

NAVAJO NATION CODE ANNOTATED

**Title 21**

**Public Utilities and Communications**

**Chapter 1. Navajo Tribal Utility Authority**

**Subchapter 1. Generally**

**History**

**Revision note.** Subchapter 1 added as a result of codifying Subchapter 2, Ramah Navajo Utility Authority.

**§ 1. History**

A. The Navajo Tribal Utility Authority was created by the Navajo Tribal Council on January 22, 1959, in order to bring electric power to Shiprock, Navajo Nation, (New Mexico). The Authority has expanded into natural gas, water, sewer utility operations, and telecommunications and information services as well as increasing its electric services.

B. By CN-61-59, the Navajo Tribal Utility Authority was authorized to acquire, construct, operate and maintain utility systems throughout the Navajo Nation. Since then the Authority has extended the benefits of utility services to substantial portions of the Reservation. Over time the Plan of Operation of the Authority has been amended to meet needs associated with changing circumstances.

**History**

GSCAP-35-03, April 17, 2003. Amended Sections 1 and 5 of NTUA's plan of operation.

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-866, January 28, 1966.

**1988 Resolution.** CF-6-88, amended generally the authority of the Enterprise.

**1986 Resolution.** ACJN-9-86, amended generally the Plan of Operation.

**1985 Resolution.** ACF-30-85, amended generally the Plan of Operation.

**1985 Resolution.** ACF-29-85, increased the Enterprise's debt limit.

**Reorganization of Tribal Utility Authority.** ACJN-82-65, June 10, 1965, acting on the authority granted by CAP-46-65, adopted a series of bylaws for the Utility which were rescinded by ACN-149-65, November 8, 1965, and a revised Plan of Operation was submitted for approval to the Commissioner of Indian Affairs.

**1965 Resolution.** ACN-149-65 was amended by ACD-158-65, December 13, 1965, and a further revision of the Plan of Operation was submitted for approval to the Commissioner of Indian Affairs.

**1966 Resolution.** ACJA-8-66, § 1, January 28, 1966, confirmed ACD-158-65 and revised the Plan of Operation attached thereto. ACJA-8-66, § 2, acknowledged Commissioner's letter of approval dated January 13, 1966.

**Transfer of existing facilities.** Plan of Operation, § XI, provided: "The existing plant and facilities of the Navajo Tribal Utility Authority, including all electric, natural gas, water and sewer systems now in operation or under construction, as of the effective date hereof (which totaled eight million seven hundred forty-six thousand five hundred fifty-three dollars and twenty-three cents (\$8,746,553.23), as of June 30, 1964), are to be transferred to the Enterprise and accounted for in accordance with applicable regulations and statutes. Additional funds for capital expenditure for construction of further facilities, as recommended by the Management Board may be supplied from Tribal funds on approval of the Navajo Tribal Council and the Secretary of the Interior or his or her authorized representative, or from outside sources with the approval of the Advisory Committee and the Secretary of the Interior or his authorized representative."

ACD-245-66, December 13, 1966, authorized the transfer of all Fort Defiance, Navajo Nation (Arizona), Water and Sewerage facilities and appurtenances thereto of P.L. 86-121 Project No. WI-61-320 to the Tribal Utility Authority, subject to acceptance of the Management Board.

**Power supply lease and agreement.** CJY-46-60, July 21, 1960, authorized lease of plant site for generating power and agreement for supply of power with the Arizona Public Service Company. Tribal Council Res. CF-18-66, February 23, 1966, ACMY-81-66, May 27, 1966, and Res. ACMY-79-66, May 27, 1966, authorized and approved supplemental lease and agreement.

**Repayment schedule.** Plan of Operation, § XII, provided: "The Tribal Council shall determine whether the whole or any part of the Tribal funds advanced or facilities transferred to this Enterprise shall be regarded as a fixed investment. The portion of Tribal funds, if any, advanced to the Enterprise on a loan basis, shall bear interest at a rate to be agreed upon and the amount thereof shall be repaid at the times and in the manner fixed by agreement."

**Authority.** Plan of Operation, § XVIII, provided: "Tribal Council Resolutions CJA-14-59, CN-61-59, CMY-22-60, CD-61-61 and CAP-46-65 contain the authority for development of the Navajo Tribal Utility Authority."

## **§ 2. Name, location and place of business**

A. Navajo Tribal Utility Authority.

B. The principal place of business and the office of the Enterprise shall be at Window Rock, Navajo Nation (Arizona), and the post office address of the principal office is Post Office Box 68, Window Rock, Arizona.

C. The Enterprise may also have offices at such other place or places as

the Management Board may from time to time direct, or as the operation of the Enterprise shall require.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 3. Seal**

The seal of this Enterprise shall consist of two concentric circles between which shall be the name of the Enterprise and the word "seal", and in the center shall be the words, "An Enterprise of the Navajo Nation".

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 4. Duration**

The duration of the Enterprise is perpetual.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 5. Purposes**

A. General. The purposes for which the Navajo Tribal Utility Authority is organized are as follows:

1. To operate, maintain, and promote existing utility systems furnishing electric, gas, water, sewer utility services, generation, and telecommunications and information services (as such services are defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*) for the benefit of residents of the Navajo Nation, including the establishment, ownership, operation and maintenance of electric generating, telecommunications and information services on or off the Navajo Reservation.

2. To expand and execute such extensions of existing and new utility generation telecommunications and information services systems as are appropriate, efficient and feasible.

3. To plan for, provide and furnish utility generation, telecommunications and information services to all areas of the Navajo Nation, where such services are determined to be feasible and economical.

4. To carry out the purposes and intent of the Act of April 15, 1950, Public Law 474, 81st Congress, the Navajo-Hopi Rehabilitation Act.<sup>1</sup>

5. To promote the use of utility generation, telecommunications and information services where available in order to improve the health and welfare of the residents of the Navajo Nation.

6. To provide utility generation, telecommunications and information services on a non-profit basis and at reasonable cost to residents of the Navajo Nation consistent with the economical operation of the Enterprise.

B. Ancillary. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes herein above set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law, or this Chapter for the Enterprise.

#### **History**

GSCAP-35-03, April 17, 2003. Amended Sections 1 and 5 of NTUA's plan of operation.

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 6. Control of operations**

It is intended that control and operation of this Enterprise shall be patterned as closely as is feasible on the lines of a chartered public service corporation of similar magnitude with a management board comparable to a board of directors of such a corporation.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 7. Management Board; purpose; duties and powers**

A. Subject to applicable federal and Navajo Nation laws and regulations, the management board shall direct the purposes and exercise the following powers and duties:

1. The management board of the Navajo Tribal Utility Authority is delegated authority and responsibility for the management and operation of the Enterprise.

2. The management board is authorized to direct the operations to accomplish the purposes set forth in 21 N.N.C. § 5 and to exercise the powers set forth in Subsection (B) below without previous authorization or subsequent approval, and all parties dealing with the Authority shall have the right to rely upon any action taken by the management board pursuant to such authorization.

3. The management board shall exercise full power and shall be responsible for the custody and management, operation, inventory, and maintenance of all utilities and facilities, the planning, constructing and operating of all new facilities, and the taking of any and all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.

4. The management board shall function in much the same capacity as an elected board of directors of a chartered public service corporation, and shall numerously be responsible for making investment decisions, subject to the limitations contained herein or in any advance of funds; for the establishment and maintenance of effective operating policies; for the selection of management personnel, except that the person selected as the general manager shall be approved by the Navajo Nation Council; and for continuous supervision of the utility authority's performance.

5. The management board shall be expected to exercise its authorized powers in the best interests of the Navajo Nation within the limits of responsible business judgment and with the stipulation that the board shall not incur contract obligations in excess of the ability of the enterprise to make payment on due dates.

6. The management board shall select from its own membership a chairman of the board and other officers; and shall adopt such rules as it may determine necessary for the orderly conduct of business.

7. The minutes of each meeting shall be made available promptly after each meeting to the Economic Development Committee of the Navajo Nation Council, the Navajo area director and to such other officials as may be designated from time to time.

8. Members shall be reimbursed for expenses incurred in attending meetings and the Board may, at its discretion, propose a fee to be paid to members (subject to approval of the Economic Development Committee of the Navajo Nation Council) on a per-meeting attended or an annual basis.

9. The chairman of the board shall make a formal report to the Navajo Nation Council and the Economic Development Committee of the Navajo Nation Council not less often than annually and in such report, shall include a summary of the budget which the management board has approved for the coming fiscal year.

10. The management board shall establish purchasing policies and procedures, giving usual and essential latitude to the general manager and his or her delegated employees, but establishing limitations on amounts which may be expended without specific approval of the board.

11. No contract or other transaction between the Navajo Tribal Utility Authority and any one of the members of the management board, or between the Navajo Tribal Utility Authority and any corporation, partnership, firm or other legal entity in which one or more of the management board has an interest directly or indirectly shall be valid, for any purpose, unless the entire interest of the director or directors in such corporation, firm or other legal entity is fully disclosed to the management board and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the entire management board who are not so interested.

12. The management board, in its discretion, may submit any such contract or act for approval or ratification at any regularly called or

noticed meeting of the Economic Development Committee of the Navajo Nation Council; and any contract or act that shall be approved or ratified by the vote of the majority of the Economic Development Committee of the Navajo Nation Council shall be valid and binding upon the parties.

13. The management board shall submit any contract or act wherein a Navajo Nation officer or employee may have an interest directly or indirectly in the matter or transaction to any regularly called or noticed meeting of the Economic Development Committee of the Navajo Nation Council. Any contract or act that shall be approved or ratified by the vote of the majority of the Economic Development Committee of the Navajo Nation Council shall be valid and binding upon the parties.

B. Enumerated powers. Subject to Navajo Nation Council approval where required, and applicable Navajo Nation and federal laws and regulations, and solely in furtherance of the limited purposes set forth in 21 N.N.C. § 5, the management board shall have the following powers:

1. Facilities. The management board shall exercise full authority and shall be responsible for the custody, management and operation of all utility authority property and facilities owned and operated by the Navajo Nation, including such expansions and enlargements thereof as shall be authorized; for the planning, construction and operation of additional utility authority facilities including the negotiation and execution of engineering and construction contracts; and for the taking of any and all usual, necessary, and convenient actions incident thereto.

2. Capacity to act. To have the capacity to act and to direct the officers of the Enterprise to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in 21 N.N.C. § 5, and such as are not repugnant to laws and regulations applicable to this Enterprise.

3. To appoint officers and agents. To elector appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the board or Economic Development Committee may be needed from time to time, and to define their duties and fix their compensation; provided, however, that unless the Economic Development Committee shall consent and approve otherwise, the auditors shall be the firm of accountants employed by the Navajo Nation; and provided further, that the selection of a general manager shall be approved by the Navajo Nation Council. The Management board, at enterprise expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the enterprise.

4. To act as agent. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the tribal enterprise.

5. To deal in real property. To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the sale, lease, or mortgage of, either alone

or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in 21 N.N.C. § 5 except as prohibited by law. Title to all such real property shall be taken in the name of the Navajo Nation and title to all trust or restricted real property shall be and remain in its trust or restricted status.

6. To deal in personal property, generally. To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth in 21 N.N.C. § 5.

7. To deal in inventions, copyrights, and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, and that title of all such acquisitions shall be taken in the name of the Navajo Nation.

8. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Enterprise, to the extent that such guaranty is made in pursuance of the purposes set forth in 21 N.N.C. § 5, provided, that no such guaranty in excess of two hundred thousand dollars (\$200,000) shall be made without the prior written approval of the Economic Development Committee of the Navajo Nation Council.

9. Depository. To designate and approve all depositories used for the deposit of funds of the enterprise.

10. To make contracts. To enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth in 21 N.N.C. § 5, including the negotiation of contracts subject to R.S. § 2103, 25 U.S.C. § 81 (1964), which shall, as therein provided, become effective only upon the approval of the Secretary of the Interior.

11. To approve budgets. To give initial approval to annual enterprise budgets, and to take final approval action with reference to the use of funds under the exclusive control of the enterprise for operating and capital addition purposes.

12. To borrow funds. To borrow money, make and issue notes, obligations and bonds of the authority for any of its purposes and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personality, revenues, income or contracts. The total outstanding long-term debt of the authority at any one time shall not exceed two hundred million dollars (\$200,000,000).

13. To accept grants and loans. To accept grants or loans from, and enter into contracts, agreements or other transactions with any federal agency, the government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of the authority's purposes.

C. Ancillary powers. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the authority is organized.

D. No construction of powers as purposes. The powers enumerated herein shall not be construed as purposes, but the Navajo Tribal Utility Authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purposes set forth in 21 N.N.C. § 5.

### **History**

CJY-52-02, July 17, 2002.

CAP-32-94 amended Subsection (13)(12) increasing debt limitation from thirty million dollars (\$30,000,000) to seventy-five million dollars (\$75,000,000).

ACF-29-85, February 19, 1985.

CO-62-80, October 29, 1980 added Subsections 12 and 13.

ACJY-8 5-80, § 1, July 17, 1980.

ACN-149-65, as amended by ACD-158-65, December 13, 1965 and ACJA-8-66, January 28, 1966.

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-866, January 28, 1966.

**1985 amendment.** Subsection (B) (12). Amended generally.

**1980 amendment.** Added Subsections (B) (12) and (B) (13).

**Applications to put utility lines across rights-of-way.** CJN-49-71 provided: "The Chairman of the Navajo Tribal Council or his designee is hereby authorized to execute any and all applications or other documents on behalf of the Navajo Tribe of Indians, for the purpose of securing permission to place utility lines across rights of way or easements within the Navajo Nation."

**Confirmation and ratification of adoption of safety codes and rules.** ACAU-164-66, August 30, 1966, confirmed and ratified resolution No. NTUA-28-66 of the Utility Authority which adopted specific safety codes and rules.

**Consignment of supply contracts.** ACAU-152-66, August 10, 1966, consigned the following utility supply contracts to the Utility Authority:

1. Arizona Public Service Wholesale Power Supply Contract, dated December 1, 1960.



2. Public Service Company of New Mexico, Electrical Service Agreement, dated July 19, 1962.

3. El Paso Natural Gas Company, Natural Gas Service Agreement, dated February 15, 1963.

4. Continental Oil Company, Natural Gas Service Agreement, dated January 28, 1963.

**Compensation.** ACMY-74-66 provided for compensation for the Management Board.

**Delegation to act.** ACMA-21-66, § 5, March 14, 1966, delegated authority for the Management Board to act in all matters incidental and pursuant to CAP-46-65 and its approved Plan of Operation.

**1966 Amendments.** ACJA-8-66, § 2, amended Subsection (B)(10) generally.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **§ 8. Indemnification of officers, employees, and members of the Management Board**

The Navajo Tribal Utility Authority shall indemnify any officer, employee or member of the management board or former officer, employee or member of the management board of the Navajo Tribal Utility Authority, or any person who may have served at its request as an officer, employee or member of the management board against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding of which he or she is made a party by reason of being, or having been such officer, employee or member of the management board except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; or except in relation to matters in which such employee was acting beyond the scope of his or her employment. The Navajo Tribal Utility Authority shall also reimburse to any officer, employee or member of the management board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the management board other than directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Navajo Tribal Utility Authority and the Navajo Nation that such settlement be made and that such officer, employee or member of the management board was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee, or member of the management board may be entitled to receive.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 9. Membership of Board; qualifications; term of office**

A. Number. The management board shall consist of seven persons, all of whom shall be appointed by the Government Services Committee of the Navajo Nation Council.

B. Qualifications. The members of the management board shall be called directors, and shall have the following qualifications:

1. Four of the directors shall be members of the Navajo Nation who speak English with fluency and who have sufficient education and experience to qualify them for learning utility business practices and procedures and making sound judgments.

2. Four of the directors shall be persons having not less than 10 years experience in business management of substantial character and at least two of such persons shall have had such experience in the management and operation of a utility business.

C. Term of office. Directors shall be elected for the following terms of office and shall hold office until the qualification and selection of their successors:

1. The initial management board shall be appointed for a period of one year or until their successors have been appointed and qualified. Directors shall be eligible for reappointment.

2. Beginning the second year, the directors shall be selected and designated by the Government Services Committee in three groups, the first group of three to serve one year, the second group of two to serve for two years, and the third group of two to serve for three years. Thereafter, all terms shall be for three years.

3. Vacancies in the management board may be filled by the Government Services Committee for the unexpired term of the vacant office.

### **History**

ACF-30-85, February 19, 1985.

**1985 amendment.** Subparagraph (B) (3): Deleted.

ACS-194-68, § 2, September 16, 1968.

**Amendments 1968.** ACS-194-68, § 2, amended this Section by substituting "Four of the Directors" for "Three of the Directors" in Subsection (B) (1).

**Appointment of members.** The following resolutions appointed members of the Management Board of the Navajo Tribal Utility Authority and designated the expiration dates of the term of such members:

ACS-301-69, §§ 1, 2, September 3, 1969.

ACS-194-68, §§ 3, 4, 5, September 16, 1968.

ACJ-2-68, January 5, 1968.

ACMA-21-66, §§ 2, 3, March 14, 1966.

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**Revision note.** Words "Government Services Committee" inserted pursuant CD-68-89, Resolve #10.

#### **§ 10. Meetings of Board**

A. Annual meeting. The annual meeting of the management board shall be held at 10:30 a.m. on the second Wednesday of October at the principal place of business, or at such other place as the Board shall fix, commencing with 1966. No notices shall be required for annual meetings.

B. Regular meetings. The management board shall meet at least quarterly upon notice fixing the time and place.

C. Special meetings. Special meetings of the board may be held upon notice given by the chairperson, or secretary, or by any three members of the board, at such place as the Board shall direct or as shall be fixed by the notice.

D. Notice.

1. Notice of meetings stating the time and date, shall be given in writing by letter, telegram or radiogram properly addressed to each member according to the latest available enterprise records, not later than five days nor more than 30 days immediately preceding the meeting excluding the day of the meeting.

2. Notice may be waived in writing signed by the member or members entitled to such notices; whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at the special meeting shall constitute a waiver of notice.

E. Quorum. Five members of the management board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the board.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

First meeting. ACMA-21-66, § 4, March 14, 1966.

#### **§ 11. Executive Committee**

A. Designation of committee. The management board, by resolution duly adopted, may designate four members of the board, two of whom shall be members of the Navajo Nation, to constitute an executive committee. Following such designation of Executive Committee membership or a modification thereof, the management board shall give prompt notice in writing to the Economic Development Committee and the Navajo area director of the members thereof. The

designation of such executive committee and the delegation of the authority herein granted, shall not operate to relieve the management board, or members thereof, of any responsibility imposed upon it, or him or her, by law or this Plan of Operation. No member of the executive committee shall continue to be a member thereof after he or she ceases to be a member of the management board. The management board shall have the power at any time to increase the number of members of the executive committee, to all vacancies thereon, to change any member thereof, and to change the functions or to terminate the existence thereof.

B. Powers of the executive committee. During the intervals between meetings of the management board, and subject to such limitations as may be required by resolution of the management board, the executive committee shall have and may exercise such authority as may be delegated by the board. All minutes of meetings of the executive committee shall be submitted to the next succeeding meeting of the management board for approval, but failure to submit the same or to receive the approval thereof shall not invalidate any completed or uncompleted action taken by the enterprise upon authorization of the executive committee prior to the time at which the same was submitted as above provided.

C. Procedure, meetings. A chairperson of the executive committee shall be elected by the management board from among the members of the executive committee and shall preside at meetings of the executive committee and perform all duties incident to the office of the chairperson of the executive committee, and such other duties as, from time to time, may be assigned to him or her by the management board or the executive committee. The secretary of the enterprise shall keep a record of the acts of the executive committee and its proceedings. In the absence of the secretary, the chairperson of the management board shall designate a person to act in said capacity.

D. No individual authority. The members of the executive committee shall act only as a committee, and the individual members shall have no power as individuals.

E. Notice. Notices of all meetings of the executive committee shall be given by the chairperson, the secretary, or any member thereof, in the manner provided in 21 N.N.C. § 10(D), and may be waived as therein provided.

F. Quorum. The presence of not less than three members shall be necessary to constitute a quorum for the transaction of business and the act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Committee.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**Note.** Reformatted for purposes of statutory form.

#### **§ 12. Principal officers**

The principal officers of the enterprise shall consist of the following:

A. Chairperson of the management board and chairperson of the executive committee, which positions may be, but need not be, held by the same person.

B. Secretary and a treasurer, who need not be members of the management board or of the executive committee.

C. General manager, who shall not be a member of the management board.

D. In the discretion of the board, there may be a vice-chairperson of the board, assistant secretary, and assistant treasurer. Any two of these positions may be held by the same person.

### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**Note.** Reformatted for purposes of statutory form.

### **§ 13. Powers and duties**

A. All officers and agents of the enterprise shall have the following duties and such other duties as may be determined by resolution of the management board, not inconsistent with this Chapter:

1. The Chairperson of the Board. The chairperson of the management board shall be chosen from among the members of the Board, shall preside at all meetings of the board if present, and shall, in general, perform all duties incident to the office of the chairperson of the board and such other duties as, from time to time, may be assigned by the management board. If a vice-chairperson is elected, he or she shall act in the capacity of the chairperson in the absence of the latter, and shall discharge any other duties designated by the chairperson.

2. The Secretary. The secretary shall keep, or cause to be kept the minutes of the meeting of the management board and the executive committee. The secretary shall see that all notices are duly given in accordance with provisions of this Chapter. The secretary shall be custodian of the seal and records, and in general, shall perform all duties incident to the office of the secretary, and such other duties as may, from time to time, be assigned by the management board, the chairperson, or the executive Committee.

3. The Treasurer. The treasurer shall be the financial officer of the enterprise and shall have charge and custody of, and be responsible for, all funds of the enterprise, and shall deposit such funds in such banks, trust companies, or other depositories as shall have been approved by the management board. The treasurer shall receive and give receipts for monies due and payable to the enterprise from any source whatsoever; and, in general, shall perform all duties incident to the office of the Treasurer and such other duties as, from time to time, may be assigned by the management board, the chairperson, or the executive committee. The treasurer shall render to the chairperson and the board, whenever the

same may be required, an account of all transactions as treasurer and of the financial condition of the enterprise. The treasurer shall, at the expense of the authority, give a bond for the faithful performance and discharge of the, duties in such amount, so conditioned, and with such surety or sureties as the management board may require.

4. General Manager. The general manager shall be principal operating executive of the enterprise and shall have direction of all parts of the actual operations. The general manager shall be responsible to the management board as a principal operating executive of a public service corporation normally would be. The general manager shall render reports to the board and perform all other functions and duties specified in 21 N.N.C. § 18 for the general manager.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

CO-62-80; the Navajo Nation Council directed the Authority to give consideration to the special circumstances of the lands in the Former Joint Use Area in determining priorities of establishment or expansion of services.

#### **§ 14. Election; term of office; qualifications**

The officers with the exception of the general manager, shall be chosen annually by the management board at its annual meeting, or as soon after such annual meeting as newly appointed directors shall have qualified. Each officer shall hold office until a successor is chosen and qualified, or until death, or until the general manager shall have resigned, or shall have been removed in the manner provided herein.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 15. Removal**

Any officer or agent elected or appointed by the board may be removed by the management board whenever, in its judgment, the best interest of the enterprise will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed; provided, however, the general manager may be removed only pursuant to any approved contract provisions.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 16. Resignation; vacancies**

Any officer may resign at any time by giving written notice to the management board, or to the chairperson, or secretary; such resignation shall take effect at the time specified therein, and, unless otherwise specified

therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 17. Other officers and agents**

The management board may appoint such other officers and agents as it deems necessary or expedient, and may determine their duties, as well as the terms of their holding office.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 18. General Manager; functions; duties**

A. The general manager shall be employed under a written employment contract subject to approval by the Navajo Nation Council and the Secretary of the Interior or authorized representative, and shall be responsible to the management board.

B. The function of a general manager shall be analogous to that of the president of a public service corporation. The general manager shall, among other things, execute the general policies formulated by the management board and organize the operation of the enterprise into departments each with its own specific duties and responsibilities.

C. The general manager shall exercise best judgment in the determination of the ways and means by which general policy set forth by the management board is to be effectuated.

D. The general manager shall be the active, operating executive of the enterprise and shall prepare plans and annual budgets; and make suggestions as to policies and any proposals for improvements.

E. The general manager shall have the full authority and control over all employees of the enterprise and shall be responsible for all department heads or other executives carrying out their assignments.

F. The general manager shall be responsible for the general supervision of the performance of staff in respect to all matters such as conformance to approved budgets, standards, program inspection, cost control, employee relations and in-service training.

G. The general manager shall render regular reports to the board and perform all other functions and duties specified in this Chapter.

H. The general manager shall be furnished with transportation and shall be reimbursed for any personal expenses that he or she may incur in the

performance of responsibilities.

I. The general manager shall employ competent department heads for the usual functional responsibilities for each department.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

#### **§ 19. Accounting; fiscal year**

The accounting system for the authority shall be maintained in accordance with generally accepted utility accounting practices. Financial operating statements shall be provided to the Speaker of the Navajo Nation Council, the Bureau of Indian Affairs, and the management board on a regular basis. The fiscal year of the authority shall be January 1st to December 31st.

#### **History**

ACO-135-81, § 1, October 14, 1981.

**1981 amendment.** Amended generally and changed the fiscal year for the Authority to a calendar year to facilitate borrowing from the Rural Electrification Administration.

#### **§ 20. Records; inspection; audits**

The books, records and property of the authority shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation, and upon notice to the Economic Development Committee of the Navajo Nation Council, by representatives of the Secretary of the Interior. The accounts and records of the Authority shall be audited at the close of each fiscal year in accordance with the provisions of 21 N.N.C. § 7(B). Copies of such audit reports shall be furnished to the parties receiving copies of the financial and operating statements and to the Economic Development Committee of the Navajo Nation Council.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-8-66, January 28, 1966.

#### **§ 21. Insurance**

Insurance, including liability, adequate and sufficient to protect the interests of the United States and the Navajo Nation from losses by fire or other disaster shall be carried on all property of the enterprise.

#### **History**

ACN-149-65, as amended by Res. ACD-158-65, December 13, 1965.

#### **§ 22. Rates and charges**



A. All rates and charges for utility services shall be adopted by the management board after formal public hearing for which adequate notice as the board may determine has been given.

B. The management board may, in their sole discretion, negotiate with large users of a particular utility service for special rates and charges, provided, however, that such negotiated rates shall be demonstrated to be fair and equitable to all other customers or users of the Navajo Tribal Utility Authority services.

C. Procedures shall be established by the Economic Development Committee of the Navajo Nation Council to provide for appeals of rate decisions to an impartial review board composed of specialists on utility rates.

#### **History**

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

**Confirmation and ratification of Tariff Rules and Regulations.** ACJN-95-66, June 15, 1966, confirmed and ratified all provisions included in the Authority's Tariff Rules and Regulations.

#### **§ 23. Pledges and security interests**

Any pledge of, or security interest in, personalty, fixtures, revenues or other monies or funds, or of a revenue-producing contract or contracts made by the authority shall be valid and binding from the time when the pledge is made or the security interest is given; the personalty, fixtures, revenues, or other monies or proceeds of any contract or contracts so pledged or secured and thereafter received by the authority shall immediately be subject to the lien of such pledge or security interest without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. Neither the resolution, nor any other instrument by which a pledge or security interest is created need be recorded.

#### **History**

Advisory Committee Res. ACJY-85-80, § 1 (b), July 17, 1980.

CO-62-80, October 29, 1980.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **§ 24. Exemption from levy and execution**

All property, including funds, of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against such property nor shall any judgment against the authority be a charge or lien upon its property; provided, however, that this Section shall not apply to or limit the right of noteholders or bondholders to pursue any remedies or rights, including, but not limited to, possession, execution, attachment, and sale of security, for the enforcement of any pledge or lien

given by the authority on its property, including personalty, fixtures, revenues, rates, fees, or other income of any other funds.

#### **History**

CO-62-80, October 29, 1980.

