

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0348-17

**DATE:** September 5, 2017

**TITLE OF RESOLUTION:** PROPOSED COUNCIL RESOLUTION; AN ACT RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; ASSERTING SOVEREIGNTY AND TAKING OVER PRIMARY REGULATORY AUTHORITY FROM THE FEDERAL GOVERNMENT, OFFICE OF SURFACE MINING AND RECLAMATION ENFORCEMENT OVER ALL COAL MINING LANDS LOCATED ON THE NAVAJO NATION, ENACTING A WAIVER OF SOVEREIGN IMMUNITY; AND ESTABLISHING NEW SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 ET SEQ

**PURPOSE:** The purpose of this resolution is to enact the Navajo Nation Surface Coal Mining Program Act, establishing new Navajo Nation Code sections 18 N.N.C. §§1701 *et seq.* This enactment will provide for the regulation, inspection and enforcement of surface coal mining and reclamation operations on Navajo Nation lands by the Navajo Minerals Department, specifically the Surface Coal Mining Program. If this legislation is passed, the Navajo Nation will be the first, and possibly the only, American Indian Nation to obtain primacy over surface coal mining and reclamation.

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

5-DAY BILL HOLD PERIOD: None  
Website Posting Time/Date: 4:37pm 9/12/17  
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Eligible for Action: 9/12/2017

Law & Order Committee

THENCE

Resources & Development Committee

THENCE

Naa'bik'íyáti' Committee

THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
23<sup>rd</sup> NAVAJO NATION COUNCIL -- Third Year, 2017

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0348-17

AN ACT

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT,  
AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL;  
ASSERTING SOVEREIGNTY AND TAKING OVER PRIMARY  
REGULATORY AUTHORITY FROM THE FEDERAL GOVERNMENT,  
OFFICE OF SURFACE MINING AND RECLAMATION ENFORCEMENT  
OVER ALL COAL MINING LANDS LOCATED ON THE NAVAJO NATION,  
ENACTING A WAIVER OF SOVEREIGN IMMUNITY; AND ESTABLISHING  
NEW SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 *ET SEQ*

BE IT ENACTED:

**Section One. Findings**

- A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 601 (B) (14), reviews and makes recommendations to the Navajo Nation Council proposed amendments to the Navajo Nation Code.
- B. The Resources and Development Committee is a standing committee of the Navajo Nation Council and exercises oversight over the land and environmental protection. 2 N.N.C. § 500 (C).

- 1 C. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §  
2 164 (A) (9), reviews proposed legislation which requires final action by the Navajo  
3 Nation Council.
- 4 D. Enactments of positive law must be reviewed and approved by resolution by the  
5 Navajo Nation Council. 2 N.N.C. § 164 (A).
- 6 E. Pursuant to the federal Surface Mining Control and Reclamation Act (SMCRA)  
7 §710 (j) (1) (A), "an Indian tribe may apply for, and obtain the approval of, a tribal  
8 program under section 503 regulating in whole or in part surface coal mining and  
9 reclamation operations on reservation land."
- 10 F. Currently, the Office of Surface Mining and Reclamation Enforcement (OSMRE)  
11 regulates all aspects of surface coal mining and reclamation on Indian lands.
- 12 G. The passage of this legislation will increase the sovereignty of the Navajo Nation in  
13 regards to being able to regulate, inspect, and enforce both activity on both the mine  
14 sites while active mining is occurring and the reclamation standards for the mines  
15 on the Navajo Nation reservation lands when the mining is complete.
- 16 H. The Navajo Nation will receive 100% of the funding for the operation of the Navajo  
17 Surface Coal Mining Program, in contrast to states, who only receive 50% federal  
18 funding for their programs.
- 19 I. The Office of Surface Mining and Reclamation Enforcement (OSMRE) intends to  
20 implement a cost recovery program, which will charge mines thousands to hundreds  
21 of thousands of dollars to review permit revisions or conduct any similar type of  
22 work. The Nation will preserve mining jobs by saving the coal mining companies  
23 the cost of OSMRE's Cost Recovery Program cost as it applies only to the federal  
24 government work performed to review the many companies permit applications,  
25 amendments and field site visits.
- 26 J. Pursuant to the Surface Mining Control and Reclamation Act (SMCRA), a tribe  
27 needs to also enact a waiver of sovereign immunity. When an Indian Nation seeks  
28 to obtain primary regulatory authority pursuant to SMCRA, "an Indian tribe shall  
29 waive sovereign immunity for purposes of section 520 and paragraph (4)."  
30 SMCRA, PL 95-87 Section 710 (j) (3), or 30 USC 1300 (j) (3).

- 1 K. Further, this waiver of sovereign immunity currently extends past exhaustion of all  
2 tribal remedies, according to §710 (j) (4) (A). Should a party disagree with the  
3 decision of the Navajo Supreme Court, the party may appeal the decision to a  
4 federal district court.
- 5 L. The Nation, pursuant to Naabik'iyati' Resolution NABIO-87-16, attached as  
6 **Exhibit "C,"** is working with the United States Congress to remove the provision  
7 permitting an aggrieved party to appeal a decision of the Navajo Nation Supreme  
8 Court to a federal circuit court.
- 9 M. Should the United States Congress change SMCRA and remove the provision of  
10 §710 (j) (4) (A) allowing federal circuit court review of a Navajo court decision,  
11 this federal law shall be automatically incorporated into Navajo Nation law without  
12 further action by the Nation.
- 13 N. This legislation has been reviewed by Executive Review document number 004872,  
14 attached as **Exhibit "A."**
- 15 O. A legal analysis of this legislation is provided in **Exhibit "B."**
- 16 P. The Navajo Nation Minerals Department, Division of Natural Resources has  
17 worked for three decades to obtain Navajo Nation Primacy over surface coal mining  
18 and reclamation. The Nation is on track to be the first and may be the only  
19 American Indian Nation to obtain primary regulatory authority over surface coal  
20 mining reclamation.
- 21 Q. It is in the best interest of the Navajo Nation to obtain primary regulatory authority  
22 over surface coal mining and reclamation.

23  
24 **Section Two. Waiver of Navajo Nation Sovereign Immunity with regard to the**  
25 **Navajo Nation Surface Coal Mining and Reclamation Act**  
26

27 The Navajo Nation hereby grants a waiver of sovereign immunity only to the extent  
28 is it contained within the Navajo Nation Surface Coal Mining and Reclamation Act.  
29  
30



1       **Section Three. Enacting the Navajo Nation Surface Coal Mining and Reclamation**  
2       **Act, 18 N.N.C. § 1701 *Et Seq.***

3  
4       The Navajo Nation hereby enacts the Navajo Nation Surface Coal Mining and  
5       Reclamation Act, to provide for the regulation and enforcement of surface coal  
6       mining and reclamation operations and coal exploration, Navajo Nation Code, Title  
7       18, §§ 1701 *et seq.* as follows:

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9       \*\*\*\*

10  
11                       NAVAJO NATION CODE ANNOTATED  
12                       TITLE 18. MINES AND MINERALS  
13               CHAPTER 17. NAVAJO NATION SURFACE COAL MINING AND  
14                       RECLAMATION ACT

15  
16       CHAPTER 17 – DEFINITIONS, FINDINGS, AND PURPOSES

17  
18       SEC. 1701. Definitions

19       For the purposes of this Act —

20       A. Administrative Definitions:

- 21       1. “Act” means the Navajo Nation Surface Coal Mining and Reclamation Act;  
22       2. “Attorney General” means the Attorney General of the Navajo Nation;  
23       3. “BIA” means the Bureau of Indian Affairs of the U.S. Department of the Interior;  
24       4. “BLM” means the Bureau of Land Management of the U.S. Department of the  
25       Interior;  
26       5. “Federal Lands” means any land, including mineral interests, owned by the  
27       United States without regard to how the United States acquired ownership of the  
28       land and without regard to the agency having responsibility for management  
29       thereof, except Indian lands;  
30

1 6. "Federal Program for Indian Lands" means the program at 30 CFR Part 750  
2 established by the Secretary pursuant to SMCRA section 710(d) to regulate surface  
3 coal mining and reclamation operations on Indian Lands in accordance with the  
4 requirements of SMCRA;

5 7. "Indian Lands" means all lands, including mineral interests, within the exterior  
6 boundaries of any federal Indian reservation, notwithstanding the issuance of any  
7 patent, and including rights-of-way, and all lands including mineral interests held  
8 in trust for or supervised by an Indian tribe;

9 8. "Indian tribe" means any Indian tribe, band, group, or community having a  
10 governing body recognized by the Secretary;

11 9. "Local government," "local agency," "local governmental agency," and "local  
12 governmental body" mean a Navajo Nation Chapter, a local governmental unit of a  
13 state, or a non-Navajo tribal government or agency or local governmental unit  
14 thereof, which may be affected by the Navajo regulatory program;

15 10. "Navajo Nation" means the federally recognized Navajo Tribe of Indians, an  
16 Indian nation governed by the Navajo Nation government;

17 11. "Navajo Nation Chapter" means a unit of local government that is a political  
18 subdivision of the Navajo Nation and identified as a Chapter under Navajo Nation  
19 law;

20 12. "Navajo Nation law" means the entire body of law of the Navajo Tribe of  
21 Indians, including the Navajo Nation Code, all lawfully promulgated rules and  
22 regulations of agencies of the Navajo Tribe of Indians, and all lawfully enacted  
23 resolutions and ordinances of the Navajo Nation Chapters, Provided, that this Act  
24 preempts any authority of any political subdivision of the Navajo Nation over  
25 surface coal mining and reclamation operations;

26 13. "Navajo regulatory program" means the program established by the Navajo  
27 Nation and approved by the Secretary pursuant to sections 503, 504(e), and 710(j)  
28 of SMCRA to regulate surface coal mining and reclamation operations on Navajo  
29 regulatory program lands in accordance with the requirements of SMCRA and 30  
30 CFR Chapter VII;

1 14. "Navajo regulatory program lands" means those lands upon which surface coal  
2 mining and reclamation operations and coal exploration are regulated by the  
3 NSCMP under the Navajo regulatory program, which consist of all lands within the  
4 formal Navajo Indian Reservation as established by the Treaty of June 1, 1868 and  
5 subsequent acts of Congress and executive orders;

6 15. "Navajo Surface Coal Mining Program" is the tribal regulatory authority for  
7 administering this Act and SMCRA under the Navajo regulatory program approved  
8 by the Secretary;

9 16. "NNOHA" means the Navajo Nation Office of Hearings and Appeals which is  
10 the government unit responsible for conducting administrative hearings and  
11 deciding appeals of decisions of the Navajo Surface Coal Mining Program that are  
12 required or authorized by this Act;

13 17. "NSCMP" means the Navajo Surface Coal Mining Program;

14 18. "operator" means any person, partnership, or corporation engaged in coal  
15 mining who removes or intends to remove coal from the earth by coal mining;

16 19. "OSMRE" means the Office of Surface Mining Reclamation and Enforcement  
17 of the U.S. Department of the Interior;

18 20. "other minerals" means clay, stone, sand, gravel, metalliferous and  
19 nonmetalliferous ores, and any other solid material or substances of commercial  
20 value excavated in solid form from natural deposits on or in the earth, exclusive of  
21 coal and those minerals which occur naturally in liquid or gaseous form;

22 21. "permit" means a permit to conduct surface coal mining and reclamation  
23 operations issued by the NSCMP under the Navajo regulatory program or by  
24 OSMRE under the Federal Program for Indian Lands;

25 22. "permit applicant" or "applicant" means a person applying for a permit;

26 23. "permit area" means the area of land indicated on the approved map submitted  
27 by the operator with his or her application, which area of land shall be covered by  
28 the operator's bond as required by section 2109 of this Act and shall be readily  
29 identifiable by appropriate markers on the site;

30 24. "permittee" means a person holding a permit;

1 25. "person" means an individual, partnership, association, society, joint stock  
2 company, firm, company, corporation, or other business organization, including  
3 Navajo Nation business entities;

4 26. "Program Manager" means the Manager of the Navajo Surface Coal Mining  
5 Program;

6 27. "reclamation plan" means the plan in a permit application submitted under the  
7 Navajo regulatory program or the Federal Program for Indian Lands which sets  
8 forth a plan for reclamation of the proposed surface coal mining operations pursuant  
9 to section 2108 of this Act;

10 28. "regulatory authority" means the state or tribal regulatory authority where the  
11 State or Tribe is administering SMCRA under an approved state or tribal program  
12 or OSMRE where OSMRE is administering SMCRA under a federal program for a  
13 State, the Federal Program for Indian Lands, or the Federal Lands Program, or the  
14 Initial Program at 30 CFR Chapter VII, Subchapter B;

15 29. "Resources Committee" means the Resource and Development Committee of  
16 the Navajo Nation Council or any successor Navajo governmental entity, including  
17 any Navajo Executive Branch Division or Department to which authorities of the  
18 Resources and Development Committee may be delegated;

19 30. "Secretary" means the Secretary of the U.S. Department of the Interior;

20 31. "SMCRA" means the Surface Mining Control and Reclamation Act of 1977  
21 (P.L. 95-87), and all subsequent revisions and amendments to it;

22 32. "State" means a State of the United States;

23 33. "surface coal mining and reclamation operations" means surface coal mining  
24 operations and all activities necessary and incident to the reclamation of such  
25 operations after August 3, 1977;

26 34. "surface coal mining operations" means —

27 a. activities conducted on the surface of lands in connection with a surface coal  
28 mine or subject to the requirements of Section 2116 of this Act surface operations  
29 and surface impacts incident to an underground coal mine, the products of which  
30 enter commerce or the operations of which directly or indirectly affect interstate



1 commerce. Such activities include excavation for the purpose of obtaining coal  
2 including such common methods as contour, strip, auger, mountaintop removal, box  
3 cut, open pit, and area mining, the uses of explosives and blasting, and in-situ  
4 distillation or retorting, leaching or other chemical or physical processing, and the  
5 cleaning, concentrating, or other processing or preparation, loading of coal for  
6 interstate commerce at or near the mine site: Provided, however, that such activities  
7 do not include the extraction of coal incidental to the extraction of other minerals  
8 where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for  
9 purposes of commercial use or sale or coal explorations subject to section 2112 of  
10 this Act; and

11 b. the areas upon which such activities occur or where such activities disturb the  
12 natural land surface. Such areas shall also include any adjacent land the use of  
13 which is incidental to any such activities, all lands affected by the construction of  
14 new roads or the improvement or use of existing roads to gain access to the site of  
15 such activities and for haulage, and excavations, workings, impoundments, dams,  
16 ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles,  
17 spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas,  
18 processing areas, shipping areas and other areas upon which are sited structures,  
19 facilities, or other property or materials on the surface, resulting from or incident to  
20 such activities; and

21 35. "Uniform Rules" means the Uniform Regulations for Permit Review,  
22 Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo  
23 Nation Environmental Acts; Provided, that, as referred to in the Uniform Rules,  
24 "Director" shall mean "Program Manager," "NNEPA" shall mean "NSCMP,"  
25 "USEPA" shall mean "OSMRE," "tape recording" and "tape" shall include "other  
26 types of electronic recording," "a brief description of the proposed regulation" also  
27 shall include "a statement of the basis and purpose of the proposed regulation," in  
28 section 407(b) of the Uniform Rules, "adoption of the final regulation" shall include  
29 "approval of the final regulations by the Resources Committee," and in section  
30 407(c) of the Uniform Rules, "approval of the final regulations by the Resources

Committee” shall mean “approval of the final regulations by the Resources Committee and by the Secretary or the OSMRE Director.” In the case of any conflict between a provision of this Act or regulations implementing this Act and a provision of the Uniform Rules, the provision of this Act or implementing regulations shall govern.

B. Technical Definitions:

1. “alluvial valley floors” means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits;

2. “approximate original contour” means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the NSCMP determines that they are in compliance with section 2115(B)(8) of this Act;

3. “authorized land user” means a landowner, a person with valid homesite lease issued by the Navajo Land Department, a person with a valid grazing permit issued by the BIA, or a person with a valid permit, lease, right-of-way, or other type of authorization for surface or subsurface use of Navajo regulatory program lands or structures;

4. “cemetery” means any area of land where human bodies are interred, including family burial grounds and any site or area where a body is interred in the traditional Navajo way;

5. “commerce” means trade, traffic, commerce, transportation, transmission, or communication among the several States/Tribes or between a State/Tribe and any

1 other place outside thereof, or between points in the same State/Tribe which directly  
2 or indirectly affect interstate commerce;

3 6. "head-of-hollow fill" means a fill structure consisting of any material, other than  
4 organic material, placed in the uppermost reaches of a hollow where side slopes of  
5 the existing hollow, measured at the steepest point, are greater than 20 degrees or  
6 the average slope of the profile of the hollow from the toe of the fill to the top of the  
7 fill is greater than 10 degrees. In head-of-hollow fills the top surface of the fill,  
8 when completed, is at approximately the same elevation as the adjacent ridge line,  
9 and no significant area of natural drainage occurs above the fill draining into the fill  
10 area;

11 7. "imminent danger to the health and safety of the public" means the existence of  
12 any condition or practice, or any violation of a permit or other requirement of this  
13 Act in a surface coal mining and reclamation operation, which condition, practice,  
14 or violation could reasonably be expected to cause substantial physical harm to  
15 persons outside the permit area before such condition, practice, or violation can be  
16 abated. A reasonable expectation of death or serious injury before abatement exists  
17 if a rational person, subjected to the same conditions or practices giving rise to the  
18 peril, would not expose himself or herself to the danger during the time necessary  
19 for abatement;

20 8. "landowner" means both the legal owner of record and the equitable owner of  
21 record of the land;

22 9. "prime farmland" means land that is defined as prime farmland by the Secretary  
23 of the U.S. Department of Agriculture on the basis of such factors as moisture  
24 availability, temperature regime, chemical balance, permeability, surface layer  
25 composition, susceptibility to flooding, and erosion characteristics, and which  
26 historically has been used for intensive agricultural purposes, and as published in  
27 the Federal Register;

28 10. "steep slope" means any slope above twenty degrees;

29 11. "unwarranted failure to comply" means the failure of a permittee to prevent the  
30 occurrence of any violation of his or her permit or any requirement of this Act due



1 to indifference, lack of diligence, or lack of reasonable care, or the failure to abate  
2 any violation of such permit or this Act due to indifference, lack of diligence, or  
3 lack of reasonable care;

4 12. "valley fill" means a fill structure consisting of any material, other than organic  
5 material, that is placed in a valley where side slopes of the existing valley,  
6 measured at the steepest point, are greater than 20 degrees, or where the average  
7 slope of the profile of the valley from the toe of the fill to the top of the fill is  
8 greater than 10 degrees; and

9 13. "water user" means a person with an ownership interest in the water resource, a  
10 person with a valid right to the surface water or groundwater, a person with a valid  
11 water use permit issued by the Navajo Nation Department of Water Resources  
12 Water Code Administration, or a person with a valid permit, lease, or other type of  
13 authorization for use of the waters of the Navajo Nation.

14 SEC. 1702. Findings

15 The Navajo Nation Council finds and declares that —

16 A. the extraction of coal from the earth can be accomplished by various methods of  
17 mining, including surface mining;

18 B. the Navajo Nation owns and leases substantial and valuable deposits of coal,  
19 which may be recovered through both surface and underground mining methods.  
20 Commercial exploitation of coal resources yields significant benefits to the Navajo  
21 Nation and its members, including royalty and tax income and employment  
22 opportunities. Moreover, the commercial exploitation of coal resources contributes  
23 greatly to the well-being of surrounding States, and enhances the energy self-  
24 sufficiency and national security of the United States;

25 C. many surface coal mining operations on the Navajo Nation have resulted and  
26 may result in disturbances of surface areas that burden and adversely affect the  
27 public welfare by destroying or diminishing the utility of land for commercial,  
28 industrial, residential, recreational, agricultural, cultural, and forestry purposes, by  
29 causing erosion and landslides, by contributing to floods, by polluting the water, by  
30 destroying vegetation, fish, and wildlife habitats, by impairing natural beauty, by



1 damaging the property of the Navajo Nation and its residents, by creating hazards  
2 dangerous to life and property, by degrading quality of life in local communities,  
3 and by counteracting governmental programs and efforts to conserve soil, water,  
4 and other natural resources;

5 D. the Navajo Nation recognizes the need to establish appropriate standards to  
6 minimize damage to the environment and to restore the productivity of the soil and  
7 to protect the health and safety of the public;

8 E. surface coal mining and reclamation technologies are now developed so that the  
9 effective and reasonable regulation of surface coal mining operations on the Navajo  
10 Nation in accordance with the requirements of this Act is an appropriate and  
11 necessary means to minimize so far as practicable the adverse social, economic, and  
12 environmental effects of such mining operations;

13 F. the Navajo Nation shall set surface coal mining and reclamation standards  
14 consistent with, and no less stringent than, the standards set forth in SMCRA and  
15 regulations promulgated thereunder, in order to ensure that competitive pressures  
16 among coal suppliers will not undermine the ability of the Navajo Nation to  
17 improve and maintain adequate environmental standards for coal mining operations  
18 within the Navajo Nation;

19 G. surface coal mining and reclamation operations contribute to the economic well-  
20 being and general welfare of the Navajo Nation and should be conducted in an  
21 environmentally sound manner, with proper respect for the characteristics, culture,  
22 and traditions of the Navajo Nation and its people;

23 H. the comprehensive and cooperative effort established by this Act is necessary to  
24 prevent or mitigate adverse environmental effects of present and future surface coal  
25 mining operations;

26 I. the health, welfare, cultural integrity, and economic viability of the Navajo  
27 Nation depend on its natural and human resources. The lands of the Navajo Nation  
28 have enormous economic and social significance for the Navajo People, as  
29 rangeland for the grazing of livestock, as homeland for the many thousands of  
30 Navajos who prefer to live in the traditional Navajo way on the land, as farmland

1 for the raising of crops, as forests for timber development, as habitat for diverse  
2 species of wildlife, as the source of plants and herbs vital to numerous traditional  
3 religious rites and ceremonies, and as an embodiment of much of the spirit of  
4 traditional Navajo beliefs. The increase in the Navajo population has caused the  
5 Navajo Nation land base to become crowded in many areas. Thus, care must be  
6 taken to ensure that the positive values of a one-time, temporary land use such as  
7 surface coal mining do not damage the long-term interests of the Navajo Nation and  
8 its people; and

9 J. the regulation of land use within the territorial jurisdiction of the Navajo Nation  
10 for all its residents is an essential component of the sovereignty of the Navajo  
11 Nation. The Navajo Nation seeks self-sufficiency and should undertake full  
12 responsibility for effectuating this component of Navajo Nation sovereignty.

