinos").
- 12 I. In order to develop the Navajo casinos the Navajo Nation Gaming Enterprise obtained  
13 loans from the Navajo Nation, as recommended by the Investment Committee,  
14 approved by the Budget and Finance Committee, and signed by the Navajo Nation  
15 President, to provide funds to develop and construct the Navajo casino (the "Gaming  
16 Loan").
- 17 J. In order to loan funds under the Gaming Loan to the Navajo Nation Gaming Enterprise,  
18 the Navajo Nation used the fund principals from the Navajo Nation Permanent Fund,  
19 Land Acquisition Trust Fund, and other trust funds (collectively the "Master Trust  
20 Fund").
- 21 K. The Gaming Loans were approved and executed in accordance with all applicable  
22 Navajo laws, including the Navajo Nation Bond Financing Act, 12 N.N.C. §§1300-  
23 1350, Navajo Nation Gaming Enterprise Plan of Operation, 5 N.N.C. §§1701 – 1719,  
24 the Navajo Nation Master Investment Policies, and the Gaming Loan was reviewed and  
25 approved by the Navajo Nation Controller and Navajo Nation Department of Justice.
- 26 L. The Navajo Nation Gaming Enterprise also obtained loans from (a) the Navajo Tribal  
27 Utility Authority ("NTUA") for the benefit of the TANCR, the FWNC and the NENC  
28 (the "Utility Loans"), and (b) the Navajo Hopi Land Commission acting by and through  
29 the Navajo Hopi Land Commission Office (the "Commission" and together with  
30 NTUA, the "Subordinate Lenders") for the benefit of the TANCR Project (the

1 “Commission Loan” and together with the Utility Loans, the “Gaming Subordinate  
2 Loans”), pursuant to which the Navajo Nation Gaming Enterprise has granted security  
3 interest in certain pledge revenues and other collateral relating to the Navajo Casinos.

4 M. At the request of the Navajo Nation Gaming Enterprise, the Navajo Nation is agreeable  
5 to modifying the Gaming Loan.

6 N. The Gaming Enterprise has requested certain modifications to the Gaming Loan  
7 including, without limitation, an interest rate reduction, an extended term, allowance  
8 for additional capital to grow the Navajo Nation Gaming Enterprise, and provide more  
9 gaming revenue through the Navajo Nation Gaming Distribution Plan and job creation  
10 and business development. Navajo Nation Gaming Enterprise Term Sheet attached as  
11 Exhibit A.

12 O. The Navajo Nation Gaming Enterprise attempted to negotiate with the Navajo Nation  
13 Investment Committee with no conclusion.

14 P. In connection with the modification to the Gaming Loan and in accordance with the  
15 Term Sheet, it will be necessary for the Navajo Nation and the Navajo Nation Gaming  
16 Enterprise to modify the Gaming Loan, and other related documents if necessary.

17 Q. The Navajo Nation Gaming Enterprise believes that the terms and conditions set forth  
18 in the Term Sheet should move forward through the legislative process.

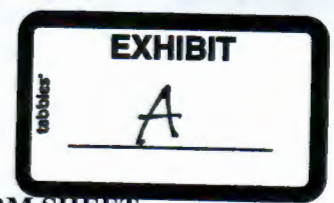
19 R. It is in the best interest of the Navajo Nation that the Gaming Loan be approved and  
20 executed by the Navajo Nation.

## 21 22 **Section Two. Approval**

23 A. The Navajo Nation hereby approves: (a) the modification of the Gaming Loan pursuant  
24 to the Term Sheet and (b) the negotiation, approval, and execution of the Gaming  
25 Loans Documents, and such other instruments and agreements as may be contemplated  
26 and documentation as may be required to give effect to the modification of the Gaming  
27 Loan and such other actions as may hereafter be necessary and appropriate to carry out  
28 the obligations of the Navajo Nation Gaming Enterprise under the amended Gaming  
29 Loans Documents, consistent with the Navajo Nation law.  
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1 B. The Navajo Nation hereby direct and orders the Navajo Nation Department of Justice  
2 and the Office of the Controller, in coordination with the Gaming Enterprise, to modify  
3 the Gaming Loan in accordance with this Resolution and attachments.

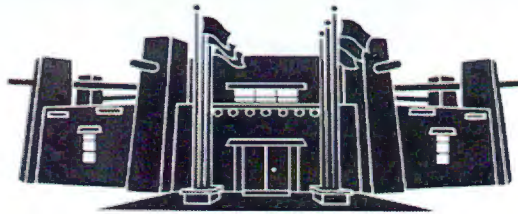
4 C. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any  
5 and all documents necessary to effectuate the intent and purpose of this Resolution.  
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## NAVAJO NATION/NAVAJO NATION GAMING ENTERPRISE TERM SHEET

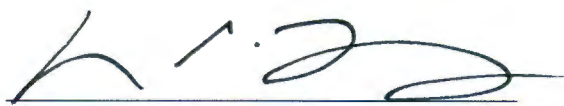
Proposal to Amend the April 3, 2012 NN/NNGE Amended and Restated Consolidated Loan Agreement  
("Gaming Loan Agreement")

Term Loan Amount	Up to the Outstanding Principal Amount but not to exceed \$212,078,943 – consisting of the outstanding principal of the Nation Loan and all accrued but unpaid interest on the Nation Loan as of the Amendment Date.
Maturity Date	12/31/2036
Interest Rate	3.50% fixed rate
Amortization	Interest only for the first five years from the Amendment Date, thereafter, interest and principal payments based on a 20-year amortization schedule with the remaining principal due at Maturity Date.
Reporting/Compliance	<p>NNGE will provide to the Navajo Nation the following during the term of the Nation Loan:</p> <ul style="list-style-type: none"><li>• As soon as available and no later than 120 days after the end of each Fiscal Year, audited financial statements;</li><li>• As soon as available and no later than sixty (60) days after the end of each quarter, quarterly financial/operating reports, together with quarterly Compliance Certificates duly certified by the CFO or another Senior Officer of NNGE;</li><li>• Not later than 20 days after the last day of each month, monthly financial statements for the prior month together with a monthly reconciliation of cash flow;</li><li>• Not later than 30 days prior to the commencement of each Fiscal Year, annual operating budgets for each of the Navajo Casinos, including projected balance sheets, statements of income and statements of cash flow; and</li><li>• Such other financial and operating reports as the Nation may request, including cash forecasts, Flash Reports, MD&amp;A, third-party market studies and management reports</li></ul>
Forbearance Agreement	Terminate per mutual agreement



