

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



January 6, 2023

Hon. Otto Tso
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CD-56-22, *An Act Relating to the Resources and Development, Budget and Finance, Resources and Development, and Naabik'iyáti' Committees, and the Navajo Nation Council; Approving \$783,500 from the Síhasin Fund for the San Juan River Dineh Water Users, Inc. to Complete the Shiprock Lateral Water Conversion – Phase I Salinity Control – Project; and Approving the Related Expenditure Plan*

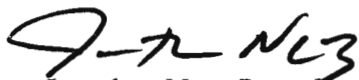
Dear Speaker Tso,

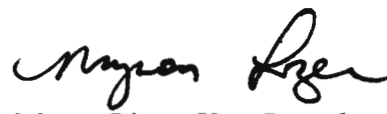
We appreciate the support of the Resources and Development , Budget and Finance, Naabik'iyáti Committees, Navajo Nation Council, and all others who contributed to this finalization of the legislation for the Shiprock Lateral Water Conversion – Phase I Salinity Control Project.

Much of the work for this project is in progress or has been completed. In accordance with the Síhasin Fund policy, this project meets the requirements of leveraging other sources of funding through the \$1.2 million contribution form the Bureau of Reclamation for Phase II. We commend the due diligence and commitment of the local communities, San Juan River Dineh Water Users, Inc. and many others for supporting this critical project.

We look forward to the completion of this project and the future harvests of the San Juan Dineh famers who will put this irrigation water to use. Pursuant to the authority vested in the Navajo Nation President, I am signing CD-56-22 into law.

Sincerely,


Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - FOURTH YEAR, 2022

AN ACT

RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING \$783,500 FROM THE SÍHASIN FUND FOR THE SAN JUAN RIVER DINEH WATER USERS, INC. TO COMPLETE THE SHIPROCK LATERAL WATER CONVERSION - PHASE 1 SALINITY CONTROL - PROJECT; APPROVING THE RELATED EXPENDITURE PLAN

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council empowered with oversight authority over all 110 Navajo Nation Chapters. 2 N.N.C. § 500(C); 26 N.N.C. § 102.
- B. The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the responsibility to "review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds." 2 N.N.C. § 301(B) (2).
- C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council that considers all proposed final actions by the Navajo Nation Council. 2 N.N.C. § 164(A) (9).
- D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A). As such, the Council may approve appropriations from the Navajo Nation's Síhasin Fund.

Specifically, 12 N.N.C. § 2505(A) permits expenditures from the Síhasin Fund upon a two-thirds (2/3) approval vote of all members of the Navajo Nation Council.

- E. 12 N.N.C. § 2502, as amended by CJA-03-18, states the purpose of the Navajo Nation Síhasin Fund ("Síhasin Fund") as follows:

§ 2502 Purpose

- A. The purposes of this Fund are to provide financial support and/or financing for:

1. The planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterline, solid waste management development, powerline projects, and transportation and communication systems, within the Navajo Nation; . . .
- B. For the Purpose in § 2502(A)(1), Fund expenditures for infrastructure shall not be limited by 12 N.N.C. § 1310(F) or TCDCJY-77-99.
- C. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund, including loan financing from the Fund, for the purposes in § 2502(A)(1), shall be favored over direct funding in whole.
- F. The Síhasin Fund provides that "Fund Principal" shall consist of all deposits made to the Síhasin Fund, that "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and realized by the Fund Principal, and that Síhasin Fund Income shall be deposited in, and added to, the Fund Principal until such time as a Fund Expenditure Plan is duly approved. 12 N.N.C. § 2504 and § 2505(C).
- G. The Síhasin Fund provides that "Fund Principal and Income shall not be expended except pursuant to a Fund Expenditure Plan consistent with the purposes set forth in § 2502 of this Chapter and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council." 12 N.N.C. § 2505(A).