13  
14 SEC. 1703. Purposes

15 It is the purpose of this Act to —

16 A. establish a program for the Navajo Nation to protect people and the environment  
17 from the adverse effects of surface coal mining operations;

18 B. assure that the rights of surface landowners, residents, water users, and  
19 authorized land users are fully protected from such operations;

20 C. assure that surface coal mining operations are not conducted where reclamation  
21 as required by this Act is not feasible;

22 D. assure that surface coal mining operations are conducted so as to protect the  
23 environment;

24 E. assure that adequate procedures are undertaken to reclaim surface areas as  
25 contemporaneously as possible with the surface coal mining operations;

26 F. assure that the coal supply essential to the Navajo Nation's economic and social  
27 well-being is provided and strike a proper balance, consistent with this Act and  
28 SMCRA, between protection of the environment and agricultural productivity and  
29 the Navajo Nation's need for coal as an essential source of revenue;  
30

1 G. assure that appropriate procedures are provided for public participation in the  
2 development, revision, and enforcement of regulations, standards, reclamation  
3 plans, or programs established by the Navajo Nation under this Act;

4 H. wherever necessary, exercise the full reach of the sovereign and delegated  
5 powers of the Navajo Nation to the extent allowed by applicable laws to ensure the  
6 protection of the public interest through effective control of surface coal mining  
7 operations; and

8 I. carry out the provisions and purposes of SMCRA and implementing federal  
9 regulations, as amended.

## 10 11 CHAPTER 18 – NAVAJO SURFACE COAL MINING PROGRAM

### 12 13 SEC. 1801. Establishment, Employees, and Duties of the Navajo Surface Coal 14 Mining Program

15 A. There is established in the Navajo Nation Division of Natural Resources,  
16 Minerals Department, the Navajo Surface Coal Mining Program to regulate surface  
17 coal mining and reclamation operations and coal exploration on Navajo regulatory  
18 program lands pursuant to this Act.

19 B. The NSCMP shall have a Program Manager who shall be hired in accordance  
20 with Navajo Nation personnel practices, and who shall report to the Director of the  
21 Navajo Nation Minerals Department. The Program Manager shall have the  
22 responsibilities provided under subsection (C) of this section. Employees of the  
23 NSCMP shall be recruited consistent with Navajo Nation laws and personnel  
24 practices on the basis of their professional competence and capacity to administer  
25 the provisions of this Act. The NSCMP may use employees of federal agencies on  
26 a reimbursable basis when appropriate and where authorized by applicable federal  
27 law; Provided that, such federal employees shall be subject to SMCRA section  
28 201(f) and the federal agencies and employees shall comply with the requirements  
29 of 30 CFR Part 706. The NSCMP may use, on a reimbursable basis when  
30 appropriate, employees of other Navajo Nation agencies to administer the



1 provisions of this Act, providing that no legal authority, program, or function in any  
2 Navajo Nation agency which has in its purpose promoting the development or use  
3 of coal or other mineral resources or regulating the health and safety of miners  
4 under the provisions of the Federal Coal Mine Health and Safety Act of 1969 (83  
5 Stat. 742) shall be transferred to the NSCMP.

6 C. The Program Manager shall —

7 1. administer the NSCMP and the Navajo regulatory program for controlling  
8 surface coal mining and reclamation operations and coal exploration; make those  
9 investigations and inspections necessary to ensure compliance with this Act;  
10 conduct hearings, administer oaths, issue subpoenas, and compel the attendance of  
11 witnesses and production of written or printed material as provided for in this Act;  
12 issue cease-and-desist orders; review and vacate or modify or approve orders and  
13 decisions; review and approve, disapprove, or conditionally approve permit  
14 applications for surface coal mining operations and coal exploration; issue or deny  
15 permits for surface coal mining operations and coal exploration; and order the  
16 suspension, revocation, or withholding of any permit for surface coal mining  
17 operations and coal exploration for failure to comply with any of the provisions of  
18 this Act or any rules and regulations adopted pursuant thereto;

19 2. publish and promulgate, pursuant to the rulemaking procedures of Subpart 4 of  
20 the Uniform Rules, such rules and regulations as may be necessary to carry out the  
21 purposes and provisions of this Act, including procedures and requirements for  
22 administrative adjudicatory hearings to be conducted by the NNOHA under this  
23 Act;

24 3. consult with federal agencies, other Navajo Nation agencies, and, where  
25 appropriate, state and non-Navajo tribal agencies having expertise in the control and  
26 reclamation of surface coal mining operations, to provide for effective  
27 administration of this Act and to minimize unnecessary duplication of effort;

28 4. conduct a continuing study of surface coal mining and reclamation operations  
29 within the Navajo Nation by collecting data, conducting experiments, and  
30 conducting appropriate research in order to improve reclamation technology;



1 5. develop objective criteria and appropriate procedures and institutions for  
2 determining those areas of Navajo regulatory program lands to be designated  
3 unsuitable for all or certain types of surface coal mining pursuant to section 2122 of  
4 this Act;

5 6. cooperate with other Navajo Nation and federal agencies and state and tribal  
6 regulatory authorities to minimize duplication of inspections, enforcement, and  
7 administration of this Act and SMCRA;

8 7. administer cooperative agreements with OSMRE, other federal agencies, and,  
9 where appropriate, state and tribal agencies;

10 8. develop and implement the Navajo regulatory program for regulation of surface  
11 coal mining and reclamation operations that reflects the requirements and  
12 environmental, cultural, and agricultural conditions of the Navajo Nation as  
13 provided in this Act;

14 9. assure that the decisions, goals, regulations, and non-confidential information of  
15 the NSCMP are made available to the public at reasonable times and interpreted  
16 when requested;

17 10. notify OSMRE of potential criminal actions associated with surface coal mining  
18 and reclamation operations on Navajo regulatory program lands and recommend  
19 that OSMRE pursue criminal penalties under SMCRA; and

20 11. perform such other duties as may be provided by law and relate to the purposes  
21 of this Act.

22 D. The Program Manager shall not use, either permanently or temporarily, any  
23 person charged with responsibility of inspecting coal mines under the Federal Coal  
24 Mine Health and Safety Act of 1969, unless he or she finds and publishes such  
25 finding in a daily or weekly newspaper of general circulation in the Navajo Nation  
26 that such activities would not interfere with such inspections under the 1969 Act.

27 E. No employee of the NSCMP or any other Navajo Nation employee performing  
28 any function or duty under this Act shall have a direct or indirect financial interest  
29 in underground or surface coal mining operations. A person shall not be deemed to  
30 have a direct or indirect financial interest in underground or surface coal mining

1 operations by virtue of such person's membership in the Navajo Nation. No  
2 employee of the NSCMP or any other Navajo Nation employee performing any  
3 function or duty under this Act shall be eligible for a per capita distribution of any  
4 proceeds from coal mining operations conducted on Indian reservation lands under  
5 SMCRA. Whoever knowingly violates the provisions of this subsection shall, upon  
6 conviction, be punished by a fine of not more than \$2,500, or by imprisonment for  
7 not more than one year, or both, to the extent authorized by applicable law. The  
8 Program Manager shall publish and promulgate regulations, in accordance with the  
9 Uniform Rules, Subpart 4, that meet the minimum policies and procedures of 30  
10 CFR Part 705 to monitor and enforce the provisions of this subsection, including  
11 appropriate rules for the filing by such employees of statements concerning their  
12 financial interests which may be affected by this subsection and the review of such  
13 statements and supplements thereto.

14 F. Petitions for issuance, amendment, or repeal of rule; filing; hearing or  
15 investigation; notice of denial

16 1. After the NSCMP has adopted regulations as required by section 2101 of this  
17 Act, any person may petition the Program Manager to initiate a proceeding for the  
18 issuance, amendment, or repeal of a rule under this Act.

19 2. Such petitions shall be filed in the principal office of the Program Manager and  
20 shall set forth only the facts which it is claimed established that it is necessary to  
21 issue, amend, or repeal a rule under this Act.

22 3. The Program Manager may hold a public hearing or may conduct such  
23 investigation or proceeding as he or she deems appropriate in order to determine  
24 whether or not such petition should be granted.

25 4. Within 90 days after filing of a petition described in paragraph (1) of this  
26 subsection, the Program Manager shall either grant or deny the petition. If the  
27 Program Manager grants such petition, the Program Manager shall promptly  
28 commence an appropriate proceeding in accordance with the provisions of Subpart  
29 4 of the Uniform Rules. If the Program Manager denies such petition, the Program  
30 Manager shall so notify the petitioner in writing setting forth the reasons for such

1 denial. The Program Manager's decision denying in whole or in part such petition  
2 shall be subject to appeal pursuant to section 2126 of this Act.

3 5. Any person may petition the Navajo Nation District Court for the District of  
4 Window Rock for judicial review of a final regulation and may request amendment  
5 or repeal of the regulation pursuant to Subpart 4 of the Uniform Rules.

6 G. The NSCMP shall not participate in any way in negotiations for and leasing of  
7 Navajo Nation coal or other mineral resources.

8 H. The NSCMP is authorized to submit grant applications and receive and  
9 administer grants under 30 CFR Chapter VII, Subchapter C. Funds received by the  
10 NSCMP for any purpose whatsoever shall be disbursed and accounted for in  
11 accordance with this Act and applicable Navajo Nation and federal laws.

12 I. The Navajo Nation hereby waives sovereign immunity for the limited purposes of  
13 citizen suits arising under section 2120 of this Act or under section 520 of SMCRA,  
14 judicial review under section 2126 of this Act, and judicial review under SMCRA  
15 section 710(j)(4). The NSCMP shall be and hereby is clothed with the sovereign  
16 immunity from suit enjoyed by the Navajo Nation, to the extent not waived in this  
17 Act. Permittees and operators of surface coal mining and reclamation operations in  
18 which the Navajo Nation has an ownership or controlling interest are not clothed in  
19 sovereign immunity for the purposes of this Act and are fully subject to the  
20 provisions of this Act.

21 J. The Program Manager shall closely monitor all pertinent legislation, both Navajo  
22 Nation and federal, concerning coal mining, Indian lands, regulatory powers,  
23 reclamation, and related issues to protect the interests of the Navajo Nation. The  
24 Program Manager may represent the Navajo Nation at hearings and provide  
25 comments, both written and oral, with respect to mining reclamation and regulatory  
26 issues in the name of the Navajo Nation: Provided, that participation in such  
27 hearings and such comments are reviewed and approved in accordance with  
28 applicable Navajo Nation law.

29  
30 CHAPTER 19 – RESERVED

1  
2 CHAPTER 20 – RESERVED  
3

4 CHAPTER 21 – CONTROL OF THE ENVIRONMENTAL IMPACTS OF  
5 SURFACE COAL MINING  
6

7 SEC. 2101. Promulgation of Implementing Regulations

8 A. After the enactment of this Act, the Program Manager shall publish and  
9 promulgate regulations covering the standards and procedures for surface coal  
10 mining and reclamation operations based on and incorporating the provisions set  
11 out in this Act. The Program Manager shall follow the rulemaking procedures in  
12 Subpart 4 of the Uniform Rules, including providing public notice of these  
13 proposed regulations and affording interested persons and Navajo Nation, federal,  
14 state, and local governments a period of not less than 30 days following publication  
15 to review and comment on the proposed regulations. The Program Manager also  
16 shall provide at least one public hearing, in Window Rock, on the proposed  
17 regulations.

18 B. The Program Manager shall consult with OSMRE, BIA, BLM, and the Navajo  
19 Nation Environmental Protection Agency, and solicit their comments prior to the  
20 promulgation of such rules. Comments submitted by all agencies and the public  
21 shall be considered by the Program Manager.  
22

23 SEC. 2102. Reserved  
24

25 SEC. 2103. Reserved  
26

27 SEC. 2104. Reserved  
28

29 SEC. 2105. Reserved  
30



1       SEC. 2106. Permits

2       A. Persons engaged in surface coal mining within Navajo Nation; time limit;  
3       exception

4       1. On the effective date of approval of the Navajo regulatory program by the  
5       Secretary, pursuant to SMCRA sections 503 and 710(j), no person shall engage in  
6       or carry out on Navajo regulatory program lands any surface coal mining operations  
7       unless such person has first obtained a permit issued by the NSCMP pursuant to the  
8       Navajo regulatory program or holds a valid permit from OSMRE under the Federal  
9       Program for Indian Lands. A person conducting surface coal mining operations  
10      under a permit issued by OSMRE under the Federal Program for Indian Lands may  
11      continue to conduct such operations as authorized in the permit, subject to the  
12      provisions of paragraph (A)(2) of this section. OSMRE shall work with the Nation  
13      to complete any permitting action begun prior to the effective date of approval of  
14      the Navajo regulatory program.

15      2. Upon the effective date of approval of the Navajo regulatory program by the  
16      Secretary, the NSCMP shall become the regulatory authority administering the  
17      federal permits issued by OSMRE under the Federal Program for Indian Lands for  
18      those surface coal mining operations on Navajo regulatory program lands that are  
19      authorized under the federal permit. The NSCMP shall review such permits to  
20      determine that the permit meets the requirements of this Act and the regulations  
21      promulgated thereunder. The federal permittee shall also have the right to apply for  
22      a tribal permit to supersede his or her federal permit. Should the Navajo regulatory  
23      program contain additional requirements not contained in the Federal Program for  
24      Indian Lands, the permittee will be provided the opportunity for an administrative  
25      hearing and up to 180 days after notification by the NSCMP of such additional  
26      requirements or the conclusion of the administrative hearing, if requested, to  
27      conform his or her ongoing surface coal mining and reclamation operations to such  
28      additional requirements. Upon the effective date of approval of the Navajo  
29      regulatory program by the Secretary, the NSCMP shall also be responsible for the  
30      regulation of surface coal mining and reclamation operations on Navajo regulatory

1 program lands under the initial regulatory program at 30 CFR Chapter VII  
2 Subchapter B.

3 B. All permits issued pursuant to this Act shall be issued for a term not to exceed  
4 five years: Provided, that if the applicant demonstrates that a specified longer term  
5 is reasonably needed to allow the applicant to obtain necessary financing for  
6 equipment and the opening of the operation, and if the application is full and  
7 complete for such specified longer term, the NSCMP may grant a permit for such  
8 longer term. A successor-in-interest to a permittee who applies for a new permit  
9 within 30 days of succeeding to such interest, and who is able to obtain the bond  
10 coverage of the original permittee, may continue surface coal mining and  
11 reclamation operations according to the approved mining and reclamation plan of  
12 the original permittee until such successor's application is granted or denied.

13 C. A permit shall terminate if the permittee has not commenced the surface coal  
14 mining operations covered by such permit within three years of the permit issuance:  
15 Provided, that the NSCMP may grant reasonable extensions of time upon a showing  
16 that such extensions are necessary by reason of litigation precluding such  
17 commencement or threatening substantial economic loss to the permittee, or by  
18 reason of conditions beyond the control and without the fault or negligence of the  
19 permittee: Provided further, that in the case of a coal lease issued by the Navajo  
20 Nation for coal owned in whole or in part in fee by the Navajo Nation or held by the  
21 United States in trust for the Navajo Tribe of Indians, no extension of time may  
22 extend beyond the period allowed for development in accordance with such lease or  
23 other applicable law and in the case of a coal lease issued under the federal Mineral  
24 Leasing Act, as amended, extensions of time may not extend beyond the period  
25 allowed for diligent development in accordance with section 7 of that Act: Provided  
26 further, That with respect to coal to be mined for use in a synthetic fuel facility or  
27 specific major electric generating facility, the permittee shall be deemed to have  
28 commenced surface coal mining operations at such time as the construction of the  
29 synthetic fuel or generating facility is initiated.

30 D. Renewal

1 1. Any valid permit issued pursuant to this Act shall carry with it the right of  
2 successive renewal upon expiration with respect to areas within the boundaries of  
3 the existing permit. The holders of the permit may apply for renewal and such  
4 renewal shall be issued (provided, that on application for renewal the burden shall  
5 be on the opponents of renewal), subsequent to fulfillment of the public notice  
6 requirements of sections 2113 and 2114 of this Act unless it is established that and  
7 written findings by the NSCMP are made that:

8 (a) the terms and conditions of the existing permit are not being satisfactorily met;

9 (b) the present surface coal mining and reclamation operations are not in  
10 compliance with the environmental protection standards of this Act and the Navajo  
11 regulatory program;

12 (c) the renewal requested substantially jeopardizes the operator's continuing  
13 responsibility on existing permit areas;

14 (d) the operator has not provided evidence that the performance bond in effect for  
15 said operation will continue in full force and effect for any renewal requested in  
16 such application as well as any additional bond the NSCMP might require pursuant  
17 to section 2109 of this Act; or

18 (e) any additional revised or updated information required by the NSCMP has not  
19 been provided.

20 2. Prior to the approval of any permit renewal, the NSCMP shall provide notice to  
21 the appropriate Navajo Nation Chapters, Departments, Commissions, and  
22 Divisions, and other public authorities.

23 3. If an application for renewal of a valid permit includes a proposal to extend the  
24 mining operation beyond the boundaries authorized in the existing permit, the  
25 portion of the application for renewal of a valid permit which addresses any new  
26 land areas shall be subject to the full standards applicable to new applications under  
27 this Act.

28 4. Any permit renewal shall be for a term not to exceed the period of the original  
29 permit established by this Act. An application for permit renewal shall be made at  
30 least 120 days prior to the expiration of the valid permit.



1       SEC. 2107. Application Requirements

2       A. Each application for a surface coal mining and reclamation permit pursuant to  
3       this Act shall be accompanied by a fee as determined by the NSCMP. Such fee  
4       may be less than but shall not exceed the actual or anticipated cost of reviewing,  
5       administering, and enforcing such permit issued pursuant to the Navajo regulatory  
6       program. The NSCMP may develop procedures so as to enable the cost of the fee  
7       to be paid over the term of the permit.

8       B. The permit application shall be submitted in a manner satisfactory to the  
9       NSCMP and shall contain, among other items —

10       1. the names and addresses of (A) the permit applicant; (B) every landowner of the  
11       property (surface and mineral) to be mined; (C) the holders of record of any  
12       leasehold interest in the property; (D) any purchaser of record of the property under  
13       a real estate contract; (E) any authorized land user; (F) the operator if s/he is a  
14       person different from the applicant; and (G) if any of the above is a business entity  
15       other than a single proprietor, the names and addresses of its principals, officers,  
16       and registered agent for service of process pursuant to the Navajo Nation  
17       Corporation Code;

18       2. the names and addresses of the landowners of all surface and subsurface areas  
19       adjacent to any part of the permit area;

20       3. a statement of any current or previous surface coal mining permits in the United  
21       States held by the applicant and the permit identification, and each pending  
22       application;

23       4. if the applicant is a partnership, corporation, association, or other business entity,  
24       the following where applicable: the names and addresses of every officer, partner,  
25       director, or person performing for the applicant a function similar to a director,  
26       together with the name and address of any person owning of record 10 percent or  
27       more of any class of voting stock of the applicant, and a list of all names under  
28       which the applicant, partner, or principal shareholder previously operated a surface  
29       mining operation within the United States within the five-year period preceding the  
30       date of submission of the application;



1 5. a statement of whether the applicant or any subsidiary, affiliate, or persons  
2 controlled by or under common control with the applicant, has ever held a federal,  
3 state, or tribal mining permit, that in the five-year period prior to the date of  
4 submission of the application has been suspended or revoked or has had a mining  
5 bond or similar security deposited in lieu of bond forfeited and, if so, a brief  
6 explanation of the facts involved;

7 6. a copy of the applicant's advertisement to be published in a newspaper of general  
8 circulation in the locality of the proposed site at least once a week for four  
9 successive weeks, and which includes the ownership, a description of the exact  
10 location and boundaries of the proposed site sufficient so that the proposed  
11 operation is readily locatable by local residents, and the location of where the  
12 application is available for public inspection;

13 7. a description of the type and method of coal mining operation that exists or is  
14 proposed, the engineering techniques used or proposed to be used, and the  
15 equipment used or proposed to be used;

16 8. the anticipated or actual starting and termination dates of each phase of the  
17 mining operation and the number of acres of land to be affected;

18 9. an accurate map or plan, to an appropriate scale, that clearly shows the land to be  
19 affected as of the date of the application, the area of land within the permit area  
20 upon which the applicant has the legal right to enter and commence surface mining  
21 operations, and a statement of those documents upon which the applicant bases his  
22 or her legal right to enter and commence surface mining operations on the area  
23 affected and whether that right is the subject of pending court litigation: Provided,  
24 that nothing in this Act shall be construed as vesting in the NSCMP the jurisdiction  
25 to adjudicate property title disputes;

26 10. the name of the watershed and location of the surface stream or tributary into  
27 which surface and pit drainage will be discharged;

28 11. a determination of the probable hydrologic consequences of the mining and  
29 reclamation operations, both on and off the mine site, with respect to the hydrologic  
30 regime, quantity and quality of water in surface water and groundwater systems,

1 including the dissolved and suspended solids under seasonal flow conditions, and  
2 the collection of sufficient data for the mine site and surrounding areas so that an  
3 assessment can be made by the NSCMP of the probable cumulative impacts of all  
4 anticipated mining in the area upon the hydrology of the area and particularly upon  
5 water availability: Provided, however, that the determination shall not be required  
6 until such time as hydrologic information on the general area prior to mining is  
7 made available from an appropriate Navajo Nation, federal, state, or tribal agency,  
8 and Provided further, that the permit shall not be approved until such information is  
9 available by the applicant and is incorporated into the application;

10 12. when requested by the NSCMP, the climatological factors that are peculiar to  
11 the locality of the land to be affected, including the average seasonal precipitation,  
12 the average direction and velocity of prevailing winds, and the seasonal temperature  
13 ranges;

14 13. accurate maps to an appropriate scale clearly showing (A) the land to be  
15 affected as of the date of application and (B) all types of information set forth on  
16 the topographical maps of the U.S. Geological Survey of a scale of 1:24,000 or  
17 1:25,000 or larger, including all manmade features and significant known  
18 archaeological sites (including all Indian historical, burial, and religious sites)  
19 existing on the date of application, provided, however, that information which  
20 pertains to such sites shall be kept confidential and not made a matter of public  
21 record. Such a map or plan shall, among other requirements specified by the  
22 NSCMP, show all boundaries of the land to be affected, the boundary lines and  
23 names of present landowners of all surface areas abutting the permit area, and the  
24 location of all buildings within 1,000 feet of the permit area;

25 14. cross-sections, maps or plans of the land to be affected including the actual area  
26 to be mined, prepared by or under the direction of and certified by a qualified  
27 registered professional engineer or professional geologist, with assistance from  
28 experts in related fields such as land surveying and landscape architecture, showing  
29 the pertinent elevation and location of test borings or core samplings and depicting  
30 the following information: the nature and depth of the various strata of overburden;

1 the location of groundwater, if encountered, and its quality; the nature and thickness  
2 of any coal or rider seam above the coal seam to be mined; the nature of the stratum  
3 immediately beneath the coal seam to be mined; all mineral crop lines and the strike  
4 and dip of the coal to be mined, within the area of land to be affected; existing or  
5 previous surface mining limits; the location and extent of known workings of any  
6 underground mines, including mine openings to the surface; the location of  
7 aquifers; the estimated elevation of the water table; the location of spoil, waste, or  
8 refuse areas and topsoil preservation areas; the location of all impoundments for  
9 waste or erosion control; any settling or water treatment facility; constructed or  
10 natural drainways and the location of any discharges to any surface body of water  
11 on the area of land to be affected or adjacent thereto; and profiles at appropriate  
12 cross-sections of the anticipated final surface configuration that will be achieved  
13 pursuant to the operator's proposed reclamation plan;

14 15. a statement of the result of test borings or core samplings from the permit area,  
15 including logs of the drill holes, the thickness of the coal seam found, and an  
16 analysis of the chemical properties of such coal; the sulfur content of any coal  
17 seam; chemical analysis of potentially acid- or toxic-forming sections of the  
18 overburden; and a chemical analysis of the stratum lying immediately underneath  
19 the coal to be mined, except that the provisions of this paragraph may be waived by  
20 the NSCMP with respect to the specific application, by a written determination that  
21 such requirements are unnecessary;

22 16. for those lands in the permit application, which a reconnaissance inspection  
23 suggests may be prime farmlands, a soil survey which shall be made or obtained  
24 according to standards established by the Natural Resources Conservation Service  
25 in order to confirm the exact location of such prime farmlands, if any;

26 C. Information pertaining to coal seams, test borings, core samplings, or soil  
27 samples as required by this section shall be made available to any person with an  
28 interest which is or may be adversely affected: Provided, that information which  
29 pertains only to the analysis of the chemical and physical properties of the coal  
30 (excepting information regarding such mineral or elemental content which is



1 potentially toxic in the environment) shall be kept confidential and not made a  
2 matter of public record.