#### **§ 25. Liability of authority**

A. The Navajo Nation Council does hereby pledge to contract and agree with any person, firm or corporation, or any federal, Navajo Nation or state agency subscribing to or acquiring notes or bonds of the authority issued for the purposes of the authority, that it obligates itself not to limit or alter the rights or powers vested in the authority until all such notes or bonds at any time issued, together with interest thereon are fully met, paid and discharged. The Navajo Nation Council does further pledge to, contract and agree with any federal agency, that in the event any such agency shall loan or contribute any funds for construction, extension, improvement or enlargement of any facilities, the Navajo Nation Council will not alter or limit the rights or powers of the authority in any manner which would be inconsistent with the continued operation and maintenance of such facilities or the extension, improvement or enlargement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such federal agency; and the authority shall continue to have and may exercise all rights and powers under its plan of operation, so long as the same shall be necessary or desirable for the carrying out of its purposes and those of any federal agency loaning or contributing funds for the construction, extension, improvement or enlargement of any facilities.

B. Any agreements of the authority with the Corps of Engineers of the Department of the Army of the United States regarding construction, extension, improvements, enlargement, or protection on any facilities may be enforced against the authority in the appropriate federal district court of appropriate jurisdiction, or in the courts of the Navajo Nation according to their respective terms, including any obligation of the Authority to pay compensatory damages in the event of failure to perform.

C. The foregoing shall be construed as an explicitly limited exception to the sovereign immunity of the Navajo Nation and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation, other than those of the Authority. Otherwise, the provisions of the Navajo Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

#### **History**

CO-62-80, October 29, 1980, as amended generally by CF-6-88, February 3, 1988.

**1988 Amendment.** Added Subsections (B) and (C).

**1980 Amendment.** Added Subsection (A).

#### **Cross References**

The Navajo Sovereign Immunity Act, see 1 N.N.C. § 551 *et seq.*

**§ 26. Remedies of note or bondholders**

A. Subject to any contractual limitations binding upon the holders of any issue of notes or bonds, or trustees therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of any note or bond, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of notes or bonds similarly situated:

1. By mandamus or other suit, action, or proceeding at law or in equity in the Courts of the Navajo Nation to compel the authority and its board, officers, agents or employees to perform and carry out their duties and obligations under the authority's plan of operation, and their covenants and agreements with such holders;

2. By action or suit in equity to require the authority and the board thereof to account as if they were the trustees of an express trust;

3. By action, suit or other proceeding at law or in equity to have a receiver appointed and/or to enforce any pledge, lien or security agreement given in connection with the issuance of any note or bond, such enforcement right to include the power to possess, control and sell the security in accordance with the applicable security agreement, lien or pledge;

4. By action or suit in equity against the Authority or its Board to enjoin any acts or things which may be unlawful or in violation of the rights of the note or bondholders; and

5. To bring suit against the authority upon the notes or bonds, security instruments or loan contracts.

B. No remedy conferred by this Section upon any holder of the notes or bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting and without regard to any other remedy conferred by this resolution or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of the notes or bonds, or any trustee therefor, shall extend to or shall effect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any note or bondholder, or any trustee therefor, to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon such holder may be enforced and exercised from time to time as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be determined adversely to the holder of the note or the bond, or any trustee therefor, then and in every such case the Authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

C. The foregoing shall be construed as a limited exception to the general principles of Sovereign Immunity and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation other than the authority. Otherwise, the provisions of the Navajo Nation Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

#### **History**

ACJN-99-86 amended Subsection (C).

CO-62-80, October 29, 1980.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Navajo Sovereign Immunity Act, see 1 N.N.C. § 551 *et seq.*

#### **§ 27. Lands in Former Joint Use Area**

The Navajo Nation Council directs the Navajo Tribal Utility Authority to give consideration to the special circumstances of those lands in the Former Joint Use Area added to the Navajo Nation by the judgment of partition of February 10, 1977, in determining priorities of establishment or expansion of services.

#### **History**

CO-62-80, October 29, 1980.

### **Subchapter 2. Ramah Navajo Utility Authority**

#### **History**

ACS-151-86, September 23, 1986. Enactment.

#### **§ 51. Establishment**

A. There is established the Ramah Navajo Utilities Authority within the Ramah Navajo Chapter (hereinafter referred to as "authority").

B. A board of commissioners is delegated authority and responsibility for the management and operation of the authority.

C. The principal office of the authority shall be on the Ramah Navajo Reservation, Cibola County, New Mexico.

D. The authority may also have offices at such other place or places as the board of commissioners may from time to time direct and/or deem necessary.

#### **History**

ACS-151-86, September 23, 1986.

**§ 52. Purposes and objectives**

A. The general purpose of the authority is to provide, maintain, and establish utility services on a cost-effective basis to the residents of the Ramah Navajo Reservation and nearby communities.

B. Objectives of the Authority are:

1. To operate, maintain, and promote existing utility systems furnishing water, sewer, electric, telephone, gas, solar, and solid waste services on the Ramah Navajo Reservation.

2. To expand and execute such extensions of existing utility systems as are efficient and feasible.

3. To plan for, provide and furnish feasible utility services to all areas of the Ramah Navajo Reservation.

4. To secure funding from either private or public sources on a contractual basis for the Ramah Navajo Community and others.

5. To seek public or private utility services in the furtherance of Ramah Navajo community health and welfare.

6. To establish and maintain executive offices and facilities to employ professional staff, personnel and others necessary to accomplish the above purposes.

7. To receive contributions by gift, bequest, devise, grant and personal or mixed property from any person, firm, corporation, state, local, federal or tribal government, upon such terms and conditions as the board of commissioners shall deem reasonable and in the best interest of the authority.

8. To establish reasonable rates to apply to all operating expenses, purchase of equipment, establish reserves for future capital replacements and expansion of the utility systems.

9. To do everything necessary, proper, advisable, and/or convenient for the accomplishment of the purposes and objectives in accordance with applicable laws, rules and regulations.

**History**

ACS-151-86, September 23, 1986.

**Revision note.** Slightly reworded for purposes of form and clarity.

**§ 53. Membership of commissioners; selection; terms of office**

A. The members of the board of commissioners shall be nominated, selected

and approved at a regularly scheduled chapter meeting. The board of commissioners shall consist of five members, 18 years of age or older, representing the five local grazing district units; each member shall live in the grazing district unit which each represents.

B. The terms of the members of the board of commissioners shall be as follows:

1. From District Unit #1—Two years;
2. From District Unit #2—Three years;
3. From District Unit #3—Three years;
4. From District Unit #4—Four years;
5. From District Unit #5—Two years;

Members may serve consecutive terms for an indefinite number of terms.

C. Any member of the board of commissioners can resign at any time. In such an event, a vacancy shall be declared and filled through the procedure specified above at a regularly scheduled chapter meeting.

D. No elected chapter official shall serve on the board of commissioners.

### **History**

ACS-151-86, September 23, 1986.

### **§ 54. Removal**

A. Any member of the board of commissioners may be removed from the board for any of the following causes or reasons:

1. Failure to attend two consecutive regular board meetings without reasonable written justification; such failure shall be deemed abandonment of the position on the board of commissioners.
2. Habitual use of alcohol or substance abuse which reflects upon the integrity and prestige of the board of commissioners.
3. Conviction of a felony.
4. Other just cause as determined by the board of commissioners upon approval of the Ramah Navajo Chapter.

B. Any member of the board of commissioners who is removed has the right to file a grievance petition in writing within five calendar days after receipt of the notice of removal to the president of the board of commissioners.

C. Within five calendar days of receiving the written grievance petition submitted by the aggrieved party, the president of the board of commissioners shall call a board meeting to address the grievance.

### **History**

ACS-151-86, September 23, 1986.

### **§ 55. Meetings of board of commissioners**

A. The board of commissioners shall hold a minimum of 12 meetings per year, and at the discretion of the president, any number of special meetings may be called as deemed necessary.

B. Three members of the board of commissioners shall constitute a quorum necessary for the conduct of official business. A majority vote of the members present shall be necessary to approve any action of the board of commissioners.

C. All proceedings of the board of commissioners shall be open to the public except for discussion of personnel and/or personal matters. A meeting may be closed to discuss such matters upon the majority vote of members present at said meeting.

D. Notice of meetings shall be posted at least a week in advance in public locations throughout the community for public participation.

### **History**

ACS-151-86, September 23, 1986.

### **§ 56. Election and duties of officers**

A. At its initial board session, the members of the board of commissioners shall nominate, select and approve a president, vice-president, and secretary.

B. The elected officers shall serve according to their terms unless removed by the board of commissioners as provided for in § 54 of this Subchapter.

C. The president shall call and preside at all meetings. The president shall represent the board of commissioners at chapter meetings and other meetings on and off Ramah Navajo Reservation lands to further the purposes and objectives of the authority.

D. The vice-president shall be vested with the responsibilities and duties of the president in the event of the president's absence and as delegated.

E. The secretary shall be responsible for:

1. Maintaining the records of all proceedings of the board of commissioners;
2. Publicizing all meetings; and
3. Carrying out other delegations of authority and assignments

together with the staff.

**History**

ACS-151-86, September 23, 1986.

**§ 57. Staffing and compensation**

Staff shall be retained as needed to carry out the purposes and duties of the authority. Ramah Navajo Chapter programs or executive offices may detail personnel to assist the authority as staff. Appropriate competitive compensation shall be made from available sources approved by the board of commissioners and authorized by the chapter program or executive office.

**History**

ACS-151-86, September 23, 1986.

**§ 58. Liability exemption**

The private property of the authority members, officers, and staff shall be exempt from liability, damage, or injury, debt or obligation arising out of the authority management and operations.

**History**

ACS-151-86, September 23, 1986.

**§ 59. Conflict of interest**

Members of the board of commissioners who have a personal business interest or close family relationship in business or personal matters brought before the board of commissioners shall not participate in proceedings of the board of commissioners regarding the matters nor shall they vote on such matters.

**History**

ACS-151-86, September 23, 1986.

**§ 60. Amendment**

This plan of operation may be repealed, amended and/or revised, upon recommendation of the board of commissioners, by the Ramah Chapter at a regular chapter meeting with the approval of the Government Services Committee of the Navajo Nation Council.

**History**

ACS-151-86, September 23, 1986.

**Revision note.** This Subchapter has been reworded for form and clarity.



## **Chapter 2. Diné Power Authority**

### **History**

CJA-2-96, January 19, 1996.

**Revision note.** Diné Power Authority was previously codified as Chapter 2, §§ 101-123, Title 21, Navajo Nation Code.

### **§ 201. Creation**

A. There is established an authority of the Navajo Nation to be known as the Diné Power Authority ("authority"), in order to provide an instrumentality of the Nation to participate in the development of a major coal-fired, mine-mouth steam electric generating station to be located within the extended boundaries of the Navajo Reservation in northwestern New Mexico, together with all common facilities, transmission facilities and water facilities relating thereto, and related infrastructure, community development, communications, transportation and support service facilities and job training and other programs; and to conduct overall development and operations of high voltage transmission lines, related transmission facilities, switchyards, substations, electric generation production, renewable energy research and development, and related power and energy development on the Navajo Nation necessary to vertically and horizontally integrate the Navajo Nation's power, utility and resource infrastructure. The Authority is authorized to participate in the above activities or projects and any part thereof. The projects or activities developed, in whole or in part, may be located within or outside the extended boundaries of the Navajo Nation or on lands selected by the Navajo Nation pursuant to the Navajo-Hopi Settlement Act.<sup>1</sup>

B. The Navajo Nation Council hereby finds and declares that the creation of the Authority is necessary and desirable in order to promote the development of the Navajo Nation's resources and new sources of electric energy and transmission capacity, to develop the social, economic and cultural well-being of Navajo People including those subjected to relocation from Hopi Partitioned Lands, to promote the economic vitality of the Navajo Nation through the production of goods and services, the employment of Navajo People and the utilization of Navajo businesses, to promote the efficient utilization and distribution of energy, to facilitate management of the Navajo Nation's interest in energy development activities and to limit the Navajo Nation's liability with respect thereto.

### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

### **§ 202. Name, location and place of business**

A. The name of the authority, instrumentality and enterprise of the Navajo Nation formed herein shall be "Diné Power Authority".

B. The principal place and headquarters of business and the offices of the authority shall be at Window Rock, Navajo Nation, Arizona.

C. The authority may also have offices at such other place or places as the board of directors may from time to time direct or as the activities of the Authority shall require.

D. The authority is and shall remain an authority, instrumentality and enterprise of the Navajo Nation, subject at all times to the control of the oversight authorities delegated by the Nation Council, and shall not become or attempt to become a corporation under the laws of any state or other governmental entity, without prior approval of the Navajo Nation Council.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

**Revision note.** Subsection (b): Reference to post office address of principal office deleted.

1989 Amendments to Title 2 placed enterprises under the oversight of the Economic Development Committee of the Navajo Nation Council.

#### **§ 203. Identification**

The identification of this authority shall be by seal, insignia or logo as approved by the board of directors and may be changed from time to time as warranted.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **§ 204. Duration**

The duration of the authority is perpetual.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **§ 205. Purposes**

A. General. The purposes for which the authority is organized are as follows:

1. To participate in energy development activities and projects, directly or indirectly, independently or with other private or public

entities or enterprises, in partnership, venture, or other association or arrangement of any kind, to provide for the ownership, design, construction, equipping, supply, maintenance, financing and operation of the activities and projects and the sale, wheeling or distribution of power, energy and transmission services from the activities and projects, the mitigation of impacts of the activities and projects and the provision of community and other services and programs related thereto; and to provide or facilitate the provision of bulk power and electricity to other Navajo enterprises.

2. To provide training and employment opportunities for Navajo People and businesses in the acquisition, construction, management and operation of the activities and projects and the authority.

3. To facilitate the economic and community development of the Navajo Nation through the activities and projects to promote and enhance self-determination, to apply to and invest in the activities and projects such resources of the Navajo Nation as are contributed or conveyed to the authority for such purpose, and to facilitate the administration of the Navajo Nation's involvement with the activities and projects.

4. To provide a fair return to the Navajo Nation and the Navajo people on its investment in the authority through declaration of dividends and distribution of profits, through participation with other Navajo enterprises to promote vertical and horizontal power and energy integration, and through the delivery and transmission of low cost, safe, reliable and efficient power and electricity, that is consistent with economic development and self-determination objectives.

5. To manage and administer, in consultation with the Navajo-Hopi Land Commission, any resources or revenues acquired from the lands selected by the Navajo Nation and as developed by the authority pursuant to the Navajo-Hopi Settlement Act of 1974,<sup>1</sup> solely for the benefit of Navajo relocatees designated in the Act, or the transfer of any such resources or revenues to any entities established by the Navajo Nation for the purpose of administration of benefits on behalf of such relocatees.

B. Ancillary. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein above set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law or this plan of operation.

### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

### **§ 206. Control of authority**

It is intended that the control and activities of this authority shall be patterned as closely as is feasible on the lines of an agency or instrumentality of the Navajo Nation as a public government and domestic

sovereign nation with board of directors performing policy-making functions for such an agency or instrumentality.

### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

### **§ 207. Board of Directors; purpose; duties and powers**

A. Direction of purposes and exercise of powers by board of directors. Subject to applicable laws and regulations, the authority shall be managed by or under the direction of the board of directors which shall direct the purposes and exercise the following powers and duties:

1. The board of directors is delegated authority and responsibility for the activities of the authority.

2. The board of directors is authorized to accomplish the purposes set forth in § 205 hereof and to exercise the powers set forth in Subsection (B) below without previous authorization or subsequent approval of the Navajo Nation Council and all parties dealing with the authority shall have the right to rely upon any action taken by the board of directors pursuant to this authorization.

3. The board of directors shall exercise full power and shall be responsible for participation of the authority in the activities and projects (including the custody, management, operation, inventory, and maintenance of all property and facilities of the authority relating to the activities and projects), and the taking of any and all usual, necessary and convenient actions, incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, participation in other organizational entities, and the making of contracts or commitments which it deems necessary or advisable for participation in the activities and projects.

4. The board of directors may authorize the authority to enter into a project agreement or agreements for participation in the activities and projects on such terms as it deems necessary or advisable, including without limitation as owner, co-owner, partner, venturer, shareholder, trustor, trustee, beneficiary or some other capacity, and may designate one of its members, an officer or other person as a representative of the authority on any governing or other body related to the activities and projects.

5. The board of directors shall function in much the same capacity as an appointed board of an agency or instrumentality of the Navajo Nation as a public government and domestic sovereign nation, and shall be responsible for making investment decisions subject to the limitations contained herein; for any advance of funds; for the establishment and maintenance of effective policies; for the selection of management personnel and for continuous supervision of the activities and projects.

6. The board of directors shall exercise its authorized powers in good faith in a manner which it believes to be in the best interests of the Navajo Nation and in full compliance in accordance with the Ethics in Government Law of the Navajo Nation.

7. The board of directors shall select from its own membership a Chairman of the Board and other officers; and it shall adopt such rules as it may determine necessary for the orderly conduct of its business.

8. Minutes of each meeting shall be made available after each meeting to the Economic Development Committee of the Navajo Nation Council, and such other officials as may be designated from time to time.

9. Directors shall be reimbursed for reasonable expenses actually and necessarily incurred in participating in all meetings, and the board of directors may, at its discretion, propose a fee to be paid to its members on any reasonable basis and not exceeding that paid by comparable enterprises' boards of directors within the Navajo Nation.

10. The chairman of the board or his or her designee shall make a formal written report to the Navajo Nation Council and the Economic Development Committee of the Navajo Nation Council not less often than semi-annually and in such report shall include a summary of the Authority's financial condition.

11. The board of directors may delegate the management of the day-to-day operation of the authority to the general manager or acting general manager, and in exercising its authority hereunder, may rely on its officers and other experts. The board of directors shall establish policies and retain responsibility for ultimate direction of the affairs of the authority but shall give usual and essential latitude to the general manager and his or her delegated employees, after establishing limitations on amounts which may be expended without specific approval of the board of Directors and any additional restraints on relationships with related persons and on other conflict of interest situations.

12. No contract or other transaction between the authority and any one of the members of the board of directors, or between the authority and any corporation, partnership, firm or other legal entity in which one or more of the members of the board of directors has a financial interest, directly or indirectly, shall be valid, for any purpose, unless the entire interest of the director or directors in such corporation, firm or other legal entity is fully disclosed to the board of directors and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the members of the entire authority board who are not so interested. Any director who has such a material financial interest may not vote on any matter affecting or affected by that interest, and must recuse him or herself from all discussions concerning any transaction involving that interest.

13. a. Except as provided in subdivision (b), in investing, reinvesting, purchasing, acquiring, exchanging, selling and managing the authorities investments, the board of directors shall: (1) avoid speculation (other than as may be associated with investments in the

Project); and (2) comply with any standards imposed by the plan of operation or express terms of an instrument or agreement pursuant to which the assets were contributed to the authority.

b. No investment violates this Subsection where it conforms to the provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to the Authority.

c. In carrying out duties under this Subsection, each director shall act as required by the standard of conduct applicable to public officials, and may rely upon others in performing the duty of director to the extent of relying on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by one or more officers or employees of the authority, counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence or a committee of the board of directors as to such matters the director believes to reasonably merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

14. Any action required or permitted to be taken by the board of directors may be taken without a meeting, if all directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board of directors.

B. Enumerated powers. Subject to approvals where required and any applicable laws and regulations, and solely in furtherance of the limited purposes set forth in § 205 of this plan of operation, the authority shall have the following powers which may be exercised by or under the direction of the board of directors:

1. Territorial jurisdiction. To qualify to conduct its activities in any other jurisdiction.

2. Capacity to act. To act in any capacity as a natural person would act and to participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind, whether or not participation involves sharing or delegation of control with or to others.

3. To appoint officers and agents. To elect or appoint officers, agents, engineers, auditors, accountants, appraisers, counsel and other professional consultants as in the opinion of the board of directors may be needed from time to time, and to define their duties and compensation subject to Navajo Nation law. The board of directors, at authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the authority consistent with policies applicable to officials of the Navajo Nation. The board of directors may delegate to the general

manager the election and appointment of agents for operational activities.

4. To act as agent. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the authority.

5. To deal in real property. To acquire (by purchase, exchange, lease, hire or otherwise) utilize, improve, manage, operate, and to sell, lease, or mortgage, either alone or in conjunction with others having an interest therein, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in § 205 of this plan of operation, title to all such acquired real property or interest therein may be taken in the name of the authority and title to all trust or restricted real property shall be and remain in its trust or restricted status unless otherwise legally transferred to the authority; and to convey any such real property or interest therein (including without limitation any granted right-of-way for transmission lines and other facilities or operations related to the activities and projects) to the activities and projects or others pursuant to the terms of any agreement related to or in connection with the activities and projects.

6. To deal in personal property. To deal in personal property, including intangibles, generally. To acquire (by purchase, application, transfer, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, including without limitation, equity securities and inventions, copyrights, trademarks and other intangibles, and interests therein, of every kind, character and description.

7. Depository. To designate and approve all depositories used for the deposit of funds of the authority.

8. To make contracts. In addition to the authority described in Subsection (A)(4) of this plan of operation regarding participation in activities and project agreements, to enter into, make, perform and carry out or cancel and rescind contracts for any lawful purpose pertaining to its purposes and activities.

9. To approve budgets. To give initial approval to annual authority budgets, and to take final approval action with reference to the use of funds under the exclusive control of the authority for operating, capital and other purposes.

10. To borrow funds. With the prior approval of the Economic Development Committee of the Navajo Nation Council, to borrow money, make and issue debt securities of the authority evidencing such borrowing, and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personalty, revenues, income, contracts or other property and income (subject to any restraints thereon imposed under law) and to purchase, redeem, receive, take or otherwise acquire any of such obligations.

11. To accept grants or loans. To accept grants or loans from, and enter into contracts, agreements or other transactions with any local government, state and federal agencies, the government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof.

12. To lend money. To lend money or otherwise use its credit for the development of its activities and projects.

13. To sue or be sued. To bring suit in its name and (subject to the Navajo Nation Sovereign Immunity Act and other limitations) contractually waive its immunity to suit.

14. To create sub-entities. To create sub-divisions, sub-entities and subsidiaries for purposes of separating and furthering authority project.

C. Ancillary powers. To have and exercise all powers necessary, convenient or incidental to the authority's express powers.

D. No construction of powers as purposes. The powers enumerated herein shall not be construed as purposes but the authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purposes set forth in this plan of operation in § 205 hereof. A declaration of the board of directors that its powers are being so exercised shall be conclusive evidence thereof on which third parties dealing with the Authority may rely.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **Cross References**

Navajo Sovereign Immunity Act, see 1 N.N.C. §§ 551-555.

#### **§ 208. Indemnification of officers, employees and members of the Board of Directors**

While acting in their official capacities the authority shall indemnify any officer, employee or member of the board of directors or former officer, employee or member of the board of directors, or any person who may have served at its request as an officer, employee or member of another entity, against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she is made a party by reason of being, or having been such officer, employee or member of such entity; except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. The authority shall also reimburse to any officer, employee or member of the board of directors or such other entity, reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the board of directors other



than directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the authority and the Navajo Nation that such settlement be made and that such person was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such person may be entitled to receive, but shall be subject to any applicable limitation thereon.

### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

### **Cross References**

Navajo Sovereign Immunity Act, see 1 N.N.C. §§ 551-555.

### **§ 209. Membership of Board of Directors; qualifications; term of office; removal**

A. Number. The board of directors shall consist of seven persons. All members of the board of directors shall be appointed by the President of the Navajo Nation and shall be confirmed by the Economic Development Committee of the Navajo Nation Council.

B. Qualifications. The members of the board of directors shall be called directors, and shall collectively have the following qualifications:

1. One director shall have an accounting or finance background.
2. One director shall have an engineering background.
3. At least four Directors shall be members of the Navajo Nation, of whom at least one shall reside in areas impacted or otherwise affected by the Navajo-Hopi Land Dispute.
4. No director shall be an employee of the Bureau of Indian Affairs.
5. One director shall be a member of the Economic Development Committee of the Navajo Nation Council and shall serve as an ex-officio member who shall be a non-voting member, but shall have a right to participate in all meetings of the board.
6. One director shall be a member of the Resources Committee of the Navajo Nation Council and shall serve as an ex-officio member who shall be a non-voting member, but shall have a right to participate in all meetings of the board.
7. One director may possess sufficient qualifications so as to meet more than one requirement as set out in 1 through 4 above.
8. The directors appointed by the Economic Development Committee and the Resources Committee of the Navajo Nation Council shall serve at

the discretion of the respective committees.

C. Term of Office. Directors shall be appointed for five-year staggered terms and shall hold office until the qualification and selection of their successors.

D. Vacancy. Vacancies on the board of directors may be filled by the President of the Navajo Nation with the confirmation of the Economic Development Committee of the Navajo Nation Council for the unexpired term of the vacant office.

E. Removal. Members of the board of directors may be removed with or without cause only upon recommendation by the President of the Navajo Nation with the approval of the Economic Development Committee of the Navajo Nation Council.

### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

### **§ 210. Meetings of Board of Directors**

A. Annual meeting. The annual meeting of the board of directors shall be held at such times as the board of directors shall designate as the principal place of business, or at such other place as the board of directors shall fix. No notices shall be required for annual meetings.

B. Regular meetings. The board of directors shall meet at least quarterly upon notice fixing the time and place.

C. Special meetings. Special meetings of the board of directors may be held upon notice given by the chairperson of the board, or secretary, or by majority of the board of directors at such place as the board of directors shall direct or as shall be fixed by the notice.

D. Notice. Notice of meetings, except for that of the annual meeting, stating the time, date, and place shall be given in writing by letter, telegram, radiogram or facsimile transmission properly addressed to each member according to the latest available Authority records, not later than seven days nor more than 30 days immediately preceding the meeting, excluding the day of the meeting.

E. Waiver of Notice. Notice may be waived in writing signed by the member or members entitled to such notices whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a special meeting shall constitute a waiver of notice.

F. Quorum. A majority of the members of the board of directors shall constitute a quorum for the transaction of any business. The act of the majority of the members participating and voting at a meeting at which a quorum is present shall be the act of the board of directors.

### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

### **§ 211. Principal officers**

The principal officers of the authority shall consist of the following:

- A. Chairperson of the board of directors.
- B. The General Manager, who shall not be a member of the board of directors.
- C. Secretary, who need not be a member of the board of directors.
- D. Treasurer, who need not be a member of the board of directors.

### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

### **§ 212. Powers and duties**

All officers and agents of the authority shall have the following duties and such other duties as may be provided in any rules or determined by or pursuant to resolution of the board of directors, not inconsistent with this plan of operation:

A. The Chairperson of the Board. The chairperson of the board of directors shall be chosen from among the members of the board of directors, shall preside at all meetings of the board of directors if present, and shall, in general, perform all duties incident to the office of the chairperson of the board and chief executive officer and such other duties as, from time to time, may be assigned the chairperson of the board by the board of directors. If a vice-chairperson is elected, he or she shall act in the capacity of the chairperson of the board in the absence of the latter, and shall discharge any other duties designated by the chairperson of the board.

B. The Secretary. The secretary shall keep, or cause to be kept the minutes of the meeting of the board of directors. The secretary shall see that all notices are duly given in accordance with provisions of this Chapter. The secretary shall be custodian of the identification and records, and in general, shall perform all duties incident to the office of the secretary, and such other duties as may, from time to time, be assigned to him or her by the board of directors, or the chairperson of the board.

C. The Treasurer. The treasurer shall be the financial officer of the authority and shall have charge and custody of, and be responsible for all funds of the authority, and shall deposit such funds in such banks, trust

companies, or other depositories as shall have been approved by the board of directors. The treasurer shall receive and give receipts for monies due and payable to the authority from any source whatsoever; and, in general, shall perform all duties incident to the office of the treasurer and such other duties as, from time to time, may be assigned by the board of directors or the chairperson of the board. The treasurer shall render to the chairperson of the board and the board of directors, whenever the same may be required, an account of all his or her transactions as treasurer and of the financial condition of the authority. The treasurer shall, at the expense of the authority, give a bond for the faithful performance of discharge of his or her duties in such amount, so conditioned, and with such surety or sureties as the board of directors may require.

D. The General Manager. The general manager shall be the principal administrative and chief operating officer of the authority and shall have direction of all parts of the actual operations. The general manager shall report to the board of directors and perform all other functions and duties specified in § 217 of this plan of operation for the general manager.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **§ 213. Election; term of office; qualification**

The officers, with the exception of the general manager, shall be chosen annually by the board of directors at its annual meeting, or as soon after such annual meeting as newly appointed directors shall have qualified. The term of the general manager shall be determined by the board of directors at the time of his appointment, subject to the provisions of § 217 hereof. Each officer shall hold office until his or her successor is chosen and qualified, or until death, or until he or she shall have resigned, or shall have been removed in the manner provided in § 214 herein.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **§ 214. Removal**

Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interest of the authority will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

**§ 215. Resignations; vacancies**

Any officer may resign at any time by giving written notice to the board of directors, or to the chairperson of the board, or secretary, such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

**History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

**§ 216. Other officers and agents**

The board of directors or the chairperson of the board may appoint such other officers and agents deemed necessary or expedient, and may determine the duties of them, as well as the terms of their holding office.

