

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- First Year, 2019

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY'S AMENDED PLAN OF
OPERATION

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee of the Navajo Nation Council has legislative oversight with respect to the Nation's economic development and such enterprises as the Navajo Agricultural Products Industry. (NAPI) 2 N.N.C. §§ 401 (B) (1), 5 N.N.C. § 1604.

SECTION TWO. FINDINGS


- A. The Navajo Agricultural Products Industry (NAPI) has submitted its amended Plan of Operation for approval by its legislative oversight, the Resources and Development Committee.
- B. The amended Plans of Operation have been reviewed by the enterprise's legal counsel found legally sufficient and approved by the NAPI Board of Directors. See **Exhibit "B"**.
- C. The Navajo Nation Resources and Development Committee finds it in the best interest of the Navajo People to approve the amended changes to the NAPI Plan of Operation as amended and found at **Exhibit "A"**.

SECTION THREE. APPROVAL

The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Agricultural Products Industry's Plan of Operation as amended and found at **Exhibit "A"**.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting at the Navajo Technical University, Crownpoint, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 3 in favor, and 2 opposed, on this 27th day of September 2019.


Thomas Walker, Jr., Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Mark A. Freeland
Second: Honorable Wilson C. Stewart, Jr.

Vice Chairperson Thomas Walker, Jr. not voting.



EXHIBIT "A"



Navajo Agricultural Products Industry Amended and Restated Plan of Operation

Article 1. Establishment

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

Article 2. Seal

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

Article 3. Purposes

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

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

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

Article 4. Definitions

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

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

of Office; Removal or Resignation; Filling Vacancies; Authority

- A. NAPI shall be managed by a Board of Directors that shall provide governance and oversight of the organization, subject to the restrictions of this Plan of Operation and applicable law. The Board shall consist of ~~seven (7)~~ five (5) members from the Western, Chinle, and Eastern Agencies of the Navajo Nation. At least one Director shall be from District 13 and one Director shall be from District 19, ~~and one (1) member from District 13 and one (1) member from District 19, must be registered Chapter members in their respective districts.~~
- B. Appointment. The President's Office of the Navajo Nation shall ~~appoint members to serve on the Board of Directors subject to final confirmation by the Resources and Development Committee of the Navajo Nation Council. The President of the Navajo Nation shall~~ advertise any open positions on the Board of Directors whether based on vacancy or an expired term. Each Director of the Board of Directors shall be nominated by the President of the Navajo Nation and confirmed by the Resources and Development Committee ("RDC"). However, if more than thirty (30) days has passed with a vacancy as a result of death, resignation or removal and the President has not nominated a replacement, then the RDC may both nominate and confirm a replacement Director so long as the proposed replacement Director meets the qualifications stated herein. The appointment is effective upon communication of the appointment by the Chairperson of the RDC to the Chairperson of the NAPI Board.
- C. Qualifications. Each Director, ~~with the exception of District 13 and 19 representatives,~~ shall have substantial business experience which shall include, but not be limited to agribusiness and/or business marketing, livestock, agricultural economics and finance, irrigation and P.L. 93-638 contracting. It is preferred that each Director shall have knowledge of corporate and/or business financial statements and capital investment planning and shall possess a Bachelor's degree from a recognized and accredited four-year institution of higher learning. Preference in the appointment of Directors shall be given to Navajos and, secondarily, to non-Navajos who meet the minimum qualifications and are legally married to Navajos; however, the procedural and substantive provisions of the Navajo Preference in Employment Act, 15 N.N.C. section 601, *et seq.*, shall not apply to such appointments. No Director shall be a person who is or was employed by NAPI within the past six (6) years or a current Council delegate or Chapter Official.
- D. Term of Office. Directors shall serve staggered terms of three (3) years and may be reappointed to serve additional terms.
- ~~0. The Chief Executive Officer shall notify the President of the Navajo Nation when the term of a Director is set to end at least forty five (45) days prior to the end of such term. The President shall appoint a new member or reappoint~~

~~an existing member to serve on the Board of Directors in accordance with the process outlined herein. A Director whose term has ended shall hold office until the appointment and confirmation of his/her successor.~~

E. Alcohol and Drug-Free Policy: To comply with the same restrictions that are placed on NAPI management and employees, all duly appointed Directors shall not consume alcohol and/or illegal drugs during regular or special meetings of the Board of Directors, during travel related to such meetings or when representing NAPI at any formal or social events. Failure of any Director to comply with this alcohol and drug-free policy shall constitute good cause for the Board of Directors to recommend to the Resources and Development Committee for the immediate removal of such member from the Board of Directors.