3 D. Applications for surface coal mining and reclamation permits pursuant to this  
4 Act shall be submitted to the NSCMP in a format approved by the NSCMP. The  
5 NSCMP shall notify and make available to each applicant for a surface coal mining  
6 and reclamation permit the format in which the application must be submitted.

7 E. If the NSCMP finds that the probable total annual production at all locations of a  
8 surface coal mining operation will not exceed 300,000 tons, the cost of the  
9 following activities, which shall be performed by a qualified public or private  
10 laboratory or such other public or private qualified entity designated by the  
11 NSCMP, shall be assumed by the NSCMP upon the written request of the operator  
12 in connection with his or her permit application:

13 1. the determination of probable hydrologic consequences required by subsection  
14 (B)(11) of this section, including the engineering analyses and designs necessary for  
15 the determination;

16 2. the development of cross-sections, maps and plans required by subsection  
17 (B)(14) of this section;

18 3. the geologic drilling and statement of results of test borings and core samplings  
19 required by subsection (B)(15) of this section;

20 4. the collection of archaeological information required by subsection (B)(13) of  
21 this section and any other archaeological and historical information required by the  
22 NSCMP, and the preparation of plans necessitated thereby;

23 5. pre-blast surveys required by section 2115(B)(15)(e) of this Act; and

24 6. the collection of site-specific resource information and the production of  
25 protection and enhancement plans for fish and wildlife habitats and other  
26 environmental values required by the NSCMP under this Act.

27 F. Each applicant for a permit shall be required to submit to the NSCMP, as part of  
28 the permit application, a reclamation plan which shall meet the requirements of this  
29 Act.

1 G. Each applicant for a surface coal mining and reclamation permit shall file a copy  
2 of the application for public inspection at the appropriate Navajo Nation Chapter(s)  
3 or public office designated by the NSCMP near where the mining is proposed to  
4 occur, except for that information pertaining to archaeological information that is  
5 protected as the normal course of business at the Nation and the coal seam itself—  
6 or and any other information required to be kept confidential pursuant to Navajo  
7 law.

8 H. Each applicant for a permit shall be required to submit to the NSCMP, as part of  
9 the permit application, a certificate issued by an insurance company authorized to  
10 do business in the United States which certifies that the applicant has a public  
11 liability insurance policy in force for the surface coal mining and reclamation  
12 operations for which such permit is sought. Such policy shall provide for personal  
13 injury and property damage protection in an amount adequate to compensate any  
14 persons damaged as a result of surface coal mining and reclamation operations,  
15 including the use of explosives, and entitled to compensation under the applicable  
16 provisions of Navajo Nation law and/or state law. Such policy shall be maintained  
17 in full force and effect during the terms of the permit or any renewal, including the  
18 duration of all reclamation operations.

19 I. Each applicant for a surface coal mining and reclamation permit shall submit to  
20 the NSCMP, as part of the permit application, a blasting plan which outlines the  
21 procedures and standards by which the operator will meet the provisions of section  
22 2115(B)(15) of this Act.

23 J. An operator that has received assistance pursuant to subsection (E) of this section  
24 shall reimburse the NSCMP for the cost of the services rendered if the Program  
25 Manager finds that the operator's actual and attributed annual production of coal for  
26 all locations exceeds 300,000 tons during the 12 months immediately following the  
27 date on which the operator is issued the surface coal mining and reclamation permit.

28  
29 SEC. 2108. Reclamation Plan Requirements  
30

1 A. Each reclamation plan submitted as part of a permit application to the NSCMP  
2 shall include, in the degree of detail necessary to demonstrate that reclamation as  
3 required by the Navajo regulatory program can be accomplished, a statement of:  
4 1. the identification of the lands subject to surface coal mining operations, over the  
5 estimated life of those operations, and the size, sequence, and timing of the sub-  
6 areas for which it is anticipated that individual permits for mining will be sought;  
7 2. the condition of the land to be covered by the permit prior to any mining,  
8 including:  
9 a. the uses existing at the time of the application, and if the land has a history of  
10 previous mining, the uses which preceded any mining;  
11 b. the capability of the land prior to mining to support a variety of uses, giving  
12 consideration to soil and foundation characteristics, topography, and vegetative  
13 cover, and if applicable, a soil survey prepared pursuant to section 2107(B)(16) of  
14 this Act; and  
15 c. the productivity of the land prior to mining, including appropriate classification  
16 as prime farmlands, as well as the average yield of food, fiber, forage, or wood  
17 products from such lands obtained under high levels of management;  
18 3. the use which is proposed to be made of the land following reclamation,  
19 including a discussion of the utility and capacity of the reclaimed land to support a  
20 variety of alternative uses and the relationship of such use to existing land-use  
21 policies and plans, the comments of any landowners of the surface , and the  
22 comments of the Navajo Nation Land Department and other Navajo Nation  
23 agencies, the BIA, and state and local governments or agencies thereof that would  
24 have to initiate, implement, approve or authorize the proposed use of the land  
25 following reclamation;  
26 4. a detailed description of how the use which is proposed to be made of the land  
27 following reclamation is to be achieved, and the necessary support activities which  
28 may be needed to achieve the proposed land use;  
29 5. the engineering techniques proposed to be used in mining and reclamation and a  
30 description of the major equipment to be utilized; a plan for the control of surface



water drainage and of water accumulation; a plan, where appropriate, for backfill, soil stabilization, compaction and grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in sections 2115(B)(7)(a), (b), (c) and (d) of this Act, for those food, forage, and forest lands identified in section 2115(B)(7) of this Act; an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in section 2115 of this Act;

6. the consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be eliminated or minimized;

7. a detailed estimated timetable for accomplishing each major step in the reclamation plan;

8. the consideration which has been given to making the surface mining and reclamation operations consistent with the plans of the surface landowners and applicable Navajo Nation, BIA, state, and local land-use plans and programs;

9. the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards, including a detailed description of how the applicant proposes to conduct dust abatement during surface mining and reclamation operations;

10. the consideration which has been given to developing the reclamation plan in a manner consistent with the local physical, environmental, and climatological conditions;

11. all lands, interests in lands, or options on such interests held by the applicant or pending bids by the applicant on interests in lands, which lands are contiguous to the area to be covered by the permit;

12. the results of test borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the NSCMP, including the location of groundwater, and an analysis of the chemical and physical properties of the coal and overburden, including the acid-forming properties of the mineral contents and overburden: Provided, that information

1 which pertains only to the analysis of the chemical and physical properties of the  
2 coal (excepting information regarding such mineral or elemental contents which is  
3 potentially toxic in the environment) shall be kept confidential and not made a  
4 matter of public record;

5 13. a detailed description of the measures to be taken during the mining and  
6 reclamation process to ensure the protection of:

7 a. the quality of surface water and groundwater systems, both on- and offsite, from  
8 the adverse effects of the mining and reclamation process;

9 b. the rights of present water users to surface water and groundwater systems, both  
10 on- and offsite; and

11 c. the quantity of surface water and groundwater systems, both on- and offsite, from  
12 adverse effects of the mining and reclamation process, or to provide alternative  
13 sources of water where such protection of water quantity cannot be ensured; and

14 14. such other requirements as the NSCMP shall prescribe by regulations.

15 B. Any information required by this section which is not required to be held in  
16 confidence shall be a matter of public record.

17  
18 SEC. 2109. Performance Bonds

19 A. After a surface coal mining and reclamation permit application has been  
20 approved but before such a permit is issued, the applicant shall file with the  
21 NSCMP, on a form prescribed and furnished by the NSCMP, a bond for  
22 performance payable to the Navajo Nation and conditional upon faithful  
23 performance of all the requirements of this Act and the permit. The bond shall  
24 cover that area of land within the permit area upon which the operator will initiate  
25 and conduct surface coal mining and reclamation operations within the initial term  
26 of the permit. As succeeding increments of surface coal mining and reclamation  
27 operations are to be initiated and conducted within the permit area, the permittee  
28 shall file with the NSCMP an additional bond or bonds to cover such increments in  
29 accordance with this section. The amount of the bond required for each bonded  
30 area shall depend upon the reclamation requirements of the approved permit; reflect

1 the probable difficulty of reclamation considering such factors as the site's  
2 topography, geology, hydrology, and revegetation potential; and be determined by  
3 the NSCMP. The amount of the bond shall be sufficient to ensure the completion  
4 of the reclamation plan if the work had to be performed by the NSCMP in the event  
5 of forfeiture, and in no case shall the bond for the entire area under one permit be  
6 less than \$10,000.

7 B. Liability under the bond shall be for the duration of the surface coal mining and  
8 reclamation operation and for a period coincident with the operator's responsibility  
9 under the revegetation requirements in section 2115 of this Act. The bond shall be  
10 executed by the operator and a corporate surety licensed to do business in the state  
11 where such operation is located, except that the operator may elect to deposit cash,  
12 negotiable bonds of the United States Government or such state, or negotiable  
13 certificates of deposit of any bank organized or transacting business in the United  
14 States. The cash deposit or market value of such securities shall be equal to or  
15 greater than the amount of the bond required for the bonded area: Provided, that the  
16 manner of deposit and the institution where the deposit is to be made must be  
17 approved specifically by the NSCMP and the Attorney General.

18 C. Cash or securities so deposited shall be deposited upon the same terms as the  
19 terms upon which surety bonds may be deposited. Such securities shall be security  
20 for the repayment of such negotiable certificates of deposit.

21 D. The amount of the bond or deposit required and the terms of each acceptance of  
22 the applicant's bond shall be adjusted by the NSCMP from time to time as affected  
23 land acreages are increased or decreased or where the anticipated cost of future  
24 reclamation changes.

25  
26 SEC. 2110. Permit Approval or Denial

27 A. Upon the basis of a complete mining application and reclamation plan or a  
28 revision or renewal thereof, as required by this Act, and pursuant to the Navajo  
29 regulatory program, including public notification and an opportunity for a public  
30 hearing as required by section 2113 of this Act, the NSCMP shall grant, require



1 modification of, or deny the application for a permit in a reasonable time set by the  
2 NSCMP and notify the applicant in writing. The applicant for a permit, or revision  
3 of a permit, shall have the burden of establishing that his or her application is in  
4 compliance with all the requirements of the Navajo regulatory program. Within ten  
5 days after the granting of a permit, the NSCMP shall notify the President of the  
6 Navajo Nation, the Speaker of the Navajo Nation Council, and officials of the local  
7 governments in which the area of land to be affected is located that a permit has  
8 been issued and shall describe the location of the land.

9 B. No permit or revision application shall be approved unless the application  
10 affirmatively demonstrates and the NSCMP finds in writing, on the basis of the  
11 information set forth in the application or from information otherwise available,  
12 which will be documented in the approval and made available to the applicant, that

13 —

14 1. the permit application is accurate and complete and that all the requirements of  
15 this Act and the Navajo regulatory program have been complied with;

16 2. the applicant has demonstrated that reclamation as required by this Act and the  
17 Navajo regulatory program can be accomplished under the reclamation plan  
18 contained in the permit application;

19 3. the NSCMP has assessed the probable cumulative impact of all anticipated  
20 mining in the area on the hydrologic balance specified in section 2107(B) of this  
21 Act, and the proposed operation has been designed to prevent material damage to  
22 the hydrologic balance outside the permit area;

23 4. the area proposed to be mined is not included within an area designated  
24 unsuitable for surface coal mining pursuant to section 2122 of this Act or is not  
25 within an area under study for such designation in an administrative proceeding  
26 commenced pursuant to section 2122(A)(4)(c) or (B) of this Act (unless in such an  
27 area as to which an administrative proceeding has commenced pursuant to section  
28 2122(A)(4)(c) of this Act, the operator making the permit application demonstrates  
29 that, prior to January 1, 1977, he or she has made substantial legal and financial  
30

1 commitments in relation to the operation for which he or she is applying for a  
2 permit);

3 5. the proposed surface coal mining operation would —

4 a. not interrupt, discontinue, or preclude farming on alluvial valley floors that are  
5 irrigated or naturally sub-irrigated, but excluding undeveloped range lands which  
6 are not significant to farming on said alluvial valley floors and those lands as to  
7 which the NSCMP finds that if the farming that will be interrupted, discontinued, or  
8 precluded is of such small acreage as to be of negligible impact on the farm's  
9 agricultural production, or

10 b. not materially damage the quantity or quality of water in surface water or  
11 groundwater systems that supply such valley floors in paragraph (a) of subsection  
12 (B)(5) of this section.

13 6. in cases where the private mineral estate has been severed from the private  
14 surface estate, the applicant has submitted to the NSCMP —

15 a. the written consent of the surface landowner to the extraction of coal by surface  
16 mining methods; or

17 b. a conveyance that expressly grants or reserves the right to extract the coal by  
18 surface mining methods; or

19 c. if the conveyance does not expressly grant the right to extract coal by surface  
20 mining methods, the surface-subsurface legal relationship shall be determined in  
21 accordance with applicable law: Provided, That nothing in this Act shall be  
22 construed to authorize the NSCMP to adjudicate property rights disputes.

23 C. The applicant shall file with his or her permit application a schedule listing any  
24 and all notices of violations of this Act, SMCRA, and any other law, rule, or  
25 regulation of the Navajo Nation or the United States, or of any department or  
26 agency of the Navajo Nation or in the United States pertaining to air or water  
27 environmental protection incurred by the applicant in connection with any surface  
28 coal mining operation during the three-year period prior to the date of application.  
29 The schedule shall also indicate the final resolution of any such notice of violation.  
30 Where the schedule or other information available to the NSCMP indicates that any

1 surface coal mining operation owned or controlled by the applicant is currently in  
2 violation of this Act or such other laws referred to in this subsection, the permit  
3 shall not be issued until the applicant submits proof that such violation has been  
4 corrected or is in the process of being corrected to the satisfaction of the NSCMP or  
5 other department or agency which has jurisdiction over such violation. No permit  
6 shall be issued to an applicant after a finding by the NSCMP, after opportunity for  
7 an administrative hearing, that the applicant, or the operator specified in the  
8 application, controls or has controlled mining operations with a demonstrated  
9 pattern of willful violations of this Act of such nature and duration with such  
10 resulting irreparable damage to the environment as to indicate an intent not to  
11 comply with the provisions of this Act.

12 D. In addition to finding the application in compliance with subsection (B) of this  
13 section, if the area proposed to be mined contains prime farmland pursuant to  
14 section 2107(B)(16) of this Act, the NSCMP shall, after consultation with the  
15 Navajo Nation Department of Agriculture and the U.S. Department of Agriculture,  
16 and pursuant to regulations issued by the NSCMP, grant a permit to mine on prime  
17 farmland if the NSCMP finds in writing that the operator has the technological  
18 capability to restore such mined area, within a reasonable time, to equivalent or  
19 higher levels of yield as non-mined prime farmland in the surrounding area under  
20 equivalent levels of management, and can meet the soil reconstruction standards in  
21 section 2115(B)(7) of this Act. Except for compliance with subsection (B) of this  
22 section, the requirements of this paragraph shall apply to all permits issued after  
23 August 3, 1977.

#### 24 25 SEC. 2111. Revision of Permits

26 A. During the term of the permit, the permittee may submit an application for a  
27 revision of the permit, together with a revised reclamation plan, to the NSCMP.

28 1. An application for a revision of a permit shall not be approved unless the  
29 NSCMP finds that reclamation as required by this Act, and the Navajo regulatory  
30 program can be accomplished under the revised reclamation plan. The revision



1 shall be approved or disapproved within a period of time established by the Navajo  
2 regulatory program. The NSCMP shall establish guidelines for a determination of  
3 the scale or extent of a revision request for which all permit application information  
4 requirements and procedures, including notice and hearings, shall apply: Provided,  
5 that any revisions which propose significant alterations in the reclamation plan  
6 shall, at a minimum, be subject to public notice, comment, and hearing  
7 requirements set forth in section 2113 of this Act.

8 2. Any extensions to the area covered by the permit, except incidental boundary  
9 revisions, must be made by application for another permit.

10 B. No transfer, assignment, or sale of the rights granted under any permit issued  
11 pursuant to this Act shall be made without the written approval of the NSCMP.

12 C. The NSCMP, within a time limit prescribed in the regulations promulgated by  
13 the NSCMP, shall review outstanding permits and may require reasonable revision  
14 or modification of the permit provisions during the term of such permit: Provided,  
15 that such revision or modification shall be based upon written findings and subject  
16 to the public notice, comment, and hearing requirements set forth in section 2113 of  
17 this Act.

#### 18 19 SEC. 2112. Coal Exploration Permits

20 A. Coal exploration operations which substantially disturb the natural land surface  
21 shall be conducted in accordance with exploration regulations issued by the  
22 NSCMP. Such regulations shall include, at a minimum: (1) the requirement that  
23 prior to conducting any exploration under this section, any person must file with the  
24 NSCMP an application for a permit to conduct coal exploration, which shall include  
25 a description of the exploration area, a description of the methods and equipment to  
26 be used to conduct the coal exploration, and the period of supposed exploration, and  
27 (2) provisions for reclamation, in accordance with the performance standards in  
28 section 2115 of this Act, of all lands disturbed in exploration, including  
29 excavations, roads, drill holes, and the removal of necessary facilities and  
30 equipment.

1 B. Information submitted to the NSCMP pursuant to this subsection as confidential,  
2 concerning trade secrets or privileged commercial or financial information which  
3 relates to the competitive rights of the person or entity intending to explore the  
4 described area, shall not be available for public examination.

5 C. Any person who conducts any coal exploration activities which substantially  
6 disturb the natural land surface in violation of this section or regulations issued  
7 pursuant thereto shall be subject to the provisions of section 2118 of this Act.

8 D. No operator shall conduct coal exploration without the specific written approval  
9 of, and a coal exploration permit issued by, the NSCMP.

10 E. Coal exploration on Federal lands shall be governed by section 4 of the Federal  
11 Coal Leasing Amendments Act of 1976 (90 Stat. 1085).

12  
13 SEC. 2113. Public Notice and Informal Conferences

14 A. At the time of submission of an application for a surface coal mining and  
15 reclamation permit, or revision of an existing permit, pursuant to the provisions of  
16 this Act, the applicant shall submit to the NSCMP a copy of his or her  
17 advertisement of the ownership, precise location, and boundaries of the land to be  
18 affected. The advertisement shall provide for a public comment period on the  
19 application of at least 30 days following the publication of the last advertisement,  
20 and shall include notice of an informal conference if the NSCMP determines there  
21 is sufficient interest in the application. As soon as the NSCMP approves the form  
22 and content of the advertisement, the applicant shall place such advertisement in a  
23 local newspaper of general circulation in the locality of the proposed surface mine  
24 at least once a week for four consecutive weeks, as required by section 2107(B)(6)  
25 of this Act. The NSCMP shall notify appropriate agencies of the Navajo Nation,  
26 various local governmental bodies, planning agencies, sewage and water treatment  
27 authorities, and water companies in the locality in which the proposed surface  
28 mining will take place, notifying them of the operator's intention to surface mine a  
29 particularly described tract of land and indicating the application's permit number  
30 and where a copy of the proposed mining and reclamation plan may be inspected.

1 These local bodies, agencies, authorities, or companies may submit written  
2 comments on the mining application, within the public comment period, with  
3 respect to the effects of the proposed operation on the environment which are within  
4 their area of responsibility. Such comments shall immediately be transmitted to the  
5 applicant by the NSCMP and be made available to the public at the same location(s)  
6 as the mining application.

7 B. Any person having an interest which is or may be adversely affected or the  
8 officer or head of any Navajo Nation, federal, or local governmental agency or  
9 authority shall have the right to file written objections to the proposed initial or  
10 revised application for a permit for surface coal mining and reclamation operation  
11 with the NSCMP within 30 days after the last publication of the above notice and  
12 request an informal conference on the application if one has not already been  
13 scheduled pursuant to subsection (A) of this section. Such objections shall  
14 immediately be transmitted to the applicant by the NSCMP and shall be made  
15 available to the public. If written objections are filed and an informal conference is  
16 requested, the NSCMP shall hold the conference in the locality of the proposed  
17 mining and reclamation operation if requested within a reasonable time of the  
18 receipt of such objections or request. If not already advertised under subsection (A)  
19 of this section, the date, time and location of the conference shall be advertised by  
20 the NSCMP in a newspaper of general circulation in the locality at least two weeks  
21 prior to the scheduled conference date. The NSCMP may arrange with the  
22 applicant, upon request by any party, access to the proposed mining area for the  
23 purpose of gathering information relevant to the conference. An electronic or  
24 stenographic record shall be made of the informal conference. Such record shall be  
25 maintained and be accessible to the parties until final release of the applicant's  
26 performance bond. In the event all parties requesting the informal conference  
27 withdraw their request prior to the informal conference, such informal conference  
28 need not be held.

29  
30 SEC. 2114. Decisions of the Navajo Surface Coal Mining Program and Appeals



1 A. If an informal conference has been held pursuant to section 2113(B) of this Act,  
2 the NSCMP shall issue and furnish the applicant for a permit and persons who are  
3 parties to the administrative proceedings with the written finding of the NSCMP,  
4 granting or denying the permit in whole or in part and stating the reasons therefor,  
5 within the 60 days of said hearings.

