

**RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---Second Year 2016**

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCJA-06-16 RELATING TO AN APPROVAL OF A NAVAJO NATION SAND AND GRAVEL PIT LEASE AND ACCESS ROAD RIGHT OF WAY FOR FORT DEFIANCE SAND AND GRAVEL, INC.

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. Pursuant to 2 N.N.C. § 501 (B)(2), the Resources and Development of the Navajo Nation Council has authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.
- B. Pursuant to RDCJN-33-15 the Resources and Development Committee delegated authority to the Director of the Navajo Land Department to approve land withdrawals on the Navajo Nation. The resolution also approved the Administrative Rules and Regulations for Land Withdrawals.
- C. The Administrative Rules and Regulations for Land Withdrawals at Section One states[t]he purpose of a land Withdrawal Designation is to designate an area of land for future development by, a. Ensuring that the rights of grazing permittees, who are in compliance with their grazing permits, are properly addressed as applicable and as required under 16 N.N.C. §§ 401 et seq. and to prevent subsequent claims to the land; and b. Ensuring that the affected Chapter supports the Land Withdrawal Designation and use of the land.

SECTION TWO. FINDINGS

- A. On January 19, 2016, the Resources and Development Committee passed Resolution No. RDCJA-06-16, Approving an

Assignment of the Use of or Redesignate the Use of a Land Withdrawal of 43,209 Acres (40.979 Acres for Use as a Sand and Gravel Pit and 2.23 Acres for an Access Road), More or Less, in the Fort Defiance Chapter Vicinity; and Approving a Sand and Gravel Lease and Access Road Right-of-Way to Fort Defiance Sand and Gravel, Inc. in the Fort Defiance Chapter Vicinity, Navajo Nation (Apache County, Arizona). See Exhibit A.

- B. Resolution No. RDCJA-06-16 approved the Navajo Nation Sand and Gravel Lease and Access Road Right-of-Way between the Navajo Nation and Fort Defiance Sand and Gravel, Inc.; waiving RDCJN-33-15 which delegated authority to the Director of the Navajo Land Department to approve Land Withdrawals on the Navajo Nation. See Exhibit B (also labeled Exhibit K in RDCJA-06-16)
- C. The approved Navajo Nation Sand and Gravel Lease and Access Road Right-of-Way (Sand and Gravel Lease) provides payment to the Navajo Nation by Fort Defiance Sand and Gravel, Inc. (Lessee) in which Lessee shall pay an annual advance royalty of Sixty-four thousand dollars (\$64,000), due within 10 days of the Effective Date and subsequent annual advance royalty payments due on or before each anniversary of the Effective Date. See Sand and Gravel Lease, Section 2(i).
- D. The approved Sand and Gravel Lease provides payment to the Navajo Nation by Lessee of a royalty rate of two dollars and fifty cents (\$2.50) per ton for sand and gravel material removed from the Lease premises; the royalty rate shall be made on a monthly basis within 15 days following the month in which the royalty is due. See Sand and Gravel Lease, Section 2(ii).
- E. The approved Sand and Gravel Lease requires the Lessee to furnish a performance and reclamation bond for two hundred and fifty thousand dollars (\$250,000) with the Department of the Interior, Bureau of Indian Affairs, Navajo Region. See Sand and Gravel Lease, Section 4.
- F. Meetings on January 29, 2016 and February 22, 2016 with Lessee and representatives of the Navajo Nation, including the Office of the President and Vice-President, Navajo Division of Natural Resources, along with representatives

from the Department of the Interior Bureau of Indian Affairs, Navajo Region, it was the understanding of the participants that the recommendation for changes to the annual advance royalty payment, the per ton royalty rate and the performance bond will be advanced to the appropriate Navajo Nation Council Standing Committee. See February 25, 2016 letter attached as Exhibit C.

G. It is the Recommendation of the Lessee to amend the approved Navajo Nation Sand and Gravel Lease and Access Road Right-of-Way in the following manner:

1. Advance royalty rate of Twenty five thousand dollars (\$25,000). Sand and Gravel Lease, Section 2(i).
2. A royalty rate of One dollar and forty-two cents (\$1.42) per ton for sand and gravel material. Sand and Gravel Lease, Section 2(ii).
3. The performance and reclamation bond of Seventy five thousand dollars (\$75,000). Sand and Gravel Lease, Section 4.