G.F. Removal or Resignation.

1. Any Director may be removed by a simple majority vote of the Resources and Development Committee taken at a lawful meeting if:
 - (a) Such Director has been convicted or entered a plea of nolo contendere to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided that any such violation shall be limited to the last ten (10) years of such person's history and provided that the Resources and Development Committee shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification.
 - (b) Such Director violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 et. seq. as amended, provided that any such violation shall be limited to the last ten (10) years of such person's history.
 - (c) Such Director commits malfeasance or misfeasance of office as member of the Board of Directors.
 - (e)(d) Four (4) members of the Board of Directors voting at a regular or special meeting recommends that such Director be removed from the Board for good cause.
2. A Director may resign by giving written notice of resignation to the President of the Navajo Nation, the Chairperson of the Resources and Development Committee, and the Chairperson of the Board of Directors. Resignation shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Acceptance of resignation shall not be necessary to make such resignation effective. A Director who has failed to attend two (2)

consecutive properly called and noticed meetings of the Board or who fails to attend six Board meetings properly noticed in any fiscal year shall, unless excused from attendance by the Chairperson of the Board, be considered to have resigned.

H.G. Notification of Procedures for Filling Vacancies

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

~~4. Upon receipt of notice of a vacancy, the President shall appoint a qualified candidate on or before forty-five (45) days following the vacancy. If more than forty-five (45) days has passed with a vacancy and the President has not nominated a replacement, then the Resources and Development Committee may both nominate and confirm a replacement Director so long as the proposed replacement Director meets the qualifications stated herein. The appointment is effective upon communication of the appointment by the Chairperson of the Resources and Development Committee to the Chairperson of the NAPI Board.~~

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

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

- A. The Principal Officers. The Principal Officers of NAPI Board of Directors shall consist of the Chairperson, Vice Chairperson and Secretary.
 1. *Chairperson of the Board.* The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors, and shall, in general, perform all duties incident to the office of the Chairperson of the Board of Directors and such other duties as may be assigned by the Board of Directors.
 2. *Vice Chairperson of the Board.* The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson and shall discharge any other duties designated by the Chairperson or the Board of Directors.

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

Article 7. Board of Directors Powers and Duties

Subject to applicable Federal and Navajo Nation laws and regulations, the Board of Directors shall have overall responsibility for the affairs of NAPI, giving usual and essential latitude to the Chief Executive Officer ("CEO") to accomplish the purposes set forth in Article 3 of this Plan of Operation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote. The Board may adopt such rules and regulations for the conduct of their meetings as it deems proper, and not inconsistent with this Plan of Operation. The NAPI

Board shall have the following powers and duties to establish policies and procedures, receive reports and provide direction to the CEO and his or her delegated employees, by resolution or directive:

- A. Lobbying. To engage in lobbying activities on behalf of NAPI before local, state and Federal legislative and administrative bodies to achieve the purposes of NAPI.
- B. Property. To exercise ultimate responsibility for the custody of inventory and maintenance of all NAPI property, facilities, and special utilities. To obtain regular reports by the Chief Executive Officer and his or her delegated employees regarding the planning, construction and operation of all facilities, and to take any and all usual, necessary and proper actions incidental thereto including, the consent to the borrowing of funds to accomplish the purposes of NAPI, provided that no assets or funds of the Navajo Nation shall be pledged as security therefore, except upon approval by the Navajo Nation Council, and to make other commitments necessary to accomplish the business purposes of NAPI.
- C. Investment of funds. To establish effective investment policies and procedures and to ensure that investment decisions are consistent with the policies and procedures and are subject to limitations as may be imposed by the Navajo Nation Council.
- D. Borrowing. To obtain loans so long as NAPI shall not incur obligations in excess of the ability of NAPI to pay or to issue bonds and to secure payment thereof by loan guaranty or pledge of, or lien on, all or any of its fixtures, personal property, revenues, income or contracts of NAPI. Nothing herein shall be construed as authorizing NAPI to mortgage or encumber trust or restricted property, including all water and real property resources of the Navajo Nation, or as providing consent by the Navajo Nation Council thereto. The Resources and Development Committee of the Navajo Nation Council shall not adopt amendments to this Plan of Operation which limit or alter the rights or powers vested in NAPI necessary to fulfill NAPI's obligations until all such notes or bonds or obligations issues, together with interest thereon, are fully met, paid, and discharged. This subsection shall be interpreted to protect the previously established rights of NAPI creditors or others to whom NAPI owes a legally enforceable obligation.
- E. Reports. To report quarterly in writing to the President of the Navajo Nation. Such quarterly report shall include a summary of activities on management, income and expenditures for the current quarter. In addition, NAPI shall issue an annual report with fiscal year and the audited financial reports no later than ninety (90) days after the expiration of the fiscal year and a copy of this report shall be provided to the Resources and Development Committee and the President within ten working days after the date on which the annual report is issued.
- F. Operating policies. To establish general operating policies and procedures, such as purchasing, accounting, information technology and personnel procedures, giving