6 B. If there has been no informal conference held pursuant to section 2113(B) of this  
7 Act, the NSCMP shall notify the applicant for a permit within a reasonable time as  
8 determined by the NSCMP and set forth in regulations, taking into account the time  
9 needed for proper investigation of the site, the complexity of the permit application,  
10 and whether or not written objection to the application has been filed, whether the  
11 application has been approved or disapproved in whole or part.

12 C. If the application is approved, the permit shall be issued. If the application is  
13 disapproved, specific reasons therefor must be set forth in the notification. Within  
14 30 days after the applicant is notified of the final decision of the NSCMP on the  
15 permit application, the applicant or any person with an interest which is or may be  
16 adversely affected may request a hearing on the reasons for the final determination.  
17 The NNOHA shall hold a hearing within 30 days of such request and provide  
18 notification to all interested parties at the time that the applicant is so notified. Such  
19 hearing shall be of record, adjudicatory in nature and no person who presided at a  
20 conference under section 2113(B) of this Act shall either preside at the hearing or  
21 participate in this decision thereon or in any administrative appeal therefrom.  
22 Within 30 days after the hearing the NNOHA shall issue and furnish the applicant,  
23 and all persons who participated in the hearing, with the written decision of the  
24 NNOHA granting or denying the permit in whole or in part and stating the reasons  
25 therefor.

26 D. Where a hearing is requested pursuant to subsection (C) of this section, the  
27 NNOHA may, under such conditions as it may prescribe, grant such temporary  
28 relief as it deems appropriate pending final determination of the proceedings if –  
29 1. all parties to the proceedings have been notified and given an opportunity to be  
30 heard on a request for temporary relief;

1 2. the person requesting such relief shows that there is a substantial likelihood that  
2 he or she will prevail on the merits of the final determination of the proceeding; and  
3 3. such relief will not adversely affect the public health or safety or cause  
4 significant imminent environmental harm to land, air, or water resources.

5 E. For the purpose of such hearing, the NNOHA may administer oaths, subpoena  
6 witnesses, or written or printed materials, compel attendance of witnesses, or  
7 production of the materials, and take evidence including but not limited to site  
8 inspections of the land to be affected and other surface coal mining operations  
9 carried on by the applicant in the general vicinity of the proposed operation. A  
10 verbatim record of each public hearing required by this Act shall be made, and a  
11 transcript made available on the motion of any party or by order of the NNOHA.

12 F. Any applicant or any person with an interest which is or may be adversely  
13 affected, who has participated in the administrative proceedings as an objector, and  
14 who is aggrieved by the final permit decision of the NNOHA, or if the NSCMP or  
15 the NNOHA fails to act within the time limits specified in this Act, shall have the  
16 right to appeal the final permit decision in accordance with section 2126 of this Act.

17  
18 SEC. 2115. Performance Standards

19 A. Any permit issued under the Navajo regulatory program to conduct surface coal  
20 mining operations shall require that such surface coal mining operations will meet  
21 all applicable performance standards of this Act, and such other requirements as the  
22 NSCMP shall promulgate in the Navajo regulatory program.

23 B. General performance standards shall be applicable to all surface coal mining and  
24 reclamation operations and shall require an operation as a minimum to —

25 1. conduct surface coal mining operations so as to maximize the utilization and  
26 conservation of the solid fuel resource being recovered so that re-affecting the land  
27 in the future through surface coal mining can be minimized or eliminated;

28 2. restore the land affected to a condition capable of supporting the uses which it  
29 was capable of supporting prior to any mining, or higher or better uses of which  
30 there is reasonable likelihood, so long as such use or uses do not present any actual

1 or probable hazard to public health or safety or pose any actual or probable threat of  
2 water diminution or pollution, and the permit applicant's declared proposed land  
3 use following reclamation is not deemed to be impractical or unreasonable,  
4 inconsistent with applicable land-use policies and plans, involves unreasonable  
5 delay in implementation, or violates federal or Navajo Nation law or applicable  
6 laws of states or local governments;

7 3. with respect to all surface coal mining operations, backfill, compact (where  
8 advisable to ensure stability or to prevent leaching of toxic materials), and grade in  
9 order to restore the approximate original contour of the land with all highwalls,  
10 spoil piles, and depressions eliminated (unless small depressions are needed in  
11 order to retain moisture to assist revegetation or as otherwise authorized pursuant to  
12 this Act): Provided, however, that in surface coal mining which is carried out at the  
13 same location over a substantial period of time where the operation transects the  
14 coal deposit and the thickness of the coal deposits relative to the volume of the  
15 overburden is large, and where the operator demonstrates that the overburden and  
16 other spoil and waste materials at a particular point in the permit area or otherwise  
17 available from the entire permit area is insufficient, giving due consideration to  
18 volumetric expansion, to restore the approximate original contour, the operator, at a  
19 minimum, shall backfill, grade, and compact (where advisable) using all available  
20 overburden and other spoil and waste materials to attain the lowest practicable  
21 grade but not more than the angle of repose, to provide adequate drainage and to  
22 cover all acid-forming and other toxic materials, in order to achieve an ecologically  
23 sound land use compatible with the surrounding region: And provided further, that  
24 in surface coal mining where the volume of overburden is large relative to the  
25 thickness of the coal deposit and where the operator demonstrates that due to  
26 volumetric expansion the amount of overburden and other spoil and waste materials  
27 removed in the course of the mining operation is more than sufficient to restore the  
28 approximate original contour, the operator shall after restoring the approximate  
29 contour, backfill, grade and compact (where advisable) the excess overburden and  
30 other spoil and waste materials to attain the lowest grade but not more than the



1 angle of repose, and to cover all acid-forming and other toxic materials, in order to  
2 achieve an ecologically sound land use compatible with the surrounding region and  
3 that such overburden or spoil shall be shaped and graded in such a way as to  
4 prevent slides, erosion, and water pollution and shall be revegetated in accordance  
5 with the requirements of this Act;

6 4. stabilize and protect all surface areas, including spoil piles affected by the surface  
7 coal mining and reclamation operation, to effectively control erosion and attendant  
8 air and water pollution;

9 5. remove the topsoil from the land in a separate layer, replace it on the backfill  
10 area, or if not utilized immediately, segregate it in a separate pile from other spoil,  
11 and when the topsoil is not replaced on a backfill area within a time short enough to  
12 avoid deterioration of the topsoil, maintain a successful cover thereafter by quick-  
13 growing plants or other means so that the topsoil is preserved from wind and water  
14 erosion, remains free of any contamination by other acid or toxic materials, and is  
15 in a usable condition for sustaining vegetation when restored during reclamation,  
16 except if the topsoil is of insufficient quantity or of poor quality for sustaining  
17 vegetation, or if other strata can be shown to be more suitable for vegetation  
18 requirements, then the operator shall remove, segregate, and preserve in a like  
19 manner such other strata which are best able to support vegetation;

20 6. restore the topsoil or the best available subsoil which is best able to support  
21 vegetation;

22 7. for all prime farmlands, as identified in section 2107(B)(16) of this Act, to be  
23 mined and reclaimed, soil removal, storage, replacement, and reconstruction shall  
24 be conducted according to specifications established by the Natural Resources  
25 Conservation Service, and the operator shall, as a minimum, be required to —

26 a. segregate the A horizon of the natural soil, except where it can be shown that  
27 other available soil materials will create a final soil having a greater productive  
28 capacity; and if not utilized immediately, stockpile this material separately from  
29 other spoil, and provide needed protection from wind and water erosion or  
30 contamination by other acid or toxic material;

1 b. segregate the B horizon of the natural soil, or underlying C horizons or other  
2 strata, or a combination of such horizons or other strata that are shown to be both  
3 texturally and chemically suitable for plant growth and that can be shown to be  
4 equally or more favorable for plant growth than the B horizon, in sufficient  
5 quantities to create in the regraded final soil a root zone of comparable depth and  
6 quality to that which existed in the natural soil; and if not utilized immediately,  
7 stockpile this material separately from other spoil, and provide needed protection  
8 from wind and water erosion or contamination by other acid or toxic material;

9 c. replace and regrade the root zone material described in subparagraph (b) of this  
10 subsection with proper compaction and uniform depth over the regraded spoil  
11 material; and

12 d. redistribute and grade in a uniform manner the surface soil horizon described in  
13 subparagraph (a) of this subsection;

14 8. create, if authorized in the approved surface coal mining and reclamation plan  
15 and permit, permanent impoundments of water on mining sites as part of  
16 reclamation activities only when it is adequately demonstrated that:

17 a. the size of the impoundment is adequate for its intended purposes;

18 b. the impoundment dam construction will be so designed as to achieve the  
19 necessary stability with an adequate margin of safety compatible with that of  
20 structures constructed under Public Law 83-566 (16 U.S.C. 1006);

21 c. the quality of impounded water will be suitable on a permanent basis for its  
22 intended use and that discharges from the impoundment will not degrade the water  
23 quality in the receiving stream below water quality standards established pursuant  
24 to applicable federal, Navajo Nation, state, and non-Navajo tribal laws;

25 d. the level of water will be reasonably stable;

26 e. final grading will provide adequate safety and access for proposed water users;  
27 and

28 f. such water impoundments will not result in the diminution of the quality or  
29 quantity of water utilized by adjacent or surrounding landowners, water users, and  
30 authorized land users for agricultural, industrial, recreational, or domestic uses;

1 9. conduct any augering or highwall mining operation associated with surface  
2 mining in a manner to maximize the recoverability of mineral reserves remaining  
3 after the operation and reclamation are complete and seal all auger or highwall  
4 mining holes with an impervious and noncombustible material in order to prevent  
5 drainage except where the NSCMP determines that the resulting impoundment of  
6 water in such auger or highwall mining holes may create a hazard to the  
7 environment or to public health or safety: Provided, that the NSCMP may prohibit  
8 augering or highwall mining if necessary to maximize the utilization, recoverability,  
9 or conservation of the solid fuel resources or to protect against adverse water  
10 quality impacts;

11 10. minimize the disturbances to the prevailing hydrologic balance at the mine site  
12 and in associated offsite areas, and to the quality and quantity of water in surface  
13 water and groundwater systems both during and after surface coal mining  
14 operations and during reclamation by —

15 a. avoiding acid or other toxic mine drainage by such measures as, but not limited  
16 to —

17 i. preventing or removing water from contact with toxic-producing deposits;

18 ii. treating drainage to reduce toxic content which adversely affects downstream  
19 water upon being released to watercourses;

20 iii. casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping  
21 acid or other toxic drainage from entering surface water and groundwater;

22 b. Operations and Structures

23 i. conducting surface coal mining operations so as to prevent, to the extent possible  
24 using the best technology currently available, additional contributions of suspended  
25 solids to streamflow, or runoff outside the permit area, but in no event shall  
26 contributions be in excess of requirements set by applicable federal, Navajo Nation,  
27 state, and non-Navajo tribal law;

28 ii. constructing any siltation structures pursuant to subparagraph (b)(i) of this  
29 subsection prior to commencement of surface coal mining operations, such  
30 structures to be certified by a qualified registered engineer or a qualified



1 professional land surveyor registered by any State that authorizes land surveyors to  
2 prepare and certify such maps or plans that they are constructed as designed and as  
3 approved in the reclamation plan;

4 c. cleaning out and removing temporary or large settling ponds or other siltation  
5 structures from drainways after disturbed areas are revegetated and stabilized, and  
6 depositing the silt and debris at a site and in a manner approved by the NSCMP;

7 d. restoring recharge capacity of the mined area to approximate premining  
8 conditions;

9 e. avoiding channel deepening or enlargement in operations requiring the discharge  
10 of water from mines;

11 f. preserving, throughout the mining and reclamation process, the essential  
12 hydrologic functions of alluvial valley floors; and

13 g. such other actions as the NSCMP may prescribe;

14 11. with respect to the surface disposal of mine wastes, tailings, coal processing  
15 wastes, and other wastes in areas other than the mine workings or excavations,  
16 stabilize all waste piles in designated areas through construction in compacted  
17 layers, including the use of incombustible and impervious materials if necessary,  
18 and ensure that the final contour of the waste pile will be compatible with natural  
19 surroundings and that the site can and will be stabilized and revegetated according  
20 to the provisions of this Act;

21 12. refrain from surface coal mining within 500 feet of active and abandoned  
22 underground mines in order to prevent breakthroughs and to protect the health or  
23 safety of miners: Provided, that the NSCMP shall permit an operator to mine near,  
24 through, or partially through an abandoned underground mine or closer to an active  
25 underground mine if (A) the nature, timing, and sequencing of the approximate  
26 coincidence of specific surface mine activities with specific underground mine  
27 activities are jointly approved by the NSCMP and the appropriate regulatory  
28 authority concerned with the health and safety of underground miners, and (B) such  
29 operations will result in improved resource recovery, the abatement of water  
30 pollution, or the elimination of hazards to public health and safety;

1 13. design, locate, construct, operate, maintain, enlarge, modify, and remove or  
2 abandon, in accordance with the standards and criteria of 30 CFR 816.81 through  
3 816.87, all existing and new coal mine waste piles consisting of mine wastes,  
4 tailings, coal processing wastes, or other liquid and solid wastes, and used either  
5 temporarily or permanently as dams or embankments;

6 14. ensure that all debris, acid-forming materials, toxic materials, or materials  
7 constituting a fire hazard are treated or buried and compacted or otherwise disposed  
8 of in a manner designed to prevent the contamination of surface water or  
9 groundwater and that contingency plans are developed to prevent sustained  
10 combustion;

11 15. ensure that explosives are used only in accordance with existing Navajo Nation  
12 and federal law and the regulations promulgated by the NSCMP, which shall  
13 include provisions to —

14 a. provide adequate advance written notice to local governments, residents, and  
15 authorized land users who might be affected by the use of such explosives by  
16 publication of the planned blasting schedule in a newspaper of general circulation in  
17 the locality, and by mailing a copy of the proposed blasting schedule to every  
18 resident living within ½ mile of the proposed blasting site, and by providing daily  
19 notice to resident/occupiers in such areas prior to any blasting;

20 b. maintain for a period of at least three years, and make available for public  
21 inspection upon request, a log detailing the location of the blasts, the pattern and  
22 depth of the drill holes, the amount of explosive used per hole, and the order and  
23 length of delay in the blasts;

24 c. limit the type of explosives and detonating equipment and the size, the timing and  
25 the frequency of blasts based upon the physical conditions of the site so as to  
26 prevent (i) injury to persons, (ii) damage to public and private property outside the  
27 permit area, (iii) adverse impacts on any underground mine, and (iv) change in the  
28 course, channel, or availability of ground or surface water outside the permit area;

29 d. require that all blasting operations be conducted by trained and competent  
30 persons as certified by the NSCMP;

1 e. provide that upon the request of a resident or owner of a manmade dwelling or  
2 structure within ½ mile of any portion of the permitted area the applicant or  
3 permittee shall conduct a pre-blasting survey of such structures and submit the  
4 survey to the NSCMP and a copy to the resident or owner making the request. The  
5 area of the survey shall be decided by the NSCMP and shall include such provisions  
6 as the NSCMP shall promulgate;

7 16. ensure that all reclamation efforts proceed in an environmentally sound manner  
8 and as contemporaneously as practicable with the surface coal mining operations:  
9 Provided, however, that where the applicant proposes to combine surface mining  
10 operations with underground mining operations to ensure maximum practical  
11 recovery of the mineral resources, the NSCMP may grant a variance for specific  
12 areas within the reclamation plan from the requirement that reclamation efforts  
13 proceed as contemporaneously as practicable to permit underground mining  
14 operations prior to reclamation;

15 a. if the NSCMP finds in writing that —

16 i. the applicant has presented, as part of the permit application, specific, feasible  
17 plans for the proposed underground mining operations;

18 ii. the proposed underground mining operations are necessary or desirable to ensure  
19 maximum practical recovery of the mineral resource and will avoid multiple  
20 disturbances of the surface;

21 iii. the applicant has satisfactorily demonstrated that the plan for the underground  
22 mining operations conforms to requirements for underground mining in the  
23 jurisdiction and that permits necessary for the underground mining operations have  
24 been issued by the appropriate authority;

25 iv. the areas proposed for the variance have been shown by the applicant to be  
26 necessary for implementing the proposed underground mining operations;

27 v. no substantial adverse environmental damage, either on- or offsite, will result  
28 from the delay in completion of reclamation as required by this Act;

29 vi. provisions for the offsite storage of spoil will comply with section 2115(B)(22)  
30 of this Act;



1 b. if the NSCMP has promulgated specific regulations to govern the granting of  
2 such variances in accordance with the provisions of this subsection and section  
3 2101 of this Act, and has imposed such additional requirements as it deems  
4 necessary;

5 c. if variances granted under the provisions of this subsection are to be reviewed by  
6 the NSCMP not more than three years from the date of issuance of the permit; and

7 d. if liability under the performance bond filed by the applicant with the NSCMP  
8 pursuant to section 2109(B) of this Act shall last for the duration of the  
9 underground mining operations and until the requirements of sections 2115(B) and  
10 2119 of this Act have been fully complied with;

11 17. ensure that the construction, maintenance, and postmining conditions of access  
12 roads into and across the site of operations will control or prevent erosion and  
13 siltation, pollution of water, damage to fish or wildlife or their habitat, or public or  
14 private property;

15 18. refrain from constructing roads or other access up a stream bed or drainage  
16 channel or in such proximity to such channel so as to seriously alter the normal  
17 streamflow;

18 19. establish on the regraded areas, and all other lands affected, a diverse, effective,  
19 and permanent vegetative cover of the same seasonal variety native to the area of  
20 land affected and capable of self-regeneration and plant succession at least equal in  
21 extent of cover to the natural vegetation of the area; except that introduced species  
22 may be used in the revegetation process where desirable and necessary to achieve  
23 the approved postmining land-use plan;

24 20. assume the responsibility for successful vegetation, as required by paragraph  
25 (19) of this subsection, for a period of at least 10 full years after the last year of  
26 augmented seeding, fertilizing, irrigation, or other work: Provided, that when the  
27 NSCMP approves a long-term intensive agricultural postmining land use, the period  
28 of responsibility for revegetation shall commence at the date of initial planting for  
29 such long-term intensive agricultural postmining land use: Provided further, that  
30 when the NSCMP issues a written finding approving a long-term intensive

1 agricultural postmining land use as part of the mining and reclamation plan, the  
2 NSCMP may grant exception to the provisions of paragraph (19) of this subsection;

3 21. protect offsite areas from slides or damage occurring during the surface coal  
4 mining and reclamation operations, and not deposit spoil material or locate any part  
5 of the operations or waste accumulations outside the permit area;

6 22. place all excess spoil material resulting from coal surface mining and  
7 reclamation activities in such a manner that:

8 a. spoil is transported and placed in a controlled manner in position for concurrent  
9 compaction and in such a way to ensure mass stability and to prevent mass  
10 movement, provided that excess spoil shall not be disposed in head-of-hollow fills  
11 or valley fills;

12 b. the areas of disposal are within the bonded permit areas and all organic matter  
13 shall be removed immediately prior to spoil placement;

14 c. appropriate surface and internal drainage systems and diversion ditches are used  
15 so as to prevent spoil erosion and movement;

16 d. the disposal area does not contain springs, natural watercourses or wet weather  
17 seeps unless lateral drains are constructed from the wet areas to the main  
18 underdrains in such a manner that filtration of the water into the spoil pile will be  
19 prevented;

20 e. if placed on a slope, the spoil is placed upon the most moderate slope among  
21 those upon which, in the judgment of the NSCMP, the spoil could be placed in  
22 compliance with all the requirements of this Act, and shall be placed, where  
23 possible, upon, or above, a natural terrace, bench, or berm, if such placement  
24 provides additional stability and prevents mass movement;

25 f. where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient  
26 size to prevent mass movement, is constructed;

27 g. the final configuration is compatible with the natural drainage pattern and  
28 surroundings and is suitable for intended uses;

29 h. design of the spoil disposal area is certified by a qualified registered professional  
30 engineer in conformance with professional standards; and

1 i. all other provisions of this Act are met;

2 23. meet such other criteria as are necessary to achieve reclamation in accordance  
3 with the purposes of this Act, taking into consideration the physical, climatological,  
4 and other characteristics of the site;

5 24. to the extent possible, using the best technology currently available, minimize  
6 disturbances and adverse impacts of the operation on fish, wildlife, and related  
7 environmental values, and enhance such resources where practicable; and

8 25. provide for an undisturbed natural barrier beginning at the elevation of the  
9 lowest coal seam to be mined and extending from the outslope for such distance as  
10 the NSCMP shall determine shall be retained in place as a barrier to slides and  
11 erosion.

12 C. The following performance standards shall be applicable to steep-slope surface  
13 coal mining and shall be in addition to those general performance standards  
14 required by this section: Provided, however, That the provisions of this subsection  
15 (C) shall not apply to those situations in which an operator is mining on flat or  
16 gently rolling terrain, on which an occasional steep slope is encountered through  
17 which the mining operation is to proceed, leaving a plain or predominantly flat area:

18 1. Ensure that when performing surface coal mining on steep slopes, no debris,  
19 abandoned or disabled equipment, spoil material, or waste mineral matter be placed  
20 on the downslope below the bench or mining cut: Provided, That spoil material in  
21 excess of that required for the reconstruction of the approximate original contour  
22 under the provisions of paragraph 2115(B)(3) or 2115(C)(2) of this Act shall be  
23 permanently stored pursuant to section 2115(B)(22) of this Act.

24 2. Complete backfilling with spoil material shall be required to cover completely  
25 the highwall and return the site to the appropriate original contour, which material  
26 will maintain stability following mining and reclamation.

27 3. The operator may not disturb land above the top of the highwall unless the  
28 NSCMP finds that such disturbance will facilitate compliance with the  
29 environmental protection standards of this section: Provided, however, That the  
30



1 land disturbed above the highwall shall be limited to that amount necessary to  
2 facilitate said compliance.

3  
4 SEC. 2116. Surface Effects of Underground Coal Mining Operations

5 A. The NSCMP shall promulgate rules and regulations directed toward the surface  
6 effects of underground mining operations, embodying the following requirements  
7 and in accordance with the procedures established under section 2101 of this Act:  
8 Provided, however, that in adopting any rules and regulations, the NSCMP shall  
9 consider the distinct difference between surface coal mining and underground coal  
10 mining. Such rules and regulations shall not conflict with nor supersede any  
11 provision of the Federal Coal Mine Health and Safety Act of 1969 nor any  
12 regulation issued pursuant thereto, and shall be consistent with the applicable  
13 requirements of 30 CFR Chapter VII.