**History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

**§ 217. General Manager; functions; duties**

A. The general manager may be employed under a written employment contract, specifying all employment benefits provided, for a term not to exceed five years; the employment contract may be renewed by the board of directors. The general manager shall be responsible to and serve at the pleasure of the board of directors, notwithstanding the terms of the employment contract and this plan of operation.

B. The function of the general manager shall be analogous to that of the chief operations officer of an agency or instrumentality of a state or local government or a sovereign nation. The general manager shall, among other things, execute the general policies formulated by the board of directors, provide annual reports to the board of directors, and may organize the operation of the authority into departments each with its own specific duties and responsibilities.

C. The general manager shall exercise his or her best judgment in the determination of the ways and means by which general policy set forth by the board of directors is to be effectuated.

D. The general manager shall be the active executive of the authority and

shall be responsible for the preparation of plans and annual budgets; shall initiate financial audits upon board approval, and shall make suggestions as to policies and any proposals for improvements.

E. The general manager shall have the full authority to hire and fire, subject of authority policies, and exert control over all employees of the authority and shall be responsible for all department heads or other executives performing their assignments.

F. The general manager shall be responsible for the supervision of the employees and agents of the authority, and their performance, in respect to all such matters such as conformance to approved budgets, standards, and policies, productivity, program inspection, cost control, employee relations and evaluations and in-service training.

G. The general manager shall render regular reports to the board of directors and perform all other functions and duties specified in this plan of operation.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **§ 218. Accounting; fiscal year**

The accounting system for the authority shall be maintained in accordance with generally accepted accounting principles applicable to its activities and projects. Financial statements shall be provided to the President of the Navajo Nation and the board of directors on a regular basis. The fiscal year of the authority shall be determined by the board of directors.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **§ 219. Records; inspection; audits**

The books, records and property of the authority shall be available for inspection at all reasonable times and upon notice by authorized representatives of the Navajo Nation, and or by the President of the Navajo Nation or the Economic Development Committee of the Navajo Nation Council or the Navajo Nation Council. The accounts and records of the authority shall be audited at the close of each fiscal year in accordance with the provisions of § 207(B) of this plan of operation. Copies of such audit reports shall be furnished to the parties receiving copies of the financial statements and to the appropriate Navajo Nation Council standing committees.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

**§ 220. Exemption from judicial process**

All property, including funds of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against such property; provided; however, that this Section shall not apply to or limit the right of participants in any activity or project agreement or any holders of contractual obligations of the authority or the activities or projects to pursue any remedies or rights, including, but not limited to, possession, execution, attachment, and sale of security, for the enforcement of any pledge or lien given by the authority on its property, including personalty, fixtures, revenues, rates, fees, or other income or funds.

**History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

**§ 221. No liability of Navajo Nation; no waiver of immunity of Navajo Nation**

A. The acts or omissions of the authority (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability on the part of the Navajo Nation, nor create any obligation, indebtedness, or recourse to the assets of the Navajo Nation (whether denominated assets, revenues or income of the Navajo Nation) and only the assets, revenue and income held by or in the name of the authority shall be subject (to the extent otherwise permitted herein and by law) to the debts, obligations or other liabilities created or incurred by the authority.

B. Any waiver of immunity of or by the authority shall not be construed to waive any immunity of the Navajo Nation or other covered persons and entities or extend any liability to any assets, revenues, or income of the Navajo Nation, nor shall the provisions of the Navajo Nation Sovereign Immunity Act (as amended) be deemed altered or amended by this plan of operation.

**History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

**Note (2005).** Reformatted for purposes of statutory form.

**Cross References**

Navajo Sovereign Immunity Act, see 1 N.N.C. §§ 551-555.

**§ 222. Amendment of Plan of Operation**

This plan of operation may be amended from time to time by resolution

duly adopted by the Navajo Nation Council upon recommendation of the Economic Development Committee of the Navajo Nation Council.

#### **History**

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

#### **Cross References**

Navajo Nation Enterprises, see 2 N.N.C. § 724(E)(1).

### **Chapter 3. Transportation Systems**

#### **History**

**Revision note.** Transportation System was previously codified at Chapter 3, §§ 201-211, Title 21, Navajo Nation Code.

#### **Subchapter 1. Buses**

##### **§ 301. Operation generally**

A scheduled bus transportation system shall be operated between Window Rock, Navajo Nation (Arizona) and Gallup and Wingate Village, New Mexico.

#### **History**

CAU-56-60, August 19, 1960.

##### **§ 302. Use of bus**

A. The principal use of the bus shall be the transporting of Tribal officials and employees commuting between Wingate Village and Gallup, New Mexico, who are employed at Window Rock, Navajo Nation (Arizona) and the vicinity, and the employees of the Bureau of Indian Affairs and the United States Public Health Service who commute between Wingate Village and Gallup, New Mexico.

B. The secondary use of the bus shall be the transporting of groups of people on special occasions during the time the bus is not required for its principal use. Such trips shall be scheduled in advance and approved by the Director of Division of General Services.

#### **History**

ACS-167-60, § I, September 14, 1960.

#### **Cross References**

Division of General Services, see Title 2, Navajo Nation Code.



**§ 303. Route and schedule of bus**

A. The bus shall not deviate from the following route: From the Motor Pool down Window Rock Boulevard to the Fort Defiance junction, left to the Ganado-Gallup-Fort Defiance junction, right to the warehouse area, return to the Ganado-Gallup-Fort Defiance junction, proceeding east on Arizona Highway 3-New Mexico Highway 68-to Highway 491 junction, taking Highway 491 to Gallup, then east on Highway 66 to Wingate Village and return on the same route.

B. The bus schedule shall be established to assure its arrival in Window Rock at 7:50 a.m. each day. Departure from Window Rock shall be 5:15 p.m. each day. A schedule of arrival and departure times from the following stops shall be available to all passengers.

C. Passengers shall embark and disembark only at the following regularly scheduled points:

1. Motor Pool-Window Rock
2. Window Rock Boulevard northwest entrance to the main administration building
3. Warehouse entrance-Fairgrounds
4. U.S. Highway 491-State 68 junction
5. North turnoff-Highway 491 to Gameraco
6. Intersection at Post Office, Gallup
7. East "Y" Highway 66, Gallup
8. Rehoboth turnoff-Highway 66
9. Office-Wingate Village

D. Changes in the route, schedule or stops shall be authorized in writing by the Director of the Division of General Services.

**History**

ACS-167-60, § II, September 14, 1960.

**§ 304. Operator of the bus-Qualifications**

The operator of the bus shall have the following qualifications:

- A. Be an employee of the Navajo Nation; and
- B. Have valid chauffeur's licenses issued by the States of New Mexico and Arizona.

**History**

ACS-167-60, § III, September 14, 1960.

**§ 305. Duties**

The operator of the bus shall have the following duties:

- A. Drive the bus in lieu of the fare charged passengers.
- B. Be responsible for the sale of fare tickets and the preparation of reports until other arrangements are necessary.
- C. Be in complete charge of the bus with authority to expel disagreeable passengers.
- D. Not operate the bus at speeds that exceed 50 miles per hour and have it fully under control at all times.
- E. Be responsible for the proper maintenance of the bus.
- F. Be responsible for obtaining monthly safety inspection of the bus by the Navajo Nation Police Department.
- G. Park the bus overnight and over weekends at Wingate Village in a location that will assure adequate protection of the vehicle.

**History**

ACS-167-60, § II, September 14, 1960.

**1961 Amendment.** ACJY-109-61, § 2, amended this Section by deleting the first numbered paragraph. Language substituted for such deleted paragraph is now set out in § 306 of this title.

**§ 306. Compensation**

The operator of the bus shall be paid at his or her regular salary rate and his or her time shall be reported by the head of the motor pool. The driving time shall be considered to be one hour for a one-way trip between Window Rock and Wingate Village. The operator shall not be paid in excess of two hours time each day unless he or she is requested to make special trips during off-duty hours.

**History**

ACJY-109-61, § 2, July 21, 1961.

ACS-167-60, September 14, 1960.

**§ 307. Fare; fare tickets; identification cards**

- A. The fare shall be thirty cents (30 for each passenger which shall be collected by the driver for each one-way trip on the bus.
- B. The passengers shall purchase fare tickets from the driver. The fare

tickets shall be assembled in books of ten and sold for three dollars (\$3.00) per book on a cash basis only.

C. The driver shall obtain a supply of fare ticket books from the controller who shall charge him or her therewith. The driver shall deliver daily to the controller the funds collected from the sale of fare ticket books.

D. The driver shall prepare a daily report on the sale of fare tickets, the number of passengers and other pertinent data. One copy of the report shall be provided the Controller which shall be attached to the official receipt. One copy shall be provided the Division of General Services Director. The tickets collected from the passengers shall be attached to the copy of the report provided the Division of General Services Director.

E. The Controller shall credit the driver for tickets sold after the funds have been delivered to the Controller as evidenced by the official receipt.

F. Authorized passengers shall be issued an identification card by the Division of General Services Director of the Navajo Nation (or a designee), and such passengers shall be required to show their identification card each time they board the bus.

#### **History**

ACJY-109-61, July 21, 1961.

ACS-167-60, § VI, September 14, 1960.

**1961 Amendment.** ACJY-109-61, § 3, amended Subsections (A) and (B) by increasing fare from 20 cents to 30 cents and cost of books of tickets from two dollars (\$2.00) to three dollars (\$3.00), and added Subsection (F).

**Revision note.** Slightly reworded for purposes of form and clarity.

#### **Cross References**

Division of General Services, see Title 2 of the Navajo Nation Code.

#### **§ 308. Conduct of passengers**

The conduct of passengers shall at all times be such that the safety, moral and general welfare of all passengers will not be jeopardized.

#### **History**

ACS-167-60, § V, September 14, 1960.

#### **§ 309. Certification of safety**

Written certification of the safety of the bus shall be provided by the Navajo Nation police department and shall be displayed in the bus.

#### **History**

ACS-167-60, § III(8), September 14, 1960.

**§ 310. Service and maintenance**

All service and maintenance of the bus shall be provided through the Navajo Nation motor pool.

**History**

ACS-167-60, § III(7), September 14, 1960.

**§ 311. Insurance**

Insurance for the bus shall be provided under the comprehensive automobile insurance policy that provides insurance protection for all other vehicles owned by the Navajo Nation.

**History**

ACS-167-60, § VI, September 14, 1960.

**Subchapter 3. [Reserved]**

**§§ 351 to 400. [Reserved]**

**Chapter 4. Navajo Paragon Generating Station Policy Board and Task Force**

**History**

**Revision note.** Navajo Paragon Generating Station Policy Board and Task Force was previously codified as Title 21, Chapter 4, §§ 301-310, Navajo Nation Code.

**§ 401. Establishment**

The Navajo Paragon Generating Station Policy Board (hereinafter "NPGS policy board") was established by the Executive Order of February 25, 1985, consisting of 15 regular voting members appointed by and serving at the pleasure of the President of the Navajo Nation upon confirmation by the Economic Development Committee of the Navajo Nation Council.

**History**

ACJN-110-85, June 13, 1985.

ACAP-60-85, April 11, 1985.

**§ 402. Purposes**

The NPGS policy board is established to assess the ongoing development of talks with other NPGS participants and to advise the Office of the President and Vice-President, the Government Services Committee, the Navajo-Hopi Land

Commission and the Navajo Nation Council on policy direction for the Navajo Nation in this project, including advice on the desired organization within the Navajo government to develop further analysis of the proposed enterprise and the ways and means to fund such effort.

#### **History**

ACAP-60-85, Exhibit A, April 11, 1985.

#### **§ 403. Powers**

A. The NPGS policy board shall have all powers necessary and proper to carry out the purposes set forth in § 402 of this plan of operation.

B. Enumerated powers of the NPGS policy board shall include the power to:

1. Establish subcommittees to further any purpose of the policy board.

2. Hold meetings at the call of the chairperson of the policy board, the President or vice-president of the Navajo Nation, or upon written request of any seven members of the policy board. A quorum shall consist of seven members for the purposes of conducting policy board business.

3. Establish this plan of operation for the Navajo Paragon Generating Station Task Force (hereinafter "NPGS task force").

4. Conduct all proper and necessary business of the policy board by written resolution adopted by a majority of the members present and duly certified by the presiding officers.

#### **History**

ACJN-110-85, June 13, 1985.

ACAP-60-85, April 11, 1985.

**1985 amendment.** Subsection (b)(2): Substituted "seven (7) members" for "five (5) members" in the first and second sentences.

#### **§ 404. Establishment of NPGS Task Force**

The Advisory Committee of the Navajo Nation Council established the plan of operation for the NPGS task force.

#### **History**

ACAP-60-85, April 11, 1985.

#### **§ 405. Term of operation**

The duration of the NPGS Task Force shall be continuous until terminated by resolution of the Navajo Nation Council or by executive order of the Office

of the President.

### **History**

ACAP-60-85, Exhibit A, April 11, 1985.

### **§ 406. Purposes of NPGS Task Force**

The purposes of the NPGS task force shall be:

A. To provide direction, analysis and management expertise to determine the viability of, financeability of, structure of, and means of participation by the Navajo Nation in the proposed New Mexico Generating Station at the Paragon Ranch area.

B. To provide coordination, analysis, and professional direction to the negotiation of leases or contracts for land, water and coal, including valuation, resource assessment and necessary and proper lease terms unrelated to the resources (e.g., business and employment preference, scholarship fund, etc.) to the extent necessary to assure they are consistent with the proposed NPGS Project.

C. To provide coordination, development, implementation, and delivery of a comprehensive community information and planning. effort, to include identification and mitigation of plant and project impacts.

D. To provide comprehensive assessment of all regulatory and legislative issues germane to Navajo Nation participation in the NPGS Project, including a detailed plan of strategy with draft legislation where appropriate.

E. To provide coordination with and direction to intergovernmental relations between the Navajo Nation and the various state and federal agencies and legislatures.

F. To provide coordination and direction to the analysis, review, and development of the legal organization and business structure of the NPGS Project and the evolution of the entity which will maximize the Navajo Nation interest in such enterprise.

G. To provide budgetary, financial, contracting, and accounting reporting as required to all Navajo Nation government or other offices or agencies, including any consultant contract requirements, upon approval by the Budget and Finance Committee of the Navajo Nation Council, and to assure the fiscal accountability of the task force.

H. To develop the information and analysis necessary to provide recommendations concerning the participation of the Navajo Nation in all aspects of this project.

### **History**

ACAP-60-85, Exhibit A, April 11, 1985.

**Revision note.** Slightly reworded for purposes of form and clarity.

### **Cross References**

Government Services Committee authority, see 2 N.N.C. § 343(B) (4).

#### **§ 407. Powers of the NPGS Task Force**

The NPGS task force shall have the following powers:

A. To fulfill the purposes set out in § 406.

B. To establish such offices for conducting its activities within or without the Navajo Nation as are necessary and proper to its purposes under this plan of operation.

C. To contract for services necessary to fulfill the purposes set out in § 406.

D. To provide reimbursement to NPGS Policy Board members for costs to attend meetings of the policy board at which a quorum is present, including all travel and per diem costs.

E. To provide for reimbursement to NPGS policy board members for all expenses incurred in the discharge of their official duties as policy board members other than duly called meetings, when done with the approval of the President of the Navajo Nation.

#### **History**

ACAP-60-85, Exhibit A, April 11, 1985.

#### **§ 408. Conflict of interest**

Members of the NPGS policy board or staff of the NPGS task force shall not use their position or influence to personal advantage or the advantage of any other individuals or organization in a manner which would disadvantage the NPGS policy board, the NPGS task force, the Navajo Nation, its subdivisions or instrumentalities. A member, officer, or employee shall be disqualified from dealing in any matter where there exists a conflict of interest.

#### **History**

ACAP-60-85, Exhibit A, April 11, 1985.

#### **§ 409. Finance**

The NPGS task force may pursue, with approval from the Budget and Finance Committee, funding for its activities from all available sources, including but not limited to, banks, profit and non-profit institutions, individuals, federal and state agencies, foreign investors, debt financing, and any other financing alternative allowed by law.

#### **History**

ACAP-60-85, Exhibit A, April 11, 1985.

#### **Cross References**

Government Services Committee authority, see 2 N.N.C. §§ 185(B) and § 343(B) (4).

#### **§ 410. Amendments**

The plan of operation of the NPGS Task Force may be amended or altered to add or delete provisions from time to time as necessary with the concurrence of the Government Services Committee of the Navajo Nation Council.

#### **History**

ACAP-60-85, Exhibit A, April 11, 1985.

#### **Cross References**

Redelegated Committee authority, see CD-68-89, December 15, 1989, and 2 N.N.C. § 343(B) (4).

### **Chapter 5. Telecommunications**

#### **Subchapter 1. Navajo Telecommunications Regulatory Act**

#### **History**

CD-56-86, December 10, 1986. CD-56-86 repealed former § 501 and redesignated Chapter 5, Navajo Telecommunications Regulatory Code, formerly "Radio and Television".

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 501. Short title**

This Act shall be known and may be cited as the Navajo Telecommunications Regulatory Act and is codified at Chapter 5 of Title 21 of the Navajo Nation Code.

#### **History**

CD-56-86, December 10, 1986, repealed former § 501, entitled "Tribal radio system and maintenance facilities".

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 502. Purposes and intent**



A. The purposes of this Act are to make available within the Navajo Nation efficient, reasonably priced and rapid communications, to promote and expand communications within the Navajo Nation, and ensure that communication activity within the Navajo Nation is consistent with the traditions, customs and desires of the Navajo People.

B. It is the intention of the Navajo Nation Council that the provisions of this Act be construed and applied in each instance, so as to accomplish its purposes. Furthermore, the Navajo Nation by virtue of its inherent sovereign powers has the authority to assert jurisdiction over telecommunications not preempted by applicable law and regulation of the federal government of the United States. Areas which may be preempted include matters relating to frequency allocation, licensing, permissible use of specific bands and interstate commerce. Federal laws now in force regulating telecommunications activity which do not preempt the Navajo Nation's jurisdiction to regulate telecommunications shall have the same force and effect and shall be binding and obligatory upon the Navajo Nation to the extent that said laws benefit and protect the traditions, customs and desires of the Navajo People and are not otherwise inconsistent with the provisions of this Act.

### **History**

CD-56-86, December 10, 1986.

### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

### **§ 503. Definitions**

For the purposes of this Act, the following definitions shall apply:

A. "Broadcasting" means the dissemination of any radio or television communications intended to be received by the public, directly or by the intermediary of relay stations.

B. "Cable System" means a system of antennas, cables, amplifiers, towers, microwaves, waveguides, laser devices, satellites, and/or other conductors, converters, equipment and facilities designed and constructed for the purpose of producing, transmitting, receiving, amplifying, storing, processing, and distributing audio, video, digital, or other forms of electronic or electrical signals capable of being transmitted by wire and cable to subscribing members of the public who pay for such services.

C. "Certificate of convenience and necessity" means the certificate issued by the Commission to a person(s) doing business in telecommunications within defined service areas of the Navajo Nation. A certificate of convenience and necessity may include or require to be filed with terms, conditions, or tariffs, and may contain terms, conditions, or tariffs found within franchise agreements.

D. "Act" means the Navajo Telecommunications Regulatory Act.

E. "Commission" means the Navajo Telecommunications Regulatory Commission

or any successor agency authorized by the Navajo Nation to regulate telecommunications.

F. "Common Carrier" means a person(s) providing, or holding itself out as providing telecommunications service or services to the public for hire within the Navajo Nation.

G. "Communications" means transmission, emission, or reception of information by any means of telecommunications.

H. "Electromagnetic spectrum" or "Radio Frequency Environment" means the entire range of wavelengths or frequencies of electromagnetic radiation from the longest radio waves to the shortest gamma rays.

I. "Federal Communications Commission" or "FCC" means that agency as presently authorized by the U.S. Congress or any successor agency authorized by the Congress to regulate cable television, telephone systems, and other communications matters or facilities.

J. "Franchise" means the contractual agreement between a telecommunications provider, who is required to have a franchise, and the commission which defines the rights and responsibilities of each regarding the installation, construction, operation, terms and conditions of services and maintenance of a communications system within the Navajo Nation. A franchise agreement may include the terms, conditions, and tariffs contained within or required by a certificate of convenience and necessity.

K. "Franchises" means the approved holder of a franchise.

L. "Licensee" means the holder of a valid license granted.

M. "Navajo Nation" has the same meaning as Navajo Indian Country as defined in 7 N.N.C. § 254, as amended.

N. "Person" means a natural person, either a Navajo or non-Navajo individual, sole proprietorship, partnership, corporation, joint venture, trust, estate, unincorporated association, government (other than the government of the Navajo Nation and any wholly owned subdivision or enterprise of that government), public or private organization, and any part, division or agency of any of the foregoing or any other entity.

O. "Pole Attachment" means an attachment of a wire or cable by a telephone system, or a cable television system to a pole; the term also includes ducts or conduits and other underground apparatus requiring the use of public right-of-way, owned or controlled by a public utility.

P. "Public Utility" means those applicants who have obtained a Certificate of Convenience and Necessity from the Commission to provide telecommunications service to subscribers or the general public within the Navajo Nation.

Q. "Radio Communication" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatuses, and services (among other things,

the receipt, forwarding, and delivery of communications) incidental to such transmission.

R. "Radio Station" means a station equipped to engage in radio communication or radio transmission of energy.

S. "Rates" mean any rate, toll, rental, charge or classification of any person engaged in providing telecommunications services.

T. "Subscriber" means the person or entity in whose name service is rendered, as evidenced by the signature on the application or contract for that service, or by the receipt and/or payment of statements, invoices or bills regularly issued in such name regardless of the identity of the actual user of the service.

U. "Tariff" means the filed and approved rates, rules and regulations of a telecommunications service-provider that sets forth the services and products offered and the rates charged, and the terms and conditions for the use of those services and products.

V. "Telecommunications" or "telecommunication" means any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum system, including but not limited to the telecommunications activity set forth in § 505(A)(2) of this Code.

W. "Telecommunication Service" means the providing of voice or other communication services by telecommunications including, without limitation, non-voice communication services, or data communication services which may interconnect with other telecommunication networks and/or involve operation of transmission/reception devices for binary information representation.

X. "Telephone System" means all property and facilities used in connection with telephone communication, including without limitation, the providing of telephone service, with or without the use of transmission wires.

Y. "Television Delivery Systems" means any transmission of television programming, via broadcasting, cable, microwave, or other such means of program delivery.

### **History**

CD-56-86, December 10, 1986.

### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

### **§ 504. Establishment; composition; staff**

The commission shall carry out the duties of regulating telecommunications activities within the Navajo Nation. The establishment and composition of the commission shall be governed by a plan of operation adopted

by the commission and approved by the Government Services Committee of the Navajo Nation Council. The administrative staff to carry out the duties and responsibilities of the commission shall be as provided for in the Commission's plan of operation or in the Commission's rules and regulations.

### **History**

CD-56-86, December 10, 1986.

### **Cross References**

Commission definition, see 21 N.N.C. § 503(E).

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

### **§ 505. Powers and duties**

A. In accordance with the commission's plan of operation, the commission shall have the power to perform any and all acts necessary and convenient to supervise, monitor, and regulate telecommunication and those persons providing telecommunications service within the Navajo Nation as specifically designated in this Chapter or in any rule, regulation, decision, order or other official pronouncement adopted hereunder, in the exercise of such power and jurisdiction.

B. The commission shall have the following specific powers:

1. To promulgate such rules and regulations as appropriate for the accomplishment of its purpose and authority, duties and responsibilities pursuant to this Act, and to enforce such rules and regulations;

2. To act upon and regulate any and all telecommunications activity within the Navajo Nation, including but not limited to telephone, television, telegraph, radio, cable television, satellite dishes, two-way radio, and other telecommunication services employing wire, radiowave, lightwave, electricity or any other electromagnetic system;

3. To establish methods, procedures, conditions and fees for obtaining permits and approved tariff schedules for telecommunications services within the Navajo Nation;

4. To establish procedures and requirements for hearings and investigations pertinent to the functions and powers of the commission; to receive, consider and hear complaints concerning the noncompliance by any person, of any provision of this Act and/or the commission's rules and regulations, decisions, orders or other official pronouncements; to issue and compel by power of subpoena the presence of any person or the production of any document, or any type of evidence deemed relevant to a matter properly before the commission; to issue decisions and orders, opinions or other official pronouncements, on any matter properly raised before the commission, and as may be necessary in the enforcement and implementation of its functions;

5. To establish and impose fines and/or any other civil sanction(s)

deemed appropriate by the commission, for violations of any provision of this Act and/or its rules and regulations, decisions, orders or other official pronouncements; and

6. To establish and collect franchise, filing and other fees from persons at amounts which are appropriate for the matter for which such collection is being made.

#### **History**

CD-56-86, December 10, 1986.

**Note.** Reformatted for purposes of statutory form.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 506. Compliance and enforcement**

A. All persons engaging in telecommunications activities shall comply with the provisions of this Act and all decisions or orders, rules and regulations or other official pronouncements issued pursuant to the Act. Enforcement of this Act shall be by the commission or through the Navajo Nation courts. The exhaustion of administrative remedies doctrine will apply to any third party seeking enforcement of the Act. The commission is authorized to seek judicial enforcement of the Act without first acting administratively if circumstances so require. Members of the public shall have standing to make complaints or inquiries to the commission about any telecommunications activities on the Navajo Nation.

B. Any Indian who violates any of the provisions of this Chapter shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of not more than 180 days, or ordered to pay a fine not exceeding five hundred dollars (\$500.00), or both, in accordance with the provisions of Title 17, Navajo Nation Code.

C. Any nonmember of the Navajo Nation who violates any of the provisions of this Chapter may be excluded from land subject to the jurisdiction of the Navajo Nation in accordance with the procedures set forth in 17 N.N.C. §§ 1901-1906, as amended.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 507. Jurisdiction**

The provisions of this Act shall apply within the Navajo Nation, as that term is defined in § 503(M) of this Act.

## History

CD-56-86, December 10, 1986.

## Cross References

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

### § 508. Cooperation with other jurisdictions

A. Intergovernmental Agreements. Where the extent of telecommunications regulatory jurisdiction of the Navajo Nation and the states, and their subdivisions and agencies are not clearly defined or involve potential jurisdictional conflict, including, without limitation, potential jurisdictional conflict arising from the commission's transition to a fully operational telecommunications regulatory body for the Navajo Nation, the commission is authorized as the designated representative of the Navajo Nation to negotiate and develop for approval by the Intergovernmental Relations Committee of the Navajo Nation Council appropriate intergovernmental agreements or joint powers agreements as are necessary to resolve such jurisdictional issues, and is further authorized to represent or intervene on behalf of the Navajo Nation in proceedings before the states and their subdivisions and agencies.

B. Federal Communications Commission (FCC) Coordination. The commission is vested with the authority of acting as the intermediary agency between the Navajo Nation and the FCC and in furtherance thereof to pool information and receive complaints. The Commission may, subject to applicable law, act as the intermediary for applications or complaints, filings, registrations, rulings, approvals and similar acts or matters before the FCC in those areas of telecommunications not specifically addressed in this Act or in the Commission's rules and regulations, provided nothing in this Act will prevent or interfere with the right of the public to communicate directly with the FCC. The Commission is authorized and delegated the responsibility of representing the Navajo Nation in proceedings before the FCC, including, without limitation, intervening on behalf of the Navajo Nation on matters pending before the FCC.

## History

CD-56-86, December 10, 1986.

## Cross References

Intergovernmental agreements and intergovernmental relations, see Intergovernmental Relations Committee authority at 2 N.N.C. § 821 *et seq.*

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

### § 509. General provisions

A. Unlawful Use of Service. It shall be unlawful to obtain, with the intent to defraud, or with the intent to evade lawful charge, telecommunication services without proper payment therefor or the authorization of the subscriber

of such services.