usual and essential latitude to the Chief Executive Officer and his or her delegated employees to carry out and implement such policies.

- G. **Business Plan.** To develop and submit to the President of the Navajo Nation and the Chairperson of the Resources and Development Committee of the Navajo Nation Council a business plan for NAPI. The Plan shall set forth the general plan for operating the commercial farm. The Plan shall include cropping patterns, annual total farm budgets, cash flow projections, and investment plans and strategies for the forthcoming years to yield a profit for NAPI. The Plan shall contain sufficient information as to justify the assumptions and conclusions of the Plan, considering market trends and prices, as well as the nationaleconomy.
- H. **Officers and agents.** To select or appoint officers, agents, auditors, and such professional consultants as may be deemed necessary and appropriate, and to define their duties and compensation. All officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of NAPI and the Navajo Nation shall be bonded.
- I. **Agency.** To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of NAPI, within the scope of authorized purposes, subject to applicable law.
- J. **Real property.** To establish policies and procedures to utilize, improve, manage, and operate Navajo Nation lands withdrawn for NIIP pursuant to a Master Agricultural Lease. The Master Agricultural Lease shall be subject to renewal at intervals that are economically advantageous to NAPI and the Navajo Nation.
- K. **Personal property, generally.** To acquire (by purchase, exchange, lease, hire, or otherwise), hold, own, mortgage, pledge, exchange, sell, deal in, hedge and dispose of, either alone or in conjunction with others, personal property, any interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth in Article 3, except personal property subject to restrictions on alienation or sale by the United States Government and provided that the approval of the Budget and Finance Committee of the Navajo Nation Council as appropriate is a condition precedent to any such transaction involving restricted or unrestricted property owned by the Navajo Nation.
- L. **Patents, Copyrights, and Trademarks.** To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefore, licenses, formulas, privileges, processes, copyrights, and applications therefore, trademarks and applications therefore, and trade names, and that title of such acquisitions shall be taken in the name of NAPI.

- M. Guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of NAPI, to the extent that such guaranty is made pursuant to the purposes set forth in Article 3 and is subject to the limitations set forth in this Plan of Operation on the use of trust or restricted property as security therefore.
- N. Depository. To designate and approve all depositories used for the deposit of funds of NAPI.
- O. Contracts. To enter into contracts for any lawful purposes set forth in Article 3 and to delegate this authority as may be advisable to the Chief Executive Officer of NAPI, or to the chairperson of the Board of Directors. Any contract for hiring or retaining an attorney is subject to applicable Federal or Navajo Nation laws, rules and regulations. Except as provided in this Plan of Operation, nothing in this section shall be construed as a waiver of sovereign immunity NAPI and/or the Navajo Nation may by law possess.
- P. Navajo Indian Irrigation Project. To work with the Navajo Indian Irrigation Project, the Department of the Interior, Bureau of Indian Affairs, and the appropriate Navajo Nation programs, departments and divisions, to maximize the potential profit and sustainable operation of the NAPI commercial farm.
- Q. Grants. To apply for and accept grants and enter into contracts, agreements or other transactions with any Federal Agency, private lending institution, the Government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of NAPI's purposes consistent with the terms and conditions of the awarded contract or grant.
- R. Dividends. To declare a dividend as appropriate out of the net earnings of NAPI to the Navajo Nation as a return on the Capital Contribution of the Nation. NAPI shall report annually to the Navajo Nation Council of its decision regarding its dividends.
- S. Subsidiary Entities. To (1) establish wholly-owned subsidiary corporations and limited liability companies, provided that such subsidiary entities shall always remain wholly owned by NAPI, (2) that such subsidiary entities shall be guided by a Board comprised of three (3) members of the NAPI Board of Directors selected by the NAPI Board of Directors and two (2) members of NAPI management selected by the NAPI Chief Executive Officer, who may include the Chief Executive Officer himself or herself, (3) that any dividends declared by the Board of a subsidiary entity be reported as other income by NAPI, (4) that such subsidiary entities be at all times adequately capitalized and insured so as to preserve the shield for the protection of NAPI, (5) that such subsidiary entities shall periodically and, in any event, upon the request of the Resources and Development Committee of the Navajo Nation Council, give full and complete reports of its operations and finances to such Committee, and (6) NAPI has the authority to establish subsidiary entities to enter into partnership or joint