14 B. Each permit issued under the Navajo regulatory program pursuant to this Act and  
15 relating to underground coal mining shall require the operator to -

16 1. adopt measures consistent with known technology in order to prevent subsidence  
17 causing material damage to the extent technologically and economically feasible,  
18 maximize mine stability, and maintain the value and reasonably foreseeable use of  
19 such surface lands, except in those instances where the mining technology used  
20 requires planned subsidence in a predictable and controlled manner: Provided, That  
21 nothing in this subsection shall be construed to prohibit the standard method of  
22 room and pillar mining;

23 2. seal all portals, entryways, drifts, shafts, or other openings between the surface  
24 and underground mine working when no longer needed for the conduct of the  
25 mining operations;

26 3. fill or seal exploratory holes no longer necessary for mining, maximizing to the  
27 extent technologically and economically feasible return of mine and processing  
28 waste, tailings, and any other waste incident to the mining operation, to the mine  
29 workings or excavations;

1 4. with respect to surface disposal of mine wastes, tailings, coal processing wastes,  
2 and other wastes in areas other than the mine workings or excavations, stabilize all  
3 waste piles created by the permittee from current operations through construction in  
4 compacted layers including the use of incombustible and impervious materials if  
5 necessary and ensure that the leachate will not degrade below water quality  
6 standards established pursuant to applicable federal, Navajo Nation, state, and non-  
7 Navajo tribal law surface waters or groundwaters, that the final contour of the waste  
8 accumulation will be compatible with natural surroundings, and that the site is  
9 stabilized and revegetated according to the provisions of this section;

10 5. design, locate, construct, operate, maintain, enlarge, modify, and remove, or  
11 abandon, in accordance with the standards and criteria of 30 CFR 817.81 through  
12 817.87, all existing and new coal mine waste piles consisting of mine wastes,  
13 tailings, coal processing wastes, or other liquid and solid wastes and used either  
14 temporarily or permanently as dams or embankments;

15 6. establish on regraded areas and all other lands affected, a diverse and permanent  
16 vegetative cover capable of self-regeneration and plant succession and at least equal  
17 in extent of cover to the natural vegetation of the area;

18 7. protect offsite areas from damages which may result from such mining  
19 operations;

20 8. eliminate fire hazards and otherwise eliminate conditions which constitute a  
21 hazard to health and safety of the public;

22 9. minimize the disturbances of the prevailing hydrologic balance at the minesite  
23 and in associated offsite areas and to the quantity of water in surface water and  
24 groundwater systems both during and after coal mining operations and during  
25 reclamation by-

26 a. avoiding acid or other toxic mine drainage by such measures as, but not limited to

27 =

28 i. preventing or removing water from contact with toxic producing deposits;

29 ii. treating drainage to reduce toxic content which adversely affects downstream  
30 water upon being released to water courses;

1 iii. casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid  
2 or other toxic drainage from entering ground and surface waters; and

3 b. conducting surface coal mining operations so as to prevent, to the extent possible  
4 using the best technology currently available, additional contributions of suspended  
5 solids to streamflow or runoff outside the permit area (but in no event shall such  
6 contributions be in excess of requirements set by applicable federal, Navajo Nation,  
7 state, or non-Navajo tribal law), and avoiding channel deepening or enlargement in  
8 operations requiring the discharge of water from mines;

9 10. with respect to other surface impacts not specified in this subsection including  
10 the construction of new roads or the improvement or use of existing roads to gain  
11 access to the site of such activities and for haulage, repair areas, storage areas,  
12 processing areas, shipping areas, and other areas upon which are sited structures,  
13 facilities, or other property or materials on the surface, resulting from or incident to  
14 such activities, operate in accordance with the standards established under section  
15 2115 of this Act for such effects which result from surface coal mining operations:  
16 Provided, That the Program Manager shall make such modifications in the  
17 requirements imposed by this subparagraph as are necessary to accommodate the  
18 distinct difference between surface and underground coal mining;

19 11. to the extent possible using the best technology currently available, minimize  
20 disturbances and adverse impacts of the operation on fish, wildlife, and related  
21 environmental values, and achieve enhancement of such resources where  
22 practicable;

23 12. locate openings for all new drift mines working acid-producing or iron-  
24 producing coal seams in such a manner as to prevent a gravity discharge of water  
25 from the mine.

26 C. In order to protect the stability of the land, the NSCMP shall suspend  
27 underground coal mining under urbanized areas, cities, towns, and communities and  
28 adjacent to industrial or commercial buildings, major impoundments, or permanent  
29 streams if he or she finds imminent danger to inhabitants of the urbanized areas,  
30 cities, towns, and communities.



1 D. The provisions of this Act relating to permits, bonds, inspections and  
2 enforcement, public review, and administrative and judicial review shall be  
3 applicable to surface operations and surface impacts incident to an underground  
4 coal mine with such modifications to the permit application requirements, permit  
5 approval or denial procedures, and bond requirements as are necessary to  
6 accommodate the distinct difference between surface and underground coal mining.  
7 The Program Manager shall promulgate such modifications in accordance with the  
8 rulemaking procedure established in section 2101 of this Act and shall ensure that  
9 such modifications are consistent with the applicable provisions of 30 CFR Chapter  
10 VII.

11  
12 SEC. 2117. Inspections and Monitoring

13 A. For the purpose of developing, enforcing, and administering the Navajo  
14 regulatory program under this Act, or in the administration and enforcement of any  
15 permit under this Act, or of determining whether any person is in violation of any  
16 requirement of the Navajo regulatory program or any other requirements of this  
17 Act—

18 1. the NSCMP shall require any permittee to (A) establish and maintain appropriate  
19 records, (B) make monthly reports to the NSCMP, (C) install, use, and maintain any  
20 necessary monitoring equipment or methods, (D) evaluate results in accordance  
21 with such methods, at such locations and intervals, and in such manner as the  
22 NSCMP shall prescribe, and (E) provide such other information relative to surface  
23 coal mining and reclamation operations as the NSCMP deems reasonable and  
24 necessary;

25 2. for those surface coal mining and reclamation operations which remove or  
26 disturb strata that serve as aquifers which significantly ensure the hydrologic  
27 balance of water use either on or off the mining site, the NSCMP shall specify  
28 those—

29 a. monitoring sites to record the quantity and quality of surface drainage above and  
30 below the mine site as well as in the potential zone of influence;

1 b. monitoring sites to record level, amount, and samples of groundwater and  
2 aquifers potentially affected by the mining and also directly below the lowermost  
3 (deepest) coal seam to be mined;

4 c. records of well logs and borehole data to be maintained; and

5 d. monitoring sites to record precipitation. The monitoring data collection and  
6 analysis required by this section shall be conducted according to standards and  
7 procedures set forth by the NSCMP in order to ensure their reliability and validity;  
8 and

9 3. the authorized representatives of the Program Manager, without advance notice  
10 and upon presentation of appropriate credentials: (A) shall have the right of entry  
11 to, upon, or through any surface coal mining and reclamation operations or any  
12 premises in which any records required to be maintained under paragraph (1) of this  
13 subsection are located; and (B) may at reasonable times, and without delay, have  
14 access to and copy any record or inspect any monitoring equipment or method of  
15 operation required under this Act.

16 B. The inspections by the NSCMP shall (1) occur on an irregular basis averaging  
17 not less than one partial inspection per month and one complete inspection per  
18 calendar quarter for the surface coal mining and reclamation operation covered by  
19 each permit; (2) occur without prior notice to the permittee or his or her agents or  
20 employees except for necessary onsite meetings with the permittee; and (3) include  
21 the filing of inspection reports adequate to enforce the requirements of and to carry  
22 out the terms and purposes of this Act.

23 C. Each permittee shall conspicuously maintain at the entrances to the surface coal  
24 mining and reclamation operations a clearly visible sign which sets forth the name,  
25 business address, and phone number of the permittee and the permit number of the  
26 surface coal mining and reclamation operations. Such sign shall include the  
27 following — “Mining and Reclamation Operations are regulated by the NAVAJO  
28 SURFACE COAL MINING PROGRAM.”

1 D. Each inspector, upon detection of each violation of any requirement of the  
2 Navajo regulatory program or this Act, shall forthwith notify the operator in  
3 writing, and shall report in writing any such violation to the NSCMP.

4 E. Copies of any records, reports, inspection materials, or information obtained  
5 under this Act by the NSCMP shall be made immediately available to the public at  
6 central and sufficient locations in the Navajo Nation and in the Chapter offices of  
7 the Navajo Nation Chapters within which the surface coal mining operation is  
8 located so that they are conveniently available to residents in the areas of mining.

9 F. Review; procedures for inspection

10 1. Any person who is or may be adversely affected by a surface mining operation  
11 may notify the Program Manager or his or her authorized representative, in writing,  
12 of any violation of this Act which he or she has reason to believe exists at the  
13 surface mining site. The Program Manager shall, by regulation, establish  
14 procedures for the informal review of any refusal by a representative of the Program  
15 Manager to issue a citation with respect to any such alleged violation. The Program  
16 Manager shall furnish such persons requesting the review a written statement of the  
17 reasons for the Program Manager's final disposition of the case.

18 2. The Program Manager shall also, by regulation, establish procedures to ensure  
19 that adequate and complete inspections are made. Any person may notify the  
20 Program Manager of any failure to make such inspections, after which the Program  
21 Manager shall determine whether adequate and complete inspections have been  
22 made. The Program Manager shall furnish such persons a written statement of the  
23 reasons for the Program Manager's determination that adequate and complete  
24 inspections have or have not been conducted.

25  
26 SEC. 2118. Penalties

27 A. In the enforcement of the Navajo regulatory program and this Act, any permittee  
28 who violates any permit condition, or who violates any other provision of this Act,  
29 may be assessed a civil penalty by the NSCMP, provided that if such violation leads  
30 to the issuance of a cessation order under section 2121 of this Act, the civil penalty



1 shall be assessed. Such penalty shall not exceed \$12,000 for each violation. Each  
2 day of continuing violation may be deemed a separate violation for purposes of  
3 penalty assessments. In determining the amount of the penalty, consideration shall  
4 be given to the permittee's history of previous violations at the particular surface  
5 coal mining operation; the seriousness of the violation, including any irreparable  
6 harm to the environment and any hazard to public health or safety; whether the  
7 permittee was negligent; and the demonstrated good faith of the permittee so  
8 charged in attempting to achieve rapid compliance after notification of the  
9 violation.

10 B. A civil penalty shall be assessed by the NSCMP only after the person charged  
11 with a violation described under subsection (A) of this section has been given an  
12 opportunity for an administrative hearing. Where such an administrative hearing  
13 has been held, the NNOHA shall make findings of fact, and it shall issue a written  
14 decision as to the occurrence of the violation and the amount of the penalty which is  
15 warranted, incorporating, when appropriate, an order therein requiring that the  
16 penalty be paid. When appropriate, the NNOHA shall consolidate such hearings  
17 with other proceedings under section 2121 of this Act. Any administrative hearing  
18 under this section shall be on the record and conducted in accordance with the  
19 regulations for administrative hearings promulgated pursuant to section 1801(C)(2)  
20 of this Act. Where the person charged with such a violation fails to avail himself of  
21 the opportunity for an administrative hearing, a civil penalty shall be assessed by  
22 the NSCMP after the NSCMP has determined that a violation did occur and the  
23 amount of the penalty which is warranted and has issued an order requiring that the  
24 penalty be paid.

25 C. Upon the issuance of a notice or order charging that a violation of this Act has  
26 occurred, the NSCMP shall inform the operator within 30 days of the proposed  
27 amount of said penalty. The person charged with the penalty shall then have 30  
28 days to pay the proposed penalty in full or, if the person wishes to contest either the  
29 amount of the penalty or the fact of the violation, forward the proposed amount to  
30 the NSCMP for placement in an escrow account. Failure to forward the money to

1 the NSCMP within 30 days shall result in a waiver of all legal rights to contest the  
2 violation or the amount of the penalty. If through administrative or judicial review  
3 of the proposed penalty, it is determined that no violation occurred, or that the  
4 amount of the penalty should be reduced, the NSCMP shall within 30 days remit the  
5 appropriate amount to the person, with interest at the rate of six percent, or at the  
6 prevailing U.S. Department of the Treasury rate, whichever is greater.

7 D. Civil penalties owed under this Act may be recovered in a civil action brought  
8 by the Attorney General, at the request of the Program Manager, in the Navajo  
9 Nation District Court for the District of Window Rock.

10 E. Any person who willfully and knowingly violates a condition of a permit issued  
11 pursuant to the Navajo regulatory program or fails or refuses to comply with any  
12 order issued under section 2121 or section 2126 of this Act, or any order  
13 incorporated in a final decision issued by the Program Manager or NNOHA under  
14 this Act, except an order incorporated in a decision issued under subsection (B) of  
15 this section, shall, upon conviction, be subject to the sanctions and penalties of  
16 SMCRA section 518(e). Any criminal actions associated with surface coal mining  
17 and reclamation operations on Navajo regulatory program lands are enforced by  
18 OSMRE under SMCRA section 518. The NSCMP will notify OSMRE of such  
19 potential criminal actions and recommend that OSMRE pursue criminal penalties  
20 under SMCRA.

21 F. Whenever a corporate permittee violates a condition of a permit issued pursuant  
22 to the Navajo regulatory program or fails or refuses to comply with any order issued  
23 under section 2121 of this Act, or any order incorporated in a final decision issued  
24 by the Program Manager or NNOHA under this Act except an order incorporated in  
25 a decision issued under subsection (B) of this section, any director, officer, or agent  
26 of such corporation who willfully and knowingly authorized, ordered, or carried out  
27 such violation, failure, or refusal shall be subject to the same civil penalties, fines,  
28 and imprisonment that may be imposed upon a person under subsections (A) and  
29 (E) of this section.

1 G. Whoever knowingly makes any false statement, representation, or certification,  
2 or knowingly fails to make any statement, representation, or certification in any  
3 application, record, report, plan, or other document filed or required to be  
4 maintained pursuant to the Navajo regulatory program or any order of decision  
5 issued by the Program Manager or NNOHA under this Act, shall, upon conviction,  
6 be subject to the sanctions and penalties of SMCRA section 518(g). Any criminal  
7 actions associated with surface coal mining and reclamation operations on Navajo  
8 regulatory program lands are enforced by OSMRE under SMCRA section 518. The  
9 NSCMP will notify OSMRE of such potential criminal actions and recommend that  
10 OSMRE pursue criminal penalties under SMCRA.

11 H. Any operator who fails to correct a violation for which a citation has been issued  
12 under section 2121(A) of this Act within the period permitted for its correction shall  
13 be assessed a civil penalty of not less than \$925 for each day during which such  
14 failure or violation continues. The period permitted for such corrections shall not  
15 end until (1) the entry of a final order by the NNOHA, in the case of any review  
16 proceedings under section 2125 of this Act initiated by the operator wherein the  
17 NNOHA orders, after an expedited hearing, the suspension of the abatement  
18 requirements of the citation after determining that the operator will suffer  
19 irreparable loss or damage from the application of those requirements, or (2) the  
20 entry of an order of the court, in the case of any review proceedings under section  
21 2126 of this Act initiated by the operator wherein the court orders the suspension of  
22 the abatement requirements of the citation.

23 I. Nothing herein shall be construed to eliminate any additional enforcement rights  
24 or procedures which are or may become available to the NSCMP under Navajo  
25 Nation law or applicable federal law, but which are not specifically enumerated  
26 herein.

27  
28 SEC. 2119. Release of Performance Bonds or Deposits

29 A. The permittee may file a request with the NSCMP for the release of all or part of  
30 a performance bond or deposit. Within 30 days after any application for bond or



1 deposit release has been filed with the NSCMP, the operator shall submit a copy of  
2 an advertisement placed at least once a week for four successive weeks in a  
3 newspaper of general circulation in the locality of the surface coal mining  
4 operation. Such advertisement shall be considered part of any bond release  
5 application and shall contain a notification of the precise location of the land  
6 affected, the number of acres, the permit and the date approved, the amount of the  
7 bond filed and the portion sought to be released, the type and dates of reclamation  
8 work performed, and a description of the results achieved as they relate to the  
9 operator's approved reclamation plan. In addition, as part of any bond release  
10 application, the applicant shall submit copies of letters which he or she has sent to  
11 adjoining landowners; planning agencies and other appropriate agencies of the  
12 Navajo Nation, federal, state, and local governments; and sewage and water  
13 treatment authorities or water companies in the locality in which the surface coal  
14 mining and reclamation activities took place, notifying them of his or her intention  
15 to seek release from the bond or deposit.

16 B. Upon receipt of the notification and request, the NSCMP shall within 30 days  
17 conduct an inspection and evaluation of the reclamation work involved. Such  
18 evaluation shall consider, among other things, the degree of difficulty to complete  
19 any remaining reclamation, whether pollution of surface water and groundwater is  
20 occurring, the probability of such pollution continuing, and the estimated cost of  
21 abatement. The NSCMP shall notify the permittee in writing of its decision to  
22 release or not to release all or part of the performance bond or deposit within 30  
23 days from the inspection and evaluation if no public hearing is held pursuant to  
24 section 2119(F) of this Act, and if a public hearing is held pursuant to section  
25 2119(F), such notification shall occur within 30 days thereafter. Any person having  
26 an interest which is or may be adversely affected by such decision shall have to  
27 right to file an appeal with the NNOHA in accordance with section 2125 of this  
28 Act.

1 C. The NSCMP may release in whole or in part said bond or deposit if the NSCMP  
2 is satisfied the reclamation covered by the bond or deposit or portion thereof has  
3 been accomplished as required by this Act according to the following schedule:

4 1. When the operator completes the backfilling, regrading, and drainage control of a  
5 bonded area in accordance with his or her approved reclamation plan, the release of  
6 up to 60 percent of the bond or collateral for the applicable permit area.

7 2. After revegetation has been established on the regraded, mined lands in  
8 accordance with the approved reclamation plan, the release of an amount of bond to  
9 be determined by the NSCMP. When determining the amount of bond to be  
10 released after successful revegetation has been established, the NSCMP shall retain  
11 that amount of bond for the revegetated area which would be sufficient for a third  
12 party to cover the cost of reestablishing revegetation and for the period specified for  
13 operator responsibility in section 2115(B)(20) of this Act. No part of the bond or  
14 deposit shall be released under this paragraph so long as the lands to which the  
15 release would be applicable are contributing suspended solids to streamflow or  
16 runoff outside the permit area in excess of the requirements set by section  
17 2115(B)(10) of this Act or until soil productivity for prime farmlands has returned  
18 to equivalent levels of yield as nonmined land of the same soil type in the  
19 surrounding area under equivalent management practices as determined from the  
20 soil survey performed pursuant to section 2107(B)(16) of this Act. Where a silt  
21 dam is to be retained as a permanent impoundment pursuant to section 2115(B)(8)  
22 of this Act, a portion of the bond may be released under this paragraph so long as  
23 adequate and enforceable written provisions for sound future maintenance by the  
24 operator or the landowner have been made with the NSCMP.

25 3. When the operator has completed successfully all surface coal mining and  
26 reclamation activities, but not before the expiration of the period specified for  
27 operator responsibility in section 2115(B)(20) of this Act, the release of the  
28 remaining portion of the bond: Provided, however, that no bond shall be fully  
29 released until all reclamation requirements of this Act are fully met.  
30

1 D. If the NSCMP disapproves the application for release of the bond or deposit, or  
2 portion thereof, the NSCMP shall notify the permittee, in writing, stating the  
3 reasons for disapproval and recommending corrective actions necessary to secure  
4 said release and allowing opportunity for a public hearing.

5 E. When any application for total or partial release of a bond or deposit is filed with  
6 the NSCMP, the NSCMP shall notify the Navajo Nation Chapters in which a  
7 surface coal mining operation is located and all appropriate Navajo Nation, federal,  
8 state, and local agencies, as determined by the NSCMP. Notification shall occur by  
9 certified mail at least 30 days prior to the release of all or a portion of the bond or  
10 deposit.

11 F. Any person with a valid legal interest that might be adversely affected by release  
12 of the bond or deposit, or the responsible officer or head of any federal, Navajo  
13 Nation, state, or local agency that has jurisdiction or special expertise with respect  
14 to any environmental, social, or economic impact involved in the operations, or is  
15 authorized to develop and enforce environmental standards with respect to such  
16 operations, shall have the right to file written objections to the proposed release  
17 from bond or deposit to the NSCMP within 30 days after the last publication of the  
18 above notice. If written objections are filed, and a hearing requested, the NSCMP  
19 shall inform all the interested parties of the time and place of the hearing, and hold a  
20 public hearing in the locality of the surface coal mining operation proposed for  
21 release of the bond or deposit within 30 days of the request for such hearing. The  
22 date, time, and location of such public hearings shall be advertised by the NSCMP  
23 in a newspaper of general circulation in the locality for two consecutive weeks. At  
24 the option of the objector(s), the NSCMP shall hold a public hearing in the locality  
25 of the surface coal mining operation proposed for release of the bond or deposit or  
26 at the NSCMP's offices within 30 days of the request for such hearing.

27 G. Without prejudice to the rights of the objector(s), the applicant, or the  
28 responsibilities of the NSCMP pursuant to this section, the NSCMP may establish  
29 an informal conference as provided in section 2113 of this Act to resolve such  
30 written objections.



1 H. For the purpose of conducting a hearing under subsection (F) of this section, the  
2 NSCMP is hereby authorized and empowered to administer oaths, subpoena  
3 witnesses or written or printed materials, compel the attendance of witnesses or  
4 production of the materials, and take evidence, including but not limited to  
5 inspections of the land affected and other surface coal mining operations carried on  
6 by the applicant in the general vicinity. A verbatim record of each public hearing  
7 required by this Act shall be made, and a transcript made available on the motion of  
8 any party or by order of the NSCMP.

9  
10 SEC. 2120. Citizen Suits

11 A. Any person having an interest which is or may be adversely affected may  
12 commence a civil action in Navajo Nation District Court for the District of Window  
13 Rock on his or her own behalf to compel compliance with this Act —

14 1. against the Navajo Nation or any other governmental instrumentality or agency  
15 of the Navajo Nation to the extent permitted by section 1801(I) of this Act and in  
16 accordance with the procedural requirements of paragraph (B)(1) of this section,  
17 which is alleged to be in violation of the provisions of SMCRA or this Act or of any  
18 rule, regulation, order or permit issued pursuant thereto, or against any person who  
19 is alleged to be in violation of any rule, regulation, order, or permit issued pursuant  
20 to SMCRA or this Act; or

21 2. against the NSCMP to the extent permitted by section 1801(I) of this Act and in  
22 accordance the procedural requirements of paragraph (B)(2) of this section where  
23 there is alleged a failure of the NSCMP to perform any act or duty under SMCRA  
24 or this Act which is not discretionary with the NSCMP.