B. Unlawful Discrimination. No telecommunications service provider shall, as to rates or service, make or grant any unreasonable preference or advantage to any person, or subject any person to any unreasonable prejudice or disadvantage based upon race, creed, national origin, sex, age, or religion.

C. Emergency. The commission, upon its determination that an emergency exists, is authorized to take any and all actions necessary to address the emergency notwithstanding any other provision in this Act.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 510. Certificate of convenience and necessity**

A. Restriction. No person shall engage in providing telecommunications services within the Navajo Nation, nor shall exercise any right or privilege under any franchise or permit, without first having obtained from the commission a certificate of convenience and Necessity, unless otherwise authorized in this Act. The commission shall promulgate and issue specific rules and regulations establishing filing and informational requirements for applications for certificates of convenience and necessity.

B. Exemption of certain activities. The commission may by rule or regulation exempt certain telecommunications services from the requirement of a certificate of convenience and necessity.

C. Construction. No person engaged, or intending to engage, in providing telecommunications services within the Navajo Nation shall begin construction of any line, service or system, or any extension beyond the defined boundaries of any existing franchise or certificate of convenience and necessity without first having obtained from the commission a certificate of convenience and necessity for the territory in which such construction or extension will occur, unless otherwise authorized in this Act.

D. Application. Every applicant for a certificate of convenience and necessity shall file with the commission an application disclosing such information required by the commission's rules and regulations, and accompanied by appropriate filing fees. Each applicant shall provide evidence of compliance with the applicable laws of the Navajo Nation, in accordance with the rules and regulations of the commission.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

## **§ 511. Tariffs**

A. Rates; publication. Rates established by a person engaged in providing telecommunication services shall first be approved by the commission for reasonableness and justness before such rates are implemented, in accordance with the commission's rules and regulations. Every person engaged in providing telecommunications services shall print, and make available for public inspection its approved tariffs which include schedules showing the rates and terms of condition of service for the services rendered to the public.

B. Unlawful rates; refunds. The commission will have authority to prescribe rates where it finds the rates in effect to be unlawful. The commission is authorized to compel the return of any rates unlawfully collected by a direct refund or a general credit against future billings.

C. Rules and regulations. All rules and regulations affecting or pertaining to its charges or services to the public adopted by a person engaged in providing telecommunications services shall be approved by the commission for reasonableness or justness before such rule or regulation is implemented. Every rule and regulation not found to be reasonable or just by the commission is prohibited and unlawful.

D. Rate and tariff changes; application; notice; filing.

1. No changes or adjustments to any existing, filed and approved tariff including, without limitation, any change in rates, territory served, rules, regulations or contracts, shall be made by any person engaged in providing telecommunications services except upon a showing before, and a finding by the commission, that a change or adjustment is reasonable and justified. Application for changes to the filed and approved tariff shall be made in writing to the commission along with a filing fee, in accordance with the commission's rules and regulations. A notice plainly stating the proposed change or changes and the existence of such application for a new proposed tariff shall be made available for public inspection and will be given to all subscribers.

2. Requests for change in rates shall be heard and acted upon by the Commission pursuant to § 516 of this Act and the commission's rules and regulations. The Commission will render a final decision on a request for a change in rates within 180 days from the date of filing, or the rate that is filed will thereafter become effective at the beginning of the next billing period following, the expiration of the 180-day period and will remain in effect until the Commission makes its decision on the requested rate change. The 180-day period specified in this § 511(D)(2) will not begin to run for any pending request for a change until the effective date of this Code.

3. The commission may for good cause shown, or upon agreement with the person requesting tariff changes, modify, deny, suspend or delay the implementation of any proposed tariff changes.



4. Nothing within this Section shall prohibit any person providing telecommunications service from offering discounts or promotions or establishing rates at a level below that established by the commission on a non-discriminatory basis, provided at least 15 days prior to offering such discounts or promotions such discount or promotion will be filed with the commission in accordance with its rules and regulations.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 512. Requirements for accounting, annual statement, and audits**

A. Accounting Systems. The commission may adopt rules and regulations establishing an accounting system to be kept by any person(s) engaged in providing telecommunications services, and prescribe the manner in which accounts shall be kept. It may prescribe the forms of accounts, records and memoranda to be kept, including records covering receipts and expenditures of money, and other records necessary to carry out the provisions of this Act. Special rules may be established for different classes of those providing telecommunications services, such as those persons additionally engaged in providing interstate communications services.

B. Certified Annual Financial Statement. Every person engaged in providing telecommunications services shall file a current annual financial statement to the commission certified by a certified public accountant and in accordance with the rules and regulations of the commission, every year on or before the first day of May or as may otherwise be approved by the commission.

C. Audits. If any person engaged in providing telecommunications services fails to comply with any provision of this Section or upon the discretion of the commission if there is good cause, the commission or its designated representative is authorized to conduct or cause to be conducted an audit of the financial records and management of such person. Expenses incurred for such an audit shall be borne by the person.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 513. Quality of service; complaint**

A. Rules and Regulations for Quality Service. The commission may adopt, promulgate, and enforce rules and regulations to insure that the quality of telecommunications services are adequate, efficient, just and reasonable. All persons providing telecommunications services within the Navajo Nation shall

take all reasonable actions to ensure that the quality of service provided is equivalent or superior to similar service available in areas outside of the Navajo Nation. The scope of this provision may include, but shall not be limited to, continuity of service, service availability, the extent of service, service interruptions, billing and collection procedures, quality of equipment, termination of service, deposits, and resolution of complaints.

B. Telecommunications connections; joint rates. When the commission finds that a physical connection can reasonably be made between the lines of two or more telecommunications service providers to form a continuous line of communication, and that public convenience and necessity will be served thereby, or that two or more telecommunications service providers have failed to establish joint rates, tolls, charges for service by or over their lines, and that it is reasonable and just that a connection be established, the commission may require that a connection and joint rates be made in accordance with § 524, provided this § 513(B) will not apply where the purpose of the connection is primarily to secure transmission of local messages or conversations between points within the same town or community.

C. Non-compliance; violations. Complaints alleging non-compliance or violations of rules, regulations, decisions, orders or other official pronouncements adopted by the commission concerning the quality of telecommunications services shall be filed with the commission in accordance with the rules and regulations of the Commission and shall be heard by the commission within 45 days of filing.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 514. Health and safety**

A. Compliance with health and safety codes. The commission may adopt, promulgate, and enforce rules and regulations requiring every person engaged in telecommunications to construct, maintain, and operate its line, system, facilities, equipment, apparatuses and premises in such manner as to promote and safeguard the health, safety and welfare of its employees, customers, and the public; to this end, the commission may prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices, and to require the performance of any other acts which the health, safety or welfare of its employees, customers or the public may demand.

B. Non-compliance; Violations. Complaints alleging non-compliance or violations of the rules and regulations, decisions, orders or other official pronouncements adopted by the commission concerning the health and safety as described herein may be filed with the commission by any aggrieved party in accordance with the commission's rules and regulations.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 515. Rulemaking process; adoption of rules and regulations**

A. Establishment of Rules and Regulations. The commission may promulgate rules and regulations in accordance with this Act, for the purpose of enforcement of this Act. Prior to the adoption by the commission of any rules and regulations being promulgated in accordance with this Act, notice shall be given to the public of such proposed rules or regulations, by a method deemed proper by the commission. Such notice shall include: the nature of the proposed rule or regulation; the meeting date of the commission where it will be reviewed and public comment solicited; the deadline date for submitting written comments; the proposed effective date of proposed rule or regulation implementation, and the location where the proposed rule or regulation will be available for public inspection. The commission shall take no action on any proposed rules or regulations for at least 45 days from the date of the last publication of the commission's notice; the restrictions of § 515(A) will not apply to rules or regulations adopted pursuant to § 509(C).

B. Promulgation of other official pronouncements. The commission may promulgate other official pronouncements governing matters not requiring a formal rule or regulation from time to time.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 516. Tariff adjustments; complaints; notice of hearings; hearings; evidence; decisions; appeal**

A. Tariff Adjustments. Any person providing telecommunications services may apply to the commission for a rate/service adjustment by filing an application in accordance with the commission's then effective rules and regulations.

B. Complaint. A written complaint may be filed by any person with the commission by any person or by the commission itself, in accordance with the commission's rules and regulations. A complaint will detail the alleged act or omission of the person engaged in telecommunications which is asserted to be in violation of the Act or any decision, order, rule or regulation, or other official pronouncements of the commission and will further contain the remedy or relief sought. A complaint may also be filed by any person regarding the justness or reasonableness of any rates. The commission is also authorized to initiate the filing of a complaint.

C. Notice of Hearing. Upon the filing of a complaint, if it is

determined by the commission to establish probable cause, the commission shall serve notice within ten days, upon the person complained of, an order to show cause why the person should not be ordered to cease operations. The notice shall specify the charge, time, date and place of hearing.

D. Procedures for Hearing. The commission shall conduct a full and fair hearing on all matters properly brought before it. All such hearings will be held in accordance with the requirements of the rules and regulations adopted by the commission.

E. Decision and Order. After the conclusion of the hearing, the commission shall make and enter its findings of facts, based upon the evidence presented at the hearing and supported by substantial evidence on the record as a whole. The commission will further issue an order of its determination and decision based upon such findings and make known the effective date of such decision and order. Every order shall be in writing and signed by at least a majority of the commission membership, and should bear the seal of the commission affixed thereto. A certified copy of such order shall be served upon each party to the proceeding or their legal counsel by certified mail.

F. Reconsideration; Appeals. After an order or decision has been made by the commission, any party to the proceeding may apply for reconsideration of any matters determined in said proceeding, in accordance with the commission's rules and regulations. Any party adversely affected by the final decision or order of the commission is entitled to seek judicial review by filing a notice of appeal with the Navajo Nation Supreme Court within 30 days following entry of the order and decision entered following reconsideration. No judicial review shall be allowed unless an application for reconsideration has been filed with and ruled upon by the commission. Review of commission actions in the Supreme Court will be on the record made in the commission and not de novo and will be limited to the determination of whether the decision and order of the commission is supported by substantial evidence, is arbitrary, capricious or an abuse of discretion, is beyond the commission's authority or otherwise contrary to applicable Navajo Nation or federal law. The Supreme Court is empowered, to affirm, reverse or modify a decision and order of the commission, or to remand the matter to the commission for further action and it may stay the effect of the decision and order pending the appeal. The commission will determine by its rules and regulations whether the right of appeal will exist with respect to its adoption of any proposed rule or regulation.

G. Jurisdiction of courts. The courts of the Navajo Nation are vested with jurisdiction:

1. Over any and all persons subject to this Chapter;
2. To hear and determine any challenge to the validity of this Chapter, either generally or as applied to any person, provided that the provisions of this § 516 and § 506 and the regulations which may be adopted pursuant thereto are complied with.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 517. Violations and civil penalties**

A. Criminal Penalties. Any person engaged in telecommunications who intentionally violates or fails to comply with the provisions of the Act or decision or order, rule or regulation, or other official pronouncement issued pursuant to the Act is guilty of an offense punishable as provided in § 506.

B. Civil Penalties. Any person engaged in telecommunications who violates any provision of the Act or decision, order, rule or regulation, or other official pronouncement of the commission issued pursuant to that Act may be subject to a civil fine imposed by the commission of not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each violation, provided the commission will have the discretion to suspend, or impose probationary conditions for avoiding, the fine.

C. Agency. In determining the existence of any offense under § 517(A) or grounds for imposing any civil penalty under § 517(B), the act or omission of any officer, agent or employee of a person engaged in telecommunications, within the scope of his or her authority, duties or employment, shall be deemed to be the act or omission of the person engaged in telecommunications.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 518. Injunctions; show cause orders; contempt**

The commission may apply through the office of the Attorney General of the Navajo Nation to any court of competent jurisdiction for injunctions to prevent continuing violations of any provision of the Act or of any rule, regulation, decision, order or other official pronouncement of the commission issued pursuant to that Act, and for show cause orders to enforce any duly issued subpoena of the commission, and such courts shall have power to grant such injunctions and show cause orders, and to enforce such injunctions and show cause orders by contempt procedure.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 519. Telephone and telegraph**

A. Certificate of convenience and necessity. For the purposes of this Section, the commission is vested with authority to grant a certificate of convenience and necessity for the provision of telephone services as provided for in § 510. Tariffs shall be established and amended in accordance with §§ 511 and 516. All telephone service providers shall comply with all applicable laws, rules and regulations, decisions and orders governing leases, easements, licenses, certificates, permits or rights-of-way, and tariffs.

B. Regulation of quality of service. The commission may adopt rules and regulations, decisions and orders governing quality of service which may govern not only service transmission quality standards, but also the service itself. The commission shall have the power to issue rules and regulations, decisions and orders governing the establishment of service, temporary service, line connection, provision of service, billing and collection, resolution of customer disputes, termination of service and notice, and telecommunication service for the disabled, handicapped, and the elderly, and like matters.

C. Additions and/or extensions of service. Applications for additions and/or extensions to existing certificates of convenience and necessity shall be addressed in accordance with rules and regulations of the commission.

D. Application of state/tribal intergovernmental agreement or state statutes. The commission in considering tariff rate approvals and adjustments of telephone services may, pursuant to its authority under § 511, employ state statutes pertaining to rate regulation in accordance with intergovernmental agreements citing the necessity for deferring commission authority and jurisdiction to the state in matters of rate regulation.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 520. Protection of customer privacy**

A. Unlisted Number. It shall be the duty of telephone companies providing services within the Navajo Nation not to disclose the number or address of a subscriber holding an unlisted number, except upon permission of said subscriber, or except by request by law enforcement and emergency authorities.

B. Unlawful Use of Telephone.

1. Preventing use of a telephone in an emergency; false emergency request for Telephone. It shall be unlawful for any person willfully to refuse to yield or surrender immediately the use of a party line or of a public telephone to another person for the purpose of permitting such person to report a fire, or summon police or medical aid, or to communicate any other *bona fide* emergency. It is unlawful for any person to ask for or request the use of a party line or public telephone on the false pretext that such an emergency exists.

2. Obscene or harassing telephone calls. It shall be unlawful for any person, with intent to annoy, abuse, threaten, or harass any person at the called number to: make any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent; make a telephone call, whether or not conversation ensues, without disclosing upon request of the person called the identity of the caller; make or cause the telephone of another repeatedly or continuously to ring; make repeated telephone calls, during which no conversation ensues; knowingly permit any telephone under his or her control to be used for any purpose prohibited by this Section.

### **History**

CD-56-86, December 10, 1986.

### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

### **§ 521. Cable television**

#### **A. Franchise**

1. Authority. For purpose of this Section the commission is vested with authority to grant franchises in defined boundaries for provision of cable television services, including pay cable services, premium and basic service, within the Navajo Nation for a maximum period of 15 years. No person shall provide cable television services within the Navajo Nation without having been granted a franchise by the commission. No exclusive franchises shall be granted for the whole or part of the Navajo Nation. The commission is authorized to issue and promulgate rules and regulations for franchise requirements, applications, franchise and other fees, tariff schedules, hearing, granting or denial procedures. The commission is further authorized, subject to restrictions of applicable law, to regulate the rates for provision of cable television services, and any other communication service provided over a cable system to cable subscribers, in accordance with §§ 511 and 516 of this Act.

2. No certificate of convenience and necessity. A person holding a validly issued franchise from the Navajo Nation to provide cable television services is not required also to hold a certificate of convenience and necessity from the Navajo Nation.

**B. Revocation of Franchise.** Non-compliance with provisions of this Act or any duly adopted rule, regulation, decision, order, or other official pronouncement of the commission, or for other good cause found to exist after a full and fair hearing of the commission shall be cause for revocation or termination of the franchise. Notice of such claim or complaint against the franchisee shall be given at least ten days before hearing with an opportunity for the franchisee to show cause why the franchise should not be revoked or terminated.

**C. Obtaining cable television services fraudulently; penalty.** No person

shall tamper with, or make connection with, the equipment providing cable television services by mechanical, electrical, acoustical, or other means with intent to avoid payment of the lawful charges for cable television service. In addition to other sanctions provided in the Act, any person violating the provisions of this Section shall be liable to the cable television operator for reasonable damages plus reasonable attorneys' fees and costs.

D. Satellite Dish. Any person, using a satellite dish for retransmission of cable television signals for hire, monetary consideration or reimbursement shall be subject to the provisions of this Act except for those systems expressly preempted by applicable federal law as non-regulated.

E. Obscenity-indecency; penalties. It is unlawful for any person providing cable television services within the Navajo Nation to broadcast or in any way produce, transmit, process or distribute by video programming, obscene or indecent material. This Section of § 521(E) will not become effective until the commission has issued and promulgated rules and regulations defining "obscene" and "indecent".

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 522. Other television delivery systems**

A. Purpose. Pursuant to regulatory guidance of the FCC, the commission may issue, promulgate and enforce rules and regulations governing multi-point distribution systems, multi-channel-multi-point distribution systems, satellite main antenna systems, direct broadcast systems, two-way television systems, and any other television programming delivery systems involving the use of microwave, fiber optic, and other video technology, video storage devices, and electromagnetic spectrum frequencies, as those technologies evolve into commercial or private use on the Navajo Nation.

B. Commercial delivery systems. Any person providing television programming delivery services for the purpose of generating revenues from subscribers must adhere to the rules and regulations, decisions, orders, or other official pronouncements of the Commission.

C. Non-profit delivery systems. Any person providing television programming delivery services in a non-profit capacity, or as a public service, must also adhere to the rules and regulations, decisions, orders, or other official pronouncements of the commission.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**



Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

**§ 523. Regulation of telemarketing and/or television marketing**

The commission may issue, promulgate and enforce rules and regulations governing telemarketing and/or television marketing within the Navajo Nation.

**History**

CD-56-86, December 10, 1986.

**Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

**§ 524. Attachments to poles, ducts and conduits**

A. The commission is authorized to issue and promulgate rules and regulations governing use of public utility facilities.

1. Joint/Pole Use. In order to provide efficient and quality telephone and cable services, the commission may authorize joint use of public utility poles, ducts, and conduits located within the Navajo Nation, owned or controlled by a public utility company. All joint use agreements including the compensation provisions thereof for wire or cable attachments to a pole, duct, or conduit must be approved by the commission. Upon the approval of the joint use agreement for pole attachments, all persons to such agreement shall have the right to use or share in and enjoy the use of the right-of-way easement granted to the pole owner.

2. Disputes. Disputes concerning terms and conditions, including rental rates, of the joint use agreement for attachments shall be resolved by the commission at a full and fair hearing conducted for that purpose pursuant to § 516 of this Act, and in accordance with the Commission's rules and regulations.

**History**

CD-56-86, December 10, 1986.

**Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

**§ 525. Radio and television**

A. The purpose of this Section is to further the development of television reception to areas of the Navajo Nation not presently receiving this service.

B. The Radio Frequency Environment. Subject to applicable federal law, the radio frequency environment as defined by § 503(H) is recognized by the Navajo Nation as a Navajo Nation resource. The commission shall have the

authority to review, develop, and issue policy to ensure that this resource is utilized to the fullest extent possible for the future benefit of the Navajo Nation and its residents subject to applicable federal law.

C. Leases, easements, licenses, permits, rights-of-way. Any person engaged in broadcasting, seeking to install, construct, operate, or maintain any radio or television station, translator station, facility, tower, microwave equipment, or apparatus, prior to such installation, construction, operation, or maintenance shall file with the commission evidence of compliance with applicable laws of the Navajo Nation and the federal government, governing leases, easements, licenses, permits, or rights-of-way.

D. Application of FCC Doctrines. Any person engaged in broadcasting shall be subject to the FCC doctrines and rules, including, but not limited to, "the fairness doctrine", "equal access time", "personal attack" and "political editorializing" as such doctrine may be further defined and clarified by the rules and regulations of the commission.

#### **History**

CD-56-86, December 10, 1986.

**Note.** The paragraphs under this Section have been redesignated with letters for clarity and statutory form.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

#### **§ 526. Radio communications systems**

A. Authorization; Rules and Regulations. For purposes of this § 526, the establishment and operation of maintenance facilities for the Navajo Nation radio systems are authorized. The commission is vested with the authority to issue, promulgate, and enforce rules and regulations for the provision of two-way radio service on the Navajo Nation. Any holder of any class of FCC radio license will adhere to the rules and regulations of the commission pertaining to the certificate of convenience and necessity when two-way radio services are provided by a person to a customer with the intent to generate revenue or profit.

B. Filing of certified copy of license. Any holder of any class of FCC radio license, excluding citizens band radio, shall maintain on file with the commission, a certified copy of that license.

C. Protection of public. It shall be unlawful to use two-way radio communications to transmit messages which abuse or further the fraudulent use of such apparatuses or facilities.

#### **History**

CD-56-86, December 10, 1986.

#### **Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

**§ 527. Severability**

If any provision of this Act or the application of such provision shall be held invalid the remainder of the Act and the application of such provision other than those held invalid shall not be affected thereby.

**History**

CD-56-86, December 10, 1986.

**Revision note.** Slightly reworded for purposes of clarity.

**Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

**§ 528. Prior inconsistent law superseded**

Upon the effective date of this Navajo Telecommunications Regulatory Act, all prior inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

**History**

CD-56-86, December 10, 1986.

**Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

**§ 529. Effective date**

The effective date of all provisions of this Navajo Telecommunications Regulatory Act shall be December 10, 1986.

**History**

CD-56-86, December 10, 1986.

**Cross References**

Navajo Telecommunications Regulatory Commission, see 2 N.N.C. § 3451 *et seq.*

**Subchapter 2. [Reserved]**

**§§ 530 to 550. [Reserved]**

**Subchapter 3. Television**

## **§ 551. Development of television reception**

The Navajo Nation Council approves of the further development of television reception to areas of the Navajo Nation not presently receiving this service.

### **History**

CN-70-59.

**Revision note.** § 551 was not repealed by CD-56-86 and is not inconsistent with the Navajo Telecommunications Regulatory Code.

## **Chapter 6. [Reserved]**

**§§ 601 to 617. [Reserved]**

### **History**

Former §§ 601 to 617 were transferred to 5 N.N.C. §§ 1651 to 1655 pursuant to CAP-23-03.

## **Title 22**

### **Water**

#### **Chapter 1. Development and Improvement**

##### **Subchapter 1. Generally**

###### **§ 1. Program; authority to prepare and present**

The President of the Navajo Nation is authorized and directed, with the approval of the Resources Committee, to prepare and present to the Navajo Nation Council a program to increase the supply of available water on Navajo Nation lands and by sanitary measures to make a larger portion of such water safe for domestic use.

### **History**

CF-36-57, February 15, 1957.

CJ-66-53, 1953 Res. p. 276, July 31, 1953.

CJ-23-53, 1953 Res. p. 274, January 23, 1953.

CJ-15-53, 1953 Res. p. 268, January 15, 1953, authorized water development programs and appropriations for such programs.

Shortages of water; control. ACJN-95-66, June 15, 1966.

Sewage treatment facilities at Tuba City. CAP-43-65, April 21, 1965.

Water development survey. By ACMA-25-65, March 15, 1965.

Agreement for repair and maintenance of water wells. CD-60-64, December 11, 1964.

Water and sanitation facilities-Support of federal program. CN-62-59, November 12, 1959.

Agreements with Surgeon General:

ACMY-65-66, May 3, 1966.

ACD-174-64, December 3, 1964.

ACJN-90-64, June 15, 1964.

ACJN-88-64, June 15, 1964.

ACMA-37-64, March 19, 1964.

ACMA-36-64, March 19, 1964.

ACJA-10-64, January 15, 1964.

ACJN-95-63, June 27, 1963.

ACJN-94-63, June 27, 1963.

ACJN-93-63, June 27, 1963.

ACJN-83-63, June 3, 1963.

ACF-45-63, February 15, 1963.

ACJY-99-60, July 5, 1960.

ACJY-98-60, July 5, 1960.

ACAP-56-60, April 25, 1960.

ACD-169-59, December 2, 1959.

CN-62-59, November 12, 1959.

### **Subchapter 3. Emergency Water Transportation Assistance Program**

#### **§ 51. Establishment**

The Navajo Nation Council established the Emergency Water Transportation Assistance Program and the Program will be operated within the Water Operations and Maintenance Department within the Division of Natural Resources.

### **History**

ACJN-66-84, June 12, 1984.

### **§ 52. Justification**

The lack of rainfall and snowfall on Navajo rangelands has resulted in severe drought conditions. Navajo stockmen are subject to unbearable hardship and, therefore, as an absolute necessity to alleviate some of the hardship suffered by the livestock during this drought season, prompt implementation of the Emergency Water Transportation Assistance Program is imperative.

### **History**

ACJN-66-84, June 12, 1984.

### **§ 53. Objective**

A. The Water Operations and Maintenance Department shall be responsible for the implementation of the Emergency Water Transportation Assistance Program in close coordination with the Bureau of Indian Affairs, Land Operations, Navajo Tribal Utility Authority, the Indian Health Services, the Grazing Committees and the Land Board Members, chapter officers, and other agencies engaged in water and livestock resources.

B. A Coordinator shall be employed by the Water Operations and Maintenance Department who will be responsible for the administration and implementation of the Emergency Water Transportation Assistance Program.

### **History**

ACJN-66-84, June 12, 1984.

### **§ 54. Duties and responsibilities**

The duties and responsibilities of the Coordinator are as follows:

A. The Coordinator shall implement the Emergency Water Transportation Assistance Program. The Construction Supervisor II of the Water Operations and Maintenance Agency Stations will designate "Field Inspectors" to monitor and provide directions to the Navajo Truckers in their respective areas on a daily basis, during the duration of this Emergency Water Transportation Assistance Program.

B. The Coordinator will keep and maintain accurate records of all expenditures, keep accurate records of all Trucking Agreements and submit a weekly financial and general program status report to the Director of the Water Operations and Maintenance Department.

C. The Coordinator shall insure adherence to proper accounting procedures, and existing policies and procedures established by the Navajo Nation Division of Finance.

D. The Coordinator shall have sufficient supervisory control to insure

that the intent and objectives of the Emergency Water Transportation Assistance Program are accomplished.

E. The Coordinator shall receive all resolutions for water hauling which shall be reviewed by the Director of the Water Operations and Maintenance Department for proper action. Priorities will then be established according to the severity of the drought conditions existing in the various areas of the Navajo Nation.

#### **History**

ACJN-66-84, June 12, 1984.

**Revision note.** Slightly reworded for purposes of clarity.

#### **§ 55. Trucking operation**

A formal "Trucking Agreement" shall be drawn up with the individual truckers who shall provide trucks, water tanks, and insurance in accordance with conditions set forth in the Agreement. It shall be the responsibility of the Field Inspector to see that the truckers adhere to all the conditions contained in the Agreement.

#### **History**

ACJN-66-84, June 12, 1984.

#### **§ 56. Amendment**

This Plan of Operation may be amended, as necessary and appropriate, by the Government Services Committee of the Navajo Nation Council.

#### **History**

ACJY-115-85, July 9, 1985.

### **Subchapter 5. Distribution to Drought-Distressed Areas**

#### **History**

**Change of name.** The Division of Water and Sanitation, referred to in ACJY-128-60 and ACJY-129-60, is the predecessor to the Resources Division and the Ground Water Development Department. The Water Department is now under the Division of Natural Resources.

#### **§ 121. Applications; survey of drought-stricken areas**

Applications for water for drought stricken areas shall be made by chapter organizations to the Division of Natural Resources. After the approval of applications by the Division of Natural Resources, the Division shall survey the drought stricken areas to determine the extent of distress and suggest feasible economical sources of relief.

### **History**

CAP-25-67, April 13, 1967.

QN-67-66, June 9, 1966.

CJY-32-63, July 16, 1963.

ACJY-128-60, July 26, 1960.

ACJY-129-60, July 26, 1960.

CJY-49-60, July 22, 1960.

### **§ 122. Contract trucks; Navajo Nation trucks**

A. The Division of Natural Resources shall contract for individually owned trucks to haul water to designated areas and each trucker shall be assigned the source from which the water is to be hauled. Preference shall be given to Navajo truck owners who are not presently employed elsewhere. Contract truckers shall be paid 14 cents (14 per ton mile, in liquid measurements, or equivalent thereof, one-way, and there will be no payment for dead runs. The maintenance and upkeep of the contracted trucks shall be the responsibility of the truck owner.

B. Trucks for hauling water shall be provided by the Navajo Nation whenever contract truckers are not available or when tanks cannot be found. Special equipment, repairs and the cost of operating Navajo Nation vehicles shall be paid for out of appropriated funds.