venture with local area communities or their respective farming entities to provide the necessary expertise and technical assistance that the local area communities request; and provided further that such subsidiary entities shall have no authority to waive the sovereign immunity of the Navajo Nation and that any waiver of immunity from suit shall be limited to the non-trust assets and property of such subsidiary entities and shall not extend to the assets and property of the Navajo Nation itself, and provided further that such subsidiary entities shall not pledge as security or otherwise, or make any guaranty respecting, any assets or funds of the Navajo Nation itself.

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

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

A. Meetings

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

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

- C. Quorum. The presence of three (3) members of the Board of Directors shall constitute a quorum for the transaction of any business. The act of the majority of the quorum shall be the act of the Board of Directors.
- D. Board Actions. All substantive action of the Board of Directors shall be taken by written resolution duly certified by the presiding officer.
- E. Minutes and Resolutions. Access to minutes of meetings and resolutions of the Board of Directors, and all other records of NAPI shall be governed by the Navajo Nation Privacy Act, 2 NNC section 81, *et seq.*
- F. Stipend and Reimbursement. Directors shall be paid a stipend for attendance of Board of Directors meeting at a rate, not to exceed \$250.00 per day per meeting for all meetings, attended. Board of Directors shall be reimbursed all reasonable mileage and expenses incurred in the execution of Board assignments at the rates established by the United States General Services Administration pursuant to 41 C.F.R. chapters 300-304. A Director may be provided an advance to cover such expenses. Such advance shall not exceed the amount of reasonable expenses.
- G. Prohibited contracts and Transactions. No contract or other transaction between NAPI and any one of the Directors, or between NAPI and any corporation, partnership, firm or other legal entity in which a Director or Director's immediate and extended family have a direct or indirect personal, family or business interest shall be valid unless the contract or transaction is approved in advance of execution by majority vote of the Board of Directors not having such interest.
- H. Conflict of Interest. No Director shall participate in or vote on any matter in which he or she has a direct or indirect personal, family or business interest. A Director who violates this provision shall be subject to removal.

Article 9. Chief Executive Officer Powers and Duties

- A. The Chief Executive Officer shall be employed under a written employment contract approved by the Board of Directors and shall be responsible and accountable to the Board of Directors. The contract shall provide for an annual evaluation of the Chief Executive Officer, based upon the duties outlined, herein, duties set forth in such contract, the purposes for which NAPI was established, and other factors deemed relevant and significant by the Board of Directors. The contract may be renewed if both NAPI and the Chief Executive Officer agree, and other requirements are met, including but not limited to, any applicable requirements imposed by the Navajo Preference in Employment Act ("NPEA"). The contract shall include a termination for cause provision, and this provision shall state that cause shall include an unsatisfactory annual evaluation and shall limit NAPI's potential liability under such contract, the NPEA, or other applicable law in the event of termination for cause.

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

to record minutes; provide notice of meetings and other clerical services as needed by the Board of Directors. Minutes shall be provided to all Board of Directors by the next regular meeting after the meeting to which the minutes pertain.

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

Article 10. Navajo Nation Capital Contribution.

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

Article 11. Accounting System; Fiscal Year.

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

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

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

Article 13. Audits.

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

Article 14. Insurance.