SECTION THREE. APPROVING AN AMENDMENT TO RDCJA-06-16 RELATING TO A NAVAJO NATION SAND AND GRAVEL AND ACCESS ROAD RIGHT OF WAY LEASE FOR FORT DEFIANCE SAND AND GRAVEL, INC.

A. The Resources and Development Committee of the Navajo Nation Council hereby approves an amendment to RDCJA-06-16 relating to the Navajo Nation Sand and Gravel and Access Road Right of Way lease for Fort Defiance Sand and Gravel, Inc., amending the following terms:

1. Advance royalty rate of Ten thousand dollars (\$10,000) Sand and Gravel Lease, Section 2(i).
2. A royalty rate of One dollar and seventy-five cents (\$1.75) per ton for sand and gravel material. Sand and Gravel Lease, Section 2(ii).
3. The performance and reclamation bond of One hundred twelve thousand dollars (\$112,000). Sand and Gravel Lease, Section 4.

All other terms and conditions shall remain as previously approved in Resolution No. RDCJA-06-16.

- B. The Navajo Nation Sand and Gravel and Access Road Right of Way lease for Fort Defiance Sand Gravel, Inc. as amended herein shall be considered as Amendment One.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at NDOT-Nataani Conference Room, TseBonito, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 3 in favor, 2 opposed, 1 abstained this 16th day of May, 2016.



Alton Joe Shepherd, Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

Motion: Honorable Leonard Pete
Second: Honorable Leonard Tsosie



THE NAVAJO NATION

RUSSELL BEGAYE
JONATHAN NEZ

February 19, 2016

MEMORANDUM

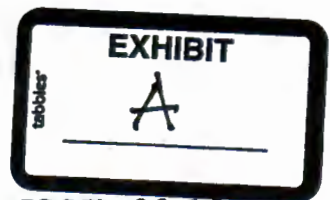
TO : Mariana Kahn, Attorney
Office of Legislative Counsel

FROM: Eunice M. Begaye
Eunice M. Begaye, Programs and Projects Specialist
Business Regulatory/DED

SUBJECT: Corporation Status – Ft. Defiance Sand and Gravel, Inc.

Per your request, this memo is to verify that Ft. Defiance Sand and Gravel, Inc. is registered with the Navajo Nation Corporation Code (NNCC). This company is not in compliance with the NNCC therefore, they are not in good standing with NNCC, Business Regulatory Department.

If you have any questions, please contact our office at (928) 871-6714 or 7365.
Thank you.



RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
Of the 23rd Navajo Nation Council---Second Year 2016

AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT; APPROVING AN ASSIGNMENT
OF THE USE OF OR REDESIGNATE THE USE OF A LAND WITHDRAWAL OF
43.209 ACRES (40.979 ACRES FOR USE AS A SAND AND GRAVEL PIT AND
2.23 ACRES FOR AN ACCESS ROAD), MORE OR LESS, IN THE FORT
DEFIANCE CHAPTER VICINITY; AND APPROVING A SAND AND GRAVEL LEASE
AND ACCESS ROAD RIGHT-OF-WAY TO FORT DEFIANCE SAND AND GRAVEL,
INC. IN THE FORT DEFIANCE CHAPTER VICINITY, NAVAJO NATION
(APACHE COUNTY, ARIZONA)

BE IT ENACTED:

SECTION ONE. FINDINGS

A. Pursuant to 2 N.N.C. § 501 (B)(2), the Resources and Development Committee of the Navajo Nation Council has authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

B. Herman Billie, the Fort Defiance Grazing Official, made an on-site survey of every house within a three-fourth mile radius of the old gravel pit determined that some grazing permittees and non-grazing permittees within that area were opposed to the gravel pit and others were not opposed. Exhibit B. Esther Kee, Navajo Land Department Right-of-Way Agent said Mr. Billie had identified four grazing permittees. Ms. Kee went to locate the grazing permittees; she was unsuccessful in locating them. Exhibit C. There is no record of Ms. Kee successfully contacting the grazing permittees.

C. Pursuant to ACJA-21-83, the Advisory Committee of the Navajo Nation Council approved the withdrawal of 149.90 acres of land "for the purpose of a dam in the Fort Defiance Community." See ACJA-21-83 attached as Exhibit D.

D. The land was withdrawn for the purpose of constructing the Blue Canyon Dam and Recreational Area. The Resolution does not include a Sand and Gravel Pit as a purpose for the withdrawal. See ACJA-21-83.