25 B. No action may be commenced —

26 1. under paragraph (A)(1) of this section —

27 a. until the plaintiff fulfills the jurisdictional condition precedent procedures of the  
28 Navajo Sovereign Immunity Act codified at 1 N.N.C. § 555 and any successors  
29 thereto and has given notice in writing of the violation to any alleged violator; or  
30

1 b. if the Navajo Nation has commenced and is diligently prosecuting a civil action  
2 in the Navajo Nation District Court for the District of Window Rock to require  
3 compliance with the provisions of this Act, or any rule, regulation, order, or permit  
4 issued pursuant to this Act, but in any such action, such person may intervene as a  
5 matter of right; or

6 2. under paragraph (A)(2) of this section until the plaintiff fulfills the jurisdictional  
7 condition precedent procedures of the Navajo Sovereign Immunity Act codified at 1  
8 N.N.C. § 555 and any successors thereto except that such action may be brought  
9 immediately after the notice is served upon the appropriate Navajo Nation officials  
10 as required at 1 N.N.C. § 555 (a)(1) and (2) and any amendments or successors  
11 thereto in the case where the violation or order complained of constitutes an  
12 imminent threat to plaintiff's health or safety or would immediately affect a legal  
13 interest of the plaintiff.

14 C. In any action under this section, the NSCMP, if not a party, may intervene as a  
15 matter of right.

16 D. The Navajo Nation District Court, in issuing any final order in any action  
17 brought pursuant to subsection (A) of this section, may award costs of litigation  
18 (including attorney and expert witness fees) to any party, whenever the court  
19 determines such award is appropriate. The Navajo Nation District Court may, if a  
20 temporary restraining order or preliminary injunction is sought, require the filing of  
21 a bond or equivalent security in accordance with the Navajo Rules of Civil  
22 Procedure.

23 E. Nothing in this section shall restrict any right which any person (or class of  
24 persons) may have under other applicable law to seek enforcement of any of the  
25 provisions of this Act and the regulations thereunder or to seek any other relief  
26 (including relief against the NSCMP).

27 F. Any person who is injured in his or her person or property through the violation  
28 by any operator of any rule, regulation, order, or permit issued pursuant to this Act  
29 may bring an action for damages (including reasonable attorney and expert witness  
30 fees) in the Navajo Nation District Court for the District of Window Rock. Nothing

1 in this subsection shall affect rights established by or limits imposed under any  
2 applicable workers' compensation laws.

3 G. After exhausting all Navajo Nation remedies with respect to a civil action arising  
4 under the Navajo regulatory program, an interested party may, pursuant to section  
5 710(j)(4)(A) of SMCRA, file a petition for judicial review of the civil action in the  
6 United States Court of Appeals for the circuit in which the surface coal mining  
7 operation named in the petition is located, or, for civil actions in which no surface  
8 coal mining operation is named in the petition, in the United States Court of  
9 Appeals for the Ninth Circuit.

10  
11 SEC. 2121. Enforcement

12 A. Whenever, on the basis of any information available to him or her, including  
13 receipt of information from any person, the Program Manager has reason to believe  
14 that any person is in violation of any requirement of this Act or any permit  
15 condition required by this Act, the Program Manager shall immediately order  
16 inspection of the surface coal mining operation at which the alleged violation is  
17 occurring unless the information available to the Program Manager was found in a  
18 previous inspection of such surface coal mining operation, and the alleged violation  
19 was already addressed by the NSCMP.

20 1. When the inspection results from information provided to the Program Manager  
21 by any person, the Program Manager shall notify such person when the inspection  
22 is proposed to be carried out and such person shall be allowed to accompany the  
23 inspector during the inspection. If the person informing the Program Manager of an  
24 alleged violation has provided adequate proof that an imminent danger of  
25 significant environmental harm exists, the Program Manager or his or her  
26 authorized representative shall immediately inspect the operation. If no inspection  
27 is to be conducted, such person shall be notified of the reason(s) for not inspecting.

28 2. When, on the basis of any inspection, the Program Manager or his or her  
29 authorized representative determines that any condition or practices exist, or that  
30 any permittee is in violation of any requirement of this Act or any permit condition



1 required by this Act, which condition, practice, or violation also creates an  
2 imminent danger to public health or safety, or is causing, or can reasonably be  
3 expected to cause significant, imminent environmental harm to land, air, or water  
4 resources, the Program Manager or his or her authorized representative shall  
5 immediately order a cessation of surface coal mining and reclamation operations or  
6 the portion thereof relevant to the condition, practice, or violation. Such cessation  
7 order shall remain in effect until the Program Manager or his or her authorized  
8 representative determines that the condition, practice, or violation has been abated,  
9 or until the order is modified, vacated, or terminated by the Program Manager or his  
10 or her authorized representative pursuant to paragraph (A)(5) of this section. Where  
11 the Program Manager finds that the cessation of surface coal mining and  
12 reclamation operations, or any portion thereof, will not completely abate the  
13 imminent danger to public health or safety or the significant imminent  
14 environmental harm to land, air, or water resources, the Program Manager shall, in  
15 addition to the cessation order, impose affirmative obligations on the operator  
16 requiring him or her to take whatever steps the Program Manager deems necessary  
17 to abate the imminent danger or the significant environmental harm.

18 3. When, on the basis of any inspection, the Program Manager or his or her  
19 authorized representative determines that any permittee is in violation of any  
20 requirement of this Act or any permit condition required by this Act, but such  
21 violation does not create an imminent danger to public health or safety, or cannot be  
22 reasonably expected to cause significant, imminent environmental harm to land, air,  
23 or water resources, the Program Manager or his or her authorized representative  
24 shall issue a notice to the permittee or his or her agent fixing a reasonable time but  
25 not more than 90 days for abating the violation. Such notice shall also provide  
26 opportunity for an administrative hearing. If, upon expiration of the period of time  
27 as originally fixed or subsequently extended, for good cause shown and upon the  
28 written finding of the Program Manager or his or her authorized representative, the  
29 Program Manager or his or her authorized representative finds that the violation has  
30 not been abated, he or she shall immediately order a cessation of surface coal

1 mining and reclamation operations or the portion thereof relevant to the violation.  
2 Such cessation order shall remain in effect until the Program Manager or his or her  
3 authorized representative determines that the violation has been abated, or until the  
4 order is modified, vacated, or terminated by the Program Manager or his or her  
5 authorized representative pursuant to paragraph (A)(5) of this section. In the order  
6 of cessation issued by the Program Manager or his or her authorized representative  
7 under this subsection, the Program Manager or his or her authorized representative  
8 shall determine the steps necessary to abate the violation in the most expeditious  
9 manner possible, and shall include the necessary measures in the order.

10 4. When, on the basis of any inspection, the Program Manager or his or her  
11 authorized representative determines that a pattern of violations of any requirements  
12 of this Act or any permit conditions required by this Act exists or has existed, and if  
13 the Program Manager or his or her authorized representative also finds that such  
14 violations are caused by the unwarranted failure of the permittee to comply with  
15 any requirements of this Act or any permit conditions, or that such violations are  
16 willfully caused by the permittee, the Program Manager or his or her authorized  
17 representative shall forthwith issue an order to the permittee to show cause as to  
18 why the permit should not be suspended or revoked, and shall provide the  
19 opportunity for an administrative hearing. If a hearing is requested the NNOHA  
20 shall inform all interested parties of the time and place of the hearing. Upon the  
21 permittee's failure to show cause as to why the permit should not be suspended or  
22 revoked, the NNOHA shall forthwith suspend or revoke the permit.

23 5. Notices and orders issued pursuant to this section shall set forth with reasonable  
24 specificity the nature of the violation and the remedial action required, the period of  
25 time established for abatement, and a reasonable description of the portion of the  
26 surface coal mining and reclamation operation to which the notice or order applies.  
27 Each notice or order issued under this section shall be given promptly to the  
28 permittee or his or her agent by the Program Manager or his or her authorized  
29 representative who issues such notice or order, and all such notices and orders shall  
30 be in writing and shall be signed by such authorized representatives or the Program

1 Manager. Any notice or order issued pursuant to this section may be modified,  
2 vacated, or terminated by the Program Manager or his or her authorized  
3 representative: Provided, that any notice or order issued pursuant to this section  
4 which requires cessation of mining by the operator shall expire within 30 days of  
5 actual notice to the operator unless an administrative hearing is held at the site or  
6 within such reasonable proximity to the site that any viewings of the site can be  
7 conducted during the course of the administrative hearing.

8 B. The Program Manager may request the Attorney General to institute a civil  
9 action for relief, including a permanent or temporary injunction, restraining order,  
10 or any other appropriate order in the Navajo Nation District Court for the District of  
11 Window Rock, whenever such permittee or his or her agent —

12 1. violates or fails or refuses to comply with any order or decision issued by the  
13 Program Manager or his or her authorized representative under this Act;

14 2. interferes with, hinders, or delays the Program Manager or his or her authorized  
15 representatives in carrying out the provisions of this Act;

16 3. refuses to admit such authorized representative to the operation;

17 4. refuses to permit inspection of the operation by such authorized representative;

18 5. refuses to furnish any information or report requested by the Program Manager or  
19 his or her authorized representative in furtherance of the provisions of this Act; or

20 6. refuses to permit access to, and copying of, such records as the Program Manager  
21 or his or her authorized representative determines necessary in carrying out the

22 provisions of this Act. The Navajo Nation District Court shall have jurisdiction to  
23 provide such relief as may be appropriate. Temporary restraining orders shall be

24 issued in accordance with Rule 65 and Rule 65.1 of the Navajo Rules of Civil  
25 Procedure. Any relief granted by the Navajo Nation District Court to enforce an

26 order under clause (a) of this section shall continue in effect until the completion or  
27 final termination of all proceedings for review of such order under this Act, unless,

28 prior thereto, the Navajo Nation District Court granting such relief sets it aside or  
29 modifies it. After exhausting all Navajo Nation remedies with respect to a civil

30 action arising under the Navajo regulatory program, an interested party may,



1 pursuant to section 710(j)(4)(A) of SMCRA, file a petition for judicial review of the  
2 civil action in the United States Court of Appeals for the circuit in which the surface  
3 coal mining operation named in the petition is located.

4 C. Nothing within this Act shall be construed so as to eliminate any additional  
5 enforcement rights or procedures which are available to the NSCMP under Navajo  
6 Nation law, but which are not specifically enumerated herein.

7  
8 SEC. 2122. Land Unsuitable for Surface Coal Mining

9 A. The NSCMP shall establish a planning process.

10 1. This process shall enable objective decisions based upon competent and  
11 scientifically sound data and information as to which, if any, areas of Navajo  
12 regulatory program lands are unsuitable for all or certain types of surface coal  
13 mining operations pursuant to the standards set forth in paragraphs (2) and (3) of  
14 this subsection, but such designation shall not prevent the mineral exploration  
15 pursuant to this Act of any area so designated.

16 2. Upon petition pursuant to subsection (B) of this section, the NSCMP shall  
17 designate an area as unsuitable for all or certain types of surface coal mining  
18 operations if the NSCMP determines that reclamation, pursuant to the requirements  
19 of this Act, is not technologically and economically feasible.

20 3. Upon petition pursuant to subsection (B) of this section, a surface area may be  
21 designated unsuitable for certain types of surface coal mining operations if such  
22 operations will —

23 a. be incompatible with existing Navajo Nation, BIA, or local land-use plans or  
24 programs; or

25 b. affect fragile or historic lands upon which such operations could result in  
26 significant damage to important historic, cultural, scientific, and aesthetic values,  
27 and natural systems; or

28 c. affect renewable resource lands upon which such operations could result in a  
29 substantial loss or reduction of the long-range productivity of the water supply or of  
30

1 food or fiber products, and such lands to include aquifers and aquifer recharge  
2 areas; or

3 d. affect natural hazard lands in which such operations could substantially endanger  
4 life and property, such lands to include areas subject to frequent flooding and areas  
5 of unstable geology.

6 4. The NSCMP is responsible for surface coal mining lands review. The NSCMP  
7 shall develop a process which includes —

8 a. a database and an inventory system which will facilitate the proper evaluation of  
9 the capacity of different areas of the Navajo Nation to support and permit  
10 reclamation of surface coal mining operations;

11 b. a method or methods for implementing land-use planning decisions concerning  
12 surface coal mining operations; and

13 c. proper notice and opportunities for public participation, including a public  
14 hearing prior to making any designation or redesignation, pursuant to this section;

15 5. Determinations of the unsuitability of land for surface coal mining, as provided  
16 for in this section, shall be integrated as closely as possible with present and future  
17 land-use planning and regulation processes of federal, Navajo Nation, and local  
18 agencies.

19 6. The requirements of this section shall not apply to lands on which surface coal  
20 mining operations are being conducted under a permit issued by the NSCMP  
21 pursuant to this Act or by OSMRE under the Federal Program for Indian Lands, or  
22 where substantial legal and financial commitments in such operation were in  
23 existence prior to January 4, 1977.

24 B. Any person having an interest which is or may be adversely affected shall have  
25 the right to petition the NSCMP to have an area designated as unsuitable for surface  
26 coal mining operations, or to have such a designation terminated. Such petition  
27 shall contain allegations of facts with supporting evidence which would tend to  
28 establish the allegations. Within ten months after receipt of a petition, the NSCMP  
29 shall hold a public hearing in the locality of the affected area, after appropriate  
30 notice and publication of the date, time, and location of such hearing. After a

1 person having an interest which is or may be adversely affected has filed a petition  
2 and before the hearing, as required by this subsection, any person may intervene by  
3 filing allegations of facts with supporting evidence which would tend to establish  
4 the allegations. Within 60 days after such hearing, the NSCMP shall issue and  
5 furnish to the petitioner and any other party to the hearing, a written decision  
6 regarding the petition, and the reasons therefor. Any person having an interest  
7 which is or may be adversely affected by such decision shall have the right to file  
8 an appeal with the Navajo Nation Supreme Court in accordance with section  
9 2126(A)(2) of this Act. In the event that all the petitioners stipulate agreement prior  
10 to the requested hearing, and withdraw their requests, such hearing need not be  
11 held.

12 C. Prior to designating any land areas as unsuitable for surface coal mining  
13 operations, the NSCMP shall prepare a detailed statement on (i) the potential coal  
14 resources of the area, (ii) the demand for coal resources, and (iii) the impact of such  
15 designation on the environment, the economy, and the supply of coal.

16 D. Subject to valid existing rights, no surface coal mining operations except those  
17 which existed on August 3, 1977 shall be permitted —

18 1. on any lands within the boundaries of units of the National Park System, the  
19 National Wildlife Refuge System, the National System of Trails, the National  
20 Wilderness Preservation System, the Wild and Scenic Rivers System, including  
21 study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, and  
22 National Recreation Areas designated by Act of Congress;

23 2. on any federal lands within the boundaries of any national forest: Provided,  
24 however, that surface coal mining operations may be permitted on such lands if the  
25 Secretary finds that there are no significant recreational, timber, economic, or other  
26 values which may be incompatible with such surface mining operations and —

27 a. surface operations and impacts are incident to an underground coal mine; or  
28 b. where the Secretary of Agriculture determines, with respect to lands which do not  
29 have significant forest cover, that surface mining is in compliance with the  
30 Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments



1 Act of 1976, the National Forest Management Act of 1976, and the provisions of  
2 SMCRA;

3 3. which will adversely affect any publicly owned park or place included in, or  
4 eligible for inclusion in, the National Register of Historic Places, unless approved  
5 jointly by the NSCMP, the Navajo Nation Chapter(s) within which the park or place  
6 is located, and the federal, Navajo Nation, state, or local agency with jurisdiction  
7 over the park or the historic place;

8 4. within 100 feet of the outside right-of-way line of any public road, except where  
9 mine access roads or haulage roads join such right-of-way line and except that the  
10 NSCMP may permit such roads to be relocated or the area affected to lie within 100  
11 feet of such road, if after public notice and opportunity for public hearing in the  
12 locality a written finding is made that the interests of the public, the landowners,  
13 and authorized land users who may be affected thereby will be protected;

14 5. within 300 feet from any occupied dwelling, unless knowingly and voluntarily  
15 waived in writing by the owner thereof, nor within 300 feet of any public building,  
16 school, church, community, or institutional building, public park, or within 100 feet  
17 of a cemetery; or

18 6. on any lands designated by the Navajo Nation Council as sacred, historical,  
19 cultural, park, wilderness, or wildlife refuge.

20  
21 SEC. 2123. Reserved

22  
23 SEC. 2124. Public agencies, Public Utilities, and Public Corporations

24 Any agency, unit, or instrumentality of federal, Navajo Nation, state, or local  
25 government, including any publicly-owned utility or publicly-owned corporation of  
26 federal, Navajo Nation, state, or local government, which proposes to engage in  
27 surface coal mining operations on Navajo regulatory program lands shall comply  
28 with the provisions of this Act.

29  
30 SEC. 2125. Administrative Review

1 A. A permittee issued a notice or order by the Program Manager or his or her  
2 authorized representative pursuant to the provisions of paragraph (A)(2) or (3) of  
3 section 2121 of this Act or any person having an interest which is or may be  
4 adversely affected by such notice or order or by any modification, vacation, or  
5 termination of such notice or order, may apply to the NSCMP for review of the  
6 notice or order within 30 days of receipt thereof, or within 30 days of its  
7 modification, vacation, or termination.

8 1. Upon receipt of such application, the NSCMP shall cause such investigation to be  
9 made as he or she deems appropriate. Such investigation shall provide an  
10 opportunity for an administrative hearing by the NNOHA, at the request of the  
11 applicant or the person having an interest which is or may be adversely affected, to  
12 enable the applicant or such person to present information relating to the issuance  
13 and continuance of such notice or order or the modification, vacation, or  
14 termination thereof. The filing of an application for review under this subsection  
15 shall not operate as a stay of any order or notice.

16 2. The permittee and other interested persons shall be given written notice of the  
17 time and place of the hearing at least five days prior thereto. Any such hearing shall  
18 be of record and conducted in conformity with the regulations for administrative  
19 hearings promulgated pursuant to section 1801(C)(2) of this Act.

20 B. Upon receiving the report of such investigation, the NNOHA shall make findings  
21 of fact, and shall issue a written decision, incorporating therein an order vacating,  
22 affirming, modifying, or terminating the notice or order, or the modification,  
23 vacation, or termination of such notice or order complained of, and shall  
24 incorporate his or her findings therein. Where the application for review concerns  
25 an order for cessation of surface coal mining and reclamation operations issued  
26 pursuant to the provisions of paragraph (A)(2) or (A)(3) of section 2121 of this Act,  
27 the NNOHA shall issue the written decision within 30 days of the receipt of the  
28 application for review unless temporary relief has been granted by the NNOHA  
29 pursuant to subsection (C) of this section or by the court pursuant to subsection (C)  
30 of section 2126 of this Act.

1 C. Pending completion of the investigation and hearing required by this section, the  
2 applicant may file with the NNOHA a written request that the NNOHA grant  
3 temporary relief from any notice or order issued under section 2121 of this Act,  
4 together with a detailed statement giving reasons for granting such relief. The  
5 NNOHA shall issue an order or decision granting or denying such relief  
6 expeditiously: Provided, that where the applicant requests relief from an order for  
7 cessation of coal mining and reclamation operations issued pursuant to paragraph  
8 (A)(2) or (A)(3) of section 2121 of this Act, the order or decision on such a request  
9 shall be issued within five days of its receipt. The NNOHA may grant such relief,  
10 under such conditions as he or she may prescribe, if —

- 11 1. a hearing on the request for temporary relief, in which all parties were given an  
12 opportunity to be heard, has been held in the locality of the permit area;
- 13 2. the applicant shows that there is substantial likelihood that the findings of the  
14 NNOHA will be favorable to him or her; and
- 15 3. such relief will not adversely affect public health or safety or cause significant,  
16 imminent environmental harm to land, air, or water resources.

17 D. Following the issuance of an order to show cause as to why a permit should not  
18 be suspended or revoked pursuant to section 2121 of this Act, the NNOHA shall  
19 hold an administrative hearing after giving written notice of the time, place, and  
20 date thereof. Any such hearing shall be of record and conducted in conformity with  
21 the regulations for administrative hearings promulgated pursuant to section  
22 1801(C)(2) of this Act. Within 60 days following the administrative hearing, the  
23 NNOHA shall issue and furnish to the permittee and all other parties to the hearing  
24 a written decision, and the reasons therefor, concerning suspension or revocation of  
25 the permit. If the NNOHA revokes the permit, the permittee shall immediately  
26 cease surface coal mining operations on the permit area and shall complete  
27 reclamation within a period specified by the NNOHA, or the NSCMP shall declare  
28 as forfeited the performance bond(s) for the operation.

29 E. Whenever an order is issued under this section, or as a result of any  
30 administrative proceeding under this Act, at the request of any person, a sum equal



1 to the aggregate amount of all costs and expenses (including attorney fees) as  
2 determined by the NNOHA to have been reasonably incurred by such person for or  
3 in connection with his or her participation in such proceedings, including any  
4 judicial review of agency actions, may be assessed against either party as the court,  
5 resulting from judicial review, or the NNOHA, resulting from administrative  
6 proceedings, deems proper.

7  
8 SEC. 2126. Judicial Review

9 A. After exhausting available administrative remedies, any action constituting  
10 rulemaking under this Act shall be subject to judicial review by the Navajo Nation  
11 District Court for the District of Window Rock, with a right of appeal to the Navajo  
12 Nation Supreme Court.

13 1. Any action subject to judicial review under this subsection shall be affirmed  
14 unless the court concludes that such action is arbitrary, capricious, or otherwise  
15 inconsistent with law. A petition for review of any action subject to judicial review  
16 under this subsection shall be filed in the Navajo Nation District Court for the  
17 District of Window Rock within 60 days from the date of such action, or after such  
18 date if the petition is based solely on grounds arising after the sixtieth day. Any  
19 such petition may be made by any person who participated in the administrative  
20 proceedings and who is aggrieved by the action of the Program Manager or the  
21 NSCMP.

22 2. Any order or decision issued by the NNOHA in a civil penalty proceeding or any  
23 other adjudicatory administrative proceeding conducted by the NNOHA or the  
24 NSCMP pursuant to this Act shall be subject to judicial review on or before 30 days  
25 from the date of such order or decision in accordance with paragraph (B) of this  
26 section in the Navajo Nation Supreme Court. In the case of a proceeding to review  
27 an order or decision issued by the NNOHA under the penalty section of this Act,  
28 the Court shall have jurisdiction to enter an order requiring payment of any civil  
29 penalty assessment enforced by its judgment.  
30

1 B. The Court shall hear such petition or complaint solely on the record made before  
2 the Program Manager, the NSCMP, or the NNOHA. Except as provided in  
3 subsection (A)(1), the findings of the Program Manager, the NSCMP, or the  
4 NNOHA, if supported by substantial evidence on the record considered as a whole,  
5 shall be conclusive. The Court may affirm, vacate, or modify any order or decision  
6 or may remand the proceedings to the Program Manager, the NSCMP, or the  
7 NNOHA for such further action as it may direct. Pursuant to SMCRA section  
8 710(j)(4)(i), after exhausting all remedies with respect to a civil action arising under  
9 the Navajo regulatory program, an interested party may file a petition for judicial  
10 review of the civil action in the United States Court of Appeals for the circuit in  
11 which the surface coal mining operation named in the petition is located, or, for  
12 civil actions in which no surface coal mining operation is named in the petition, in  
13 the United States Court of Appeals for the Ninth Circuit.