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

Article 15. Training of Navajos.

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

Article 16. Immunity; Limited Waivers.

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

purposes of NAPI, and to consent to alternative dispute resolution mechanisms such as arbitration or mediation or to suit in tribal, state and/or federal court.

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

Article 17. Compliance with Navajo Nation Law.

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

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

NAPI shall indemnify any current or former Director, officer, employee or agent against

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

Article 19. Amendments

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



NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

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

July 9, 2019

Hon. Jonathan Nez, President
The Navajo Nation
P.O. Box 7440
Window Rock, Arizona 86515

RE: Amendments to the Plan of Operation of Navajo Agricultural Products Industry (NAPI)

Dear President Nez,

On behalf of the Board of Directors of the Navajo Agricultural Products Industry ("NAPI"), we are seeking your assistance and support to the amendments of NAPI's Plan of Operation. As stated in NAPI's Plan of Operation, under **Article 19. Amendments** – *"This Plan of Operation may be amended from time to time by the Resources and Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation"*.

Back in December 31, 2018, the Resources & Development Committee of the 23rd Navajo Nation Council passed RDCD-111-18 (Dec.31, 2018) that approved and adopted the Amended and Restated NAPI Plan of Operation. What the NAPI Board of Directors initially proposed were not incorporated into the Plan of Operation pursuant to NAPI Board Resolution No. BDO-30-17.

NAPI's Legal Counsel has reviewed and prepared amendments to NAPI's Plan of Operation and has incorporated the changes approved by the NAPI Board of Directors also extending NAPI's Alcohol and Drug-Free Policy to all Directors of the NAPI Board of Directors. Thereafter, on July 5, 2019, the NAPI Board approved Resolution No. BDJY-23-19 to recommend such amendments to NAPI's Plan of Operation. Attached for your consideration and recommendation is NAPI Board Resolution BDJY-23-19 (Jul.05, 2019) and Exhibit "A".

For any questions or clarifications, please contact me at (505) 566-2603.

Sincerely,

David F. Zeller, Chief Executive Officer
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

Attachment: NAPI BOD Resolution No. BDJY-23-19
Exhibit "A" – NAPI Amended & Restated Plan of Operation

c: NAPI Board of Directors
File



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

Approving Proposed Amendments to the Plan of Operation of the Navajo Agricultural Products Industry; Respectfully Requesting the Navajo Nation President Recommend that the Resources and Development Committee Approve Such Amendments; and Respectfully Recommending the Resources and Development Committee Approve Such Amendments.

WHEREAS:

1. The Navajo Agricultural Products Industry ("NAPI") is an enterprise of the Navajo Nation charged with operating and managing a commercial farm on lands held in trust for the Navajo Nation under legislation authorizing the Navajo Indian Irrigation Project; and
2. The NAPI enabling legislation, at 5 N.N.C. § 1604, provides that "NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the Resources and Development Committee of the Navajo Nation Council"; and
3. Article 19 of the NAPI Plan of Operation provides that "[t]he Plan of Operation may be amended from time to time by the Resources and Development Committee of the Navajo Nation Council upon recommendation of the NAPI Board of Directors, and President of the Navajo Nation"; and
4. On October 17, 2017, the NAPI Board of Directors approved proposed amendments to the Plan of Operation by Resolution No. BDO-30-17 and delivered such proposed amendments to the Navajo Office of the President and the Resources and Development Committee of the Navajo Nation Council for review and consideration; and
5. On December 31, 2018, the Resources and Development Committee of the Navajo Nation Council by Resolution RDCD-111-18 adopted the Amended and Restated Plan of Operation for NAPI; however, the Amended and Restated Plan of Operation for NAPI did not include certain amendments that were initially proposed by the NAPI Board of Directors; and
6. The NAPI Board of Directors has determined that it is in the best interest of NAPI to request that the amendments to the Plan of Operation initially proposed by NAPI should be incorporated into the Plan of Operation; and
7. The NAPI Board of Directors has also determined that it is in the best interest of NAPI to extend NAPI's Alcohol and Drug-Free Policy to all Directors of the NAPI Board of Directors; and
8. Pursuant to the directive of the NAPI Board of Directors, NAPI legal counsel has reviewed and prepared amendments to the NAPI Plan of Operation, attached hereto as Exhibit "A", to incorporate the changes approved by the NAPI Board of Directors pursuant to Resolution No. BDO-30-17 and to extend NAPI's Alcohol and Drug-Free Policy to all Directors of the NAPI Board of Directors; and
9. The NAPI Board of Directors has considered the proposed amendments to the NAPI Plan of Operation, attached hereto as Exhibit "A", presented by NAPI Management and legal counsel and deems its adoption to be in the best interest of NAPI and the Navajo Nation.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The NAPI Board of Directors hereby approves amendments to the Plan of Operation of the Navajo Agricultural Products Industry, attached hereto as Exhibit "A".
2. The NAPI Board of Directors respectfully requests the Navajo Nation President recommend that the Resources and Development Committee of the Navajo Nation Council approve the amendments to the Plan of Operation of the Navajo Agricultural Products Industry, attached hereto as Exhibit "A".
3. The NAPI Board of Directors respectfully requests the Resources and Development Committee of the Navajo Nation Council approve the amendments to the Plan of Operation of the Navajo Agricultural Products Industry, attached hereto as Exhibit "A".
4. The NAPI Board of Directors hereby authorizes the Chief Executive Officer to take any and all actions necessary to carry out the purpose and intent of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at a special meeting at which a quorum was present at NAPI headquarters near Farmington, New Mexico, and that the same was passed by vote of 4 in favor, 0 opposed, and 0 abstained, this 5th day of July, 2019.