E. Grazing permittees' consents were obtained and compensation made at the time of the initial Blue Canyon Dam Project withdrawal. See Agreement to Relinquish Grazing Rights for Proposed Blue Canyon Dam Project attached as Exhibit E.

F. Despite the land being withdrawn for the purpose of a dam and for recreation, the land was never used as for those purposes but remains in a withdrawn state because no particular use of the withdrawn area has been re-identified.

G. Subsequently, in 1988 the Resources Committee recommended the withdrawal of an additional 40.979 acres of land at the Blue Canyon Dam area for the purpose of reopening the Blue Canyon Gravel Pit and the "reopening of the gravel pit at Blue Canyon Dam". See RCJL-85-88 attached as Exhibit F; see also RCJL-87-88 Recommending the Reopening of the Gravel Pit at Blue Canyon Dam and the Amendment of Advisory Committee Resolution ACJA-21-83 attached as Exhibit G.

H. In 1988 at the recommendation of the Resources Committee, the Advisory Committee amended ACJA-21-83 "approving the reopening of the Blue Canyon Dam Gravel Pit as described in Exhibit A" See ACAU-161-88 attached as Exhibit H.

I. Exhibit A in ACAU-161-88, which is a map of the Blue Canyon Dam area, purported to withdraw an additional 40.979 acres for the specific purpose of the gravel pit as originally recommended by the Resources Committee in RCJL-85-88. See Exhibit I.

J. In 1991, the Resources Committee approved a Sand and Gravel Lease Permit for an "existing gravel pit" identified as the Blue Canyon Gravel Pit, the affected land users were determined and consents were obtained, and the applicant was directed to pay the land users for surface damages; this specific project was a six-month Sand and Gravel Lease for Daye Concrete, Inc. where the land users' consents were obtained for the six month term of the sand and gravel lease. See RCAU-126-91 attached as Exhibit J.

K. The Fort Defiance Sand and Gravel has submitted a Sand and Gravel Lease application for use of the Blue Canyon Gravel Pit.

L. The proposed Sand and Gravel Lease consists of 40.979 acres more or less, of Navajo Nation Trust Lands located E ¼ & NW ¼ of Section 25, T.28N, R.30E, G&SRM, Apache County, Arizona. Navajo Nation Sand and Gravel Lease and Access Road Right-Of-Way application attached as Exhibit K.

M. Fort Defiance Sand and Gravel has also applied for a right-of-way. The proposed Sand and Gravel Lease right of way is 0.92 miles long, 20 feet wide and consists of 2.23 acres more or less, of Navajo Nation Trust Lands located E ¼ & NW ¼ of Section 25, 26, and 35, T.28N, R.30E, G&SRM, Apache County, Arizona. Navajo Nation Sand and Gravel Lease and Access Road Right-Of-Way application.

N. The Fort Defiance Chapter supported the establishment of a Sand and Gravel Pit. See Resolution FD-2012-02-09-06 attached as Exhibit L. The Fort Defiance Chapter has subsequently rescinded FD-2012-02-09-06. Resolution FD-2013-07-14-02 attached as Exhibit M.

O. Fort Defiance Sand & Gravel's application for a right of way pre-existed the delegation of authority in Resolution RDCJN-33-15.

SECTION TWO. APPROVING AN ASSIGNMENT OF THE USE OF OR REDESIGNATE THE USE OF A LAND WITHDRAWAL OF 43.209 ACRES (40.979 ACRES FOR USE AS A SAND AND GRAVEL PIT AND 2.23 ACRES FOR AN ACCESS ROAD), MORE OR LESS, OF NAVAJO TRUST LAND, IN THE FORT DEFIANCE CHAPTER VICINITY

The Navajo Nation Resources and Development Committee hereby approves the land withdrawal of 43.209 acres of which 40.979 acres is for use as a sand and gravel pit and 2.23 acres is for use as an access road. The land description is more particularly described in Exhibit K.

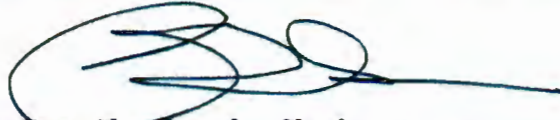
SECTION THREE. APPROVING A SAND AND GRAVEL LEASE AND ACCESS ROAD RIGHT-OF-WAY TO FORT DEFIANCE SAND AND GRAVEL, INC.