SECTION TWO. FINDINGS

- A. The San Juan River Dineh Water Users, Inc. ("Dineh Water Users") out of Shiprock, Navajo Nation (New Mexico) is requesting Síhasin funds to complete the Shiprock Lateral Water Conversion - Phase I Salinity Control - Project ("Phase I Project"). **EXHIBIT A.**
- B. Dineh Water Users explains that it first submitted a Project Proposal to the Navajo Nation Department of Water Resources in March of 2021. The U.S. Department of the Interior - Bureau of Reclamation ("DOI/BOR") has awarded \$1,200,000 for Phase II of the Shiprock Lateral Water Conversion Project. However, these federal funds cannot be used because the Phase I portion of the overall Project is not completed. **EXHIBIT A.**

- C. Dineh Water Users has prepared a detailed explanation of the proposed Phase I Project, along with a Scope of Work for the Phase I Project. **EXHIBIT B.**
- D. Dineh Water Users has also submitted a line-item cost estimate for the Phase I Project. **EXHIBIT C.**
- E. Allocation of the Síhasin funds as requested by the Dineh Water Users meets the criteria for Síhasin expenditures because the proposed expenditure involves regional infrastructure supporting economic development and community development, as well as infrastructure, and waterlines in the area, as described in 12 N.N.C. § 2502(A)(1).
- F. Allocation of the requested Síhasin funds also meets the criteria for the leveraging of funds, as described in 12 N.N.C. § 2502(C), because DOI/BOR has already allocated \$1,200,000 for the Shiprock Lateral Water Conversion Project.

SECTION THREE. APPROVING \$783,500 FROM THE SÍHASIN FUND FOR THE SAN JUAN RIVER DINEH WATER USERS, INC. TO COMPLETE THE SHIPROCK LATERAL WATER CONVERSION - PHASE 1 SALINITY CONTROL - PROJECT; APPROVING THE RELATED EXPENDITURE PLAN

- A. Pursuant to 12 N.N.C. § 2505(A), the Navajo Nation hereby approves \$783,500 from the Síhasin Fund for the Dine Water Users' implementation and completion of the Shiprock Lateral Water Conversion - Phase I Salinity Control - Project, and also approves the related Expenditure Plan for the Phase I Project, as set forth in the attached **EXHIBIT B** and **EXHIBIT C.**
- B. The total amount of Síhasin funds approved in this Act may be further leveraged by bond or loan financing pursuant to the Navajo Nation Bond Financing Act (12 N.N.C. § 1300 *et seq.*, as amended), using Síhasin Fund earnings for repayment and financing costs, upon approval of the Budget and Finance Committee and upon a two-thirds (2/3) approval vote of the full membership of the Navajo Nation Council.
- C. The Controller shall determine whether the source of the Síhasin funds approved in this Act will be Síhasin Fund Principal or Síhasin Fund Income, or a combination of both.
- D. Within thirty (30) business days after the effective date of this Act, the Controller shall transfer the approved Síhasin funds to the Navajo Nation Department of Water Resources ("DWR"). The approved Síhasin funds shall not be comingled with funds from any other sources, for the Phase I Project or otherwise.