Motion: Lorenzo J. Begay
Second: Danny Simpson



Peter Deswood III, Chairperson
Board of Directors



NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

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July 9, 2019

Hon. Rickie Nez, Chairperson
Resources & Development Committee
The 24th Navajo Nation Council
P.O. Box 3390
Window Rock, Arizona 86515

RE: Amendments to the Plan of Operation of Navajo Agricultural Products Industry (NAPI)

Dear Honorable Nez,

I am requesting your assistance in sponsoring legislation regarding amendments to the Plan of Operation of Navajo Agricultural Products Industry (NAPI). Back in December 31, 2018, the Resources & Development Committee of the 23rd Navajo Nation Council passed RDCD-111-18 (Dec.31, 2018) that approved and adopted the Amended and Restated NAPI Plan of Operation. The amendments that were supposedly to be included as stated in NAPI Board Resolution BDO-30-17 were not included.

NAPI's Legal Counsel has reviewed and prepared amendments to NAPI's Plan of Operation and has incorporated the changes approved by the NAPI Board of Directors. In addition, extending NAPI's Alcohol and Drug-Free Policy to all Directors of the NAPI Board of Directors. Thereafter, on July 5, 2019, the NAPI Board approved Resolution No. BDJY-23-19 (Jul. 5, 2019) to recommend such amendments to NAPI's Plan of Operation attached as Exhibit "A". Pursuant to Article 19 Amendments of NAPI's Plan of Operation, NAPI sent a recommendation request letter to the Navajo Nation President's Office on July 10, 2019.

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

Sincerely,

David F. Zeller, *Chief Executive Officer*
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

Attachment: NAPI BOD Resolution No. BDJY-23-19
Exhibit "A" – NAPI Amended & Restated Plan of Operation
Letter to President Jonathan Nez requesting a recommendation (Jul.9, 2019)

c: NAPI Board of Directors
File

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council
FIRST YEAR

Special Meeting

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0272-19: An Action Relating to Resources and Development; Approving the Navajo Agricultural Products Industry's Amended Plan of Operation. *Sponsor: Honorable Rickie Nez*

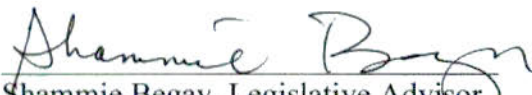
September 27, 2019 – Special Meeting

Meeting Location: Crownpoint NTU-President's Office Conference Room
Crownpoint, New Mexico

MAIN MOTION:

M: Mark A. Freeland S: Wilson C. Stewart, Jr. Vote: 3-2-1(VCNV)
YEAS: Mark A. Freeland, Rickie Nez and Herman M. Daniels
NAYS: Kee Allen Begay, Jr. and Wilson C. Stewart, Jr.


Honorable Thomas Walker, Jr., Presiding Vice-Chairman


Shammie Begay, Legislative Advisor
Office of Legislative Services