The Resources and Development Committee of the Navajo Nation Council hereby approves a sand and gravel lease for 40.979 acres and an access road right-of-way for 2.23 acres to

Fort Defiance Sand and Gravel, Inc. for Navajo Nation Trust Land located in the vicinity of Fort Defiance Chapter, Navajo Nation (Apache County, Arizona). The Lease and Right-of-Way Agreement is attached as Exhibit K.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at NECA Administration Conference Room, Shiprock (Navajo Nation) New Mexico, at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, 1 abstained this 19th day of January, 2016.

A handwritten signature in blue ink, appearing to read 'Alton Joe Shepherd', with a long horizontal line extending to the right.

Alton Joe Shepherd, Chairperson
Resources and Development Committee
Of the 23rd Navajo Nation Council

Motion: Honorable Davis Filfred
Second: Honorable Leonard Tsosie

NAVAJO NATION SAND AND GRAVEL LEASE
AND ACCESSROAD RIGHT-OF-WAY (ROW)

THIS AGREEMENT for a Sand and Gravel Lease (Lease) is made and entered by and between the Navajo Nation and whose address is at P.O. Box 7440, Window Rock, Arizona 86515 called the Lessor and Fort Defiance Sand and Gravel, Inc. whose address is at P.O. Box 1678, Window Rock, Arizona 86515, herein called the Lessee.

Definitions:

Sand & Gravel means: Earth Borrow, Sand and Natural or Processed Gravel

Department means the Navajo Nation Minerals Department.

Navajo Nation (Nation) means the Navajo Tribe of Indians.

Secretary means the Secretary of the U.S. Department of Interior or his/her designated representative.

Performance bond means a surety bond, collateral bond or self-bond or a combination thereof, by which a lessee assures faithful performance of all the requirements this lease and mining and reclamation plan.

Reclamation means those actions taken to restore mined land as required to a post-mining land use approved by the Department.

Resources and Development Committee means the Resources and Development Committee of the Navajo Nation Council.

Slope means average inclination of a surface, measured from the horizontal normally expressed as a unit of horizontal distance to vertical distance.

Stabilize means to control movement of soil, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

Ton means 2,000 pounds.

Water table means the upper surface of a zone of saturation.

Lessee, Permittee & Operator means the lessee of the sand and gravel lease/permit,

The Navajo Nation hereby grants Lessee a Lease right to extract sand and gravel from E ½ NW, Section 25, Township 28 North, Range 30 East, Apache County, Navajo Nation, Arizona. The area encompassed by the lease is 40.979 acres, more or less. The location and legal description are shown in Exhibits "A". The access road is in Sections 25, 26, and 35, T28N, R30E. It is 0.92 miles long, 20 feet wide country of 2.23 acres, more or less. The location and legal description is shown on Exhibit "B".

1. The Lease and the Access Road shall be valid for a period of five (5) years (with 5 year option to renew) effective the date it is approved by the Secretary. This date shall be known as the Effective Date of the Lease.

2. Payments to the Nation by the Lessee:

(i) The Lessee shall pay an annual advance royalty for each lease year. The first payment in the amount of sixty-four thousand dollars (\$64,000.00) is due within ten (10) days of the Effective Date. Subsequent annual advance royalty payments are due on or before each anniversary of the Effective Date. The annual advance royalty payment shall be credited against production royalties only during the year for which the advance royalty has been paid.

(ii) A royalty at the rates of \$2.50 per ton for sand and gravel material removed from the Lease premises. The royalty payment shall be made on a monthly basis within fifteen (15) days following the month for which the royalty is due.

(iii) The subsequent annual advance payments and the royalty rate shall be subject to annual adjustments on each anniversary of the Effective Date. The adjustments shall be based upon the increase in the Consumer Price Index (CPI), US. City Average for All Urban Consumers. The CPI for May 2014 shall be used as the base for all adjustments.

(iv) Lessee shall make a lump sum payment in the amount of (\$7,360.00) for the access road right-of way.

3. Mining and Reclamation Plan: The Lessee shall abide by all the requirements of the mining plan and reclamation plan attached as Exhibit "C" to this lease. The U.S. Department of the Interior (DOI) may require additional conditions. The majority of the revegetated species will be native to the area. The Lessee shall ensure that no poisonous and noxious vegetation are allowed to grow in the leased area. The Lessee shall ensure that the final post-mining topographic plan does not allow water to collect in the leased area. No water shall be discharged off the leased area without written authorization from the Navajo Nation and all federal agencies having jurisdiction.