### **History**

ACJY-128-60, July 26, 1960.

**Revision note.** The last sentence of subsection (B) was slightly rephrased for purposes of clarity.

### **§ 123. Development of water sources; equipment and labor; costs**

A. All reasonable efforts shall be made to develop water sources already available in stricken areas. Where sound wells equipped with windmills are not producing properly, engines and pump jacks shall be installed. Equipment and labor shall be paid for out of appropriated funds, but operation of the installations shall be at the direction of each community, and the costs paid for by the people making use of the facilities.

B. In areas where natural water sources are not adequate, special equipment shall be purchased and installed under the special water program. Storage tanks, hauling tanks, drinking troughs, pumps, pipe and fixtures shall be acquired and installed under the program where the need and efficiency make it most feasible.

### **History**



ACJY-28-60, July 26, 1960.

### **Subchapter 7. Window Rock Water Supply and Storage System**

#### **§ 171. Construction and operation; authority**

The President of the Navajo Nation, with the approval of the Resources Committee, is authorized, empowered, and instructed to do any and all things deemed to be necessary, advisable or incidental to accomplish the construction and operation of a water supply and storage system for Window Rock.

#### **History**

CJA-18-59, January 23, 1959.

### **Chapter 2. [Reserved]**

### **Chapter 3. Use of Water by Non-Navajos**

#### **§ 401. Sale-Generally**

All water sales to non-Navajo individuals and organizations shall be by means of a "standard water purchase contract".

#### **History**

ACO-140-65, October 22, 1965.

ACD-168-59, December 2, 1959.

**Nonpotable water.** ACF-17-65, February 11, 1965.

#### **§ 402. Price**

A. Well water shall be sold at the rate of 30 cents (30 per 1,000 gallons on a "pump it yourself" basis.

B. Surface water shall be sold at the rate of 25 cents (25 per 1,000 gallons.

C. The selling price of water supplied from a pumping station or system operated by the Navajo Nation shall be determined in each such case by the President of the Navajo Nation.

#### **History**

ACD-168-59, December 2, 1959.

#### **§ 403. Exploration or drilling of wells; permit**

No exploration or drilling of wells by non-Navajo individuals or organizations shall be done without first obtaining from the Navajo Nation a permit to perform such exploration or drilling.

## History

ACD-168-59, December 2, 1959.

## Chapter 5. Irrigation Projects

### Cross References

Irrigated farm lands, see 3 N.N.C. §§ 45 and 61.

### § 601. Responsibility for operation and maintenance; policy

It is in the best interests of the Navajo Nation to accept responsibility for the operation and maintenance of irrigation projects on the Navajo Nation.

## History

CMY-36-67, May 9, 1967.

CO-106-66, October 5, 1966.

CAP-56-66, April 28, 1966.

ACJN-80-65, June 9, 1965.

ACAU-129-64, August 24, 1964.

CMA-14-64, March 2, 1964.

ACJY-113-62, July 19, 1962.

CJA-15-60, January 22, 1960.

CJA-12-60, January 20, 1960.

CF-11-58, February 14, 1958.

CD-86-5, December 12, 1957.

CS-81-57, September 18, 1957.

CF-33-57, February 6, 1957

### Cross References

Navajo Indian Irrigation Project, for text of Act, see Appendix in Title I of this Code.

### § 602. Acquisition of land

A. The Resources Committee of the Navajo Nation Council is authorized to cooperate with the Secretary of the Interior in the purchase of non-Navajo

ranches within the boundaries of the Navajo Indian Irrigation Project insofar as such purchases pertain to private and state lands.

B. The President of the Navajo Nation shall enter into, and execute on behalf of the Navajo Nation, such agreements as he or she finds may be necessary and desirable to acquire lands within the Navajo Indian Irrigation Project, and is further authorized and directed to do any and all things necessary, advisable or incidental to the accomplishment of the purpose and intent of this Chapter.

#### **History**

CJN-44-71, June 1, 1971.

#### **Cross References**

Land acquisitions, 2 N.N.C. § 695(B) (3).

### **Chapter 7. [Reserved]**

#### **History**

The Emergency Services Department Plans of Operation codified previously at Chapter 7, §§ 801-807 deleted pursuant to Navajo Nation Attorney General's memorandum dated January 4, 1991. See Plans of Operation for Emergency Management, Disaster Assistance, and the Public Safety Committee.

### **Chapter 9. Water Development Technical Review Board**

#### **§ 1001. Establishment**

The Navajo Water Development Technical Review Board is established.

#### **History**

ACMY-51-82, May 11, 1982.

**Revision note.** Slightly reworded for purposes of clarity.

#### **§ 1002. Purposes**

The purposes of the Water Development Technical Review Board are:

A. To act as a technical review board for proposed water projects of the Navajo Nation.

B. To authorize, review and implement a five year water development plan with regard to the economic and construction feasibility of proposed Navajo water projects as was authorized by Navajo Tribal Council Resolution CF-17-82.

#### **History**

ACMY-51-82, May 11, 1982.

**Revision note.** Slightly reworded for purposes of clarity.

**§ 1003. Membership; selection; term**

Five members shall be appointed by the President of the Navajo Nation who shall serve at the pleasure of the President of the Navajo Nation.

**History**

ACMY-51-82, May 11, 1982.

**§ 1004. Powers; duties and responsibilities**

A. General. The Navajo Water Development Technical Review Board shall have all powers, duties and responsibilities necessary to carry out its purposes as set forth in 22 N.N.C. § 1002, pursuant to Navajo Tribal Council Resolution CF-17-82.

B. Enumerated duties and responsibilities. The Water Development Technical Review Board shall have the following duties and responsibilities:

1. To review all documents presenting proposals for Navajo Nation water development projects.

2. To determine if the construction of a proposed water development project is economically and technically feasible.

3. To require that all necessary Tribal and local approvals and clearances have been obtained.

4. To finally review, authorize and prepare water development project proposals, with the assistance of such technical advisors as deemed necessary or appropriate by the Board so that the project may be implemented.

5. To assist in development and to approve a budget for each proposed Navajo Nation water development project so that the project can be included in the budget of the Navajo Nation for implementation in any one given Navajo Nation fiscal year.

6. To submit to the Resources Committee two written reports each year on the status and progress of all pending and approved water projects of the Navajo Nation.

**History**

ACMY-51-82, May 11, 1982.

**Revision note.** Slightly reworded for purposes of clarity.

**§ 1005. Meetings**

A. Regular meetings of the Navajo Water Development Review Board shall be

held not more than two times per month. Special meetings may be called by the Chairperson of the Board of Navajo Water Development Technical Review Board.

B. Procedures. The Water Development Technical Review Board is empowered to develop its own procedures for the conduct of meetings, provided that all formal substantive action shall be taken by written resolution duly certified by the presiding officer, or memorialized by written memorandum setting forth the action taken and signed by the presiding officer and filed with the Central Records Department of the Navajo Nation.

C. Members of the Navajo Water Development Technical Review Board shall have authority only when acting as a Board legally in session; the Review Board shall not be bound in any way by any statement or action on the part of any individual Board member or advisor, unless such statement or action is in pursuance of a specific resolution or authority of the Review Board, which shall be duly recorded in minutes of the Board meetings, and attested to by the Chairperson of the Navajo Water Development Technical Review Board.

D. The Chairperson of the Navajo Water Development Technical Review Board shall be appointed by the President of the Navajo Nation. In the absence, of the Chairperson or the Vice-Chairperson or other Review Board member as the Chairperson or Vice-Chairperson shall delegate, shall call, conduct and preside at all meetings of the Navajo Water Development Technical Review Board, enforce the procedural rules adopted by the Review Board and sign all papers and documents required for action by the Review Board.

E. A majority of the members of the Review Board shall constitute a quorum for the transaction for business, and all actions and decisions of the Review Board shall be determined by a vote of the majority of Review Board members, including the Chairperson and members represented by duly executed proxy. Each such member shall have one vote.

F. A Review Board member may designate any other Review Board member present, by prior written authorization as his or her proxy to vote upon any or all matters to be determined at a specified Review Board meeting, or to take any other action on his or her behalf as specified in his or her said proxy.

G. A Review Board member may vote only one proxy vote and must be present at the specified meeting in order to vote as proxy for a Review Board member who is not present there at.

H. Advisors. The Chairperson of the Navajo Water Development Technical Review Board is authorized to enlist the assistance of representatives of such Navajo Nation entities and other technical staff advisors as deemed appropriate in furtherance of the function and duties of the Navajo Water Development Technical Review Board, who the Chairperson may designate as official advisors to the Review Board on a continuing or on a designated project basis, and such advisors shall provide appropriate support, advice and counsel on substantial matters.

### **History**

ACMY-51-82, May 11, 1982.

**Revision note.** Slightly reworded for clarity.

#### **§ 1006. Compensation**

A. Members of the Navajo Water Development Technical Review Board shall be provided per diem allowances for expenses for attendance at regular or special meetings or in the performance of official duties as assigned and authorized in writing by the Chairperson of the Navajo Water Development Technical Review Board, at the rate of fifty dollars (\$50.00) per diem for such meetings held within the exterior boundaries of the Navajo Nation and one hundred dollars (\$100.00) per diem for such meetings held elsewhere, together with the current Tribal mileage rate for their travel expenses.

B. Technical or other advisory staff members may be reimbursed by written authorization of the Chairperson of the Navajo Water Development Technical Review Board at the current Tribal rates for actual travel expenses only and will receive no additional compensation.

C. Members of the Navajo Water Development Technical Review Board and Navajo Nation advisory staff shall otherwise assume their responsibilities in addition to their other responsibilities as employees of the Navajo Nation.

#### **History**

ACMY-51-82, May 11, 1982.

#### **Cross References**

Travel and travel expenses, see 2 N.N.C. § 3851 *et seq.*

See also Navajo Nation Personnel Policies and Procedures.

### **Chapter 11. Navajo Nation Water Code**

#### **Subchapter 1. General Provisions**

##### **§ 1101. Declaration of purposes; assertion of authority**

In order to provide for a permanent homeland for the Navajo People to protect the health, the welfare and the economic security of the citizens of the Navajo Nation, to develop, manage, and preserve the water resources of the Navajo Nation, to secure a just and equitable distribution of the use of water within the Navajo Nation through a uniform and coherent system of regulation, and to provide for the exercise of the inherent sovereign powers of self-government by the Navajo Nation, the Navajo Nation asserts its sovereign authority over all actions taken within the territorial jurisdiction of the Navajo Nation which affect the use of water within the Navajo Nation.

#### **History**

CAU-34-84, August 2, 1984.

##### **§ 1102. Application of the Code**

Upon the effective date of this Code, it shall be unlawful for any person within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.N.C. § 254, to impound, divert, withdraw, otherwise make any use of, or take any action of whatever kind affecting the use of water within the territorial jurisdiction of the Navajo Nation unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever source, shall be recognized, except use-rights obtained under and subject to this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1103. Nature of ownership**

A. The Navajo Nation is the owner of the full equitable title to all of the waters of the Navajo Nation as defined in § 1104 of this Subchapter, and that title resides undiminished in the Navajo Nation; the United States holds the legal title to those waters solely as trustee for the Navajo Nation.

B. All rights to the use of the waters of the Navajo Nation are held subject to the overriding, prior and supreme rights, interests and governmental authority of the Navajo Nation, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1104. Waters of the Navajo Nation defined**

The waters of the Navajo Nation are defined as: (1) all waters reserved at any time for any purpose to the Navajo Nation, and to Navajo Indian lands by the Navajo Nation or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (2) all waters held by the Navajo Nation through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition; (3) all surface and groundwaters which are contained within hydrologic systems located exclusively within the lands of the Navajo Nation; and (4) all groundwaters located beneath the surface of the lands held in trust by the United States of America for the Navajo Nation.

#### **History**

CAU-34-84, August 2, 1984.

### **Subchapter 2. Notice of Enactment and Effect**

#### **§ 1201. Notice required**

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Division of Natural Resources shall, within 30 days after the effective date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this Subchapter.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1202. Contents of notice**

A. Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

NOTICE: AFTER \_\_\_\_\_ NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO TAKE ANY ACTION WITHIN THE TERRITORIAL JURISDICTION OF THE NAVAJO NATION WHICH AFFECTS THE USE OF WATER WITHIN THE NAVAJO NATION, UNLESS SUCH ACTION IS AUTHORIZED BY A PERMIT AS PROVIDED FOR BY THE NAVAJO NATION WATER CODE. NO OTHER WATER USE RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. THE NECESSARY FORMS MAY BE PROCURED FROM THE DIVISION OF NATURAL RESOURCES, POST OFFICE BOX 308, WINDOW ROCK (NAVAJO NATION), ARIZONA 86515, (928) 729-5281-5284. COMPLETE COPIES OF THE NAVAJO NATION WATER CODE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.

B. In addition to the foregoing statement, the Director of the Division of Natural Resources may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1203. Notice—How given**

A. The Director of the Division of Natural Resources shall give notice of the provisions of this Code as follows:

1. The notice provided above shall be placed in the Navajo Times at least once each week over a 6-week period.

2. The notice provided above shall be placed in a prominent and conspicuous location at the chapter houses, the Navajo Nation government offices, the Bureau of Indian Affairs offices, U.S. Post Offices, Indian Health Service hospitals and clinics, and in such other locations as are deemed necessary or appropriate.

3. The Director of the Division of Natural Resources may take any other steps and post any other notices as is deemed necessary to provide notice of the provisions of this Code.

#### **History**



CAU-34-84, August 2, 1984.

Subchapter 3. Resources Committee of the Navajo Nation Council

**§ 1301. Resources Committee—General powers**

A. In administering this Code, the Resources Committee may in addition to other actions:

1. Enter appropriate orders;
2. Recommend to the Navajo Nation Council for consideration, adoption, modification, or amendment such regulations as are deemed necessary to implement this Code;
3. File or intervene in any lawsuit, at the direction of Navajo Nation Council, or the President of the Navajo Nation Council;
4. Receive regular reports from the Director of the Division of Natural Resources;
5. Make determinations of availability and need as provided for in Subchapter 8 of the Code;
6. In cooperation with the Navajo Land Department, negotiate for and propose to the Navajo Nation Council the purchase or sale of real or personal property or other interests;
7. With the consent of the appropriate standing committees of the Navajo Nation Council and/or the Navajo Nation Council, enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off Navajo Nation lands, for appropriate purposes including the administration of interstate streams and groundwaters;
8. In cooperation with the other standing committees of the Navajo Nation Council, determine existing and foreseeable uses of and needs for water and other related resources; and
9. Take other actions as provided for in this Code.

**History**

CAU-34-84, August 2, 1984.

**Cross References**

Resources Committee powers, 2 N.N.C. § 694 *et seq.*

**§ 1302. Disqualification**

Any member of the Resources Committee may be disqualified either on his or her own motion or upon a majority vote of the Resources Committee whenever he or she is unable, because of a direct economic interest or other conflict of

interest, to serve impartially with respect to any matter.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1303. Water reserves**

In connection with a determination of availability and need as provided for in Subchapter 8 or in connection with other actions taken under this Code, the Resources Committee may establish within particular areas dependent on common water supplies, reserve water supplies which, although subject to existing uses on an interim basis, are set aside for a definite or indefinite term of years for future Navajo Nation and other needs.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1304. Water assessments**

Whenever the Resources Committee of the Navajo Nation Council determines that water not presently available is necessary for purposes and projects beneficial to a part or all of the Navajo Nation and the inhabitants thereof, the Resources Committee may assess individual water users a fair share of water, in predetermined units for such purposes, according to the relative priorities of the classes of uses.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1305. Designations of local management areas**

The Resources Committee may, upon the recommendation of the Director of the Division of Natural Resources, Navajo Nation Departments or any person, isolate and define, within the surface and groundwater systems in which individual water uses are to some degree related by reason of common supply, "local management areas," such as municipal water districts or irrigation districts, for specialized administration under regulations adopted pursuant to this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1306. Large user water permits**

The Resources Committee may, at its option or upon application, recommend for consideration by the Navajo Nation Council the granting of water use permits for amounts in excess of 1000 acre feet per year and/or for uses which require assurance of long-term supply. Such permits may be conditioned upon payment of consideration and contain other contractual terms including but not limited to, limited periods of times of use, differing conditions of

revocability or terminability, and other conditions providing varying degrees of permanence.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1307. Charges for water uses**

Reasonable charges may be imposed by regulations of the Resources Committee for the use of the waters of the Navajo Nation. Such charges shall not apply to domestic uses, stockwatering uses, fish and wildlife uses and irrigated agriculture uses. Additional charges may be imposed on users by regulations of the Resources Committee for the operation and maintenance of water delivery systems. Waivers of charges may be granted by the Resources Committee, if the use is shown to be of benefit to the Navajo Nation.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1308. Resources Committee—Method of operation**

In performing its duties under this Code, the Resources Committee is a standing committee of the Navajo Nation Council subject to the oversight and control of the Navajo Nation Council.

#### **History**

CAU-34-84, August 2, 1984.

### **Subchapter 4. Division of Natural Resources**

#### **§ 1401. Information function**

It is the duty of the Director of the Division of Natural Resources to gather for Navajo Nation use and for submission to the Resources Committee information related to the waters administered under this Code. To this end the Director of the Division of Natural Resources shall:

A. Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters within the Navajo Nation;

B. Develop such additional data and studies pertaining to water availability, quality, and use as are necessary to accomplish the objectives of this Code;

C. Solicit public comment, consult the Chapters and obtain expert advice when appropriate;

D. Investigate water uses and other activities affecting the waters within the Navajo Nation to determine compliance with this Code and with

applicable regulations, orders, determinations, permits, water quality standards, etc., issued pursuant to this Code;

E. Investigate water quality when appropriate; and

F. Develop standards and regulations concerning water quality and water allocation and submit them for recommendation by the Resources Committee and for consideration and approval by the Navajo Nation Council.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1402. Enforcement function**

It shall be the duty of the Director of the Division of Natural Resources to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of the Division of Natural Resources may:

A. Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, withdrawal, and impoundment, obstructions to the flow of water and other activities adversely affecting water quantity or quality;

B. Initiate by means provided herein, proceedings for violations of this Code and the actions taken under this Code; and

C. Enter upon land to inspect methods of diversion, withdrawal and impoundment, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when necessary, and compel testimony and data, by Navajo Nation Court subpoena, if necessary, concerning actions affecting the quality or quantity of the waters administered under this Code.

D. All enforcement actions shall be subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights, 1 N.N.C. § 1 *et seq.*

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1403. Advisory function**

The Director of the Division of Natural Resources may, from time to time, make proposals to the Resources Committee concerning the following:

A. The advisability of establishing local management areas as provided for in Subchapter 3 of this Code;

B. The advisability of making determinations of availability and need as provided for in Subchapter 8 of this Code;

C. The advisability of taking other actions and adopting other plans and methods in order to optimize available water supplies and to minimize pollution and thermal degradation;

D. The advisability, in cooperation with the Navajo Land Department, of purchasing, selling, exchanging and acquiring any interest in real or personal property;

E. The advisability of participating in administrative proceedings, law suits and other legal proceedings;

F. The advisability of entering into administrative agreements and other cooperative ventures with tribal, local, state or federal agencies outside of the Navajo Nation Council and the Resources Committee, for appropriate purposes including the administration of interstate streams and groundwaters;

G. The advisability of amending or otherwise changing Sections of this Code or adding new Sections; and

H. The advisability of taking other actions which will further the policies and purposes contained herein and increase the effectiveness of this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **Cross References**

Intergovernmental agreements, see 2 N.N.C. § 824(B)(4) and (6).

#### **§ 1404. Administrative function**

In administering this Code, the Director of the Division of Natural Resources may:

A. Grant, deny, modify and revoke water use permits;

B. Make determinations of water use rights;

C. Initiate proceedings to enforce this Code;

D. Insure, in coordination with other appropriate agencies, adequate water levels in streams, rivers, ponds, and lakes to protect Navajo traditional religious practices, wildlife conservation and other values; and

E. Enter appropriate orders.

#### **History**

CAU-34-84, August 2, 1984.

## **Subchapter 5. Guidelines for Administration**

### **§ 1501. General policy provisions**

In taking any action under this Code, the Resources Committee and the Director of the Division of Natural Resources shall be guided by the following basic policy guidelines:

A. Whenever practicable, actions taken should benefit the Navajo Nation and the members of the Navajo Nation and further the objective for which the Navajo Nation was created to provide a permanent home and abiding place for the members of the Navajo Nation, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for the benefit of the Navajo Nation. If there is presented to the Resources Committee or the Director of the Division of Natural Resources a conflict between water uses for the benefit of the Navajo Nation or any of the members of the Navajo Nation and non-Navajo Nation projects or uses, the Resources Committee or the Director of the Division of Natural Resources may grant such preference as may be required by this Code, which lie in the best interests of the Navajo Nation and its members.

B. In taking any action under this Code which may impose substantial economic hardship on persons or entities presently using water, or which threaten degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values, the Resources Committee, or the Director of the Division of Natural Resources shall, in reaching their decision, carefully consider and weigh:

1. The economic dislocation and hardship which will be imposed by such actions;

2. The investment in time, money and other resources made by the parties affected in reliance upon any previous system of distribution and use of water;

3. Any other burdens as may be imposed by such action;

4. The nature and extent of degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values.

C. The Resources Committee or the Director of the Division of Natural Resources, when considering a proposed action, shall balance the adverse effects against the benefits to the Navajo Nation and other interests which are advanced as justifying the proposed action; shall consider alternatives to the proposed action which will lessen adverse effects; and shall shape any final action so that its adverse effects will be minimized to the greatest extent possible to protect the water resources.

D. When insufficient water supplies are present for whatever reason or term, the following priority of uses shall be considered in the order in which

they are listed:

1. Domestic and municipal uses;
2. Stock watering uses;
3. Agricultural uses;
4. Instream needs, for fish, wildlife conservation and recreational uses;
5. Economic development uses including industrial and power uses;  
and
6. Other uses.

### **History**

CAU-34-84, August 2, 1984.

### **§ 1502. Guidelines for making most effective use of available resources**

In addition to the policy guidelines contained in the previous section, the Resources Committee and the Director of the Division of Natural Resources shall take appropriate actions to:

- A. Insure adequate water supplies;
- B. Maintain water levels for diversion and withdrawal systems;
- C. Maintain head and pressure in groundwaters;
- D. Prevent or reduce obstruction of surface water flows;
- E. Increase efficiency of conveyance systems; increase efficiency in water application; increase return flow; prevent waste and maximize use of the available supply,
- F. Create and enhance the efficiency of natural and artificial surface and underground storage;
- G. Enhance natural and artificial recharge of aquifers;
- H. Define and control interbasin transfers of both surface and groundwaters;
- I. Provide for some degree of overdraft from aquifers when short term recharge is not possible;
- J. Minimize interference between competing users of water sources, whether above or below ground;
- K. Minimize water quality degradation and the adverse effects of water pollution whether from point sources or non-point sources;

L. Minimize thermal degradation or the adverse effects of thermal degradation;

M. Minimize interaquifer communication;

N. Plan for long-term water development;

O. Penalize misuse; and

P. Otherwise insure conformity with the policies and provisions of this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1503. Additional policy guidelines**

A. Rivers, streams, lakes and ponds within the Navajo Nation are to be retained substantially in their natural conditions, with the base flows and water levels necessary to provide for preservation of traditional and religious, recreation, wildlife, fish, scenic, aesthetic, and other environmental values, to the extent possible. Withdrawals of water which would conflict with these interests should be authorized only where it is clear that overriding considerations of the public interest and welfare will be served.

B. Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given as to means and methods for protection of recreation, fish and wildlife resources in the planning for and construction of water impoundment structures and other artificial obstructions.

C. Individuals, corporations, groups, associations and other entities shall be required to carry out reasonable practices of water and resource conservation and environmental protection as they relate to the use of waters within the Navajo Nation.

#### **History**

CAU-34-84, August 2, 1984.

### **Subchapter 6. Descriptions of Use and Applications for Permit**

#### **§ 1601. Existing use inventory**

In order to determine existing uses of water within the Navajo Nation, the Division of Natural Resources shall cause an inventory of existing water uses to be made and completed within two years following the effective date of this Code. The inventory shall be based upon the information contained in § 1602, "Descriptions of Use".

#### **History**



CAU-34-84, August 2, 1984.

**§ 1602. Description of Use-Required**

All persons desiring to continue to operate existing uses must file a "Description of Use", as required by this Subchapter, within one year of the effective date of this Code. After such date, it shall be unlawful to continue to operate any use or to continue any other action within the jurisdiction of the Navajo Nation which affects the waters therein except as authorized by this subchapter. Individuals or groups making use of a well or other water source operated by another need not file a Description of Use unless the operator fails to do so.

**History**

CAU-34-84, August 2, 1984.

**§ 1603. Application for permit-Required**

Upon the effective date of this Code, all persons desiring to initiate new uses of, or take other actions within the jurisdiction of the Navajo Nation affecting the waters therein shall file an Application for Permit as required by this Subchapter. After such date, it shall be unlawful for any person to make any new use or take any other action within the jurisdiction of the Navajo Nation affecting the waters therein except as authorized by this Code.

**History**

CAU-34-84, August 2, 1984.

**§ 1604. Description of Use and Application for Permit-Contents**

"Descriptions of Use" and "Applications for Permit" shall be on forms provided by the Director of the Division of Natural Resources and shall include the following information;

- A. The name and mailing address of the claimant;
- B. The name, if available or a description of the source or sources from which water is or will be diverted or withdrawn;
- C. The purpose or purposes for which water is or will be used;
- D. The quantity of water which is or will be used;
- E. A legal description, if such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment;
- F. A description of the method or methods of diversion, withdrawal or impoundment. The description of the method or methods of groundwater withdrawals shall be by a Drilling Permit on a form approved by the Resources Committee;

G. A description of how water is or will be applied or consumed, including acreage and crop if the water is for irrigation; the kind and number of stock if the water is for stock watering; and the number of people and/or homes to be served if the water is for domestic or municipal use;

H. The best estimate reasonably possible of return flow to the source or sources, including how, when, at what point or points, and with what changes in quality and temperatures;

I. The estimated date on which the use or uses began or will be commenced;

J. If any preexisting use is claimed, a description of any documents or programs upon which it is based; any statute or statutes or legal doctrine upon which the use is based; and any pertinent litigation creating or affecting the use;

K. The water user's plan for future development of the water use or uses and related activities; and

L. Any other information deemed necessary by the Resources Committee.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1605. Interim permits**

A "Description of Use" which is made with respect to a use existing prior to the effective date of this Code shall, until a permit is issued or denied, serve as an interim permit authorizing the use of a reasonable quantity of water for the uses described and actually made while the application is pending. Additional uses planned but not commenced prior to the effective date of this Code may be made on an interim basis upon Emergency Certification by the Director of the Division of Natural Resources until a permit covering such uses is issued or until other action is taken under this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1606. Fees**

Each "Application for Permit" shall be accompanied by a twenty-five dollars (\$25.00) filing fee. Provided, however, that the Director of the Division of Natural Resources may waive payment of such filing fee in cases of demonstrated financial hardship.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1607. Public notice of Descriptions of Use and Applications for Permit-**

## **Initial notice**

As soon as possible and no more than two years after the effective date of this Code, the Director of the Division of Natural Resources shall divide the Navajo Nation into hydrologic basins or watersheds in which water uses are to some degree interrelated and prepare:

A. A map of the Navajo Nation showing such basins or watersheds;

B. A listing for each basin or watershed of each use described and permit applied for, which listing shall include names and addresses of applicants, descriptions of water sources, quantities applied for, points of diversion, withdrawal or impoundment, methods of diversion, withdrawal or impoundment and descriptions of the uses to be made;

C. A statement that the applicants described in the listing have applied for permits under the Navajo Nation Water Code and that any persons claiming that their uses may be adversely affected by the issuance of such permits may object to their issuance in accordance with the provisions for objection, notice and hearing provided for in this Code;

D. A brief description of the objection, notice and hearing provisions of this Code and information which will assist the objecting parties in procuring the necessary forms and commencing an objection;

E. A statement that any person may comment either orally or in writing on the issuance of any permit; and

F. A brief description of the public comment and investigation Sections of this Chapter.

G. The map, listings, statements and descriptions prepared under the preceding Paragraphs shall forthwith be published and posted in the same manner as provided in § 1203 "Notice-How given", subject to the following exceptions: (A) maps and description of objection procedures may be omitted if deemed impractical; (B) newspaper publications may be limited to four weekly notices; and (C) listings need be published and distributed only in the hydrologic basins or watersheds affected by proposed or existing uses.