## MEMORANDUM

**TO:** Hon. Leonard Tsosie  
Hon. Seth Damon  
23<sup>rd</sup> Navajo Nation Council

**FROM:**   
Levon B. Henry, Chief Legislative Counsel  
Office of Legislative Counsel

**DATE:** January 5, 2016

**SUBJECT:** AN ACTION RELATING TO RESOURCES AND DEVELOPMENT,  
BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND  
THE NAVAJO NATION COUNCIL; APPROVING CERTAIN  
MODIFICATIONS TO THE LOAN BETWEEN THE NAVAJO NATION  
AND NAVAJO NATION GAMING ENTERPRISE AND APPROVING  
THE DOCUMENTS RELATED TO THE MODIFICATION OF THE  
GAMING LOAN

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0005-16\_\_\_\_\_ SPONSOR: Seth Damon

**TITLE: An Action Relating To Resources and Development, Budget and Finance, and Naa'bik'ivati' Committees and The Navajo Nation Council; Approving Certain Modifications To The Loan Between The Navajo Nation and Navajo Nation Gaming Enterprise and Approving the Documents Related to the Modification of the Gaming Loan**

**Date posted: January 6, 2016 at 4:12pm**

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

**Please note:** This digital copy is being provided for the benefit of the Nav, ajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.:** 0005-16

**SPONSOR:** Honorable Seth Damon

**TITLE:** Relating To Resources and Development, Budget and Finance, and Naa'bik'iyati' Committees and The Navajo Nation Council; Approving Certain Modifications To The Loan Between The Navajo Nation and Navajo Nation Gaming Enterprise and Approving the Documents Related to the Modification of the Gaming Loan.

**Posted:** January 6, 2016 at 4:12 pm

**5 DAY Comment Period Ended:** January 11, 2015

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing (1)</b>	1. Jim R. Parris; Chairman of the Investment Committee and Controller for the Navajo Nation.
<b>Inclusive Comments</b>	<i>None</i>

*[Signature]*

**Executive Director  
Office of Legislative Services**

*1/14/2016 - 10:00 AM*

**Date/Time**

## legislation 0005-16

NNOOC INVESTMENTS <nnooc.investments@gmail.com>

Mon 1/11/2016 3:42 PM

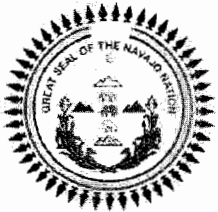
To: comments <comments@navajo-nsn.gov>;

Cc: jimrparris@gmail.com <jimrparris@gmail.com>; Tom Platero <tomplatero@navajo-nsn.gov>;

1 attachment

Statement in opposition of proposed legislation.pdf;

Submitting the attachment on behalf of the Controller, Mr. Jim R. Parris. This memo is in regards to the legislation 0005-16 modification of the gaming loan and is intended to be posted to the 5 day comment period to become an official part of the record on the legislation.



# THE NAVAJO NATION

## Memorandum

RUSSELL BEGAYE ~~PRESIDENT~~  
JONATHAN NEZ ~~VICE PRESIDENT~~

Date: January 11, 2016

To: Resource and Development Committee, Budget and Finance Committee,  
Naabik'iyati' Committee and Navajo Nation Council

From: L. R. Parris  
Jim R. Parris, Chairman of the Investment Committee, and  
Controller for the Navajo Nation

Subject: Statement in Opposition to Proposed Legislation (Tracking No. 0005-16),  
*Approving Certain Modifications to the Loan between the Navajo Nation and  
Navajo Nation Gaming Enterprise and approving the documents related to the  
modification of the Gaming Loan.*

The purpose of this memorandum is to state my opposition to the passage of the above referenced legislation, which will be presented to the Navajo Nation Tribal Council later this month. The reasons for my opposition are based upon my interpretation of the basic fiduciary responsibilities required by the Navajo Nation's Master Investment Policy. The series of loans agreed to by the Navajo Nation Gaming Enterprise (NNGE) and the subsequent renegotiation of the loan terms to defer the payment of principal and the consistent reduction of the interest rates, which have resulted in the failure of the NNGE to meet its obligations to repay the loan to the Navajo Nation Permanent Fund and other funds that have loaned them money since 2008 (see **Exhibit A**). The aggressive reduction in loan payments to these funds over the past 8 years have had the long term effect of reducing the funds available for other more profitable investment opportunities for the Investment Committee to consider and recommend for approval to the Budget and Finance Committee. The proposed terms of the loan modification are truly startling. NNGE agreed not more than 1 year ago to refinance the "past due interest" due as of 1/9/2015 in the amount of \$14,094,737.58 with "interest only payments" at 8% per annum for the first 18 months and with principal payments to begin on July 1, 2016. Now, with this proposed legislation, the NNGE wants to restructure the loan to lower the interest and principal payments once again.