4. Bond: Lessee shall furnish a performance and reclamation bond for two hundred and fifty thousand dollars (\$20,000) with the DOI's Navajo Region, Bureau of Indian Affairs. The Lessee shall maintain this bond at all times even if the Lease has expired or is terminated. The bond shall only be released with the written consent of the Navajo Nation. The bond may also be increased by the Navajo Nation and/or the DOI. The Lessee shall request a bond release to DOI only after the expiration or termination of the Lease and Lessee has fulfilled all its obligations, including payments to the Navajo Nation and reclamation of site under the terms and conditions of this Lease.

5. The Lessee shall comply with the requirements of the Blasting Plan attached as Exhibit

"D" to this lease and all applicable federal regulations including but not limited to 30 CFR, Part 56, Subpart E - Explosives.

6. Water Use Permit: Lessee shall not use water from the Navajo Nation unless a water use permit is approved by the Navajo Nation Water Resources Department.

7. Records and Reports: The Lessee shall maintain accurate records of all sand and gravel material extracted, stockpiled, sold and removed from the Lease and the royalty due and paid to the Navajo Nation. A copy of the records shall be provided to the DOI and the Navajo Nation Minerals Department (P.O. Box 1910, Window Rock, AZ 86515) on a monthly basis within fifteen (15) days following the sale month. Monthly production reports must be filed even if there was no sale of material. All material removed from the site shall be weighed and all records pertaining to the sale shall be kept for audit purposes for a term required under 30CFR 1212.200, Subpart E, Section (a).

8. Method of Payments: All required payments under Section 2 of this Lease shall be made to the Department in lawful money of the United States. A copy of the payments shall be provided to the DOI.

9. Diligence: The Lessee shall exercise diligence in the conduct of its mining operation and the land described herein shall not be held for speculative purposes, but in good faith for the extraction of sand and gravel and shall begin operation within one (1) month of the Effective Date.

10. No work shall commence until the mandatory mine health and safety training has been provided to the workers pursuant to 30 CFR, Part 46. The Lessee shall maintain the required training plan pursuant to the provisions of 30 CFR, Part 46 and a copy of minutes trained.

11. The Lessee shall obtain a mine identification number from the U. S. Mine Safety and Health Administration prior to the start of the operation.

12. The Lessee may develop, use and occupy the area under the Lease for the purpose of removing sand and gravel material. The Lessee may not develop, use or occupy the area under the Lease for any other purpose without the prior written approval of the Nation and the Secretary. Such approval of the Nation may be granted upon conditions or withheld at the sole discretion of the Nation. The Lessee may not develop, use or occupy the area under the permit for any unlawful purpose. Any unlawful use of the land within the Lease shall render the Lease void at the option of the Nation and/or the Secretary.

13. Lessee shall maintain an emergency evaluation plan to address emergencies such as possible flooding. All workers must be thoroughly familiar with the emergency plan.

14. In all activities conducted by the Lessee within the Navajo Nation, the Lessee shall abide by all laws and regulations of the Nation and of the United States, now in force and effect or as hereafter may come into force and effect, including but not limited to the following:

- a. Title 25, Code of Federal Regulations, Parts 162 and 169;

b. Title 30, Code of Federal Regulations, Parts 46 and 56;

c. The Navajo Nation Mine Safety Code 18 N.C. § 401;

d. All applicable federal and Nation antiquities laws and regulations, with the following additional condition: In the event of a discovery, all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Historic Preservation Department must be notified immediately. As used herein,

"discovery" means any previously unidentified or incorrectly identified cultural resources, including but not limited to archaeological deposits, human remains, or location reportedly associated with Native American religious/traditional beliefs or practice;

e. To the extent allowed by applicable law, the Navajo Preference in Employment Act, 15 N.C. §§ 601 et seq., the Navajo Nation Business Opportunity Act, 5 N.C. §§ 201 et seq.; and

f. The Navajo Nation Water Code, 22 N.C. et seq., Lessee shall apply for and submit all applicable permits and information to the Navajo Nation Water Resources Department, or its successor.

g. Applicable section of the Navajo Nation Tax Code.

15. The Lessee shall ensure that the air quality of the Nation is not unduly degraded during operations by violating federal and Nations applicable laws and regulations.

16. The Lessee shall clear and keep clear the lands within the Lease area to the extent compatible with the purpose of the Lease, and shall dispose of all vegetation and other materials cut, uprooted, or otherwise accumulated during any surface disturbance activities.

