

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0302-19

SPONSOR: Eugenia Charles-Newton

TITLE: An Action Relating To Resources and Development Committee, Budget And Finance Committee, NAABIK'IYATI Committee And The Navajo Nation Council; Restating That Resolution NOS. CD-60-13 And CAP-13-15, Which Approved A Limited Waiver Of Sovereign Immunity And General Indemnity Agreements For The Navajo Transitional Energy Company, LLC Specifically Applied Only To The Navajo Mine Purchase

Date posted: October 2, 2019 at 4:23 PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0302-19

DATE: September 23, 2019

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; RESTATING THAT RESOLUTION NOS. CD-60-13 AND CAP-13-15, WHICH APPROVED A LIMITED WAIVER OF SOVEREIGN IMMUNITY AND GENERAL INDEMNITY AGREEMENTS FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC SPECIFICALLY APPLIED ONLY TO THE NAVAJO MINE PURCHASE

PURPOSE: The purpose of the resolution is to restate that the limited waiver of sovereign immunity and the general indemnity agreements and sureties approved in Resolution CAP-13-15 apply only to the NTEC transactions, specifically identified in CAP-13-15 and CD-60-13, involving the purchase of the Navajo Mine and do not extend to any subsequent purchase or transactions of NTEC.

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: 2800

Website Posting Time/Date: _____

Posting End Date: 10/07/19

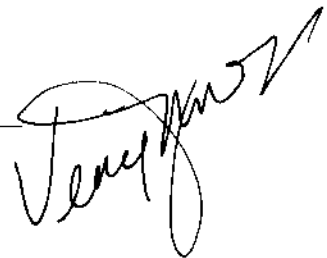
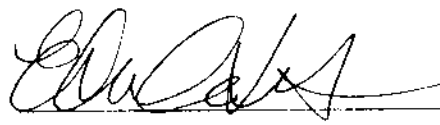
Eligible for Action: 10/08/19

Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyati Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24TH NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0302-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; RESTATING THAT RESOLUTION NOS. CD-60-13 AND CAP-13-15, WHICH APPROVED A LIMITED WAIVER OF SOVEREIGN IMMUNITY AND GENERAL INDEMNITY AGREEMENTS FOR THE NAVAJO TRANSITIONAL ENERGY COMPANY, LLC SPECIFICALLY APPLIED ONLY TO THE NAVAJO MINE PURCHASE

BE IT ENACTED:

Section One. Authority

- A. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C. § 102 (A).
- B. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the Naabik'iyati' Committee before it is heard by the Navajo Nation Council.
- C. Pursuant to 2 N.N.C. § 300 (C)(1)(3) and (4) the Budget and Finance Committee is authorized to recommend adoption of resolutions related to the expenditure of the Nation's financial resources.

1 D. Pursuant to 2 N.N.C. § 500 (C), the Resources and Development Committee has
2 oversight authority over land issues.

3
4 **Section Two. Findings**

5 A. On April 30, 2013, by Resolution No. CAP-20-13, as amended, the Navajo Nation Council
6 approved the creation of the Navajo Transitional Energy Company, LLC ("NTEC") for the
7 primary purpose of purchasing the Navajo Mine from BIIP Billiton New Mexico Coal
8 Company.

9
10 B. In order for the Navajo Nation to obtain the performance and reclamation bonds (the
11 "Bonds") required to complete the transactions for the purchase of the Navajo Mine by
12 NTEC and comply with federal law, the Navajo Nation Council pursuant to Resolution No.
13 CD-60-13 (Dec. 27, 2013) approved by a 2/3 majority vote a limited waiver of the Nation's
14 sovereign immunity and the execution of General Indemnity Agreements with the Zurich
15 American Insurance Company ("Zurich") and Arch Insurance Company. Such limited waiver
16 of sovereign immunity provided for binding arbitration and an alternative state court forum
17 for enforcement of binding arbitration and any ancillary proceedings, including for exigent
18 and emergency equitable relief, such forum to be the First Judicial District Court of the State
19 of New Mexico, or if the First Judicial District Court lacked proper jurisdiction or was
20 otherwise unavailable to the Parties, then in Superior Court, State of Arizona. Resolution No.
21 CD-60-13 was signed into law by President Ben Shelly on December 27, 2014.

22
23 C. Resolution No. CAP-13-15 signed into law on May 4, 2015 amended Resolution No.
24 CD-60-13 to extend the same limited waiver of sovereign immunity for binding
25 arbitration and an alternative state court forum for enforcement of binding arbitration
26 and any ancillary proceedings, and the same form of General Indemnity Agreement,
27 as were approved pursuant to Resolution No. CD-60-13 for Zurich, additionally
28 Approved Sureties. Resolution CAP-13-15 is attached as **Exhibit 1**.

1 D. The Navajo Nation Sovereign Immunity Act, 1 N.N.C. §554 (D) states: "... Nor does
2 any liability assumed by the Navajo Nation pursuant to this Act extend to any party or
3 parties as third party beneficiary or otherwise, other than the party or parties whom
4 such liability is expressly assumed, an only to the extent, circumstances and
5 conditions specified thereby."

6
7 E. Resolutions CD-60-13 and CAP-13-15 are specifically limited to the NTEC transactions
8 involving the purchase of the Navajo Mine. There is no waiver of Navajo Nation sovereign
9 immunity for general indemnity agreement involving any parties or transactions not
10 specifically identified in CD-10-13 and CAP-13-15.

11
12 **Section Three. Restating that CD-60-13 and CAP-13-15 are limited to the specific**
13 **transactions listed in those resolutions**

14
15 The Navajo Nation Council hereby restates that the limited waiver of sovereign
16 immunity and the general indemnity agreements and sureties approved in Resolution
17 CAP-13-15 apply only to the NTEC transactions, specifically identified in CAP-13-
18 15 and CD-60-13, involving the purchase of the Navajo Mine and do not extend to
19 any subsequent purchase or transactions of NTEC.
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