14 C. In the case of a proceeding to review any rulemaking or any order or decision  
15 issued by the NSCMP or NNOHA under this Act, including an order or decision  
16 issued pursuant to subsection (C) or (D) of section 2125 of this Act pertaining to  
17 any order issued under paragraph (A)(2), (A)(3), or (A)(4) of section 2121 of this  
18 Act for cessation of coal mining and reclamation operations, the Court may, under  
19 such conditions as it may prescribe, grant such temporary relief as it deems  
20 appropriate pending final determination of the proceedings if —

21 i. all parties to the proceedings have been notified and given an opportunity to be  
22 heard on a request for temporary relief;

23 ii. the person requesting such relief shows that there is a substantial likelihood that  
24 he or she will prevail on the merits of the final determination of the proceeding; and

25 iii. such relief will not adversely affect the public health or safety or cause  
26 significant, imminent environmental harm to land, air, or water resources.

27 D. The commencement of a proceeding under this section shall not, unless  
28 specifically ordered by the Court, operate as a stay of rulemaking or of the action,  
29 order, or decision of the NSCMP or the NNOHA.  
30

1 E. The availability of judicial review under this section shall not be construed to  
2 limit the operation of the rights established in section 2120 of this Act except as  
3 provided therein.

4  
5 SEC. 2127. Reserved

6  
7 SEC. 2128. Surface Mining Operations Not Subject To This Act

8 The provisions of this Act shall not apply to the extraction of coal as an incidental  
9 part of federal, Navajo Nation, state, or local government-financed highway or  
10 other construction under regulations established by the NSCMP.

11  
12 SEC. 2129. Reserved

13  
14 CHAPTER 22 - RESERVED

15  
16 CHAPTER 23– ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

17  
18 SEC. 2301. Reserved

19  
20 SEC. 2302. Cooperation of Other Navajo Nation Agencies

21 To the greatest extent practicable, each Navajo Nation agency shall cooperate with  
22 the NSCMP in carrying out the provisions of this Act.

23  
24 SEC. 2303. Reserved

25  
26 SEC. 2304. Reserved

27  
28 SEC. 2305. Reserved

29  
30 SEC. 2306. Reserved



1  
2 SEC. 2307. Severability

3 If any provision of this Act or the applicability thereof to any person or  
4 circumstance is held invalid, the remainder of this Act and the application of such  
5 provision to other persons or circumstances shall not be affected thereby.

6  
7 SEC. 2308. Reserved

8  
9 SEC. 2309. Reserved

10  
11 SEC. 2310. Reserved

12  
13 SEC. 2311. Experimental Practices

14 In order to encourage advances in coal mining and reclamation practices or to allow  
15 postmining land use for industrial, commercial, residential, or public use (including  
16 recreational facilities), the NSCMP, with approval by the OSMRE Director, may  
17 authorize departures in individual cases, on an experimental basis, from the  
18 environmental protection performance standards promulgated under sections 2115  
19 and 2116 of this Act. Such departures may be authorized if (i) the experimental  
20 practices are potentially more or at least as environmentally protective, during and  
21 after coal mining operations, as those required by promulgated standards; (ii) the  
22 coal mining operations approved for particular land use or other purposes are not  
23 larger or more numerous than necessary to determine the effectiveness and  
24 economic feasibility of the experimental practices; and (iii) the experimental  
25 practices do not reduce the protection afforded public health and safety below that  
26 provided by promulgated standards.

27  
28 SEC. 2312. Reserved

29  
30 SEC. 2313. Reserved

1  
2 SEC. 2314. Reserved

3  
4 SEC. 2315. Reserved

5  
6 SEC. 2316. Reserved

7  
8 SEC. 2317. Water Rights and Replacement

9 (a) Nothing in this Act shall be construed as affecting in any way the right of any  
10 person, or the Navajo Nation, to enforce or protect, under applicable law, their  
11 interest in water resources affected by a surface coal mining operation regulated  
12 under this Act.

13 (b) The operator of a surface coal mine shall replace immediately with water of at  
14 least equal quality and quantity the water supply of a landowner or a water user who  
15 obtains all or part of his or her supply of water for domestic, agricultural, industrial,  
16 or other legitimate use from an underground or surface source where such supply  
17 has been affected by contamination, diminution, or interruption proximately  
18 resulting from such surface coal mine operation.

19  
20 SEC. 2318. Reserved

21  
22 SEC. 2319. Certification of Blasters

23 In accordance with this Act, the NSCMP shall promulgate regulations requiring the  
24 examination, training, and certification of persons engaging in or directly  
25 responsible for blasting or the use of explosives in surface coal mining operations.

26  
27 SEC. 2320. Subsidence

28 Underground coal mining operations shall comply with each of the following  
29 requirements:

1 A. Promptly repair, or compensate for, material damage resulting from subsidence  
2 caused to any occupied residential dwelling and structures related thereto, or to any  
3 non-commercial building, due to underground coal mining operations. Repair of  
4 damage shall include rehabilitation, restoration, or replacement of the damaged  
5 occupied residential dwelling and structures related thereto, or non-commercial  
6 building. Compensation shall be provided to the owner of the damaged occupied  
7 residential dwelling and structures related thereto, or non-commercial building, and  
8 shall be in the full amount of the diminution in value resulting from the subsidence.  
9 Compensation may be accomplished by the purchase, prior to mining, of a non-  
10 cancelable premium prepaid insurance policy.

11 B. Promptly replace any drinking, domestic, or residential water supply from a well  
12 or spring in existence prior to the application for a surface or underground coal  
13 mining and reclamation permit, which has been affected by contamination,  
14 diminution, or interruption resulting from underground coal mining operations.  
15 Nothing in this section shall be construed to prohibit or interrupt underground coal  
16 mining operations.

17  
18 SEC. 2321. Annual Reclamation Reports

19 A. The NSCMP shall promulgate rules and regulations to require permittees under  
20 this Act to file with the NSCMP an annual reclamation report.

21 B. Annual reclamation reports shall be submitted to the NSCMP on or before April  
22 1 of each year. Annual reclamation reports shall be prepared and submitted in the  
23 format required by the NSCMP and shall describe the reclamation completed during  
24 previous calendar year and proposed reclamation activities for the current calendar  
25 year and subsequent calendar year.

26 C. Annual reclamation reports shall identify and describe:

27 1. areas for which Phase I, II, or III bond release was approved during the previous  
28 calendar year and within Phase III release areas, the areas of each postmining land  
29 use;

30 2. areas newly bonded for disturbance during the previous calendar year;



- 1       3. areas that were reclaimed and the extent to which they were reclaimed during the  
2       previous calendar year and any problems or exceptional successes encountered;  
3       4. areas to be reclaimed during the current calendar year and subsequent calendar  
4       year and the specific types of reclamation to be conducted;  
5       5. seeding mixtures used during the previous calendar year and intended to be used  
6       during the current calendar year and subsequent calendar year and the reasons for  
7       the choice of specific mixtures;  
8       6. anticipated problem areas and mitigation measures intended to be used; and  
9       7. all other information that the NSCMP may require.

10       D. All reclamation activities proposed to be conducted during the current calendar  
11       year and subsequent calendar year must conform to the schedule and specifications  
12       of the reclamation plan in the permit application approved by the NSCMP pursuant  
13       to section 2110 of this Act.

14  
15       CHAPTER 24 – RESERVED

16  
17       **Section Four. Effective Date**

18       The Act enacted herein shall be effective upon its approval pursuant to 2 N.N.C.  
19       §221.

20  
21       **Section Five. Codification**

22       The provisions of the Act which amend or adopt new sections of the Navajo Nation  
23       Code shall be codified by the Office of Legislative Counsel. The Office of  
24       Legislative Counsel shall renumber sections of this legislation such that the  
25       legislation conforms to the standard form of the Navajo Nation Code. The Office of  
26       Legislative Counsel shall incorporate such amended provisions in the next  
27       codification of the Navajo Nation Code.

28  
29       **Section Six. Savings Clause**  
30

1       Should any provision of this Act be determined invalid by the Navajo Nation  
2       Supreme Court, or the District Court of the Navajo Nation, without appeal to the  
3       Navajo Nation Supreme Court, or any other court of competent jurisdiction, those  
4       portions of this Act which are not determined invalid shall remain the law of the  
5       Navajo Nation.  
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Document No. 004872

Date Issued: 10/05/2015

### SECTION 164 REVIEW FORM

Title of Document: NNSurface Coal Mining & Reclamation Act Contact Name: ZAMAN, AKHTAR

Program/Division: DIVISION OF NATURAL RESOURCES

Email: zamanakh@yahoo.com Phone Number: (928) 871-6587

Division Director Approval for 164A: *BNB*

**Check document category: only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.**

#### Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

<input checked="" type="checkbox"/>	<b>Statement of Policy or Positive Law:</b>				
	1. OAG:	<u><i>BNB</i></u>	Date: <u>10/9/15</u>	Sufficient <input checked="" type="checkbox"/>	Insufficient <input type="checkbox"/>
<input type="checkbox"/>	<b>IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)</b>				
	1. OMB:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. OOC:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. OAG:		Date:	<input type="checkbox"/>	<input type="checkbox"/>

#### Section 164(B) Final approval rests with the President of the Navajo Nation

<input type="checkbox"/>	<b>Grant/Funding Agreement or amendment:</b>				
	1. Division:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Subcontract/Contract expending or receiving funds or amendment:</b>				
	1. Division:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. BRD:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. OMB:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	4. OOC:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	5. OAG:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:</b>				
	1. Division:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. OAG:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<b>M.O.A. or Letter of Assurance expending or receiving funds or amendment:</b>				
	1. Division:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	2. OMB:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	3. OOC:		Date:	<input type="checkbox"/>	<input type="checkbox"/>
	4. OAG:		Date:	<input type="checkbox"/>	<input type="checkbox"/>





# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ	
10/07/15	1111c
DATE / TIME	
<input checked="" type="checkbox"/> Day Deadline	
DOC #:	004872
SAS #:	
UNIT:	NRU

☐ RESUBMITTAL

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

CLIENT TO COMPLETE			
DATE OF REQUEST:	10/5/2015	DIVISION:	Division of Natural Resources
CONTACT NAME:	Akhtar Zaman	DEPARTMENT:	Minerals Department
PHONE NUMBER:	(928) 871-6587	E-MAIL:	zamanakh@yahoo.com
TITLE OF DOCUMENT: Section 164 Review No. 004872 "Navajo Nation Surface Coal Mining & Reclamation Act"			
DOJ SECRETARY TO COMPLETE			
DATE/TIME IN UNIT:	10/7/15 1:00 pm	REVIEWING ATTORNEY/ADVOCATE:	Toni Flora 10/19/15 10/16/15
DATE TIME OUT OF UNIT:	10/09/15 1:35 pm		
DOJ ATTORNEY / ADVOCATE COMMENTS			
legally sufficient			
REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Toni Flora	10/9/15 9:45	Monica Blackhat	10/9/15 1:05 pm
DOJ Secretary Called: Mallory		for Document Pick Up on 10/09/15 at 1:25 pm By: SB	
PICKED UP BY: (Print)		DATE / TIME:	




# THE NAVAJO NATION

RUSSELL BEGAYE  
JONATHAN NEZ

October 08, 2015

## MEMORANDUM

TO: Resources and Development Committee  
NAVAJO NATION COUNCIL

FROM:   
Bidtah Becker, Acting Executive Director  
Division of Natural Resources

SUBJECT: Doc No. 4872, Navajo Nation Surface Coal Mining and Reclamation Act

I am pleased to sign the 164 document review sheet indicating that the Division of Natural Resources has determined that the Navajo Nation Surface Coal Mining and Reclamation Act is and ready for Council approval. Passage of this act is the first step in the process of the obtaining primacy over surface coal mining reclamation. The Minerals Department has worked for decades to obtain this primacy, including advocating for Congressional changes to the federal Surface Mining and Coal Reclamation Act. Of significant note, the Nation is on track to be the first American Indian Tribe to obtain primacy over surface coal mining reclamation.

Thank you for your consideration of this important act to the Nation, its resources, and the Dine'.

Division of Natural Resources  
P.O. Box 9000, Window Rock, AZ 86515  
Telephone: (928) 871-6592/3; Fax: (928) 871-7040; Website: [www.dnrnavajo.org](http://www.dnrnavajo.org)



## MEMORANDUM

**TO:** Naa'bik'iyati' Committee

**FROM:**   
Toni Flora, Attorney

**DATE:** July 18, 2017

### **RE: OVERVIEW AND LEGAL ANALYSIS OF THE NAVAJO NATION SURFACE COAL MINING AND RECLAMATION ACT**

At the Naa'bikiyati Committee meeting on April 14, 2016, it became clear that the Delegates were interested in seeing a legal analysis of the Navajo Surface Coal Mining and Reclamation Act ("Primacy Legislation" or "Act").

#### **HISTORY**

In 1977, the U.S. Congress passed the federal Surface Coal Mining and Reclamation Act (SMCRA) to regulate surface coal mining and reclamation throughout the country. In this law, States were given the ability to seek Primacy from the federal government. Primacy is the ability of a government to have primary regulatory authority, conduct inspections, enforce the law, and determine how the reclamation of the land is conducted. At the time SMCRA was originally passed, tribes were not afforded the same authority. Akhtar Zaman, Director of Minerals Department, began working to change this law since the 1980s. In Section 710, SMCRA required a study of tribes that may be able to obtain primacy. SMCRA §710(a)-(b). At the time the report was filed, it was determined that of the three tribes with coal on their lands, the Navajo Nation was the only tribe capable of running a surface coal mining regulatory program. Hearing Before the Committee on Energy and Natural Resources, United States Senate, on S. 691 and S. 1701, at p. 16.

In 2006, after being placed as a rider on a bill that needed to pass, Congress passed an amendment to SMCRA, §710(j), which permitted Indian Tribes to obtain Primacy over their Surface Coal Mining Operations. This law gives the Nation the ability to apply for Primacy and receive 100% of the funding required to run the program from the federal government. The Hopi and Crow Tribes are the other two tribes eligible; however, they are not close to having their legislation or their tribal program ready to submit the application to the Office of Surface Mining and Reclamation Enforcement (OSMRE).

#### **PROCESS:**

If the Nation chooses to pass this legislation, the Nation will submit the legislation to OSMRE for approval. During this time, the Nation will hold public hearings and



receive public comments on the proposed regulations. When the regulations have gone through this review process and are passed by RDC, Minerals will prepare and submit to OSMRE the finalized regulations as well as a description of the proposed tribal program, criminal enforcement MOA, and Statement of Jurisdiction from the Attorney General. OSMRE will publish this Code along with a summary of the tribal program in the Federal Register, obtain comments, and hold a public hearing. OSMRE will then submit the final product to the Secretary of the Department of the Interior for approval. Obtaining Primacy does not mean that the Nation will or must forever have Primacy. If at some point the Nation feels the administrative processes are too burdensome, the Nation can return Primacy to OSMRE. There is nothing in this law that requires the Nation to keep Primacy.

## **ISSUES AND ANALYSIS:**

### **Sovereignty v. Limited Waiver of Sovereign Immunity**

There has been some discussion questioning how the Nation can increase sovereignty if the Nation is required to enact a limited waiver of sovereign immunity. The simple definition of sovereignty is “supreme ruler” and “a group...having sovereign authority” at [www.dictionary.com](http://www.dictionary.com); and Merriam-Webster.com defines sovereignty as “unlimited power over a country” and “a country’s independent authority and the right to govern itself.”

Sovereign immunity is where “a state cannot be sued by a citizen of the state.” Black’s Law Dictionary at [www.thelawdictionary.com](http://www.thelawdictionary.com). In this instance, SMCRA requires a tribe to “waive sovereign immunity for purposes of section 520 and paragraph (4).” SMCRA §710(j)(3). Section 520 is titled “citizen suits;” while §710(j)(4) refers to judicial review.

The federal government is the ultimate sovereign authority in this country, yet they enact limited waivers of sovereign immunity for various issues, and are sued by citizens. In this instance, having this limited waiver of sovereign immunity means that citizens are able to sue the Nation only on violations of this law—the Navajo Surface Coal Mining and Reclamation Act—and no other law.

The Nation will be increasing its sovereignty—as the supreme ruler—by not relying on the federal government to conduct these activities. The Navajo Nation will be obtaining more sovereign authority—or ultimate power—by taking over this authority from the federal government.

Enacting the limited waiver of sovereign immunity does not impair the Nation’s sovereignty—the Nation is still the “supreme ruler,” with the authority to enact laws, inspect the mines, enforce the laws in Navajo Court, and authorize the type of reclamation on the Nation after the mining activities are complete. Enacting a limited waiver of sovereign immunity means that the Nation will allow citizen suits to be heard in Navajo Courts, and after exhausting all tribal remedies, the parties may file in federal court.

However, neither of these limited waivers of sovereign immunity will take away the ability of the Nation to enact, inspect, and enforce its own laws; and no outside party will dictate the kind of reclamation that is conducted on the Nation's land. The Navajo Sovereign Immunity Act allows the Nation to waive Sovereign Immunity by balancing the other interests of the Nation against the need to permit citizens to sue the Nation. The Sovereign Immunity Act permits the Nation to be sued only when authorized by Council or required by federal law:

A. The purpose and intent of the Navajo Sovereign Immunity Act is to balance the interest of the individual parties in obtaining the benefits and just redress to which they are entitled under the law in accordance with orderly process of the Navajo government, while at the same time protecting the legitimate public interest in securing the purpose and benefits of their public funds and assets, and the ability of their government to function without undue interference in furtherance of the general welfare and the greatest good of all people."

B. "The Navajo Nation may be sued in the courts of the Navajo Nation when explicitly authorized by applicable federal law."

C. The Navajo Nation may be sued only in the courts of the Navajo Nation when explicitly authorized by Resolution of the Navajo Nation Council.

2 N.N.C. 554.

The law clearly shows that this is the Council's choice whether to enact a law that has a limited waiver of the Nation's sovereign immunity. However, if the Nation chooses that it does not want to enact this limited waiver, OSMRE will not approve primacy. If the Nation does choose to obtain primacy, federal law requires this limited waiver: "To receive primary regulatory authority under section 504(e), an Indian Tribe SHALL waive sovereign immunity for purposes of Section 520 and paragraph (4)." SMCRA §710(j)(4) (emphasis added). This language does not make the waiver an option.

#### Criminal actions

In addition, SMCRA requires that Criminal actions be brought in federal court. This is a federal requirement by SMCRA §701(j)(4)(B). Generally, Federal law requires criminal cases against non-Indians to be heard in federal court. 18 U.S.C. §1153. This is a requirement in order to obtain Primacy. This does not take anything away from the Nation, nor does it add an undue burden to the Nation's program.

#### Section 520 Citizen Suits in SMCRA

Pursuant to §710(j) of SMCRA, in order to obtain Primacy, a tribe must enact a limited waiver of sovereign immunity for the purpose of citizen suits. As such, a provision similar to §520 is included in the Primacy Legislation.

This provision permits a "person having an interest which is or may be adversely affected" to file a lawsuit against the Nation or its programs. NSCMP §201(I) makes it

clear that the Navajo Surface Coal Mining Program enjoys the same sovereign immunity as does the Nation, outside of the limited waiver for this law. It also notes that permittees and operators “in which the Navajo Nation has an ownership or controlling interest” do not have the same sovereign immunity as the Navajo Nation. NSCMP §201(I). This means that NTEC is not immune from citizen suit under this Surface Coal Mining and Reclamation Act.

#### Navajo limited waivers of Sovereign Immunity

The Nation permits limited waivers of sovereign immunity in various instances. Some examples below permit judicial review of penalty assessments or administrative subpoenas in Navajo Courts:

- 4 N.N.C. §223(E): Navajo Nation Solid Waste Act;
- 4 N.N.C. §1155: Navajo Nation Air Pollution;
- 4 N.N.C. §1383: Navajo Nation Clean Water Act;
- 4 N.N.C. §1553: Navajo Nation Underground Storage Tank Act;
- 4 N.N.C. §2510(D): Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act (CERCLA);
- 22 N.N.C. §2584(D): Navajo Nation Safe Drinking Water Act.

This is similar to the Primacy Legislation, where the permittee may sue the Nation in Navajo District Court, except that in the Primacy Legislation the petitioner may sue the Nation in Office of Hearings and Appeals. There is no legal requirement to have the lawsuit be heard in District Court or OHA.

For these EPA laws listed above, the citizen suit provision is different than that found in the Primacy Legislation. The citizen suit provisions a civil action to be brought “against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises)”. 4 N.N.C. §155(A)(1)(a); §1156(A)(1)(a); §1385(A)(1)(a); §1555(A)(1)(a); and §2804(A)(1). In the Primacy Legislation, the federal law requires that the Nation permit any person to sue the Nation. Although this is different than the laws we have on record, it is not contrary to Navajo law. The Sovereign Immunity Act permits the Council to waive sovereign immunity in certain circumstances pursuant to 2 N.N.C. §554(C), which states that the “Nation may be sued only in the courts of the Navajo Nation when explicitly authorized by Resolution of the Navajo Nation Council.” The Navajo Nation Council has the opportunity to decide whether to pass this law and permit citizens to sue the Nation, or it can choose not to pass the law.

#### Federal Court Oversight

After exhausting all tribal remedies, a party may file a petition for review of the civil suit in the US circuit courts. There are only two issues that the circuit courts can hear according to this law: a question of law and a question of fact. It is likely that if the federal court finds that the Navajo Court made an erroneous finding of fact—didn’t take an important fact into consideration, for example—the court would likely remand the case back to the Nation with guidance. If the federal court finds that the Navajo Court



made an error of law, the federal court may return the case to Navajo courts with guidance, or they may make the decision, and may overturn the Navajo court.

This is not the first time that the Navajo Nation has waived sovereign immunity in order for the Federal Courts to oversee a decision of the Navajo Nation Courts. The Navajo Minerals Department Audit Program was required to pass a law that allowed the federal court system to have oversight of the Navajo Court decisions. The Navajo Nation has a similar provision in the Minerals Audit Program. CJY-34-03 was passed by a vote of 64 to 12 in favor of obtaining a limited waiver of sovereign immunity. The current members of the Navajo Nation Council may not be aware of this limited waiver of sovereign immunity. The Minerals Audit Program does such a phenomenal job that the federal government awarded Minerals with the highest award for their work. The Audit Program has audited millions of dollars of royalties and has never made one mistake.