17. The Lessee shall at all times during the term of the Lease and at the Lessee's sole cost and expense, maintain the land subject to the Lease and all improvements located thereon and make all necessary reasonable repairs.

18. The Lessee shall obtain prior written permission to cross an existing permit or lease areas, if any, from the appropriate parties.

19. The Lessee shall be responsible for and promptly pay all damages when they are sustained, from actions the Lessee causes.

20. The Lessee shall indemnify and hold harmless the Nation and the Secretary and their respective authorized agents, employees, land users and occupants against any liability for loss of life, personal injury and property damages arising from the development, use or occupancy or use of area under the Lease by the Lessee.

21. The Lessee shall not assign, convey, transfer or sublet in any manner whatsoever, the lease or any interest therein, or in or to any of the improvements on the land subject to the lease, without the prior written consent of the Nation and the Secretary. Any such attempted assignment, conveyance or transfer without such prior written consent shall be void and of no

effect. The consent of the Nation may be granted, granted upon conditions or withheld at the sole discretion of the Nation.

22. The Nation may recommend termination of the Lease by DOI for violation of any of the terms and conditions stated herein.

23. At the termination of the Lease, the Lessee shall peaceably and without legal process deliver up the possession of the premises, in good condition, usual wear and tear excepted. Upon the written request from the Nation, the Lessee shall provide the Navajo, at the Lessee's sole cost and expense, with an environmental audit assessment of the premises at least thirty (30) days after completion and notification to the Nation that all required reclamation has been performed.

24. Holding over by the Lessee after the termination of the Lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder or in to the land subject to the Lease or to any improvements located thereon.

25. The Nation and the Secretary shall have the right, at any reasonable time during the term of the permit, to enter upon the premises, or any part thereof, to inspect the same and any improvements located therein. The Nation and Secretary have further right to audit all payments due to the Nation.

26. By acceptance of the grant of Lease, the Lessee consents to the full territorial legislative, executive and judicial jurisdiction of the Nation, including but not limited to the jurisdiction to levy fines and to enter judgments for compensatory and punitive damages and injunctive relief, in connection with all activities conducted by the Lessee within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Nation.

27. By acceptance of the grant of the Lease, the Lessee covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Nation on the basis that such jurisdiction is inconsistent with the status of the Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to a similar challenge to the jurisdiction of a state government. Nothing contained in this provision shall be construed to negate or impair federal responsibilities with respect to the land subject to the Lease or to the Nation.

28. Any action or proceeding brought by the Lessee against the Nation in connection with or arising out of the terms and conditions of the Lease shall be brought only in the Courts of the Nation, and no such action or proceeding shall be brought by the Lessee against the Nation in any court of any State.

29. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation.

30. Except as prohibited by applicable federal law, the law of the Nation shall govern the performance and enforcement of the terms and conditions contained herein.

31. The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, administrators, employees and agents, including all contractors and subcontractors, of the Lessee, and the term Lessee" whenever used herein, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

32. There is expressly reserved to the Nation full territorial legislative, executive and judicial jurisdiction over the area under the Lease and all lands burdened by the Lease, including without limitation over all persons, including the public, and all activities conducted or otherwise occurring within the area under the Lease and all lands burdened by the Lease shall be and forever remain Navajo Indian Country for purposes of Navajo Nation jurisdiction.

33. The Lessee is required to maintain and submit a certificate issued by an insurance company authorized to do business in the United States, and on the Navajo Nation, certifying that the applicant has a public liability insurance policy in force for the mining and reclamation operations pursuant to this Lease. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any person injured or property damaged as a result of the mining and reclamation operations, including the use of explosives. Minimum insurance coverage for bodily injury and property damage shall be \$500,000 for each occurrence and \$1,000,000 aggregate.

(a) The policy shall be maintained in full force during the term of the Lease and the liability period necessary to complete all reclamation requirements under the Plan.

(b) The policy shall include a rider requiring that the insurer notify the Department and DOI whenever substantive changes are made in the policy including any termination or failure to renew.

THE NAVAJO NATION, Lessor

BY _____

Date

Russell Begay, President
The Navajo Nation

FORT DEFIANCE SAND AND
GRAVEL, INC., Lessee

BY _____

Date

ACKNOWLEDGEMENT OF LESSOR

State of Arizona)
) ss.
County of Apache)

Before me, a Notary Public, on this _____ day of _____, 2015, personally appeared Ben Shelly, who executed the foregoing lease in his official capacity as President of the Navajo Nation for and on behalf of the Navajo Nation.