See below for an overview of the impact of this latest modification of the loan:

	<u>Current Terms</u>	<u>Proposed Modification</u>
Loan Principal: \$212 million	(assumes term extended)	
Interest Rate:	8.00%	3.50%
-Interest required to be paid: (over next 5 years)	\$108,059,937	\$37,113,815
-Principal Required to be paid: (over next 5 years)	\$59,644,775	\$0.00
-Interest Required to be paid: (over next 20 years)	\$260,107,250	\$115,876,874
-Principal Required to be paid: (over next 20 years)	\$203,284,664	\$154,931,704

### Statement of Facts:

- The Navajo Nation and Navajo Nation Gaming Enterprise ("NNGE") entered into various loan agreements between 2008 and 2011, which were consolidated into a single \$200,000,000 loan in April 2012.
  - NNGE was unable to make the required debt service payments pursuant to the terms of the loan and a Forbearance Agreement was entered into on December 11, 2013.
  - The Forbearance Agreement has been extended four times with the date of the latest Forbearance Agreement being January 9, 2015.
  - The term of the Current Forbearance Agreement is for three years and the base interest rate is 8%.
  - NNGE is in compliance with all the terms of the Current Forbearance Agreement.
  - The NNGE Board of Directors passed a Resolution in July 2015 authorizing NNGE to ask the Nation for a reduction in the interest rate on the loan to 3.25%, an interest only period of five years and an amortization schedule based on twenty years.
  - Representatives of NNGE and the Office of the Controller had numerous conference calls and meetings wherein discussion took place on whether a middle ground could be met.
  - Representatives of the Office of the Controller talked about whether third party financing was available and, if not, would an interest rate in the 6.25% range be acceptable to NNGE.
  - NNGE insisted that the interest rate had to be reduced to 3.25% and the term of the loan extended.
  - Representatives of the Office of the Controller informed NNGE that lowering the interest rate to 3.25% and extending the term would be in violation of the terms of the Master Investment Policy, the fiduciary duty of the Investment Committee and the prudent investor rule that applies when investing the Master Trust since comparable transactions based on the credit profile of NNGE would have interest rates in the 10% to 13% range if financing was even available in the public market.
  - NNGE met with the Investment Committee on December 9, 2015 and presented a Resolution to reduce the interest rate on then loan to 3.25%, an interest only period of five years and an amortization schedule based on twenty years.
  - The Investment Committee voted against the Resolution.
  - Legislation has now been introduced at the request of NNGE to have Council take action to require the Nation to modify the terms of the loan so that the interest rate would be 3.5%, there would be an interest only period of five years and the amortization schedule would be based on twenty years.
- 
- The Master Investment Policies set forth that the following requirements be met when investing funds within the Master Trust Funds:
    - **Section 3.1** All participants in the Nation's investment process shall act responsibly as custodians of the public trust. The Controller and the Investment Staff (defined below in Section 4.4), the Investment Committee and its members, the B&F Committee and its members, the Investment Consultant (defined below in Section 4.8), the Investment Managers (defined below in Section 4.6), the Financial Advisor (defined below in Section 4.9), Special Counsel (defined below in Section 4.10), and

any other consultants engaged by the Nation to assist in the Nation's investment program (collectively, the "Parties"), shall follow the "prudent investor" rule in investing the Nation's funds. The "prudent investor" rule provides that "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

- A fixed interest rate of 3.5% for twenty years does not meet the prudent investor rule set forth in Section 3.1 of the Master Trust Policies.
  - Tribal gaming credits with a credit profile similar to NNGE would have limited access to the capital markets and, if able to access the capital markets, interest rates would be in the 10% to 13% range with a term of between five to seven years.
  - Fixing the interest rate for a twenty-year period at a below market rate exposes the Nation to substantial risk on the return to the portfolio if interest rates increase over time.
  - The Nation completed its first ever limited public offering in November 2015 for almost \$53 million. The true interest cost on the bond issue was 4.94% with a fifteen-year term.
    - It would not be prudent to loan money to an enterprise of the Nation on terms that are better than what the Nation can borrow at.
- The intent of the loan from the Nation to the NNGE was to build and stabilize the operations of the casinos so that NNGE could refinance the loan with a third party.
  - The five-year interest only period and the twenty-year amortization means that the leverage ratio of NNGE will remain above acceptable levels for third party financing for the foreseeable future.
  - There will be a \$57,147,239 balloon payment due at the maturity date based on NNGE's proposal.
  - This is not a prudent investment when NNGE would be generating so much excess cash and not using a portion of it to prepay the loan.
- **Section 4.3(b).** Determine strategies and monitor results for all funds listed above in Section 1.2 (Scope - Funds and Accounts). The Investment Committee shall include in its deliberations such topics as: economic outlook, portfolio diversification and maturity structure, potential risks to the Nation's funds, authorized depositories, brokers and dealers, and the target rate of return on the investment portfolio.
  - An interest rate of 3.5% would be in clear violation of the targeted return for Direct Investments set forth in Section 8.1(i) of the Master Investment Policies.
- **Section 8.1(i).** Direct Investments. Direct investment of Nation funds in non-public companies through various investment structures (e.g., a partnership or joint venture), either equity or debt based, is permitted subject to investment and operational due

diligence by the Investment Committee or its designee. The Nation shall not invest in a direct investment that has a projected rate of return less than the ten (10) year average rate of return of the Master Trust portfolio.

- The average return on the Master Trust Funds for the last ten years is 6.31%
- An interest rate of 3.5% would be in clear violation of the targeted return for Direct Investments set forth in Section 8.1(i) of the Master Investment Policies
- The impact on the Master Trust Funds will be substantial if the interest rate is reduced to 3.5%.
  - Four charts are attached as **Exhibit B** that show the impact of the loan based on terms as proposed by NNGE compared to loan with an interest rate of 8% (the current interest rate on the loan) and a term of fifteen years.
    - The actual return to the portfolio for the first five years would be \$77,147,240 less based on NNGE's proposal.
    - The return to the portfolio for twenty years would be approximately \$340,000,000 less based on NNGE's proposal if the proceeds received from the loan are reinvested at 6.31% (the average return on the portfolio for the last ten years).
  - Also included in **Exhibit B** is a spreadsheet showing the losses to each respective trust and its benefactors. Example: The Veteran's Trust Fund stands to lose over \$8 million. Therefore, the benefactors of that trust fund (Navajo Veterans) will lose those dollars that could be used to assist Navajo Veterans. The Land Acquisition Fund stands to lose in excess of \$60 million. Please refer to the spreadsheet for the breakdown of the losses to each respective trust and its beneficiaries.
- Note that the loans between NNGE and NTUA and NHLC will also have to be dealt with as they are part of the overall credit package.
  - The Nation has made substantial concessions on the terms of the loan throughout the forbearance periods including reducing the interest rate from 13% to 8%. NTUA has only agreed to reduce the interest rate on its loan from 10% to 9% and NHLC has not agreed to any changes in the terms of its loan.