Additionally, in the Leases of Restricted Lands at 25 U.S.C. §415(e)(6)(A), the law requires that:

An interested party may, after exhaustion of tribal remedies, submit, in a timely manner, a petition to the Secretary to review the compliance of the Navajo Nation with any regulations approved under this subsection. If upon such review the Secretary determines that the regulations were violated, the Secretary may take such action as may be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases for Navajo Nation tribal trust lands.

In order to meet this requirement, the Nation included §903 in the Navajo General Leasing Regulations, stating that after exhausting all tribal remedies, any party may appeal to the Secretary within 30 days. The Secretary is required to review the appeal and may “limit relief to mediation, injunctive relief, declaratory relief and/or rescinding approval of these Regulations and reassuming responsibility.” General Leasing Regulations §903.

The Primacy legislation permits an aggrieved party to appeal a Navajo Supreme Court decision to the Federal District Courts. While the federal review is very limited in scope, it is not the first time that a Navajo court decision could be reviewed by a federal agency or office. This is required by SMCRA law in order to obtain Primacy. The only other instance, however, is found in the General Leasing Regulations of 2013, where the Secretary of the Department of the Interior is allowed to review a decision by the Navajo Nation Supreme Court.

In 2016, Delegate Walter Phelps proposed legislation 0316-16. This legislation seeks to work with the United States Congress to change the law in SMCRA permitting an appeal of the Navajo Supreme Court decision to a federal court. So far, Delegate Phelps and the Navajo Nation Washington Office have been working with US congressional delegation to propose a bill to remove this provision from SMCRA. This current legislation that we are seeking to pass today has a provision in the legislation that would allow the Nation to adopt the federal law without having to seek approval from

Council. If the federal government does not choose to pass a law changing this provision in SMCRA, the law stands as it currently is. If the US Congress chooses to pass a law, then no decision of the Navajo Nation Supreme Court will be appealed to the federal courts. If this law remains in effect, the federal court will review Navajo Supreme Court decisions, as stated above in this section.

#### Environmental Review

The Primacy Legislation requires that the Surface Coal Mining Program promulgate regulations to comply with Navajo Nation's Uniform Rules, which is what Navajo EPA uses to promulgate their rules and regulations. The question posed at the Naa'bikiyati meeting on April 14<sup>th</sup> was how NEPA does not need to be complied with when even homesite leases<sup>1</sup> need NEPA compliance.

As mentioned at the meeting, NEPA is triggered when there is a "major federal action." As a federal action pertains to permitting the mines on the Navajo Nation, a federal action would fall under "approval of specific projects . . . includ[ing] actions approved by permit or other regulatory decision." 40 C.F.R §1508.18(b)(4). Since there will be no federal permit when the Nation makes a decision under the Navajo regulatory program such as approving a mine permit renewal, there will be no major federal action which requires NEPA. The lack of a federal NEPA requirement does not automatically permit development or reclamation to occur on the Nation without guidance for environmental concerns. While the Code discusses the need to comply with environmental standards, the environmental standards are contained within the regulations that will come before RDC after Council approves this legislation. These regulations include protections for environmental resources such as cultural, historic, and archeological resources; fish and wildlife resources (including endangered and threatened species); air pollution control; and protection of water resources.

In addition to the environmental laws in the Navajo Code that need to be complied with independently, the Navajo Nation does have its own version of NEPA. The Navajo Environmental Policy Act, at 4 N.N.C. §904, requires:

All such agencies, departments, enterprises and other instrumentalities shall consider carefully in decision making, and prepare appropriate documentation of, any adverse environmental impacts which may occur as a result of any proposed action, the extent to which environmental impacts may be reduced or mitigated, and other alternatives, including no action, to the proposed action which may reduce or eliminate significant adverse environmental impacts.

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<sup>1</sup> Secretary of the Interior signed the Navajo General Leasing Regulations into law in April 2014. However, in order for the federal government to avoid taking action in this instance, the Navajo Nation must have the position of "Environmental Reviewer" within the Land Department. When this position is filled, and when the regulations are passed by RDC, the final action of signing the homesite lease will be done by the Navajo Nation, as opposed to BIA, so there will be no federal action requiring NEPA compliance.

The programs within the Navajo Nation have created a system by which all projects are analyzed. Currently, the programs do conduct a review of the environmental documents for the projects on the coalmines; but the review is usually of the EIS that was created pursuant to the federal NEPA process. The difference under this legislation would be that instead of reviewing an EA or EIS, the programs would review the environmental documentation is necessary to comply with independent environmental laws, such as the Navajo Clean Water Act or the Navajo Nation Endangered Species Act. However, there are instances where other federal agencies will need to be involved. By not having a NEPA requirement does not eliminate the need to comply with other Navajo and federal environmental laws.

For example the project proponent is required to do a Biological Evaluation for the Navajo Nation Department of Fish and Wildlife. If the project proponent runs into a problem where an endangered species, that occurs both on the Navajo list and the Federal list,<sup>2</sup> the project proponents are required to do a Section 7 consultation with the U.S. Fish and Wildlife Service. The consultation with the Service is an independent law that has nothing to do with SMCRA or NEPA. If the Service finds that the project proponent needs to obtain a take permit of a federally listed species, only the Service can issue a take permit for a federal species. The Nation does not have the authority to do so. This part of the process, as with other independent Navajo and federal environmental laws, will not change too much from what the programs currently do.

#### Definition for Indian Lands

The word “Indian Lands” is used to explain the type of federal permit which a mine operator may have: “the NSCMP shall become the regulatory authority administering the federal permits issued by OSMRE under the Federal Program for Indian Lands for those surface coal mining operations on Navajo regulatory program lands that are authorized under the federal permit.” There is nothing wrong with this statement and it does not need to be removed from the legislation, because of how it is used.

One of the reasons for the differentiation between “Indian lands” and “reservation lands” is that “reservation lands” is defined more narrowly than “Indian lands.” The Navajo Nation has both types of land—Indian lands and reservation lands; they are not considered one in the same, and there is a differentiation between the two in SMCRA §710(j). The first provision referring to reservation lands is 710(j)(1)(A), which states: “an Indian tribe may apply for, and obtain the approval of, a tribal program . . . surface coal mining and reclamation operations on *reservation land* under the jurisdiction of the Indian tribe.” At the very end of §710, the law offers a glimpse of the difference between reservation lands and Indian lands:

Not later than 18 months after the date on which a tribal program is approved under subsection (e) of section 504, the Secretary shall submit to the appropriate committees of Congress a report,

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<sup>2</sup> Not all federally listed species occur on the Navajo Nation. Not all Navajo Nation listed species are also federally listed species. However, there are some Navajo species that are also federally listed.



developed in cooperation with the applicable Indian tribe, on the tribal program that includes a recommendation of the Secretary on whether primary regulatory authority under that subsection should be expanded to include additional Indian lands.

SMCRA §710(j)(6). The difference between Indian lands and reservation lands is that Indian lands consists of: “all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation.” Reservation lands are considered the formal reservation boundary. After 18 months of having Primacy, and by proving that the Nation can handle the responsibilities, the Secretary can recommend to Congress that the Nation has the ability to handle all lands within the exterior boundary of the Nation. In reality, there is no coal that is mineable within the exterior boundaries of the reservation outside of what is referred to as “reservation lands.”

#### Treatment of States v. Treatment of Navajo

One of the concerns raised at the Naa’bikiyati work session was that there is the impression that the Nation is not being treated equal to the states. Section 520 of SMCRA applies to both tribes and states, so in effect, all states that have a state-run surface coal mining program must waive sovereign immunity, if they even have it. SMCRA states:

any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act . . . against the United States or any other governmental instrumentality or agency . . . or against the Secretary or the appropriate State regulatory authority.

SMCRA § 520(a). So the question is do states have to waive sovereign immunity? The answer to that is it depends on the state laws regarding sovereign immunity, but all states must allow citizens to sue the state under the SMCRA regulation. Whether by function of state law they have to waive sovereign immunity or not, this is not

#### Conclusion

While there are new legal concepts presented in this legislation, none of these concepts are contrary to Navajo law. It is a policy decision whether the Navajo Nation Council wants to pass this law to increase sovereignty and take the surface coal mining regulatory program over from the federal government, which would require a limited waiver of sovereign immunity; or to not pass the law and continue to have the federal government regulate coal mining and reclamation on Navajo. There will be additional administrative burden on the Nation, but the Nation will receive 100% Federal funding to administer the program. Akhtar has been working for the past thirty years to build up capacity to take over primacy from the federal government because the Department wanted to. Because Minerals Department already has two programs that have primacy, this responsibility is not new to the Department.

RESOLUTION OF THE  
NAABIK'ÍYÁTI' COMMITTEE OF THE  
NAVAJO NATION COUNCIL



23rd NAVAJO NATION COUNCIL -- Second Year, 2016

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI'; RESPECTFULLY  
REQUESTING CONGRESS TO AMEND INDIAN LANDS SECTION 710 (j) (4)

WHEREAS:

- A. The Navajo Nation established the Resource Development Committee (RDC) as a Navajo Nation Council standing committee and as such empowered RDC to review and recommend resolutions regarding the environment. 2 N.N.C. §§ 164 (A)(9), 500 (A), 500 (C), 500 (C)(2) (2015); see also CO-45-12.
- B. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to coordinate all federal programs and to assist and coordinate all requests for information, appearances and testimony relating to federal legislation impacting the Navajo Nation. 2 N.N.C. §§ 164 (A)(9), 700 (A), 701 (A)(4), 701(A)(6) (2015); see also CO-45-12.
- C. The Navajo Nation has a government-to-government relationship with the United States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.
- D. On January 4, 1977, the Surface Mining Control and Reclamation Act of 1977 (SMCRA of 1977) - sponsored by House Representative Morris K. Udall - was introduced to the 95<sup>th</sup> United States Congress and signed into law by the President on August 3, 1977. See <http://legcounsel.house.gov>.
- E. The SMCRA of 1977 was introduced to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes.
- F. Under Section 701 (j)(4) of the SMCRA of 1977, as amended through Pub. L. 114-94, enacted December 4, 2015, Judicial Review in civil actions:
  - (i) In General, after exhausting all tribal remedies with respect to a civil action arising under a tribal program approved under section 504 (e), an interested party may file a petition

for judicial review of the circuit in which the surface coal mining operation named in the petition is located.

- (ii) Scope of Review: (I) Questions of Law—the United States circuit court shall review de novo any questions of law under clause (i). (II) Findings of Fact—the United States circuit court shall review findings of fact under clause (i) using clearly erroneous standard.

G. Judicial Review in criminal actions—any criminal action brought under section 518 with respect to surface coal mining or reclamation operations on Indian reservation lands shall be brought in: (i) the United States district Court for the District of Columbia; or (ii) the United States district court in which the criminal activity is alleged to have occurred. *Id.*

H. An amendment of the SMCRA of 1977, by removing the judicial review over tribal courts would be in the best interest of the Navajo Nation.

**NOW THEREFORE, BE IT RESOLVED:**

- A. The Navajo Nation requests an amendment to Section 710 (j) (4) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 114-94 enacted December 4, 2015 to remove the judicial review provision over tribal court decisions.
- B. The Navajo Nation hereby authorizes the Navajo Nation President, the Navajo Nation Speaker, the Navajo Nation Chief Justice and their designees, to advocate for the amendment to the Surface Mining Control and Reclamation Act of 1977, Section 710 (j) (4).

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 11 in favor and 0 opposed, this 13<sup>th</sup> day of October 2016.



LoRenzo C. Bates, Chairperson  
Naabik'iyáti' Committee

Motion: Honorable Davis Filfred  
Second: Honorable Peterson Yazzie

(Pursuant to 2 N.N.C. §700 (D), Two members from each committee)



NAVAJO NATION

RCS# 584

Naa'bik'iyati Committee

10/13/2016

06:15:01 PM

Amd# to Amd#  
MOT Filfred  
SEC Yazzie, P

Legislation No. 0316-16:  
Respectfully Requesting Congress  
to Amend Indian Lands Section  
710(j)(4)

PASSED

Yea : 11

Nay : 0

Not Voting : 11

Yea : 11

Begay, K  
Brown  
Crotty

Damon  
Daniels  
Filfred

Pete  
Phelps  
Smith

Tsosie  
Yazzie, P

Nay : 0

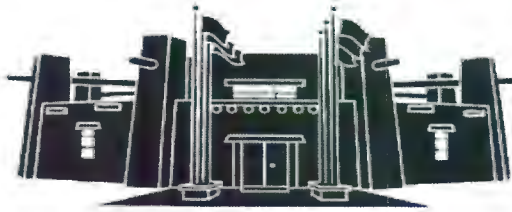
Not Voting : 11

Bates  
Begay, NM  
BeGaye, N  
Bennett

Chee  
Hale  
Jack

Perry  
Shepherd  
Slim

Tso  
Witherspoon  
Yazzie



MEMORANDUM

TO: Honorable Ben Bennett  
Crystal, Fort Defiance, Red Lake, Sawmill Chapters

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: September 5, 2017

SUBJECT: PROPOSED COUNCIL RESOLUTION; AN ACT RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; ASSERTING SOVEREIGNTY AND TAKING OVER PRIMARY REGULATORY AUTHORITY FROM THE FEDERAL GOVERNMENT, OFFICE OF SURFACE MINING AND RECLAMATION ENFORCEMENT OVER ALL COAL MINING LANDS LOCATED ON THE NAVAJO NATION, ENACTING A WAIVER OF SOVEREIGN IMMUNITY; AND ESTABLISHING NEW SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 ET SEQ

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) 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).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0348-17\_\_\_\_\_

SPONSOR: Benjamin Bennett

**TITLE: An Action Relating to Law and Order, Resources and Development, and Naabik'iyati' Committees and Navajo Nation Council; Asserting Sovereignty and taking over primary regulatory authority from the Federal Government, Office of Surface Mining and Reclamation Enforcement over all Coal Mining Lands located on the Navajo Nation, Enacting a Waiver of Sovereign Immunity; and establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 ET SEQ**

**Date posted: September 6, 2017 at 4:37pm**

**Digital comments may be e-mailed to 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.: 0348-17**

**SPONSOR: Honorable Benjamin Bennett**

**TITLE: An Action Relating To Law and Order, Resources and Development, and Naabik'iyati' Committees and Navajo Nation Council; Asserting Sovereignty and taking over primary regulatory authority from the Federal Government, Office of Surface Mining and Reclamation Enforcement over all Coal Mining Lands located on the Navajo Nation, Enacting a Waiver of Sovereign Immunity; and establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 ET SEQ.**

**Posted: September 6, 2017 at 4:37pm**

**5 DAY Comment Period Ended: September 11, 2017**

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	<i>None</i>
<b>Inclusive Comments</b>	<i>None</i>

  
\_\_\_\_\_  
Legislative Secretary II

Office of Legislative Services

9/12/2017 8:21am  
\_\_\_\_\_  
Date/Time

**LAW AND ORDER COMMITTEE  
23<sup>RD</sup> NAVAJO NATION COUNCIL**

**THIRD YEAR 2017**

**COMMITTEE REPORT**

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

**Legislation No. 0348-17:** An Act Relating to Law and Order, Resources and Development, and Naabik'iyati' Committees and Navajo Nation Council; Asserting Sovereignty and Taking Over Primary Regulatory Authority from the Federal Government, Office of Surface Mining and Reclamation Enforcement Over All Coal Mining Lands located on the Navajo Nation, Enacting the Waiver of Sovereign Immunity; and Establishing New Sections in Title 18 at N.N.C. §§ 1701 *ET SEQ* – Sponsor: Honorable Ben Bennett

Has had it under consideration and reports the same with the recommendation that it **DO PASS** with no amendment

And thereafter referred to Resources and Development Committee

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edmund Yazzie', written over a horizontal line.

Edmund Yazzie, Chairperson  
Law and Order Committee  
23<sup>rd</sup> Navajo Nation Council

Date: September 18, 2017

Main Motion: Honorable Kee A. Begay, Jr.  
Second : Honorable Raymond Smith, Jr.  
Vote : 2-0 (Chairperson not voting)

**RESOURCES AND DEVELOPMENT COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**THIRD YEAR 2017**

**COMMITTEE REPORT**

Mr. Speaker,

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

**Legislation # 0348-17:** An Action Relating to Law and Order, Resources and Development, and Naabik'Iyati Committees and Navajo Nation Council; Asserting Sovereignty and Taking Over Primary Regulatory Authority From The Federal Government, Office of Surface Mining and Reclamation Enforcement Over all Coal Mining Lands Located On the Navajo Nation, Enacting a Waiver of Sovereign Immunity; and Establishing New Sections in Title 18, at 18 N.N.C. §§ 1701 et seq. *Sponsor: Honorable Benjamin Bennett*

Has had it under consideration and report a DO PASS with no amendments;

And referred the matter to Naabik'Iyati Committee.

Respectfully submitted,



Alton Joe Shepherd, Chairperson  
Resources and Development Committee of  
the 23<sup>rd</sup> Navajo Nation Council

DATE: October 4, 2017

MEETING LOCATION: NDOT Administrative Complex, Tse Bonito, NM

Main Motion: Honorable Walter Phelps

Second: Honorable Leonard Pete

**VOTE: 3-0-1 (CNV)**



**23<sup>rd</sup> NAVAJO NATION COUNCIL**  
**Naabik'íyáti' Committee**  
**Third Year 2017**

The **NAABIK'ÍYÁTI' COMMITTEE** to whom has been assigned:

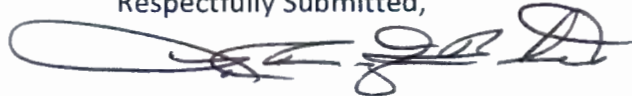
**NAVAJO LEGISLATIVE BILL # 0348-17**

An Act Relating to Law and Order, Resources and Development, and Naabik'íyáti' Committees and Navajo Nation Council; Asserting Sovereignty and taking over Primary Regulatory Authority from the Federal Government, Office of Surface Mining and Reclamation Enforcement over all Coal Mining Lands located on the Navajo Nation, Enacting a Waiver of Sovereign Immunity; and establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 *ET SEQ*

*Sponsored by: Honorable Benjamin Bennett*

Has had it under consideration and reports the same was PASSED AND REFERRED TO THE NAVAJO NATION COUNCIL

Respectfully Submitted,



*Honorable LoRenzo C. Bates, Chairman*  
*Naabiki'iyati' Committee*

**16 OCTOBER 2017**

**MAIN MOTION:**

*Motioned by: Honorable Seth Damon*

*Seconded by: Honorable Raymond Smith, Jr.*

*Vote: 11 in Favor, 00 Opposed (Chairman Bates not voting) – Vote per 2 N.N.C. § 700 (D) – Two members of each Standing Committee*

# NAVAJO NATION

RCS# 620

10/16/2017

Naa'bik'iyati Committee

08:05:22 AM

Amd# to Amd#

Legislation No. 0348-17

PASSED

MOT Damon

Asserting Sovereignty and

SEC Smith

taking over primary regulatory  
authority

**Yea : 11**

**Nay : 0**

**Not Voting : 12**

**Yea : 11**

Begay, K

Bennett

Hale

Smith

Begay, S

Chee

Pete

Witherspoon

BeGaye, N

Damon

Slim

**Nay : 0**

**Not Voting : 12**

Bates

Daniels

Perry

Tso

Begay, NM

Filfred

Phelps

Tsosie

Brown

Jack

Shepherd

Yazzie

Crotty

# 23<sup>rd</sup> NAVAJO NATION COUNCIL ACTION REPORT Fourth Year 2018

The NAVAJO NATION COUNCIL to whom has been assigned:

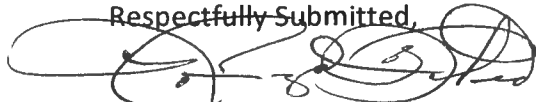
## NAVAJO LEGISLATIVE BILL #0348-17

An Act Relating to Law and Order, Resources and Development, and Naabik'íyáti' Committees and Navajo Nation Council; Asserting Sovereignty and Taking Over Primary Regulatory Authority From the Federal Government, Office of Surface Mining and Reclamation Enforcement Over All Coal Mining Lands Located on the Navajo Nation, Enacting a Waiver of Sovereign Immunity; and Establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 *ET SEQ*

*Sponsored by: Honorable Benjamin L. Bennett*

Has had it under consideration and reports the same **FAILED (Need 16 In Favor Votes)**

Respectfully Submitted,



Honorable LoRenzo Bates, Speaker  
NAVAJO NATION COUNCIL

24 JANUARY 2018

### AMENDMENT #1: (AMENDMENT FAILED)

*Page 18, line 13, after the word "act" strike ~~or under section 520 of SMCRA,~~*

*Page 18, strike all of line 14,*

*Page 18, line 15, strike ~~section 710(j)(4)~~*

*Page 76, line 7, strike ~~Pursuant to SMCRA section~~*

*Page 76, strike lines 8, 9, 10, 11, 12, and 13.*

*Motioned by: Honorable Leonard Tsosie*

*Seconded by: Honorable Nelson S. BeGaye*

*Vote: 10 in Favor, 11 Opposed (Speaker Bates Not Voting) – AMENDMENT #1 MOTION FAILED*



**MAIN MOTION:**

*Motioned by: Honorable Walter Phelps*

*Seconded by: Honorable Raymond Smith, Jr.*

*VOTE: 14 in Favor, 08 Opposed (Speaker Bates not voting) – MAIN MOTION FAILED (NEEDED 16 IN FAVOR VOTES)*

# NAVAJO NATION

RCS# 932

Winter Session

1/24/2018  
01:31:51 PM

Amd#1 to Amd#  
MOT Tsosie  
SEC BeGaye, N

Page 18, line 13, 14, 15  
strike language and page 76  
line 7, pursuant to SMCRA Sec.  
delete line 8,9,10,11,12,& 13

FAILED

Yea : 10

Nay : 11

Excused : 0

Not Voting : 3

## Yea : 10

Begay, S  
BeGaye, N  
Crotty

Daniels  
Filfred  
Hale

Perry  
Slim

Tsosie  
Witherspoon

## Nay : 11

Begay, K  
Begay, NM  
Bennett

Brown  
Chee  
Damon

Jack  
Phelps  
Shepherd

Smith  
Tso

## Excused : 0

## Not Voting : 3

Pete

Yazzie

Bates

# NAVAJO NATION

RCS# 933

Winter Session

1/24/2018  
01:43:09 PM

Amd# to Amd#

Legislation No. 0348-17

FAILED

MOT Phelps

Asserting Sovereignty & taking

SEC Smith

over Primary Regulatory

Authority from the Federal Govt.

**Yea : 14**

**Nay : 8**

**Excused : 0**

**Not Voting : 2**

**Yea : 14**

Begay, NM

Chee

Jack

Smith

Begay, S

Damon

Phelps

Tso

Bennett

Daniels

Shepherd

Yazzie

Brown

Filfred

**Nay : 8**

Begay, K

Crotty

Perry

Tsosie

BeGaye, N

Hale

Slim

Witherspoon

**Excused : 0**

**Not Voting : 2**

Bates

Pete