Notary Public

My Commission Expires:

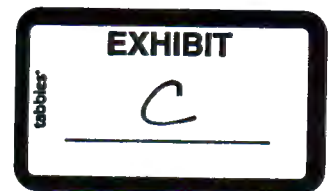
ACKNOWLEDGEMENT OF LESSEE

State of Arizona)
) ss.
County of Apache)

Before me, a Notary Public, on this _____ day of _____, 2015, personally appeared, who executed the foregoing lease in his official capacity on behalf of Fort Defiance Sand and Gravel, Inc.

Notary Public

My Commission Expires:



March 23, 2016

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

From : 
Hon. Benjamin Bennett, Vice-Chair
Resources and Development Committee

Subject: Bonding and Royalty

I would appreciate it if you could expedite the Blue Canyon Gravel Pit legislation specifically on the bonding and royalty rates.

Should you have any questions, please contact me at (928) 380-2761. Thank you.



February 25, 2016

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

From : 
Hon. Benjamin Bennett, Vice-Chair
Resources and Development Committee

Subject: Bonding and Royalty Recommendation

This a chronological account of the discussions surrounding bonding and royalty rate recommendations for the gravel pit legislations of: 1) Blue Canyon and 2) Tachee/Blue Gap.

1) Blue Canyon

On January 19, 2016, Blue Canyon Gravel Pit legislation was passed by the Resources and Development Committee which was held at NECA Conference Room, Shiprock, NM. When RDC tried to amend the bonding and royalty rates, legal counsel misguided members of RDC by stating that, "changing the bonding and royalty rates will change the intent of the legislation". However, it is in the authority and responsibility of RDC to change the rates as it sees fit.

In a meeting at the President's Office on January 25, 2016, those who were in attendance were Karis Begay, Jonathan Nez, Kee Allen Begay Jr., Aaron Yazzie, Hubert Deysy, Bruce Nicholson and myself discussed the Blue Canyon Gravel Pit rates of \$250,000 for bonding and \$64,000 for advance royalty payment to open the pit. We deemed that those rates are excessive for a Navajo-owned company to pay immediately. Since 2008, there has been about ~\$200,000 that has already been invested into the Blue Canyon gravel pit by way of surveys, reclamation plans, mining plans, blasting plans, storm water prevention plans, all of which have been addressed. The objective of the meeting was to find amenable compromise was needed to benefit both Navajo Nation and Navajo-owned businesses. It was recommended that BIA should be part of the discussion, as BIA has trust responsibilities over mining leases.

2) Tachee/Blue Gap

At the same meeting, Blue Gap chapter president Aaron Yazzie had the same concerns regarding the bonding and royalty rates to open the Tachee/Blue Gap gravel pit. As of current, the chapter is being asked to pay the bonding rate of \$150,000 with an advance royalty rate of \$64,000. However, it was further revealed that Tachee/Blue Gap would not meet specifications for road construction and paving, therefore the bonding and royalty rates should be significantly dropped as the rocks will not be eligible for sale. It was recommended that the chapter would be responsible mainly for the payment of the crushing and hauling of the rocks.



In addition, it was agreed upon by all those in attendance, that Navajo Division of Transportation would be considered a partner in this initiative and they would be able to receive rock from Blue Canyon gravel pit for little to no fee, except for payment of the crushing and hauling of the rocks. A follow-up meeting was set for February 17, 2016 with BIA, OP/VP, DNR and RDC, however due to scheduling the meeting was moved to February 22, 2016.

In attendance at the February 22, 2016 meeting was Sharon Pinto, Bitah Becker, Perry Shirley, and myself Ben Bennett. During that meeting we discussed the wishes and best options for the Navajo Nation regarding bonding, royalty, and tonnage rates. Since there was no response from anyone, I, Ben Bennett, volunteered to take responsibility of changing and setting the bonding and advance royalty rates by recommending that a \$75,000 bond and an advance royalty rate of \$25,000 was amenable for both Navajo Nation and Navajo-owned businesses. Furthermore, the tonnage rate will be kept at a standard rate that was set forth by BIA and Navajo Nation at \$1.42 per ton. There was no opposition from BIA, DNR, OP/VP and it was understood that the recommendation to rate change was amenable to all parties at that meeting.