- E. DWR shall administer the Síhasin funds and provide the money to the Dineh Water Users, in accordance with an appropriate grant agreement, memorandum of agreement, or other legal document executed by the Dineh Water Users and the Navajo Nation. Said agreement shall be binding upon the parties, shall be approved by DWR and the Controller, and shall establish a project schedule, payment or drawdown plan, fund management plan, or other relevant procedures governing the Phase I Project.
- F. The approved Síhasin funds shall be used by the Dineh Water Users strictly for the completion of the Phase I Project as described in EXHIBIT B and EXHIBIT C. The Dineh Water Users shall be responsible for complying with the Expenditure Plan approved herein, and with all provisions of the legal agreement described in Section Three (E) above.
- G. As a condition of receiving the approved Síhasin funds, the Dineh Water Users shall allow the Navajo Nation full access to its financial records related to the Síhasin funds it has received, for the purpose of the Navajo Nation's review and audit of the Dineh Water User's expenditures of the Síhasin funds.
- H. DWR and the Dineh Water Users shall submit a written report, and a verbal report if so requested, explaining the ongoing status of the Phase I Project and its expenditures of the approved Síhasin funds, to the Resources and Development Committee, the Budget and Finance Committee, and the Naabik'íyáti' Committee. Said reports shall be provided by the end of each Fiscal Year Quarter until the Phase I Project is completed or all Síhasin funds approved in this Act are exhausted.
- I. The approved Síhasin funds for the Phase I Project shall not lapse at the end of any fiscal year, as might otherwise occur under 12 N.N.C. § 820(N), so long as: (1) all Síhasin funds in the Phase I Project account are accounted for as of September 30 of each fiscal year; and (2) any/all remaining Síhasin funds are budgeted in the next upcoming fiscal year for use on the same Phase I Project.
- J. Notwithstanding Section Three (I) above, Síhasin funds not expended or encumbered by the deadline established in Resolution No. CAP-35-18, as amended by CJA-03-21 or by any other Resolution approved by the Navajo Nation Council, shall lapse and revert pursuant to such deadline, unless otherwise approved prior to such reversion by both the Resources and Development Committee and the Naabik'íyáti' Committee.

- K. The Síhasin Fund may be reimbursed the amount of funds approved herein, from funds available to the Navajo Nation from any and all state, federal, or other sources.

SECTION FOUR. EFFECTIVE DATE

This Act and the Expenditure Plan approved herein shall become effective pursuant to 12 N.N.C. § 2505(A) and 2 N.N.C. § 221(B).

SECTION SIX. SAVING CLAUSE

If any portion of this Act is invalidated by the Supreme Court of the Navajo Nation, or by any Navajo Nation District Court without appeal to the Navajo Nation Supreme Court, the remainder of this Act shall be the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th 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 19 in Favor, and 00 Opposed, on this 19th day of December 2022.



Honorable Jamie Henio, Speaker Pro Tem
24th Navajo Nation Council

Dec 28, 2022
DATE


Motion: Honorable Rickie Nez

Second: Honorable Eugenia Charles-Newton

Speaker Pro Tem Jamie Henio not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 6th day of January, 2023.


Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 2022 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

3. I, hereby, exercise line-item veto pursuant to the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009, on this _____ day of _____, 2022.

Jonathan Nez, President
Navajo Nation



SAN JUAN RIVER DINEH WATER USERS, INC.

PO Box 3688
Shiprock, NM 87420

September 26, 2022

EXHIBIT A

Navajo Nation Dept. Of Water Resource
Attention: Gilbert Harrison
PO Box 57
Shiprock, NM 87420

Dear Mr. Harrison,

This is a revised version of the proposal for completing the Shiprock Lateral conversion Project Phase 1 Salinity Control. A proposal was submitted to NNDWR in March of 2021. Since then, the cost of living escalated, therefore, the proposal budget increased. SJRDWU Inc. desires to fulfill its commitment with Bureau of Reclamation to complete this project. Mr. Harrison, your approval and processing of a contract to have this project completed is imperative.

The Bureau of Reclamation awarded \$1.2 million for Phase II Sanility Control of the project, but these funds cannot be used and is pending because Phase I Salinity Control is not completed. Phase II pending project are in Shiprock, Gadii'ahi, San Juan, Nenahnezad, and Upper Fruitland chapters.

The designs for this project are completed and the majority of the materials are purchased. The funding is for installation of the three remaining pipelines, two of which have the turnouts installed already. In addition, SJRDWU will complete the utility crossings on the Yellowman Lateral west of Nenahnezad chapter.

This proposal is requesting for \$783,500.00 to complete the Phase I Salinity Control project. The funds will be used for labor, equipment, and other liable expenses. Our cost for full construction activity will fund construction operation for five months and will require and attainable production rate of 240 feet of pipe installed each work day. We are confident that we can accomplish this.