## **History**

CAU-34-84, August 2, 1984.

## **§ 1608. Public notice of Applications for Permit—Continuing operation**

When additional "Applications for Permit" are received during the course of the administration of this Code, the Director of the Division of Natural Resources shall, in conformance with the preceding Section:

A. Include in the listing provided for in § 1607(B) the necessary information concerning the new use or action.

B. Prepare a statement that one or more new "Applications for Permit" have been made and objections may be made to them in accordance with § 1607(C).

C. Prepare the descriptions and statements provided in § 1607(D), (E) and (F).

D. The revised listing, statements and descriptions provided for in the preceding paragraphs shall forthwith be published, posted and mailed in the affected area in the same manner as provided for in § 1607, in order to assure adequate notice and an opportunity for hearing to persons who may be adversely affected by the proposed uses or actions.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1609. Objections affecting descriptions of use and applications for permit**

Any person or entity whose interests are or may be affected by a water use described and/or applied for may, within 30 days from the date of publishing, and posting of notice that such use has been described and/or applied for, file a formal objection to the issuance of the permit applied for.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1610. Form and contents of objections**

A. Objections may be made on forms prepared and made available by the Director of the Division of Natural Resources and shall include the name and mailing address of the party objecting; the name of the applicant whose application is objected to; a description of the water use objected to; a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for; and any suggested conditions or other provisions which should be included in any permit granted.

B. Oral objections may be made to the Director of the Division of Natural Resources when it is determined by the Director that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of the Division of Natural Resources.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1611. Reply by applicant**

Any applicant for a permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1612. Hearings regarding issuance of permits**

Any applicant directly affected or any party objecting in accordance with this Subchapter may request and obtain as a matter of right a hearing on such objection. In addition, the Director of the Division of Natural Resources or the Resources Committee may schedule a hearing concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed. Provided, that whenever possible hearings concerning proposed or existing uses in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication. Unless otherwise provided for in this Subchapter, notice of such hearings shall be as provided for in Subchapter 10, and shall be given to: the applicants whose uses are objected to; the objecting parties; other persons designated by the objecting parties and applicants; all other persons affected by the proposed use in question and all other persons requesting notice. Unless otherwise provided for in this Subchapter, hearings shall be conducted as provided for in Subchapter 10.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1613. Public comment**

Any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code. It is the policy of the Navajo Nation that all interested parties be given the opportunity to participate in the decision making process as set forth in this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1614. Investigation and review of permit issuance**

In addition to gathering information from the objections, comments, and hearings as provided for above, the Director of the Division of Natural Resources may make any reasonable investigation of the facts and circumstances surrounding the permit application; may solicit comments and information from the public and from appropriate governmental agencies; and may otherwise gather information which will assist in making the decision to issue or deny a permit in accordance with the provisions of this Subchapter.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1615. Issuance or denial of permits**

As soon as possible after application, hearing, if any, and a reasonable period for public comment shall have passed, and no more than 90 days after the date of the application, if uncontested, or the hearing, if a hearing is held, the Director of the Division of Natural Resources shall review the comments and information gathered with respect to a specific application and either deny a permit or issue a permit in the form provided for in Subchapter 7.

### **History**

CAU-34-84, August 2, 1984.

## **Subchapter 7. Water Use Permits**

### **§ 1701. Form**

Water use permits issued in accordance with this Code shall be on a form approved by the Resources Committee.

### **History**

CAU-34-84, August 2, 1984.

### **§ 1702. Information contained**

Each permit shall include:

- A. The name and mailing address of the permittee;
- B. The name of, if available, or a description of, the source or sources from which water is or will be diverted, withdrawn or impounded;
- C. The quantity of water which will be used;
- D. The legal description, if such is readily available, or other description reasonably describing the point or points of diversion, withdrawal or impoundment;
- E. A description of the method or methods of diversion, withdrawal or impoundment;
- F. The purpose or purposes for which water is or will be used;
- G. A description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, the kind and number of stock if the water is for stock watering, and the number of people and/or homes to be served if the water is for domestic or municipal use;
- H. The approximate date upon which the use or uses permitted began or will be commenced;
- I. Any other information as is deemed necessary and appropriate.

### **History**

CAU-34-84, August 2, 1984.

### **§ 1703. Conditions**

Each water use permit issued pursuant to this Code shall contain whatever

conditions are necessary to insure adequate quality and quantities of water; to otherwise further the purposes, policies and guidelines contained within this Code; and to assist in the effective administration of this Code. These may include, but are not limited to, conditions and limitations concerning:

- A. The source from which water may be diverted, withdrawn or impounded;
- B. The quantity of water which may be diverted, withdrawn or impounded during any particular time;
- C. The point or points of diversion, withdrawal or impoundment;
- D. The method or methods of diversion, withdrawal or impoundment;
- E. The purposes for which water will be used;
- F. The method of application;
- G. The location and purpose of application, including acreage for crops and number of livestock for livestock watering;
- H. The quantity and quality of return flow;
- I. The time period during which water may be used;
- J. Schedules for diversion, withdrawal or impoundment, including optional rotation schedules;
- K. Provisions for surface or groundwater storage of surplus flows;
- L. Provisions for increasing the efficiency of diversion, withdrawal or impoundment and application;
- M. Provisions for maintaining minimum pools and streamflows for fish, wildlife, recreation, aesthetic and Navajo religious values;
- N. Provisions for insuring minimum pumping and diversion levels with respect both to surface and underground water;
- O. Provisions designed to maintain head and pressure in groundwaters;
- P. Provisions designed to prevent or reduce obstruction of surface water flows;
- Q. Provisions designed to minimize point and non-point source pollution, water quality degradation and thermal degradation;
- R. Provisions designed to enhance recharge of aquifers;
- S. Provisions designed to define and control interbasin transfers of surface and groundwaters;
- T. Provisions for some degree of overdraft from aquifers when short-term recharge is not possible;

U. Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;

V. Provisions to minimize interaquifer communication;

W. Provisions to insure long-term water development;

X. Any other provisions necessary to insure conformity with the policies and provisions of this Code and actions taken pursuant to this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1704. Entry on land**

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he or she shall consent to reasonable entry upon his or her land by Navajo Nation employees engaged in the administration of this Code. Every permit issued under this Code shall contain the condition that no use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his or her land.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1705. Effect**

A water use permit issued under this Code constitutes nothing more than Navajo Nation permission to use the water within the territorial jurisdiction of the Navajo Nation, subject to the terms and conditions of the permit, to this Code, and to actions taken pursuant to this Code. No water use permit issued hereunder shall be construed as creating or recognizing any right other than Navajo Nation permission to use water, nor shall any water use permit ripen into any interest other than such limited permission.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1706. Revocability**

Unless otherwise indicated, water permits issued under this Code are revocable by the Director of the Division of Natural Resources in accordance with the policies, purposes, guidelines and procedures established in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights 1 N.N.C. § 1 *et seq.*

#### **History**

CAU-34-84, August 2, 1984.



### **§ 1707. Modification**

Water permits are modifiable in accordance with the procedures provided in this Code, and in accordance with the Indian Civil Rights Act 25 U.S.C. § 1301 *et seq.* and the Navajo Nation Bill of Rights 1 N.N.C. § 1 *et seq.*

#### **History**

CAU-34-84, August 2, 1984.

## **Subchapter 8. Determination of Availability and Need**

### **§ 1801. When proceeding available**

Whenever at any time after the Existing Use Inventory is completed an application for a permit covering a new or changed use of, or other action affecting water is made, or a complaint concerning an existing or proposed use, or other action affecting the water is made, or a request is made by the Resources Committee, and it appears probable to the Director of the Division of Natural Resources that a water supply common to a particular area is or will be used beyond its capacity, or otherwise adversely affected, the Director of the Division of Natural Resources may initiate a proceeding to determine the availability of and need for water in accordance with the provisions of this subchapter.

#### **History**

CAU-34-84, August 2, 1984.

### **§ 1802. Purposes**

The purposes of a proceeding to determine availability of and need for water under this Subchapter shall be: to evaluate existing and future needs dependent upon a particular supply; to compute with reasonable certainty the characteristics of a particular supply, including quantity, surface and groundwater levels, rates and directions of flow, rates of recharge, out-of-basin sources, pollution, thermal degradation, and other characteristics, at particular locations and times; to explore various methods for increasing supply such as artificial recharge, storage, increased efficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; to assist in land use planning in accordance with the policies and action of the Navajo Nation; and to make available to other Navajo Nation, local, state and federal agencies and to members of the public information concerning the waters in question.

#### **History**

CAU-34-84, August 2, 1984.

### **§ 1803. Notice of proceeding**

A. Whenever a proceeding is initiated under § 1801 of this Subchapter,

the Director of the Division of Natural Resources shall provide notice of such proceeding in the same manner as provided in § 2002 to all parties who are using or will use or otherwise affect or rely upon the water supply in question, or will otherwise be directly affected by such proceeding.

B. Such notice shall state in plain and simple language the reason for initiation of the proceeding; the nature of the proceeding; the geographic area covered by the proceeding; and, as nearly as may be determined, the possible effects of such a proceeding on individual water uses.

C. The Director of the Division of Natural Resources shall make every reasonable effort to ensure that all persons or entities whose interests are or will be affected by the proceeding have reasonable notice of the nature, scope and possible effects of the proceeding and a reasonable opportunity to prepare for and participate in the proceeding.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1804. Division of Natural Resources—Investigation initiation**

As soon as the Director of the Division of Natural Resources determines that a proceeding shall be initiated under this subchapter, he or she shall define as accurately as possible the area covered by the proceeding and commence an investigation as provided herein.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1805. Division of Natural Resources—Information gathering**

The Director of the Division of Natural Resources shall initiate an investigation to gather and evaluate all available, pertinent data from whatever sources concerning the water supply and needs for water in question; to formulate proposals concerning the use of the water in question; and to provide other information, alternatives, and recommendations shall be contained in the report of the Director of the Division of Natural Resources provided for in § 1806 of this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1806. Division of Natural Resources—Report**

Upon completion of the investigation provided for in § 1805, and no more than 90 days after the initiation of the investigation, the Director of the Division of Water Resources shall transmit to the Resources Committee the report concerning the availability of and need for water in the particular area to which the proceeding applies. The report shall include the following:

A. A geographic and geologic description of the area studied, setting out

as precisely as possible the boundaries of the area;

B. A general description of the water supply in that area, from all sources;

C. A description of the various characteristics of the water supply which are relevant to present and proposed uses and other actions;

D. A computation of the water supply available at particular times and places;

E. A description of present and proposed uses of and other actions affecting the water supply in question;

F. A description and evaluation of the need for each such present or proposed use or other action;

G. A description of possible methods for increasing available water supply;

H. A description of economic and technical methods which may be implemented to increase the efficiency of use;

I. Alternatives for present uses which will minimize the impacts described in § 1501 of this Code;

J. Amounts of water within the particular supply which shall be subject to a reserve as provided in § 1303 of this Code;

K. Proposals for assessing varying amounts of water as provided for in § 1304 of this Code; and

L. Any additional information and recommendations which the Director of the Division of Natural Resources deems is necessary for inclusion.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1807. Proposed Determination of Availability and Need**

As soon as possible and no more than 30 days after receipt of the report of the Director of the Division of Natural Resources, the Resources Committee shall cause to be prepared a proposed "Determination of Availability and Need" in accordance with the provisions of this subchapter.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1808. Determination of Availability and Need—Contents**

"Determination of Availability and Need" may include the following, either as recommendations or mandatory provisions:

- A. A description and map of the affected area;
- B. A description of the water supply in the affected area, including a description of the various characteristics of the supply which are especially pertinent to present and proper water uses within that area;
- C. A description of the various, present and future needs for using or affecting the water supply in the area;
- D. A list of priorities to be observed within the affected area;
- E. A list of storage methods which are or may be proposed and implemented;
- F. A description of methods for increasing efficiency;
- G. A description of possible interbasin transfers; and
- H. Other information, provisions and recommendations or requirements reasonably calculated to inform the affected parties concerning the future management of the water supply in question.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1809. Notice of hearing**

As soon as possible and no more than 30 days after the drafting of a proposed "Determination of Availability and Need", the Director of the Division of Natural Resources shall provide notice, in the manner provided for in § 1803, of a public hearing at which interested persons may present oral or written comments concerning the proposed "Determination of Availability and Need". Included in the notice shall be a description and map of the affected area; a description of the proceeding to date and a clear statement that copies of the proposed "Determination of Availability and Need" shall be made reasonably available to interested person. The notice shall state the date, time and place for a hearing to be held not less than 30 nor more than 60 days after the date notice is required.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1810. Hearing**

A hearing shall be held with respect to every proposed "Determination of Availability and Need". Whenever possible, such hearings shall be held in the affected area, at a date, time and place which is reasonably convenient to a major portion of the parties affected. At such hearings, the Resources Committee or its designees shall provide a brief oral statement of the purpose of the hearing and a description of the proceeding to date, including the proposed "Determination". At least one member of the Resources Committee shall

be present and shall preside over the hearing. After the presentation is made by the Resources Committee or its designees, public comment shall be allowed. Public comment may be limited by reasonable rules adopted by the Resources Committee to insure an opportunity for full comment. Hearings may be continued if necessary to such times and places as are deemed appropriate upon adequate notice.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1811. Final Determination of Availability and Need**

As soon as possible, and no more than 60 days after the public hearing provided in § 1810, the Resources Committee shall cause to be prepared a final "Determination of Availability and Need". Notice of this final "Determination" shall be made in the same manner as provided for in § 1803 and shall indicate that copies of the "Determination" are reasonably available for public review.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1812. Subsequent action**

Upon completion of the above proceedings, the Director of the Division of Natural Resources shall make copies of the "Determination of Availability and Need" made under the provisions of this Subchapter reasonably available to parties requesting the same; shall grant, revoke, deny or modify permits in accordance with such "Determination", shall enter appropriate orders and take other actions authorized by this Code to prevent overuse and/or pollution in accordance with such Determination; and shall take whatever other actions are necessary and authorized by this Code to assist in the implementation of the "Determination" and of the policies, provisions and guidelines set forth in this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1813. Appeal**

Appeals from the final "Determination of the Availability and Need" shall be taken in the same manner as provided for in Subchapter 11 of this Code.

#### **History**

CAU-34-84, August 2, 1984.

### **Subchapter 9. Transfer and Loss of Rights**

#### **§ 1901. Transfer, assignment, descent, distribution and creation of security interest**

Permits issued under this Code shall not be subject to transfer, assignment, descent, distribution or creation of any security interest without the express written consent of the Director of the Division of Natural Resources. Applications for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Director of the Division of Natural Resources. Such forms shall be designed to solicit information concerning any substantial changes which will or may occur as a result of the transfer, assignment or creation of a security interest in a water use permit. Every attempt should be made to conform with the purposes of Subchapter 6, governing "Descriptions of Use and Applications for Permit". Heirs and successors in interests of permittees shall apply for permits in their own names; however, such substitute permits shall be freely granted unless changing hydrological conditions clearly warrant a modification of the prior permits.

### **History**

CAU-34-84, August 2, 1984.

### **§ 1902. Loss by non-use**

A. Any right to use or otherwise affect in any way water within the territorial jurisdiction of the Navajo Nation, regardless of its origin, shall become void and revert, to the extent of the abandonment or non-use, to the Navajo Nation when the holder of such use right wholly or partially abandons the same, or voluntarily fails without sufficient cause to use all or a portion of the water available under such use right for a period of five consecutive years.

B. "Sufficient cause" shall include:

1. Drought or other unavailability of water;
2. Active service in the armed forces of the United States;
3. The operation of legal proceedings;
4. The application of any laws restricting water use;
5. Incarceration in a penal institution;
6. Confinement in a mental institution, whether voluntary or involuntary;
7. Incompetence by reason of age or mental incapacity;
8. Provisions for future use as provided in this Code; or
9. Other causes of non-use beyond the control of the holder or holders of the use right claimed.

C. Before such rights to use water may be deemed lost by non-use or abandonment, the Director of the Division of Natural Resources shall serve

notice on the holders of such use rights to appear at a hearing to be held before the Resources Committee not less than 30 days after the mailing or personal service of such notice and show cause why their use rights should not be deemed void. Such notice and hearing shall be in the manner provided for in Subchapter 10 of this Code governing notice and hearing.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1903. Loss by adverse possession, prescription, estoppel, or acquiescence**

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel or acquiescence.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 1904. Outside proceedings**

No use right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided for in this Code, and in compliance with the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights, 1 N.N.C. § 1 *et seq.*

#### **History**

CAU-34-84, August 2, 1984.

### **Subchapter 10. General Hearing Provisions**

#### **§ 2001. Applicability**

Unless otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this Subchapter.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2002. Notice**

A. All parties who will or may be directly affected by a proposed action shall be given notice by mail of any hearings held under this Subchapter. In addition, notice of hearings shall be published in one paper having general circulation in the affected area and notice of hearings shall be posted in prominent places in the affected area, as set forth in Subchapter 2 of this Code.

B. Every attempt shall be made to give each party who will or may be directly affected by any action actual notice of that action and fair and

adequate opportunity to be heard.

**History**

CAU-34-84, August 2, 1984.

**§ 2003. Time and place of hearing**

Whenever possible hearings shall be held in the affected area, at a date, time and place which is convenient for a major portion of the parties affected.

**History**

CAU-34-84, August 2, 1984.

**§ 2004. Continuances**

Continuances shall be freely granted when the ends of justice so require and in order to assure adequate notice and opportunity to be heard.

**History**

CAU-34-84, August 2, 1984.

**§ 2005. Presiding officer**

The Resources Committee shall designate a qualified and impartial hearing officer to preside over hearings provided for in this Subchapter.

**History**

CAU-34-84, August 2, 1984.

**§ 2006. Forms of evidence**

Evidence may be submitted in any practical form including oral testimony, written evidence, and descriptive evidence. The ordinary rules of evidence shall not apply but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfairly admitted, may be excluded or admitted only under special conditions or stipulations.

**History**

CAU-34-84, August 2, 1984.

**§ 2007. Consolidation of hearings**

Whenever possible, hearings concerning proposed or existing actions in a particular watershed or area shall be consolidated to promote efficiency, minimize expense or hardship, and to prevent duplication.

**History**

CAU-34-84, August 2, 1984.



## **§ 2008. Recording**

Hearings shall be recorded by mechanical means, provided, that any person may provide at his or her own expense for a stenographic record.

### **History**

CAU-34-84, August 2, 1984.

## **§ 2009. Decision**

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the Hearing Officer shall prepare findings of fact and conclusions of law and shall recommend a proposed decision to the Director of the Division of Natural Resources. The Director may make such modifications as are clearly warranted by the evidence and applicable law and shall issue a final decision, including an explanation for any changes made in any recommendation of the Hearing Officer, within 30 days of such recommendation. Such decision shall be published and served upon the parties in the same manner as provided in § 2002 governing notice of hearings.

### **History**

CAU-34-84, August 2, 1984.

## **Subchapter 11. Appeals**

### **§ 2101. Appeals provided for**

There shall be no appeal from actions taken under this Code except as provided herein. Appeals shall be to the Supreme Court of the Navajo Nation.

### **History**

CAU-34-84, August 2, 1984.

### **Cross References**

Navajo Rules of Civil Appellate Procedure, see Rule 7.

Supreme Court of the Navajo Nation, 7 N.N.C. § 801.

### **§ 2102. Notice of Appeal—Jurisdiction**

Any party aggrieved by any final action taken under this Code may, by filing a Notice of Appeal with the Supreme Court of the Navajo Nation, obtain review of such final action. The Supreme Court shall have no jurisdiction to hear any appeal initiated pursuant to this subchapter unless the Notice of Appeal is filed with the Supreme Court of the Navajo Nation within 30 days after the date of the final action. "Final action" means any action taken under this Code for which no further consideration by the Director of the Division of Natural Resources or the Resources Committee is required.

### **History**

CAU-34-84, August 2, 1984.

### **§ 2103. Notice of Appeal—Service**

Upon filing of the Notice of Appeal the party appealing the final action shall forthwith, and no more than 10 days after filing of the Notice of Appeal, cause the Notice of Appeal to be served on all parties to the proceeding being appealed from, on the Director of the Division of Natural Resources, and on the Chairperson of the Resources Committee.

### **History**

CAU-34-84, August 2, 1984.

### **§ 2104. Transmittal of record**

A. Upon receipt of the Notice of Appeal, the Director of the Division of Natural Resources and the Resources Committee shall cause all pertinent documents in their possession, and any other articles of evidence in their possession, to be transmitted to the Supreme Court of the Navajo Nation.

B. Any party to an appeal may, at the Director's own expense, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Supreme Court of the Navajo Nation. Provided that the Director of the Division of Natural Resources in his or her discretion shall bear the final financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

### **History**

CAU-34-84, August 2, 1984.

### **§ 2105. Oral argument**

Upon receipt of the Notice of Appeal, the Supreme Court of the Navajo Nation shall, as soon as possible and no more than 15 days after receipt thereof, notify the Resources Committee, the Director of the Division of Natural Resources, the appealing party, and the other parties to the proceedings of a date certain for full hearing before the Supreme Court of the Navajo Nation.

### **History**

CAU-34-84, August 2, 1984.

### **§ 2106. Briefs**

Parties may at their own option or shall when requested to do so by the Supreme Court of the Navajo Nation file briefs in support of their appeal. Briefs shall be due on dates set by the Supreme Court of the Navajo Nation and no less than 30 days after receipt of the notice provided for in § 2105 of this

Subchapter.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2107. Scope of review**

The Supreme Court of the Navajo Nation, in reviewing the final action appealed from, shall limit its review to the issues and the evidence which were before the Director of the Division of Natural Resources or the Resources Committee at the time of the final action appealed from. The Supreme Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed from. Provided, final actions appealed from may only be reversed, modified or remanded when they are arbitrary, capricious, unsupported by substantial evidence, not in substantial conformity with this Code, or otherwise contrary to law.

#### **§ 2108. The Supreme Court--Additional powers**

A. The Supreme Court of the Navajo Nation may on its own motion or upon motion of any party dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.

B. In addition, the Supreme Court may stay the operation of final actions appealed from, in whole or in part, and may when the ends of justice require, provide for a supersedeas bond or other security from the parties to the appeal.

#### **History**

CAU-34-84, August 2, 1984.

### **Subchapter 12. Definitions**

#### **§ 2201. Director of the Division of Natural Resources**

"Director of the Division of Natural Resources" means the Executive Director of the Division of Natural Resources of the Navajo Nation government, his or her designated representative or agent, or his or her successor in responsibility, as determined by the President of the Navajo Nation.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2202. Domestic use**

"Domestic use" means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

#### **History**

CAU-34-84, August 2, 1984.

**§ 2203. Effective date**

The "effective date" referred to herein shall be the date of the resolution of the Navajo Nation Council approving adoption of this Code.

**History**

CAU-34-84, August 2, 1984.

**§ 2204. Municipal use**

"Municipal use" means all reasonable water uses necessary in carrying out the functions of municipal government, local Chapter government and growth centers or towns.

**History**

CAU-34-84, August 2, 1984.

**§ 2205. Person**

"Person" includes an individual; a partnership; a corporation, whether public and private; and a governmental entity, unit or agency, whether tribal, local, state or federal.

**History**

CAU-34-84, August 2, 1984.

**Subchapter 13. Prohibited Acts**

**§ 2301. Waste of water prohibited**

No waters that have been withdrawn, diverted, impounded or otherwise taken pursuant to a valid permit or otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion, withdrawal and impoundment works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions, withdrawals and impoundments such shall not be construed as waste if reasonable diligence is shown by the permittee in effecting necessary repairs.

**History**

CAU-34-84, August 2, 1984.

**§ 2302. Unauthorized actions affecting waters prohibited**

Whenever any use or other action affecting the use of waters within the territorial jurisdiction of the Navajo Nation is required by this Code to be

authorized under the provisions of this Code, it shall be a violation of this Code to knowingly make such use or take such other action without the authorization required.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2303. Obstruction of Navajo Nation employees**

The willful obstruction of or interference with Navajo Nation employees performing their lawful duties under this Code shall be a violation of this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2304. Misstatement of material facts**

The knowing misstatement of any material fact by any person or entity when providing information required by this Code, with respect to "Descriptions of Use and Applications for Permit" or otherwise, shall be a violation of this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2305. Sanctions for Code violations**

Violations of this Chapter may subject the person(s) or entity(ies) responsible to forfeiture or suspension of rights to the use of water administered under this Code. Sanctions may also include the requirement of payment for water improperly used or adversely affected by the improper use; payment of the costs for all associated remedial actions taken, including the replacement of lost water; payment of associated administrative costs incurred by the Navajo Nation as a result of the violation; and payment of such other costs as are necessary to render the Navajo Nation and its inhabitants whole. Sanctions shall be imposed by the Director of the Division of Natural Resources subject to the limitations imposed by the Indian Civil Rights Act 25 U.S.C. § 1301 *et seq.*, and the Navajo Nation Bill of Rights, 1 N.N.C. § 1 *et seq.*

#### **History**

CAU-34-84, August 2, 1984.

### **Subchapter 14. Miscellaneous Provisions**

#### **§ 2401. Severability**

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the Code can be given effect without the invalid

provision or application; and to this end the provisions of this Code are declared to be severable.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2402. Construction**

This Code shall be liberally construed to effectuate its objectives, policies, guidelines, purposes, and provisions.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2403. Review of authority**

The Resources Committee and the Director of the Division of Natural Resources shall, from time to time, review the authority granted to them under this Code and propose amendments and additions thereto to the Navajo Nation Council in order to improve administration under this Code.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2404. Extension of time limits**

The time limits provided for in various places of this Code may be extended, for good cause shown, by the agency before whom the proceeding is pending when the ends of justice so require.

#### **History**

CAU-34-84, August 2, 1984.

#### **§ 2405. Representation**

Parties appearing at hearings and other proceedings provided for by, this Code may represent themselves or may be represented by individuals licensed to practice before the Courts of the Navajo Nation if they so desire.

#### **History**

CAU-34-84, August 2, 1984.

### **Chapter 13. Navajo Nation Safe Drinking Water Act**

#### **History**

The Navajo Public Water Systems Supervision Program, previously adopted by resolution CD-57-86, December 10, 1986, and codified at 22 N.N.C. § 2501 et

seq., was rescinded and replaced by resolution CJY-50-95 which originally enacted the Navajo Nation Safe Drinking Water Act. The Navajo Nation Safe Drinking Water Act was subsequently amended by resolutions CJY-70-98 and CAU-69-01. For purposes of organizational consistency and to maintain the NNSDWA's subchapters, the NNSDWA has been relocated from Subchapter 15 of Chapter 11 to its own Chapter 13 within Title 22 but maintains its section numbers at 22 N.N.C. § 2501 *et seq.*

### **Subchapter 1. General Provisions**

#### **§ 2501. Title**

This Act may be cited as the "Navajo Nation Safe Drinking Water Act" (NNSDWA).

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2502. General policy**

It is the policy of the Navajo Nation to recognize, preserve, and protect the health and welfare of the Navajo People by ensuring that water is safe for drinking and to protect underground sources of drinking water from contamination by the subsurface emplacement of fluids by injection wells as well as by surface and subsurface discharges.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2503. Purpose**

The purpose of this Act is to protect the health and welfare of the Navajo People and the environment by establishing appropriate drinking water standards to ensure that drinking water is safe for consumption, and by protecting underground sources of drinking water from potential contamination by underground injection activities.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2504. Definitions**

A. "Administrator" - Means the Administrator of the United States Environmental Protection Agency.

B. "Aquifer" - means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

C. "Attorney General" - means the Attorney General of the Navajo Nation.

D. "Contaminant" - means any physical, chemical, biological or radiological substance or matter in water including uranium and other radiological isotopes.

E. "Community Water System" - A public water system that:

1. Serves at least 15 service connections used by year-round residents of the areas served by the system; or

2. Regularly serves at least 25 year-round residents. Community water systems serve a residential population on a year-round basis. Users of community systems are likely to be exposed to any contaminants in the water supply over an extended time period.

F. "Director" - Means the Executive Director of the Navajo Nation Environmental Protection Agency or his/her designee.

G. "Endangerment to Drinking Water Sources" - Means, in reference to underground injection, that such injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply a public water system, and that the presence of such contaminant may result in such system's not complying with a Navajo Nation Primary Drinking Water Regulation or may otherwise adversely affect the health of any person.