## Conclusion

In summary, the following is submitted for your consideration:

BFJN-17-15, *Resolution of the Budget and Finance Committee of the Navajo Nation Council*, the approved amendment and restatement of the *Navajo Nation Master Investment Policy*, which was signed effective June 12, 2015, states in:

- Section 2.1, Investment Objectives and Priorities, that, "*The Nation shall invest all available funds subject to the following objectives and priorities*", which includes item, "*e*) *Conformance with Nation law and other legal restrictions.*" and,
- Section 2.3, Long-Term Funds, "*The Nation shall focus it's long-term funds on capital growth...*", which, "*...shall be designed to protect principal while earning a rate of*

*return that will meet or exceed the rate of inflation to preserve the fund assets and to ensure that sufficient reserves will be available to cover future cash requirements."*

Comments: No principal has been paid since 2013, and the terms of the proposed legislation, will allow the principal to not be paid for another 5 years. There have been 4 "forbearance" actions taken since 2013, and there is no reason to believe that at the end of the next 5 years (or before) NNGE will request another forbearance agreement to be approved by the Investment Committee.

- Section 3.1, Prudence. *"All participants in the Nation's investment process shall act responsibly as custodians of the public trust. The Controller and the Investment Staff..., the Investment Committee and it's members, the B&F Committee and it's members , the Investment Consultant..., the Investment Managers..., the Financial Advisor..., Special Counsel..., and any other consultants engaged by the Nation to assisting the Nation's investment program..., shall follow the "prudent investor" rule in investing or advising the Nation's funds. The "prudent investor" rule provides that "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."*

Comments: The reason that the Investment Committee did not take action on at the last meeting which was held on December 9, 2015, on the NNGE proposed loan modification was that the Committee voted to not approve any more proposed investments, including the NNGE proposed amendment to their loan agreement, until the "due diligence" review procedures were developed and approved by the Investment Committee.

- Section 8.1, Direct Investments. *"The Nation shall not invest in a direct investment that has a projected annual rate of return in any year of less than the ten (10) year average rate of return of the Master Trust portfolio."*

Comments: As stated above, the 10 year average is 6.31%, which is considerably more than the 3.50% requested by the legislation.

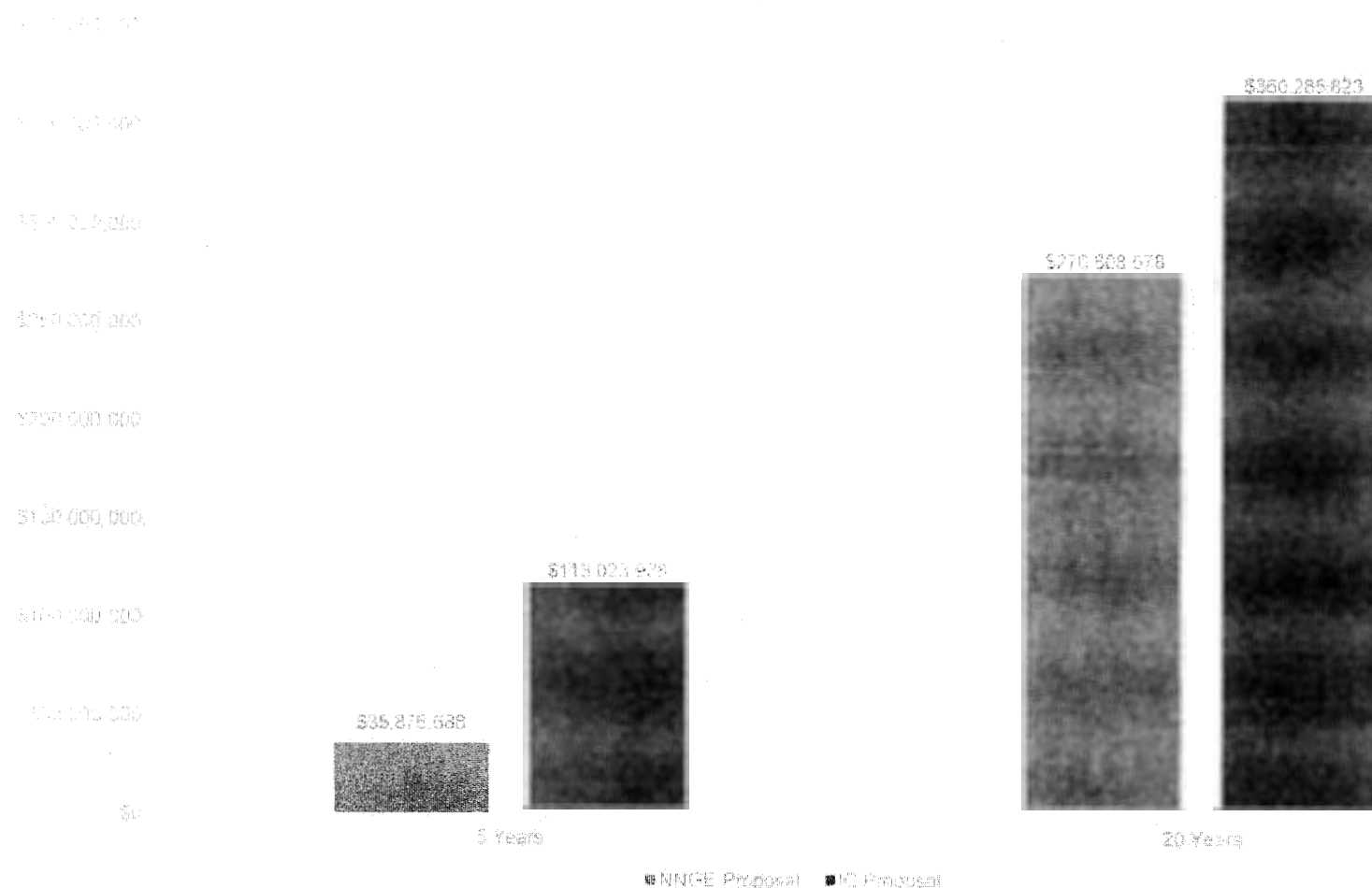
- Section 4.4, the Controller's Responsibility, states that, *"The Controller is vested with the authority to pursue the administration and management of the Nation's investment programs, and the Controller has a responsibility to the B&F Committee to properly execute and operate the Nation's investment program."*