Please proceed with the contract expeditiously. This project is time sensitive so it is critical we move forward on this project.

We appreciate your support on this project. Please feel free to contact me if you have any questions.

Sincerely,

Katherine Jim
Interim CEO

CC: File

Honorable Rickie Nez, 24th Navajo Nation Council Delegate
Honorable Eugenia Charles-Newton, 24th Navajo Nation Council Delegate
Honorable Amber Crotty, 24th Navajo Nation Council Delegate



SAN JUAN RIVER DINEH WATER USERS, INC.

EXHIBIT B

RE: Proposing a Scope of Work for the San Juan River Dineh Water Users, Inc., for Salinity Control Phase 1. To conduct contruction of converting open irrigation ditches into underground pressurized pipeline to benefit the San Juan River agricultural producers with Land User Permits. Three ditch laterals in the Mesa Farm area in Shiprock and Nenahnezad Yellowman Lateral utility crossings.

In 2017 the San Juan River Dineh Water Users, Inc. (SJRDWU), entered into a cooperative agreement RC16AC00015 with the Bureau of Reclamation (BOR) to complete the Shiprock Lateral Converion Project Phase 1, a \$6M project. This project was partial funded by the Navajo Nation which contributed \$1.2M as a cost share to the cooperative agreement. The Shiprock Lateral Conversion Phase 1 planned on converting 182,917 ft. Of open ditch into underground pressurized pipeline. To date, SJRDWU has been able to convert 149, 589 feet of ditches in the Shiprock and Nehahnezad chapter areas. This leaves 33,328 feet of the project remaining to complete.

The cooperative agreement with Bureau of Reclamation had expired but an extension has been established and to expire in December 31, 2022. SJRDWU was not able to complete the remaining length of Salinity Control Phase 1, that was due to the start of the irrigation season. SJRDWU has also expended all of the funding from the cooperative agreement and so will not be able to complete the project as planned. Cost overruns and time overruns are due to a one-year-delay at the beginning of the project because of environmental permitting. In addition to that the SJRDWU was affected by the CoVid 19 Pandemic.

OBJECTIVE

The project object include:

Enable SJRDWU to complete the terms of the cooperative agreement with the Bureau of Reclamation. This requires the installation of the 33,328 fee of pipe. Ditches to be converted include :

1. Number Nine Lateral Ditch in Shiprock
 2. H-50 Lateral Ditch in Shiprock
 3. H-53 Lateral Ditch in Shiprock
 4. Yellowman Lateral utilities crossings in Nenahnezad
- Maps for each of the laterals are included in the proposal.

Utilize all of the pipe previous purchase for the project by the Navajo Nation. All of the pipes have been purchase but approximalely 34,00 feet of pipe have yet to be installed and so is in storage. The proposed project will ensure the Navajo Nation owned pipe is utilized as intended.

APPROACH

Each ditch conversion requires permitting, design, material purchase, installation, and commissioning. All permitting, design, and material purchase has been completed for these projects. In addition, the concrete turnouts and some pipes have been constructed for H-50 and H-53 ditches. The remaining work to be completed is construction and commissioning.

Existing designs for these pipelines will guide the work. All road crossings have permits from BIA and SJRDWU coordinates all water and sewer crossings with NTUA. Pipeline routes will need to be prepared by demolishing the existing ditch, removing vegetation, and survey staking. Pipe can then be hauled to the routes and installed as shown on the designs. SJRDWU will use a 120 hp excavator to excavate the trench and backfill with an 80 hp bulldozer. Pipe installed is immediately backfilled that only one joint of the pipe is exposed at the end of a construction day. Road crossings and driveways are completed within four hours to allow access by local residents. Construction details are recorded so that as-built drawings may be prepared. Commissioning a pipeline entails slowly filling a pipeline and monitoring it for any leaks. Leaks are repaired immediately. Turnout keys and valve openers are distributed to farmers permits with in-field demonstrations provided for each farm permit holder.