H. "EPA" - The United States Environmental Protection Agency.

I. "Exempted Aquifer" - Means an aquifer or portion of an aquifer that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in the Navajo Nation Underground Injection Control regulations.

J. "Exemption" - Means a waiver granted by the Director to a public water system pursuant to this Act and regulations promulgated hereunder.

K. "Fluid" - Means any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gas or any other form or state.

L. "Groundwater" - Means water below the land surface in a zone of saturation.

M. "Injection Well" - Means a "well" into which "fluids" are being injected.

N. "Lead-Free" - When used with respect to solders and flux, "lead-free" shall mean not more than two-tenths percent (0.2%) lead, and when used with respect to pipes and pipe fittings, "lead-free" means not more than eight percent (8%) lead.



O. "Maximum Contaminant Level" – means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, except in the case of turbidity, where the maximum permissible level is measured at the point of entry to the distribution system.

P. "Navajo Nation" – Means:

1. When referring to the body politic, except as the context by otherwise require, the same meaning as set forth in 1 N.N.C. § 552.

2. When referring to governmental territory, all lands and water within the territorial boundaries of the Navajo Nation, including:

a. All lands and waters within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments, all without regard to the nature of this title thereto;

b. All lands and waters held in trust by the United States for or restricted by the United States or otherwise set apart under the superintendence of the United States for the use or benefit of the Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

c. All other lands and waters over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

Q. "Navajo Nation Environmental Protection Agency, or NNEPA" – Means the agency established by the Navajo Nation Council pursuant to CAP-47-95, 2 N.N.C. § 1921 *et seq.* to carry out the environmental laws and regulations adopted by the Navajo Nation.

R. "Non-Community Water System" – Means a public water system that is not a community water system.

S. "Person" – means an individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

T. "Primary Drinking Water Regulations" – Means requirements promulgated under this Act that:

1. Apply to public water systems;

2. Specify contaminants which, in the judgment of the Director, may have an adverse effect on the health of persons;

3. Specify for each contaminant either:

a. A maximum contaminant level if, in the judgment of the Director, it is economically and technologically feasible to ascertain the level of contaminant in public water systems; or

b. If, in the judgment of the Director, it is not economically or technologically feasible to so ascertain the level of contaminant, each treatment technique known to the Director which leads to a reduction in the level of contaminant sufficient to satisfy the requirements of § 1412 of the SDWA, 42 U.S.C. § 300g-1, and of Subchapter 3 of this Act; and

4. Contain criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels, including accepted methods for quality control and testing procedures to ensure compliance with such levels and to ensure proper operation and maintenance of the public water system, and requirements as:

a. To the minimum quality of water which may be taken into the system; and

b. Siting for new facilities for public water systems.

U. "Public Water System Owner or Operator" – Means any person who owns and/or operates a public water system.

V. "Public Water System" –

1. The term "public water system" means a system for the provision to the public water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

a. Any collection, treatment, storage and distribution facilities under control of the operator of such system and which are used primarily in connection with such system; and

b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "non-community water system."

2. For purposes of Paragraph 1, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

a. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

b. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for

residential or similar uses for drinking and cooking; or

c. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

W. "PWSSP" – Means the NNEPA program responsible for implementing and enforcing the provisions of this Act pertaining to public water systems.

X. "Regularly Serves" – Means that a public water system serves an average of at least 25 individuals daily at least 60 days out of the year.

Y. "Resources Committee" – Means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 691 *et seq.* with oversight authority over the Navajo Nation Environmental Protection Agency as provided for by the Navajo Nation Council Resolution No. CAP-47-95.

Z. "Safe Drinking Water Act or SDWA" – means the Public Health Service Act, as amended by the Safe Drinking Water Act Amendments of 1986 as amended, 42 U.S.C. § 300f *et seq.*

AA. "Sanitary Survey" – Means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of the source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

BB. "Secondary Drinking Water Standards" – Standards promulgated under this Act that apply to public water systems and specify the maximum contaminant levels which, in the judgment of the Director, are requisite to protect the public welfare primarily with regard to aesthetic qualities. Such standards may apply to any contaminant in drinking water;

1. Which may adversely affect the odor or appearance of water and, consequently, may cause a substantial number of persons served by the public water system providing such water to discontinue its use, or

2. Which may otherwise adversely affect the public welfare. Such standards may vary according to geographic and other circumstances.

CC. "Tamper" – Means to introduce a contaminant into a public water system with the intention of harming persons; or to otherwise interfere with the operation of a public water system with the intention of harming persons.

DD. "Total Dissolved Solids" – Means the total dissolved (filterable) solids as determined by use of established US EPA test methods.

EE. "Underground Injection Activity or Facility" – means any underground injection well or another facility or activity that is subject to regulation under the SDWA.

FF. "Underground Injection Control (UIC) Program" – Means the NNEPA program responsible for implementing and enforcing the provisions of this Act

pertaining to underground injection and the protection of underground sources of drinking water.

GG. "Underground Injection" – Means the subsurface emplacement of fluids by well injection. The term does not include the underground injection of natural gas for purposes of storage.

HH. "UIC Owner or Operator" – Means any person who owns or operates an underground injection facility.

II. "Underground Source of Drinking Water (USDW)" – Means an aquifer or its portion of an aquifer:

1. Which supplies any public water system; or
2. Which contains a sufficient quantity of groundwater to supply a public water system; and
  - a. Currently supplies water for human consumption; or
  - b. Contains fewer than 10,000 mg/l total dissolved solids.
3. Which is not an exempted aquifer.

JJ. "Variance" – Means a waiver granted by the Director to a public water system pursuant to this Act and regulation promulgated hereunder.

KK. "Well" – Means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than its largest surface dimension.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2505. Applicability**

A. Except as otherwise provided in this Section, the provisions of this Act and the regulations promulgated hereunder shall apply to all within the Navajo Nation.

B. This Act does not apply to any water system that meets all of the following conditions:

1. It consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
2. It obtains all of its water from, but is not owned or operated by, a public water system to which these regulations apply;
3. It does not sell water to any person;

4. It is not a carrier which conveys passengers in interstate commerce; and

5. It does not provide water to any school, tribal, state or federal governmental office or private entity serving 25 or more employees or individuals.

C. Except as otherwise provided in Subsections (D) and (E) of this Section, the provisions of this Act and/or regulations promulgated hereunder in whole or in part; shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any covenant not to regulate or otherwise exercise jurisdiction over such person or property.

D. Notwithstanding the provisions of Subsection (C) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to its provisions and to all property within the Navajo Nation owned or operated by such person.

E. If not otherwise applicable in accordance with Subsection (D) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 2506.

F. Nothing in this Act shall excuse the required performance of any act as set out in any other applicable law or regulation of the Navajo Nation.

G. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2506. Voluntary Compliance Agreement**

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate the part or parts of this Act and/or regulations promulgated

hereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be for a term of not less than one year, and may be subject to renewal for successive terms of not less than one year. A voluntary compliance agreement may not vary the requirements of this Act, except that the consent required to be given in accordance with § 2572 of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act in accordance with the terms of said voluntary compliance agreement, including any renewals thereof.

D. A voluntary compliance agreement shall not be effective unless and until there is final approval of the agreement by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this Section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interest of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination of admission by the Navajo Nation that such claim of exemption is valid.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2507. Authority of Director**

##### **A. General Responsibilities.**

1. The Director is responsible for administering this Act and is authorized to exercise all the legal authority necessary for this purpose. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such of his or her powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.

2. The Director shall promulgate regulations for the enforcement of this Act.

3. Inventory. The Director shall establish and maintain a current inventory of all public water systems and of all underground injection facilities within the Navajo Nation.

a. In compiling such inventory, the Director shall review and incorporate all appropriate materials previously developed by the USEPA, by the Navajo Nation, and by other appropriate governmental agencies. It shall, however, be the duty of each public water system owner or operator

and each UIC owner or operator to provide all information needed for this inventory, and all amendments or modifications, in the form required by the Director.

b. The Director shall make available, at the Navajo Nation EPA offices, a copy of the inventory information and other information regarding each Navajo public water system and underground injection facility and shall provide a copy when requested to the appropriate public water system owner or operator, UIC owner or operator and to the general public.

c. All public water system and UIC owners and operators shall provide, in writing, all information, corrections or amendments necessary for the development and maintenance of a complete inventory.

4. Records. The Director shall establish and maintain a file for each public water system and underground injection facility listed in the inventory. With respect to public water systems each file shall contain the information and be maintained as required by 40 C.F.R. 142.14, as that regulation may be amended from time to time, as well as any additional information deemed appropriate by the Director. These records shall be made available for public inspection at the office of the Director during regular business hours.

5. Reports. The Director shall submit reports to the USEPA as required by 40 C.F.R. 142.15, with regard to public water systems, and by 40 C.F.R. 144.8, with regard to underground injection facilities as those provisions are amended from time-to-time. These reports shall be made available for public inspection at the office of the Director during regular business hours.

B. Contracts and Grants. The Director is authorized to:

1. In compliance with Title 2 of the Navajo Nation Code enter into agreements, contracts or cooperative arrangements with other tribal departments, divisions or entities; with state, federal or interstate agencies; municipalities; local health departments, educational institutions or other organizations; or other persons for the purpose of ensuring the safety of drinking water or underground sources of drinking water within the Navajo Nation.

2. In compliance with Title 2 of the Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Act, provided that all monies resulting therefrom shall be deposited in the PWS Fund or the UIC Fund, as the case may be, pursuant to § 2573 and as authorized under Navajo Nation law.

3. Participate in demonstration programs, such as the sole source aquifer demonstration program provided for in § 1427 of the SDWA, 42 U.S.C. § 300h-6.

C. Investigations and Hearings. In order to fulfill the obligations of this Act, the Director is authorized to:

1. Conduct investigations, inspections and tests to carry out the duties of this Act;

2. Hold hearings related to any aspect of or matter within the duties of this Act and, in connection therewith, compel the attendance of witnesses and the production of records according to the procedures established in this Act;

3. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act;

4. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;

5. Compile and publish, from time to time, reports, data and statistics with respect to matters studied or investigated by the Director or at his or her direction;

6. Implement and administer the provisions of this Act; and

7. Perform such other activities as the Director may find necessary to carry out his or her functions under this Act.

#### D. Regulations

1. The Director is authorized to promulgate such regulations from time to time as may be necessary to carry out the provisions of this Act. Such regulations may include:

a. Regulations governing the determination of penalties, denials, suspension or revocation of permits;

b. Regulations governing appeals from actions taken under this Act; and

c. Regulations governing administration of this Act by the Director.

2. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and in the Navajo language over local radio and/or television stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question, the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period at least 30 calendar days; allow any person to submit written comments, data or documentary information; give interested persons an opportunity to present orally their views, data or arguments



in the Navajo or English languages; and keep the docket open for at least 10 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

3. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

4. The effectiveness and enforceability of the provisions of this Subchapter shall not be dependent upon the adoption of regulations pursuant to Subsection (D)(1) of this Section.

5. Regulations shall be effective in accordance with their terms after approval of the Resources Committee of the Navajo Nation Council.

6. Regulations promulgated under Subsection (D)(1) shall contain minimum requirements for an effective program to prevent underground injection which endangers drinking water sources. Such regulations shall require that the Navajo Underground Injection Control Program:

a. Prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection which is not authorized by a permit issued by the EPA or NNEPA;

b. Require:

i. That the applicant for a permit to inject must satisfy to the Navajo Nation that the underground injection activity will not endanger drinking water sources; and

ii. That no regulation may be promulgated which authorizes any underground injection which endangers drinking water sources;

c. Include inspection, monitoring, record keeping, and reporting requirements; and

d. Apply to all underground injection activities on the Navajo Nation, including but not limited to:

i. Underground injections by federal agencies; and

ii. Underground injections by any other person whether or not occurring on property owned or leased by the United States, including injection for the purpose of uranium protection.

7. Regulations pertaining to underground injection control may not prescribe requirements which interfere with or impede:

a. The underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations; or

b. Any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

8. The regulations of the Director under this Section shall permit or provide for consideration of varying geologic, hydrological or historical conditions in different areas within the Navajo Nation.

9. Nothing in this Section shall be construed to alter or affect the duty of ensuring that underground sources of drinking water will not be endangered by any underground injection activities.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note:** This Section previously codified at § 2506.

#### **Cross References**

Intergovernmental agreements, see 2 N.N.C. §§ 824(B)(4) and (6).

#### **§ 2508. Severability**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected, and to this end the provisions of this Act are declared to be severable.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2507.

#### **§ 2509. Construction**

A. The provisions of this Act shall be liberally construed to fulfill the intent and purposes of this Subchapter and so as not to conflict with applicable law of the United States.

B. Nothing contained in this Act shall be construed to diminish, limit or otherwise adversely affect any right or remedy otherwise held or available to the Navajo Nation or its members under applicable law.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95 July 31, 1995.

**Note.** This Section previously codified at § 2508.

## **Subchapter 2. Prohibited Acts**

### **§ 2521. Use of lead pipes, solder and flux**

A. No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is not lead-free, as defined in § 2504. This Subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

B. No person shall introduce into commerce any pipe or any pipe or plumbing fitting or fixture that is not lead-free, except for a pipe that is used in manufacturing or industrial processing.

C. No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead-free.

D. No person shall introduce into commerce any solder or flux that is not lead-free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

E. The requirements of this prohibition on lead shall be enforced by the Director and through local plumbing codes or such other means of enforcement as the Navajo Nation may determine to be appropriate.

### **History**

CAU-69-01, August 8, 2001.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2509.

### **§ 2522. Tampering with public water systems**

It shall be unlawful to tamper or attempt or threaten to tamper with a public water system. Any person who tampers or attempts or threatens to tamper with a public water system may be subject to civil and/or criminal fines, pursuant to § 2583 of this Act.

### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2510.

**§ 2523. Other violations**

No person shall violate:

A. Any conditions of any variance, exemption, permit or order, including cease and desist orders and orders to comply, decisions, rules, or any other actions taken pursuant to this Act;

B. Any of the requirements of this Act or the regulations promulgated hereunder.

**History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2511.

**§ 2524. Operating a public water system without a permit**

Within 90 days of the effective date of these amendments, no person shall operate or construct a public water system unless said person holds, or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under § 2571 of this Act and the NNEPA Uniform Permit Procedures, or, if a Navajo Nation PWS permit program has not yet been developed, has contacted the Director in writing and has provided whatever information the Director reasonably requests regarding the public water system.

**History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2512.

**§ 2525. Operating an underground injection facility without a permit**

Within 90 days of the effective date of these amendments, no person shall operate or construct an underground injection facility unless said person holds or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under § 2571 of this Act and the NNEPA Uniform Permit Procedures, or if a Navajo Nation UIC permit program has not yet been developed, has contacted the Director in writing and has provided whatever information the Director reasonably requests regarding the underground injection facility.

### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

## **Subchapter 3. Drinking Water Regulations**

### **§ 2531. Primary drinking water regulations**

The Director may prescribe by regulation the maximum permissible levels for contaminants in all public water systems on the Navajo Nation. These regulations shall govern monitoring and reporting of the water quality of all public water systems, and shall be at least as stringent as federal regulations promulgated pursuant to the SDWA or with respect to quality control and testing procedures, as stringent as the alternative procedures published by the Administrator as guidance pursuant to SDWA § 1401(1), 42 U.S.C. § 300f(1).

### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2513.

### **§ 2532. Secondary drinking water regulations**

The Director may prescribe by regulation controls including water purification systems for contaminants in drinking water that primarily affect the aesthetic qualities (such as taste, color and smell) relating to the public acceptance of drinking water. Such secondary regulations should be guided by any national secondary drinking water regulations, but may vary from any non-mandatory federal guidelines.

### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2514.

### **§ 2533. Sampling and analytical regulations**

The Director may prescribe by regulation the microbiological, inorganic, organic, radioactivity, and turbidity sampling requirements.

### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note:** This Section previously codified at § 2515.

**§ 2534. Reporting, record keeping and public notification requirements**

The Director may prescribe by regulation the method of record-keeping and reporting of sample analyses as well as the requirements for public notification.

**History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note:** This Section previously codified at § 2516.

**§ 2535. Surface water treatment regulations**

The Director may prescribe by regulation the filtration, disinfection, analytical and sampling requirements for those public water systems that use surface water and/or groundwater under the influence of surface water.

**History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note:** This Section previously codified at § 2517.

**§ 2536. Lead and copper regulations**

The Director may prescribe by regulation corrosion control treatment, source water treatment and lead service line replacement requirements. These regulations may also prescribe sampling requirements, analytical methods, reporting requirements and record keeping requirements.

**History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note:** This Section previously codified at § 2518.

**§ 2537. Laboratory requirements**

The Navajo Nation adopts the certified laboratory lists maintained by the USEPA or any state with primacy over that state's drinking water program, as they may be amended from time to time. Public water system owners or operators are required to use a certified laboratory from such lists in contracting for

laboratory services. The Director may maintain a service contract with one or more certified laboratories to meet this requirement.

### **History**

CJY-50-95, July 31, 1995.

**Note:** This Section previously codified at § 2519.

### **§ 2538. Wellhead Protection**

A. Wellhead Protection Program. The Director shall develop by regulation a program to protect wellhead areas within the Navajo Nation from contaminants that may have an adverse effect on public health. Such program shall at a minimum:

1. Specify the duties of Navajo agencies, other governmental entities and public water supply systems with respect to the development and implementation of the program;

2. For each wellhead, determine the wellhead protection area as defined in Subsection (B) based on all reasonably available hydrogeologic information on groundwater flow, recharge and discharge and other information the Director deems necessary;

3. Identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have an adverse effect on public health;

4. Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply with wellhead protection areas from such contaminants;

5. Include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or well field contamination by such contaminants;

6. Include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public supply system; and

7. Provide for the addition of new wellhead protection areas for water well sited after promulgation of the initial program.

B. Definition of Wellhead Protection Area. As used in this Section the term "wellhead protection area" means the surface and subsurface area surrounding a water well or well field supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. The extent of a wellhead protection area is necessary to provide protection from contaminants which may have an adverse effect on the public health and is to be determined by the Director in the program developed under Subsection (A). The Director may rely on technical guidance issued by the Administrator in making such determination. In any event, the

determination should reflect factors such as the radius of influence around a well or wellhead, the depth of drawdown of the water table by such well or well field at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or well field, or other factors affecting the likelihood of contaminants reaching the well or well field, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellhead is located.

C. Public Participation. The Director shall establish procedures to encourage public participation in developing the wellhead protection program. Such procedures may include the establishment of technical and citizens' advisory committees and the presentation of program proposals at chapter meetings. Such procedures shall include notice and opportunity for public hearing on the program before it is promulgated by the Director.

D. Reports. Every two years after promulgation of a wellhead protection program, the Director shall submit to the Navajo Resources Committee and to the Administrator a report describing the progress in implementing the program. Such report shall include amendments to the program for water wells sited during the two year period.

### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

### **§ 2539. Operator Certification**

All operators of public water systems on the Navajo Nation must be certified to operate such a facility. The Director shall develop by regulation a program, consistent with guidelines published by the Administrator pursuant to § 1419(a) of the SDWA Amendments of 1996 (Pub. L. 104-182), to certify all public water system operators in accordance with the standards described below. The Director shall serve as the Certification Administrator. The Director shall:

A. Implement a program requiring the certification of all operators of public water systems and requiring that such operators comply with the applicable requirements of the certification and training program;

B. Classify all public water systems and specify operator certification, renewal and re-certification procedures and requirements for each level of classification;

C. Establish minimum operator qualifications to validate skills, knowledge, ability and judgment for each level of classification, and include provisions for reciprocity for operator certifications from neighboring states;

D. Establish procedures for suspension, revocation and other appropriate enforcement action for operator and owner noncompliance;

E. Establish a fee system for the examination and certification of



operators;

F. Establish an advisory committee for ongoing involvement in the revision and operation of operator certification; and

G. Develop a procedure to review and evaluate the adequacy of the operator certification program, including to revise the certification requirements based on revisions to applicable law and on new technology or construction techniques that change operator requirements.

#### **History**

CAU-69-01, August 8, 2001.

### **Subchapter 4. General Responsibilities of Public Water System Owners and Operators**

#### **§ 2541. Record keeping**

A. A public water system owner or operator shall retain, on the premises or at a convenient location near the premises of the public water system, the following records:

1. Records of microbiological analyses made pursuant to this chapter or the regulations hereunder shall be kept for no fewer than five years. Records of chemical analyses made pursuant to this Act or the regulations hereunder shall be kept no fewer than 10 years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

a. The date, place and time of sampling, and the name of the person who collected the sample;

b. Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;

c. Date of analysis;

d. Laboratory and person responsible for performing analysis;

e. The analytical technique or method used; and

f. The results of the analysis.

B. Records of actions taken by the public water system owner or operator to correct violations of this Act or the regulations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved.

C. Copies of any written reports, summaries or communication relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any tribal, state, or federal agency, shall be kept for no

fewer than 10 years after completion of the sanitary survey involved.

D. Records concerning a variance or exemption to the system shall be kept for no fewer than five years following the expiration of such variance or exemption.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2520.

#### **§ 2542. Reporting test and analyses**

A. It shall be the duty of each public water system owner or operator to ensure that copies of all tests and analyses performed on each public water system, pursuant to the requirements of the Primary Drinking Water Regulations and other applicable Navajo and federal law, are, made available to the Director, on a timely basis, for inclusion in such files.

B. Except where a shorter period is specified in this Section, each public water system owner or operator shall report to the Director the results of any test, measurement, or analysis required by this Act or the regulations hereunder within:

1. The first 10 days following the month in which the result is received; or
2. The first 10 days following the end of the monitoring period required by the Director, whichever of these is shortest.

C. The public water system owner or operator shall report to the Director within 48 hours any violation of a primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this Act or the regulations thereunder.

D. The public water system owner or operator is not required to report analytical results to the Director in cases where a USEPA-approved laboratory performs the analysis and reports the results to the Director.

E. The public water system owner or operator shall, within 10 days of completion of each public notice required by this Act or the regulations hereunder submit to the Director a representative copy of each type of notice distributed, published, posted, and/or made available to the media or to persons served by the system.

F. The Director may request from the public water system owner or operator all pertinent information. The public water system owner or operator shall submit to the Director, within the time stated in the request, copies of any records required by this Act or the regulations hereunder to be maintained and copies of any documents which the Director is entitled to inspect pursuant to this Act.

G. By January 1st of each year the Director shall prepare, make readily available to the public and submit to the Administrator an annual report on violations of primary drinking water regulations by public water systems within the Navajo Nation, including violations with respect to maximum containment levels, treatment requirements determined to be significant by the Administrator after consultation with NNEPA.

H. The NNEPA must make reports of the public water systems available to the public upon request, and must maintain a copy of the reports for one year. The certifications submitted by the public water system should be kept for five years.

### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2521.

### **§ 2543. General public notification requirements**

A. Each owner or operator of a public water system shall give notice of each of the following to the persons served by the public water system:

1. Failure of the public water system to comply with an applicable maximum contaminant level or treatment technique, specified in the regulations promulgated under this Act;

2. Failure to limit fluoride concentration to less than 2.0 mg/l;

3. Failure to comply with an applicable testing procedure established by this Act or the regulations promulgated hereunder;

4. The existence of a variance or exemption from an applicable maximum contaminant level;

5. Failure to comply with a schedule prescribed pursuant to such variance or exemption; or

6. Failure to perform any monitoring required by this Subchapter or the regulations promulgated hereunder; or

7. The concentration level of any unregulated contaminant for which public notice is required either under § 1414(c)(2)(E) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(c)(2)(E), or under this Section. Such notice shall comply with federal regulations issued under SDWA § 1414(c)(2) and the provisions set forth in this Section except to the extent that the Director establishes alternative requirements regarding form and content pursuant to SDWA § 1414(c)(2)(b).

B. If a community water system has violated an applicable maximum contaminant level, the public water system owner or operator shall notify the public of such violation in addition to the notification required in Subsection (C) below, as follows:

1. By publication for no fewer than three consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within 14 days after the public water system owner or operator learns of the violation.

2. By furnishing a copy of the notice to the radio and television stations serving the area served by the system. Such notice shall be furnished within seven days after the public water system owner or operator learns of the violation. The notice shall be given orally in English and in the Navajo language.

3. The requirements of Paragraph (2) of this Subsection may be waived by the Director if he or she determines that the violations have been corrected promptly after discovery, the causes of the violation have been eliminated, and there is no longer a risk to public health.

C. In addition, in the case of a community water system and with respect to all violations listed in Subsection (A) and the grant of variances and exemptions, the owner or operator of the system shall notify the users of the water system as soon as possible and in any event within three months after a violation or grant of an exemption or variance. The notification shall be by any means necessary to ensure that all users are notified of the problem. This may require the house to house distribution of handouts in cases where inclusion with monthly utility bills is not practical. Such notice shall be repeated at least once every three months as long as the violation or the variance or exemption remains in effect.

D. Customers of a community water system must be notified by the owner or operator of the public water system in question every three months when drinking water concentrations for fluoride exceed 2.0 mg/l. The notification must consist of any means necessary to make users aware of the problem. The notices must also be mailed on a quarterly basis to tribal and federal public health officials, and published in the local newspaper(s). Continued notification is desirable to alert, new users who may begin using the system. The exact form and manner of such notice shall be prescribed by the Director as may be necessary to ensure adequate notice.

E. In the case of a non-community water system, the public water system owner or operator shall give notice by continuous posting of any violation of an applicable maximum contaminant level or of the granting of a variance or exemption from any such level to the persons served by the system as long as the violation or variance or exemption continues. The form and manner of such notice shall be prescribed by the Director, and shall ensure that the public using the system is adequately informed of the violation or the variance or exemption.

F. Notice given pursuant to this Section other than that specified in Subsection (D) of this Section shall be written in a manner reasonably designed to inform fully the users of the system. The notice shall be conspicuous and

shall not use unduly technical language, unduly small print, or other methods which could frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject, including the nature of the problem and, when appropriate, a clear statement that a primary drinking water regulation has been violated and preventive measures that should be taken by the public, such as the necessity for seeking alternative water supplies. Where appropriate, or where designated by the Director, bilingual notice shall be given. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.

G. Notice to the public required by this Section may be given by the Director on behalf of the public water system owner or operator, where, in the Director's discretion, this is warranted.

H. In any instance in which notification by mail or other suitable means is required by this Section but notification by newspaper, radio or television stations is not required by this Section, the Director may nevertheless require the owner or operator of a public water system to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public's health.

I. Any person who violates this Section or regulations issued under this Section shall be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2522.

#### **§ 2544. Lead public notification requirements**

A. Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from the lead content in the construction materials of the public water distribution system or the corrosivity of the water supply sufficient to cause leaching of lead.

B. Notice shall be provided in such manner and form as may be reasonably required by the Director. Notice under this Subsection shall be provided notwithstanding the absence of a violation of any Navajo Nation Drinking Water standard.

C. Notice under this Section shall provide a clear and readily understandable explanation of the potential sources of lead in the drinking water and the potential adverse health effects. The notice shall also include reasonably available methods of mitigating known or potential lead content in

drinking water, any steps the system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.

D. The public notice requirements shall apply throughout the Navajo Nation upon enactment of this Act.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2523.

#### **§ 2545. Emergency water plan**

Each public water system owner or operator shall develop an emergency water plan and submit a copy to the Director for review within 180 days after the enactment of this Act. An emergency water plan is a plan for the provision of alternative safe drinking water in emergencies. The Director shall review and comment on the emergency water plan and notify the public water system owner or operator of his or her determinations within 90 days after having received the emergency water plan. The public water system owner or operator shall incorporate the changes or modifications, if any, recommended by the Director in his or her comments.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2524.

#### **§ 2546. Consumer confidence reports by community water systems**

Each community water system shall prepare annually a report on the quality of drinking water delivered by the system. Such report also shall characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner, and shall comply with regulations issued by the Director pursuant to this Section and applicable federal regulations. Each community water system shall mail such report annually to each customer of the system, unless other means of disseminating the report are provided by NNEPA by regulation.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

## **Subchapter 5. Standards for Construction**

### **§ 2551. Design criteria**

#### **A. Public Water Systems**

1. No new or substantially modified public water system shall be authorized to begin construction or operation within the jurisdiction of the Navajo Nation until such time as the Director has reviewed the proposed design of such facility to ensure that it is capable of compliance with applicable minimum construction guidelines for public water systems. In conducting this review, the Director is authorized to rely upon the technical assistance of the Office of Environmental Health and Engineering, United States Indian Health Service.