For the reasons stated above, I recommend that the legislation not be approved by the Resource and Development Committee, Budget and Finance Committee, Naabik'iyati' Committee and Navajo Nation Council, as it would be in direct violation of the Master Investment Policies and the Fiduciary Duty to maximize the return to the Master Trust Fund Portfolio

Date	Terms		Description
4/11/2008	<ul style="list-style-type: none"> <li>Principal: \$35,000,000</li> <li>Interest rate: 11%</li> </ul>	<ul style="list-style-type: none"> <li>Term: 3 years</li> <li>Amortization: 7 years</li> </ul>	TNN entered into a loan agreement with NNGE for the constructions of Fire Rock.
6/24/2010	<ul style="list-style-type: none"> <li>Principal: \$30,236,437.32</li> <li>Interest rate: 14% current and 2% deferred</li> </ul>	<ul style="list-style-type: none"> <li>Term: 5 years</li> <li>Amortization: 15 years</li> </ul>	TNN and NNGE agreed to restructure the Fire Rock loan.
8/12/2010	<ul style="list-style-type: none"> <li>Principal: CF1 - \$2,516,250, CF2 - \$838,750.</li> <li>Interest rate: CF1 - 14% current and 2% deferred, CF2 - 25% deferred.</li> </ul>	<ul style="list-style-type: none"> <li>Term: 5 years.</li> <li>Amortization: 15 years.</li> </ul>	TNN and NNGE agreed to enter into an additional loan agreement for the construction of Flowing Waters.
12/21/2010	<ul style="list-style-type: none"> <li>Principal: CF1 - \$26,250,000, CF2 - \$8,750,000</li> <li>Interest rate: CF1 - 14% current and 2% deferred, CF2 - 25% deferred.</li> </ul>	<ul style="list-style-type: none"> <li>Term: 5 years.</li> <li>Amortization: 15 years.</li> </ul>	TNN and NNGE agreed to enter into an additional loan agreement for the construction of Northern Edge.
1/6/2011	<ul style="list-style-type: none"> <li>Principal: CF1 - \$75,000,000, CF2 - \$25,000,000</li> <li>Interest rate: CF1 - 14% current and 2% deferred, CF2 - 25% deferred.</li> </ul>	<ul style="list-style-type: none"> <li>Term: 5 years</li> <li>Amortization: 15 years</li> </ul>	TNN and NNGE agreed to enter into an additional loan agreement for the construction of Twin Arrows.
4/3/2012	<ul style="list-style-type: none"> <li>Principal: \$200,000,000</li> <li>Interest rate: 15% to June 30, 2012. 13% thereafter. Reduced to 10% based on consolidated leverage ratio of NNGE.</li> </ul>	<ul style="list-style-type: none"> <li>Term: matures March 31, 2020</li> <li>Principal payments: \$3,333,333 to commence on September 30, 2013</li> </ul>	TNN entered into an amended, restated and consolidated loan agreement with NNGE.
12/11/2013	<ul style="list-style-type: none"> <li>Period: December 11, 2013 to April 30, 2014.</li> <li>Waived principal payments during this period.</li> <li>Receive monthly priority payments at 9% during this period.</li> <li>Unpaid priority interest is accrued and payable by NNGE.</li> <li>Excess revenue after priority interest available to pay subordinate debt</li> </ul>	<ul style="list-style-type: none"> <li>Excess revenue after priority interest and subordinate debt service available to pay accrued interest on difference between 9% priority interest and 13% loan agreement rate.</li> <li>Excess revenue after 13% loan agreement rate available to pay any accrued subordinate debt service.</li> </ul>	<p>NNGE informed TNN that it would make the September 30, 2013 payment, but it would not have sufficient funds to make the December 31, 2013 payment.</p> <p>Therefore, TNN and NNGE entered into a forbearance agreement.</p>
4/30/2014	<ul style="list-style-type: none"> <li>Period: April 30, 2014 to August 31, 2014.</li> </ul>	<ul style="list-style-type: none"> <li>Terms the same as original forbearance agreement.</li> </ul>	TNN and NNGE entered into a first amended and restated forbearance agreement.
5/22/2014	<ul style="list-style-type: none"> <li>Agreement stated that no changes will occur with senior management.</li> </ul>	<ul style="list-style-type: none"> <li>The CFO resigned on May 9, 2014.</li> <li>TNN waived this event of default.</li> </ul>	TNN agreed to waive an event of default under the first amended and restated forbearance agreement.
8/31/2014	<ul style="list-style-type: none"> <li>Period: August 31, 2014 to December 31, 2014.</li> </ul>	<ul style="list-style-type: none"> <li>Terms the same as original forbearance agreement.</li> </ul>	TNN and NNGE entered into a second amended forbearance agreement.
12/31/2014	<ul style="list-style-type: none"> <li>Period: December 31, 2014 to March 31, 2015.</li> </ul>	<ul style="list-style-type: none"> <li>Terms the same as original forbearance agreement.</li> </ul>	TNN and NNGE entered into a third amended forbearance agreement.
1/9/2015	<ul style="list-style-type: none"> <li>Period: January 9, 2015 to December 31, 2017</li> <li>Past due interest of \$14,094,737.58 added to the principal</li> <li>New principal balance of \$212,078,943.13</li> <li>TNN to receive monthly interest at 8% during the term.</li> </ul>	<ul style="list-style-type: none"> <li>NNGE to pay subordinate interest at 1% beginning in the 3<sup>rd</sup> year following the effective date.</li> <li>Interest only payments for the first 18 months.</li> <li>Principal payments to commence on July 1, 2016.</li> <li>Amortization at 30 years.</li> </ul>	TNN and NNGE entered into a fourth amended forbearance agreement.