The irrigation season for the Fruitland and Hogback Canal is usually scheduled from April 1 to October 31 of each year. SJRDWU acknowledges this scheduling so the construction will be planned immediately when irrigation season is over, the beginning of November. A Scope of Work and Scheduling Plan is attached. (Appendix A)

SJRDWU proposes to prepare an invoice for the project as agreed upon. SJRDWU will require upfront payment to complete the project because of cash flow. The cost of completing the scope of work by SJRDWU will be attached. (Appendix B)

APPENDIX A

SCOPE OF WORK: Shiprock Lateral Conversion - Salinity Control Phase 1.

We propose the following scope of work:

1. Number 9 Ditch Conversion. Convert 12,836 feet of Number 9 Ditch into underground pipeline. Number 9 pipeline also includes 42 field turnouts and ten road crossings.
2. H-50 Ditch Conversion. Covert 5.272 feet of H-50 Ditch into underground pipeline. H-50 pipeline also includes 16 field turnouts.
3. H-53 Ditch Conversion. Convert 15,330 feet Ditch into underground pipeline. H-53 pipeline also includes 70 field turnouts and 9 road crossings.
4. Yellowman Lateral Crossings. Utility crossings or Reclamation Navajo Municipal Pipeline and Yellowman Siphon so that pressurized is delivered to farms north of Yellowman Siphon. Four crossing are required.
5. And
6. As-built drawings. Prepare and submit as-built drawings on all four pipelines.

SCHEDULING PROPOSE

Proposed scheduled for Shiprock Lateral Conversion Salinity Phase 1.

Project Phase	Description	20022 1st half	20022 2nd half	20023 1st half	20023 2nd half			
A	Contracting							
B	Permitting & Planning							
C	Design							
D	Number 9 Ditch Conversion							
E	H-50 Ditch Conversion							
F	H-53 Ditch Conversion							
G	Yellowman Lateral Utility Crossing							
H	As-built Drawings							
J	Outreach & Education	A comprehensive outreach and education on newly installed pipeline will continuously be available to all agricultural producers that farm in these areas.						