# Navajo Nation Gaming Loan

Total Proposed Payments to Master Trust



## NNGE Proposal:

- Interest Rate – 3.5%
- Interest Only Period – 60 Months
- Maturity Date – 12/31/2036 (240 month amortization)

## Investment Committee Proposal:

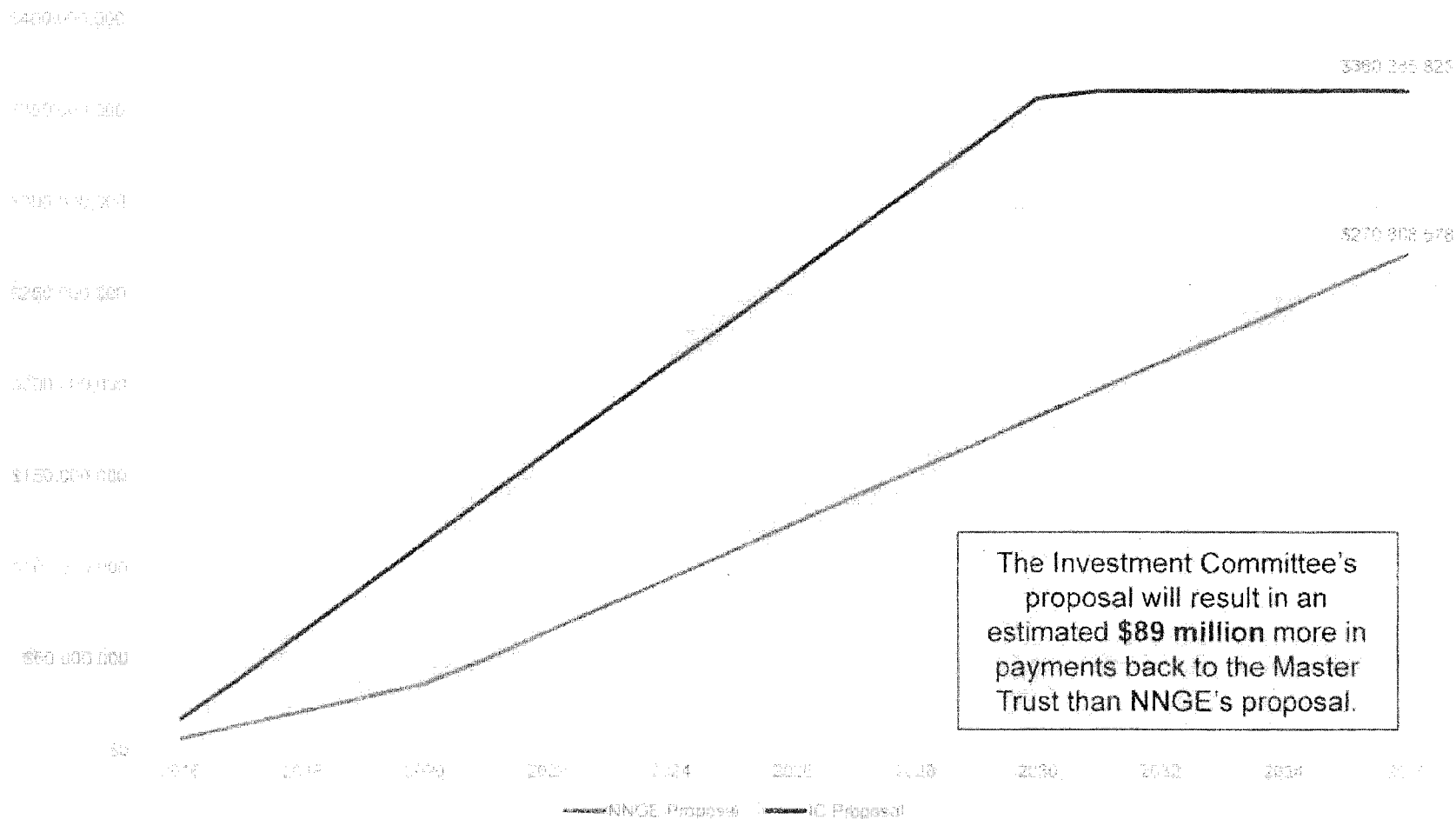
- Interest Rate – 8.0%
- Interest Only Period – 12 Months
- Maturity Date – 12/31/2031 (180 month amortization)



RVK

# Navajo Nation Gaming Loan

NNGE Loan Proposal Options - Cumulative Payments



The Investment Committee's proposal will result in an estimated **\$89 million** more in payments back to the Master Trust than NNGE's proposal.

## NNGE Proposal:

- Interest Rate – 3.5%
- Interest Only Period – 60 Months
- Maturity Date – 12/31/2036 (240 month amortization)

## Investment Committee Proposal:

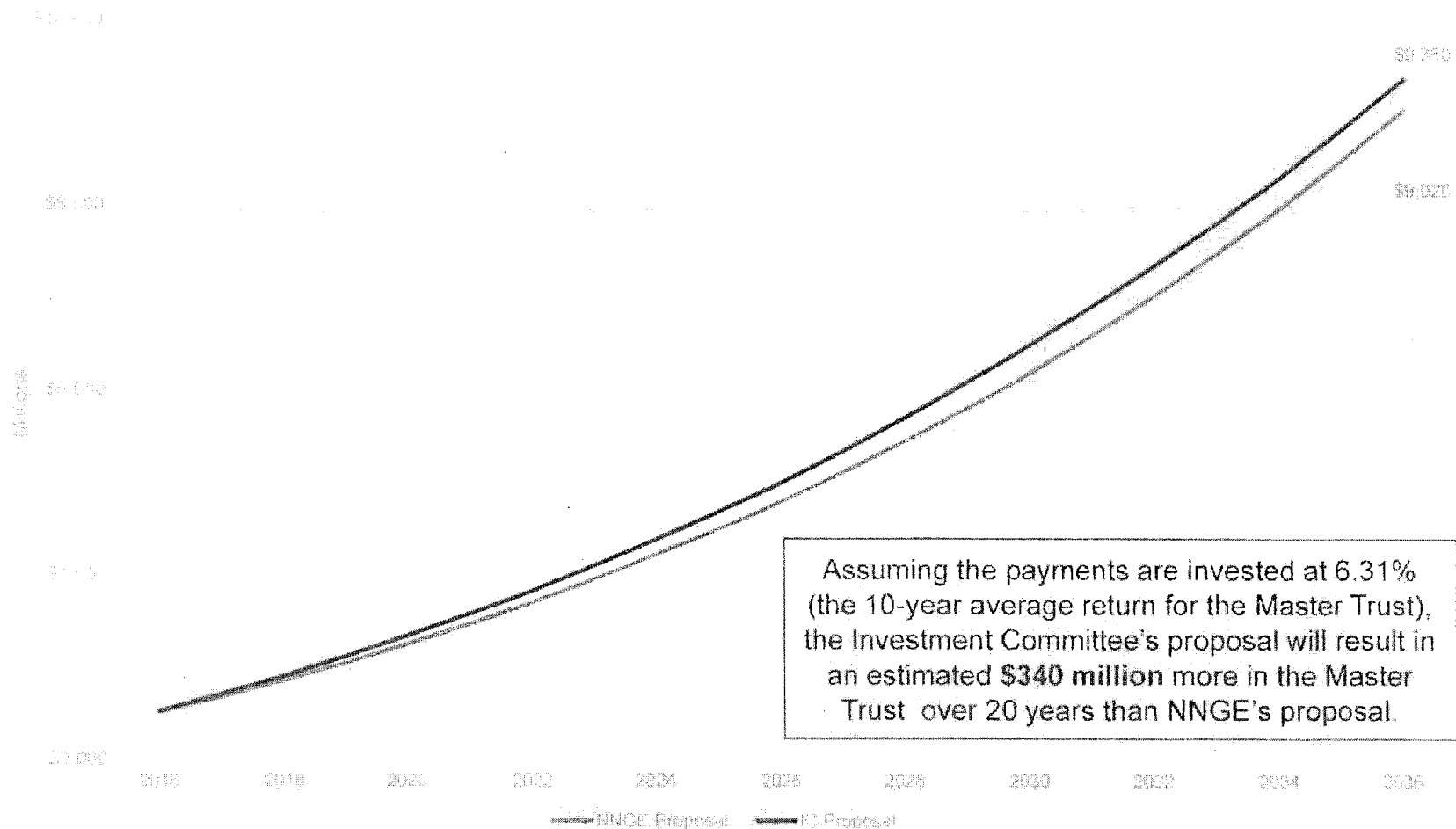
- Interest Rate – 8.0%
- Interest Only Period – 12 Months
- Maturity Date – 12/31/2031 (180 month amortization)



RVK

# Navajo Nation Gaming Loan

NNGE Loan Proposal Options - Projected Market Value



## NNGE Proposal:

- Interest Rate – 3.5%
- Interest Only Period – 60 Months
- Maturity Date – 12/31/2036 (240 month amortization)