Scheduling may change due to delays and unforeseen interruption of construction

DESCRIPTION	RATE	QTY.	HRS.	EXTENSION	TOTAL
PERSONNEL					\$ 275,147.20
CEO	\$ 22.89	880	HRS.	\$ 20,143.20	
CONSTRUCTION MANAGER	\$ 19.50	880	HRS.	\$ 17,160.00	
OFFICE MANAGER	\$ 19.50	800	HRS.	\$ 15,600.00	
ENGINEER ASSISTANT	\$ 21.50	880	HRS.	\$ 18,920.00	
OFFICE SPECIALIST	\$ 13.10	0	HRS.	\$ -	
ACCOUNT	\$ 17.55	880	HRS.	\$ 15,444.00	
ACCOUNT CLERK	\$ 14.15	880	HRS.	\$ 12,452.00	
FORMAN	\$ 19.50	880	HRS.	\$ 17,160.00	
MECHANIC	\$ 19.50	880	HRS.	\$ 17,160.00	
EQUIPMENT OPERATOR I	\$ 16.53	1760	HRS.	\$ 29,092.80	
EQUIPMENT OPERATOR II	\$ 17.55	1760	HRS.	\$ 30,888.00	
LABORER I	\$ 14.89	2640	HRS.	\$ 39,309.60	
LABORER II	\$ 15.84	2640	HRS.	\$ 41,817.60	
FRINGE BENEFITS					\$ 58,995.02
FICA	7.65%			\$ 21,048.76	
WORKMANS COMP.	\$ 1,523.00	4	EA.	\$ 6,092.00	
MEDICARE	1.45%			\$ 3,992.39	
SOCIAL SECURITY (Employer's share)	6.20%			\$ 17,061.88	
WORKFORCE SOLUTION	\$ 200.00	4		\$ 800.00	
LIABILITIES	\$ 2,500.00	4	EA.	\$ 10,000.00	
EQUIPMENT					\$ 392,128.00
POWER TOOLS & COMPACTOR	\$ 27.50	80	DAYS	\$ 2,200.00	
MAPPING GRADE GPS	\$ 95.80	80	DAYS	\$ 7,664.00	
RTK SURVEY EQUIPMENT	\$ 66.50	80	DAYS	\$ 5,320.00	
300 HP EXCAVATOR	\$ 85.50	800	HRS.	\$ 68,400.00	
100 HP EXCAVATOR	\$ 70.20	800	HRS.	\$ 56,160.00	
100 HP DOZER	\$ 37.40	800	HRS.	\$ 29,920.00	
160 HP LOADER	\$ 55.00	600	HRS.	\$ 33,000.00	
80 HP BACKHOE	\$ 45.63	800	HRS.	\$ 36,504.00	
WATER TRUCK	\$ 35.00	760	HRS.	\$ 26,600.00	
DUMP TRUCK & TRAILER	\$ 46.80	760	HRS.	\$ 35,568.00	
PICKUP TRUCK	\$ 23.40	3500	HRS.	\$ 81,900.00	
UTILITY TRAILER	\$ 11.70	760	HRS.	\$ 8,892.00	
SUPPLIES & MATERIALS					\$ 32,700.00
WATER FEE	\$ 25.00	0	CY	\$ -	
MISCELLANEOUS BUILDING SUPPLIES	\$ 20.00	1500	EA	\$ 30,000.00	
CONCRETE	\$ 3.25	0	FT	\$ -	
CANAL GATES	\$ 500.00	0	EA	\$ -	
DISCHARGE PIPE	\$ 5,500.00	0	EA	\$ -	
DRAIN PIPE	\$ 2,500.00	0	EA	\$ -	
PLYWOOD	\$ 65.00	0	EA	\$ -	
LUMBER BOARDS	\$ 2.10	0	FT	\$ -	
TIES	\$ 1.05	0	FT	\$ -	
FENCING SUPPLIES	\$ 250.00	0	ea	\$ -	
PERSONAL PROTECTORS	\$ 20.00	90	DAYS	\$ 1,800.00	
SAFETY DEVICES	\$ 10.00	90	DAYS	\$ 900.00	
CONTRACTUAL					\$ 24,590.00
ADMINISTRATION/LIABILITIES	\$ 32.00	110	HRS.	\$ 3,520.00	
CONTRACTUAL ENGINEER	\$ 110.00	110	HRS.	\$ 12,100.00	
SUPPLEMENTAL COMPLIANCES	\$ 6,000.00	1	EA.	\$ 6,000.00	
TRUCKING DEPRIS & PIPES	\$ 30.00	22	TRIPS	\$ 660.00	
CONTRACT WELDING	\$ 21.00	110	HRS.	\$ 2,310.00	
TOTAL COST:					\$ 783,560.22

*A staffing increas will increase the cost to complete the scope of work.

Labor	\$ 334,100.00
Equipment	\$ 392,100.00
Material	\$ 32,700.00
Contrctual	\$ 24,600.00
Total	\$ 783,500.00

NAVAJO NATION

1241

12/19/2022

Navajo Nation Council Special Session

06:05:55 PM

Amd# to Amd#	Legislation 0187-22: Approving	PASSED
MOT Nez, R	\$783,500 from the Sihasin Fund	
SEC Charles-Newton	for the San Juan River Dineh	
	Water Users, Inc. to Complete...	

Yeas : 19

Nays : 0

Excused : 2

Not Voting : 2

Yea : 19

Begay, E	Crotty	Nez, R	Walker, T
Begay, K	Daniels	Slater, C	Wauneka, E
Begay, P	Freeland, M	Stewart, W	Yazzie
Brown	Halona, P	Tso, D	Yellowhair
Charles-Newton	James, V	Tso, E	

Nay : 0

Excused : 2

Damon	Tso
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Not Voting : 2

Tso, C	Smith
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Presiding Speaker: Henio, J