## Investment Committee Proposal:

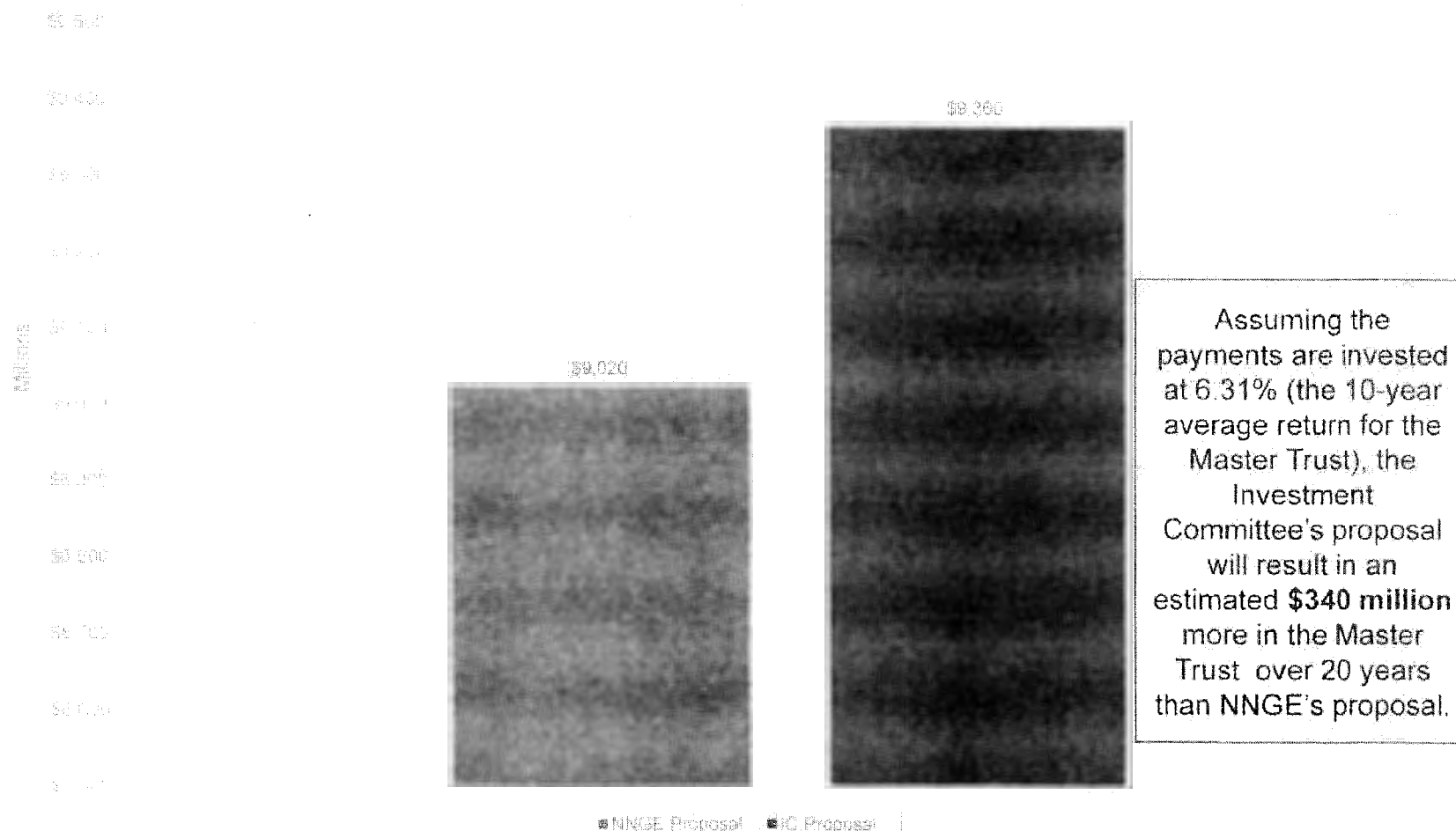
- Interest Rate – 8.0%
- Interest Only Period – 12 Months
- Maturity Date – 12/31/2031 (180 month amortization)



RVK

# Navajo Nation Gaming Loan

Total Projected Master Trust Market Value in 2036



## NNGE Proposal:

- Interest Rate – 3.5%
- Interest Only Period – 60 Months
- Maturity Date – 12/31/2036 (240 month amortization)

## Investment Committee Proposal:

- Interest Rate – 8.0%
- Interest Only Period – 12 Months
- Maturity Date – 12/31/2031 (180 month amortization)



RVK

Income Lost Over 20 years	
Fund	\$340,000,000
CGNBF 1982 Claim Fund	\$5,899,600.06
CGNBF 1986 Claim Fund	\$7,434,082.41
Graduate Scholarship Fund	\$5,500,986.03
Handicapped Trust Fund	\$2,025,437.22
Land Acquisition Fund	\$60,871,817.43
Permanent Fund	\$242,982,944.93
Scholarship Claims Fund	\$2,584,553.64
Senior Citizen Trust Fund	\$1,738,455.83
Tucson G&E Scholarship Fund	\$299,328.78
Veterans Trust Fund	\$8,639,136.56
Vocational Education Trust Fund	\$2,023,656.91

RESOURCES AND DEVELOPMENT COMMITTEE  
OF THE 23rd NAVAJO NATION COUNCIL

SECOND YEAR 2016

COMMITTEE REPORT

Mr. Speaker,

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

**Legislation # 0005-16:** An Action Relating to Resources and Development Committee, Budget and Finance Committee, Naabik'Iyati Committee and the Navajo Nation Council; Approving Certain Modifications to the Loan Between the Navajo Nation and Navajo Nation Gaming Enterprise and Approving the Document Related to the Modification of the Gaming Loan. *Sponsor: Honorable Seth Damon.*

Has had it under consideration and report the matter was respectfully referred to Budget and Finance Committee for their consideration.

Respectfully submitted,



Benjamin Bennett, Vice-Chairperson  
Resources and Development Committee of  
the 23<sup>rd</sup> Navajo Nation Council

Date: January 19, 2016  
Motion: Davis Filfred  
Second: Leonard Pete  
Vote: 4-0-1 (CNV)

**23<sup>rd</sup> NAVAJO NATION COUNCIL**

Second Year 2016

Mr. Speaker:

The **BUDGET & FINANCE COMMITTEE** to whom has been assigned

**NAVAJO LEGISLATIVE BILL # 0005-16:**

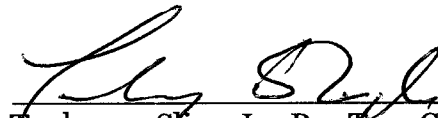
An Action Relating to Resources and Development, Budget and Finance and Naabikiyati Committees and Navajo Nation Council; Approving Certain Modifications to the Loan Between the Navajo Nation and Navajo Nation Gaming Enterprise and Approving the Document Related to the Modification of the Gaming Loan *Sponsored by Seth Damon, Council Delegate*

has had it under consideration and reports the same with the recommendation that It **Do Pass** without amendment.

*Directive: for the Attorney General to provide written legal advisement on how the Nation could address the request to lower the interest rate before the FY2016 Navajo Nation Council Winter Session. MRB/LJ/3-0*

And therefore, referred to the **NAABIKIYATI** Committee

Respectfully submitted,

  
Tuchoney Slim, Jr., Pro Tem Chairman

Adopted:   
Legislative Advisor

Not Adopted: \_\_\_\_\_  
Legislative Advisor

**20 January 2016**

The vote was **2** in favor **1** opposed  
Excused: Tom T. Chee, Dwight Witherspoon

*Please note: Hon. Dwight Witherspoon presided at the beginning of the Committee's deliberation of the legislation, but had to leave and therefore, Hon. Tuchoney Slim, Jr. became the presiding Pro Tempore Chairman.*