2. In the event that the proposed design is satisfactory, the Director shall so advise the applicant, in writing, in a timely manner. Appropriate design changes must be made by the applicant prior to initiating any operation of the system.

#### **B. Underground Injection Wells**

1.<sup>1</sup> Proposed designs and plans for new or substantially modified underground injection wells must be submitted with the permit application for each such well. The Director shall decide what standards for construction shall be required based on the geologic formation of the area in question and any relevant standards in the regulations promulgated under this Act or in 40 C.F.R. part 146, and shall include any such requirements in the permit, if a permit is issued.

### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2525.

## **Subchapter 6. Variances and Exemptions**

### **§ 2561. Variances**

A. The Director may grant one or more variances from an applicable Primary Drinking Water Regulation to one or more public water systems which, because of characteristics of the raw water sources that are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the Director that indicates that alternative sources of water are not reasonably available to the system. Before the Director may grant a variance under this Subsection, the Director must find that the variance will not result in an

unreasonable risk to health. If the Director grants a public water system a variance under this Subchapter, the variance shall become part of the permit issued to the public water system under § 2571, and the Director shall prescribe, at the time the variance is granted, a schedule for:

1. Compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted; and

2. Implementation by the public water system of such additional control measures as the Director may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

- a.<sup>1</sup> The Director shall provide notice and opportunity for public hearing on the schedule before such schedule may take effect. A notice given pursuant to the preceding sentence may cover the granting of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice, and may be conducted as part of the permit hearing. A schedule prescribed pursuant to this Subchapter for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable as the Director may reasonably determine.

B. The Director may grant to one or more public water systems one or more variances from any provision of a primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the Director that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this Subchapter shall be conditioned on such monitoring and other requirements as the Administrator may prescribe, which conditions shall become part of the permit.

C. Before a variance proposed to be granted by the Director under Subsection (A) or (B) of this Section may take effect, the Director shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The hearing may be conducted as part of a permit hearing. The Director shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under Subsection (A), the basis for the finding required by that Subsection before the granting of the variance) and documentation of the need for the variance.

D. The Director shall condition each public water system's variance granted under Subsection (A) of this Section upon compliance by the public water system with the schedule prescribed pursuant to Subsection (A) of this Section. Any schedule or other requirement on which a variance granted under Subsection (A) or (B) of this Section is conditioned may be enforced under § 2583 as if such requirement were part of a primary drinking water regulation.



E. Each schedule prescribed pursuant to Subsection (A) of this Section shall be deemed approved by the Administrator pursuant to § 1415(a) of the U.S. SDWA<sup>2</sup> unless the variance for which it was prescribed is revoked by the Administrator or the schedule is revised by the Administrator under such Section.

F. If an application for a variance under Subsection (A) or (B) of this Section is made, the Director shall act upon such application within 60 days after the date of its submission.

G. For purposes of this Subchapter, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with SDWA § 1401(1)(C)(ii))<sup>3</sup> each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of § 1412(b)(3) of the U.S. SDWA.<sup>4</sup>

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2531.

#### **§ 2562. Small systems variances**

A. In general. The Director may grant a variance under this Section for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to:

1. Public water systems serving 3,300 or fewer persons; and
2. With the approval of the Administrator pursuant to Subsection (I) (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons, if the variance meets each requirement of this Section.

B. Availability of variances. A public water system may receive a variance pursuant to Subsection (A) if:

1. The Administrator has identified a variance technology under SDWA § 1412 300g-1(b)(15) that is applicable to the size and source water quality conditions of the public water system;
2. The public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and
3. The Director determines that the conditions of Subsection (C) are met.

C. Conditions for granting variances. A variance under this Section shall be available only to a system:

1. That cannot afford to comply, in accordance with affordability criteria established by the Director, with a national primary drinking water regulation, including compliance through:

a. Treatment;

b. Alternative source of water supply; or restructuring or consolidation (unless the Director makes a written determination that restructuring or consolidation is not practicable); and

2. For which the Director determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

D. Compliance schedules. A variance granted under this Section shall require compliance with the conditions of the variance not later than three years after the date on which the variance is granted, except that the Director may allow up to two additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Director determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to SDWA § 1452<sup>1</sup> or any other federal or tribal program.

E. Duration of variances. The Director shall review each variance granted under this Section not less often than every five years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

F. Ineligibility for variances. A variance shall not be available under this Section for:

1. Any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

2. A primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

G. Regulations and guidance. The Director shall promulgate regulations for variances to be granted under the Section, specifying:

1. Procedures for granting or denying variances, including requirements for notifying the Director and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

2. Requirements for the installation and proper operation of variance technology that is identified for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

3. Eligibility criteria for a variance for each primary drinking water regulation, including requirements for the quality of the source water (pursuant to § 1412(b)(15)(A) of the SDWA<sup>2</sup>); and

4. Information requirements for variance applications.

H. Approval of variances. Before proposing to grant a variance under this section to a public water system serving more than 3,300 and fewer than 10,000 person, the Director shall submit the variance to the Administrator for review and approval prior to the issuance of the variance, pursuant to SDWA § 1415(e)(9).<sup>3</sup>

I. Petition by consumers. Not later than 30 days after the Director proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance, pursuant to SDWA § 1415(e)(10).<sup>4</sup>

J. Timing. No variance shall be granted by the Director until the later of the following:

1. 90 days after the Director proposes to grant a variance; or

2. If the Administrator objects to the variance, the date on which the Director makes the recommended modifications or responds in writing to each objection, pursuant to SDWA § 1415(e)(10)(A).<sup>5</sup>

### **History**

CAU-69-01, August 8, 2001.

### **§ 2563. Exemptions**

A. The Director may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, of an applicable primary drinking water regulation upon a finding that:

1. Due to compelling factors (which may include economic factors) the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;

2. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system;

3. The granting of the exemption will not result in an unreasonable risk to health; and

B. If the Director grants a public water system an exemption under Subsection (A) of this Section, the exemption shall become part of the permit issued to the public water system under § 2571. The Director shall prescribe, at the time the exemption is granted, a schedule for:

1. Compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted; and

2. Implementation by the public water system of such control measures as the Director may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

a.<sup>1</sup> Before an exemption or a schedule prescribed by the Director pursuant to this Section may take effect, the Director shall provide notice and opportunity for a public hearing on the exemption and schedule which hearing may be conducted as part of the permit hearing. A notice given pursuant to the preceding sentence may cover more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

C. A schedule prescribed pursuant to this Subchapter for a public water system granted an exemption under Subsection (A) of this Section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the Director may reasonably determine) but not later than three years after the otherwise applicable compliance date established under SDWA § 1412(b)(10).<sup>2</sup>

1. No examination shall be granted unless the public water system establishes that:

a. The system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to SDWA § 1412(b)(10).<sup>2</sup>

b. In the case of a system which needs financial assistance for necessary improvements, the system has entered into an agreement to obtain such financial assistance or an assistance program is likely to be available within the period of the exemption; or

c. The system has entered into an enforceable agreement to become a part of a regional public water system; and

d. The system is taking all practicable steps to meet the standard.

2. In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under Clause a or b of the

above Subsection may be renewed for one or more additional two year periods, but not to exceed a total of six years if the system establishes that it is taking all practicable steps to meet the requirements of Subsection (C) (1).

3. A public water system may not receive an exemption under this Section if the system was granted a variance under SDWA § 1415(e) <sup>3</sup> or § 2562 of this Act.

F. Each public water system's exemption granted by the Director under Subsection (A) of this Section shall be conditioned upon compliance by the public water system with the schedule prescribed pursuant to Subsection (B) of this Section. The requirements of each such schedule shall be enforceable by the Director under Navajo Nation law as part of the permit issued to the public water system. Any requirement of a schedule on which an exemption granted under this Section is conditioned may be enforced under § 2583 as if such requirement were part of a primary drinking water regulation.

G. Each schedule prescribed pursuant to Subsection (B) of this Section shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under § 1416(d)(2) of the SDWA <sup>4</sup> or the schedule is revised by the Administrator under such Section.

H. The Director will promptly notify the Administrator of the granting of any exemption under Subsection (A) of this Section. Such notification shall contain the reasons for the exemption (including the basis for the finding required by Subsection (a)(3) of this Section, before the exemption may be granted) and document the need for the exemption.

I. If an application for an exemption under this Section is made, the Director shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

J. The Director shall make any revisions or revocations of exemptions or schedules that may be required by the Administrator, pursuant to the Administrator's authority to review such exemptions or schedules under the SDWA. <sup>5</sup>

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2541.

### **Subchapter 7. Permit Requirements for Public Water Systems and Underground Injection Facilities**

#### **§ 2571. Permits**

A. The Director shall establish, by regulation, a permit program, requiring owners or operators of public water systems and underground injection facilities within the jurisdiction of the Navajo Nation to obtain a Navajo Nation permit to operate or construct a public water system or an underground injection facility.

B. Such permit program shall specify permit fees to be paid upon application for a PWS or UIC permit and annually thereafter upon receipt of a permit and may also include fees for the processing of variances and exemptions. Such permit program shall also specify requirements for applications for and issuance of modifications to permits, shall specify monitoring and reporting requirements and shall provide for hearings on permit determination.

C. Before a UIC permit is issued under this Section, the owner or operator of the underground injection facility must demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection facility as required by the Director by regulation. Evidence of such financial responsibility shall include a surety bond, letter of credit, insurance, corporate guarantee or other submission acceptable to the Director.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2553.

#### **§ 2572. Submission of information**

A. The Director may prescribe conditions for permits (by issuing regulations and/or on a case-by-case basis) and require the submission of plans, specifications, and other information in connection with permit applications of the issuance of permits or permit modifications, variances or exemptions.

B. All permit applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit:

"Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to or in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation Safe Drinking Water Act otherwise apply. This consent shall be effective when a permit is issued, and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant."

C. The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "applicant" as appropriate and substituting the phrase "this agreement" in place of the phrase "any permit issued pursuant to this application". If applicant fails to include such statement, or enters into an agreement with another party without such party agreeing and subscribing to such statement, applicant shall be subject to civil penalties in accordance with this Act.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2573. Program funds**

Monies derived from fees and penalties collected under this Act, appropriations authorized by the Navajo Nation Council for the use of the Navajo Nation Public Water Systems Supervision Program or the Navajo Nation Underground Injection Control Program, and federal, state or other grants to such programs, shall be available solely to the Navajo Nation EPA for the administration, implementation and enforcement of this Act and the regulations promulgated hereunder. Such monies shall be deposited into one of two duly established Special Revenue Funds, call the PWS Fund and the UIC Fund, as the case may be, and shall be expended by the Director for the use of the PWS or UIC Program in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the funds, including the sources and uses thereof. Any monies contained in either of the two funds at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

### **Subchapter 8. Inspections, Enforcement and Judicial Review**

#### **§ 2581. Inspections**

A. The Director shall make such investigations and inspections as are necessary to ensure the compliance of public water systems and underground injection facilities with this Act, the Navajo primary drinking water regulations, Navajo underground injection control regulations, and other applicable laws, decisions, orders, rules or other actions taken pursuant to this Act.

B. The Director shall have the right to enter the property of any public water system or underground injection facility for the purpose of inspecting and investigating the sanitary condition of the public water system, the quality of the water, compliance with drinking water regulations or underground injection control regulations, and compliance with applicable Navajo law. This right shall include the right to review and copy the records required to be established and maintained by this Act.

C. Except in an emergency, as determined by the Director, notify and permit the public water system owner or operator or underground injection facility owner or operator to be present when an inspection or investigation is being conducted.

D. The Director is authorized to utilize the services of the United States Indian Health Service or appropriate tribal departments to ensure that necessary inspections are performed, to coordinate his or her activities with those agencies or departments, and to rely upon competent inspections and investigations performed by those agencies or departments.

E. In any instance in which an inspection reveals that a public water system or underground injection facility is not in compliance with applicable law, the Director is authorized to charge the owner or operator of such system or facility a fee for the cost of conduction inspection, whether undertaken by the Director or by another Navajo department (in which case the department undertaking the inspection would be reimbursed). Such fee shall be based on the time taken and expenses incurred in conducting the inspection, but not to exceed the costs of such time an expenses that are reasonable in light of the circumstances.

#### **History**

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2566.

#### **§ 2582. General Enforcement Authority**

A. In general. Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits or orders, variances, exemptions, decisions, rules, or any other actions take pursuant to this Subchapter, the Director is authorized to:

1. Issue and serve on such person an order to comply with such requirement, or prohibition, including an emergency order to comply, in accordance with provisions of this Section;

2. Issue and serve on such person an administrative penalty order, in accordance with § 2584;

3. Request that the Attorney General bring a civil action including



an action for injunctive relief in accordance with § 2583; and/or

4. Request that the Navajo Nation Prosecutor's Office bring a criminal action in accordance with § 2583(C) and/or refer any criminal enforcement action or portion of such action to the U.S. EPA Regional Administrator for Region 9.

B. Requirements for orders to comply. An administrative order, including an administrative penalty order, issued under Subsection (A)(1) or (A)(2) of this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to the Uniform Hearing Regulations if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the severity of the violation and any good faith efforts to comply with applicable requirements.

1.<sup>1</sup> The order shall become final immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation. No order to comply issued under this Section shall prevent the Nation from assessing any penalties nor otherwise affect or limit the Nation's authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any Section of this Act, permits, orders, variances or exemptions issued pursuant to this Act, or regulations promulgated under this Act.

C. Emergency Compliance Orders.

1. Notwithstanding any other provision of this Act, if the Director determines that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water is presenting an imminent and substantial endangerment to the public health or welfare or the environment, and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to § 2583, the Director may take such actions as the Director may deem necessary in order to protect the public health welfare or environment. Such actions may include requiring the immediate closure of such public water system or underground injection facility and issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment. Such orders shall be effective immediately upon issuance and shall remain in effect for not more than 60 days, unless the Director brings an action for injunctive relief pursuant to this Section within the 60 day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

2. In the event that the Director is required to take direct action, in place of the owner or operator of the public water system or underground injection facility at issue, to respond to an emergency in order to protect the public health and welfare from imminent and substantial endangerment, the Director may charge a fee to cover the cost of such action. Such action may include, but is not limited to, conduction cleanup, closing a facility or providing alternative water supplies to the affected population. The fee shall be charged to the owner or operator of the relevant public water system or underground injection facility, and may be in addition to any penalty imposed under Subsection (B) for failure to comply with applicable orders issued under this Section.

D. Enforcement of compliance orders. Enforcement actions of the Director shall be enforced by the Navajo Nation Environmental Protection Agency, the Navajo Department of Justice, Navajo Prosecutors Office, Resources Enforcement and/or the Division of Public Safety. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating operations at facilities not in compliance.

E. Repeated violations. In addition, when a person has repeatedly violated any requirements of this Act, the regulations promulgated under this Act, or permits, orders, variances, or exemptions or other actions taken pursuant to the Act, or refused to comply with any such requirements, the Director may:

1. Issue an order prohibiting such person from continuing to operate a public water system or underground injection facility within the Navajo Nation;
2. Prohibit such person from entering into any new contracts (including leases) that would permit such person to engage in any activity within the Navajo Nation that is governed by requirements of this Act or regulations under this Act which the person has repeatedly violated;
3. Take action declaring the person ineligible to do business on the Navajo Nation pursuant to the Business and Procurement Act; or
4. Take any other action available under law.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2568.

**§ 2583. Judicial enforcement**

A. Civil judicial enforcement. The Director may request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including damages and the assessment and recovery of civil penalties in an amount not to exceed twenty-five thousand dollars (\$25,000) per day per violation in any of the following instances:

1. Whenever a person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, variances, exemptions, rules, decisions or any other actions taken pursuant to this Subchapter.

2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or

3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in Paragraphs (1) and (2).

B. Calculation of Penalties.

1. For purposes of determining the number of days of violation for which a penalty is assessed under this Section or § 2584, if the Director has notified the violator in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continue or recurred past the date of notice, the days of violation shall be presumed to include the date such and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a penalty assessed under this Section or § 2584, the court or the Director, as the case may be, shall consider the history, severity and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any resulting from the violations; and any other factors that the court or the Director deems relevant. All penalties collected pursuant to this

Section shall be deposited in the PWS Fund or the UIC Fund, as the case may be, special revenue funds established under § 2573 of this Act.

C. Criminal Penalties. The Director may request that the Navajo Nation Prosecutor's Office initiate criminal proceedings against any person who knowingly:

1. Violates any requirement or prohibition of this Act, including but not limited to any regulation adopted pursuant to this Subchapter, a variance, exemption or order issued pursuant to this Act, or a reporting or notice requirement under this Act;

2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, record, reports, or other document required pursuant to this Act to be filed or maintained; or

3. Tampers with any public water system as prohibited in § 2522 of this Act.

Such person shall, upon conviction, be punished by a fine not to exceed five thousand dollars (\$5,000) per day of violation or imprisonment for not more than one year, or both, notwithstanding the provisions of 17 N.N.C. §§ 222 and 223, or be subject to any other penalty imposed by the court that is available under Navajo Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 2582 of this Act. For the purpose of this Paragraph, the term "person" includes, in addition to the entities referred to in § 2504 of this Act, any responsible corporate officer.

D. Jurisdiction and venue. Any action under this Section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this Section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

E. Failure to pay penalty. If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish

higher penalties to take into account situations where the prime rate is higher.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

**Note.** This Section previously codified at § 2569.

#### **§ 2584. Administrative Assessment of Penalties**

A. Basis for penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any requirement or prohibition of this Act, including but not limited to, a regulation adopted pursuant to this Act, or permits, orders, variances or exemptions issued pursuant to this Subchapter. The Director's authority under this Subsection, combined with actions under Subsection (C), shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing, pursuant to § 2585 of this Act. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 calendar days of receipt of the notice.

C. Field citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed one thousand dollars (\$1,000) per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued under Subsection (A) to the extent permissible under applicable law. The Director's authority under this Subsection, combined with action taken under Subsection (A), shall be limited into total amount by the provisions in Subsection (A). Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation under the provisions of Subsection (B). If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review

shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.

D. Judicial review. Any person subject to a penalty under Section (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock, by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq. is not required. Within 30 days thereafter, the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to pay penalty. If any person fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, pursuant to the provisions of § 2583(E).

F. Calculation of penalty. In determining the amount of any penalty to be assessed under this Section the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 2583(B) of this Act.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

#### **§ 2585. Administrative hearings and subpoenas**

A. Administrative hearings. The Director shall, by regulation, establish a formal administrative hearing process which meets due process standards to hear appeals taken under §§ 2582(B) and 2584. Until the Director establishes this administrative hearing process and appoints a qualified presiding officer, the Navajo Office of Hearings and Appeals is authorized to conduct hearings under this Act; provided, in addition, that the Director may, at his/her discretion, transfer other hearings conducted under this Act and the regulations promulgated hereunder to the Navajo Office of Hearings and Appeals when the need arises.

B. Administrative subpoenas.

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Act, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation courts. In case of contumacy or refusal to obey a subpoena, the Navajo Nation District Court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation District Court for the District of Window Rock, naming as defendant the Director in his or her official capacity and not in any other manner, in any such action, relief will be limited to declaratory relief.

**History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

**§ 2586. Judicial review**

A. Any person aggrieved by any final action of the Director taken pursuant to the authority of this Act (but not including imposition of administrative penalties under § 2584), shall have the right to appeal such action in the Navajo Nation Supreme Court. The appeal shall be taken in accordance with the Navajo Rules of Civil Appellate Procedure. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and the evidence that were before the Director at the time of the final action from which the appeal is taken. The Supreme Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action that is the subject of the appeal, provided that final actions may be reversed, modified or remanded only when they are:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

B. Any challenge to the lawfulness of authority of the Navajo Nation Council to enact any provision of this Act or regulations promulgated thereunder must be filed in accordance with Navajo law within 90 calendar days

after the date of enactment of this Act in the district court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Provided, however, that any challenge to regulations promulgated under this Act must be filed within 90 days of their adoption. In any such action, relief shall be limited to declaratory relief. The district court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this Act. Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.* and not in any other manner.

#### **History**

CAU-69-01, August 8, 2001.

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

### **Title 23**

#### **Conservation and Wildlife**

##### **Chapter 1. Generally**

###### **§ 1. Study of fish and wildlife matters; authority**

The Resources Committee is authorized to study fish and wildlife matters with particular reference to hunting and fishing regulations.

#### **History**

CM-24-51, May 9, 1951.

**Revision note.** Reference to the "Advisory Committee" changed to the "Resources Committee" pursuant to 2 N.N.C. § 695(B)(6) and (11).

###### **§ 2. Rules and regulations; authority**

The Resources Committee shall make rules and regulations for hunting and fishing, set season dates, determine who shall be permitted to hunt and fish, set permit fees, set fines for violators, and have power to use collected fees and fines for improving hunting and fishing.

#### **History**

CM-24-51, May 9, 1951.

**Revision note.** Reference to the "Advisory Committee" changed to the "Resources Committee" pursuant to 2 N.N.C. § 695(B)(6).

###### **§ 3. Redelegation of authority**



The Resources Committee from time to time may redelegate, all or any part of its authority under 23 N.N.C. § 2 to the appropriate Division of Natural Resources officials and may from time to time terminate any such redelegation.

#### **History**

CJ-41-56, July 18, 1956.

**Revision note.** Reference to the "Advisory Committee" changed to the "Resources Committee" pursuant to 2 N.N.C. § 695(B)(6) and reference to "Resources Committee" changed to "the appropriate Division of Natural Resources" officials pursuant to 2 N.N.C. § 695(B), CN-72-92.

ACF-7-56, § 6, February 14, 1956.

#### **Cross References**

Resources Committee redelegation of authority, see 2 N.N.C. § 695(B), CN-72-92, November 4, 1992.

#### **§ 4. Cooperative arrangements with United States Fish and Wildlife Service; approval**

The Intergovernmental Relations Committee of the Navajo Nation Council approves cooperative arrangements between the United States Fish and Wildlife Service and the Navajo Nation in consultation with appropriate standing committees of the Navajo Nation Council, Navajo communities and/or individual members of the Nation.

#### **History**

CM-24-51, § 4, May 9, 1951.

**Revision note.** Reference to the "Tribal Council" changed to the "Intergovernmental Relations Committee of the Navajo Nation Council" pursuant to 2 N.N.C. § 824(B)(6).

#### **Chapter 3. Department of Fish and Wildlife [Repealed]**

#### **History**

**Note.** Chapter 3, previously entitled "Department of Fish and Wildlife", repealed by CAP-41-94, Exhibit "P", April 20, 1994. See also the Attorney General's Memorandum regarding plans of operation and enabling legislation (January 4, 1991).

#### **Chapter 5. Regulations**

#### **§ 501. Application of federal law**

All hunting and fishing on lands subject to the jurisdiction of the Navajo Nation shall be conducted in conformity with Navajo and federal laws and regulations. Notwithstanding any other provision of law, it shall be

permissible at any time for any Navajo to take any species in a ceremonial manner for use by a Navajo medicine man. This Section is not intended to apply to bald eagles, or to authorize hunting in violation of federal law.

#### **History**

CJN-38-75, June 18, 1975.

CF-11-69, February 1969.

ACAU-123-59, August, 1959.

CJ-41-56, July 18, 1956.

ACJ-56-56, June 21, 1956.

ACF-7-56, February 14, 1956.

ACO-53-52, October, 1952.

ACD-101-51, December, 1951.

Executive Committee Res. 1922-1951, Res. p. 673, September 15, 1938.

Tribal Council Res. 1922-1951 Res. p. 671-2, July 12, 1934.

#### **Cross References**

Fish and wildlife violations, see 17 N.N.C. § 500 *et seq.*

#### **§ 502. Navajo Nation permit requirements**

All persons hunting, fishing or trapping on lands subject to the jurisdiction of the Navajo Nation shall have in their possession a proper Navajo permit as set forth in the regulations established by the Resources Committee of the Navajo Nation Council. For purposes of this Section, person shall mean either Indian or non-Indian.

#### **History**

CJN-38-75, June 18, 1975.

CF-11-69, February 3, 1969.

ACAU-123-59, August 19, 1959.

ACF-7-56, February 14, 1956.

#### **§ 503. [Reserved]**

#### **History**

Repealed by CJN-38-75, June 18, 1975.

**§ 504. [Reserved]**

**History**

CJN-38-75, June 18, 1975.

**§ 505. Restocking and management; federal and state cooperation**

The restocking and proper management of fish and adapted wildlife and full cooperation with the United States Fish and Wildlife Service and the respective state fish and game departments shall be encouraged.

**History**

ACF-7-56, § 3, February 14, 1956.

**§ 506. Revolving fund; establishment; expenditure; report**

A. All permit fees and fines assessed by the Navajo Nation Courts for violation of these regulations and other similar collections shall be set up as a special revolving fund for use in management, protection and regulation of fish and wildlife resources. These funds may be expended by the Controller of the Navajo Nation upon the recommendations of the Resources and the Budget and Finance Committees of the Navajo Nation Council.

B. The Controller shall report annually on the status of the special revolving fund to the Navajo Nation Council during consideration of the Navajo Nation Budget and the ensuing fiscal year.

**History**

CF-5-88, February 3, 1988.

ACF-7-56, § 4, February 14, 1956.

**Revision note.** Slightly reworded for purposes of statutory form. Also, reference to "Treasurer" changed to "Controller" pursuant to CF-5-73.

**Cross References**

Committee powers, generally, see 2 N.N.C. § 185.

Budget and Finance Committee powers, see 2 N.N.C. § 374(B)(1).

**§ 507. Predator control—Generally**

A. The control and eradication of predatory animals shall be the responsibility of the Resources Committee of the Navajo Nation Council. Such controls shall be exercised according to the wishes of the District Grazing Committees, local Grazing Committee members and/or family groups. Assistance on predator control matters may be secured from any available source.

B. Costs of control shall be borne by the stockmen or individuals requesting such assistance, unless funds are provided from other sources.

Funds provided in 23 N.N.C. § 506 are not applicable for use in predator control work unless the Resources Committee of the Navajo Nation Council finds that such control is required as a measure to insure greater success in restocking game birds and animals in specified localities.

#### **History**

ACF-7-56, § 10, February 14, 1956.

1922-1951 Res. p. 677, February 2, 1950.

Tribal Council Res. 1922-1951 Res. p. 675, July 13, 1945.

#### **§ 508. United States Fish and Wildlife Service**

A. The United States Fish and Wildlife Service is authorized to utilize all of the modern techniques and restricted materials normally used by them in conducting rodent and predator control work on Navajo Nation range areas; provided that prior approval is obtained from each District Grazing Committee as to the specific locations of control stations.

B. With the prior approval of District Grazing Committees, studies may be conducted to develop new and better predator and rodent control techniques.

#### **History**

CS-74-57, September 9, 1957.

#### **§ 509. Violations**

A. Any person hunting or fishing on lands subject to the jurisdiction of the Navajo Nation in violation of Navajo Nation or federal hunting and fishing laws or regulations shall be delivered to the appropriate Navajo Nation or federal authorities for prosecution.

B. Any person hunting or fishing on lands subject to the jurisdiction of the Navajo Nation in violation of Navajo Nation hunting and fishing laws or regulations shall be brought to trial before the District Courts of the Navajo Nation, which shall assess penalties under 17 N.N.C. § 500 *et seq.* of the Navajo Nation Code. Collections of fines for game violations shall be distinguished from regular Court fines pursuant to Resolution ACF-7-56 and shall be earmarked for purposes as provided in 23 N.N.C. § 506(A).

C. For purposes of this Section, person shall mean either Indian or non-Indian.

#### **History**

CJN738-75, June 18, 1975.

CF-11-69, February, 3, 1969.

ACJ-56-56, June 21, 1956.

ACF-7-56, February 14, 1956.

#### **Cross References**

Fish and wildlife violations, see 17 N.N.C. § 500 *et seq.*

### **Chapter 7. Navajo Forestry Department [Repealed]**

#### **History**

**Note.** Chapter 7, previously entitled "Navajo Forestry Department", repealed by CAP-41-94, Exhibit "T", April 20, 1994. See also the Attorney General's memorandum regarding plans of operation and enabling legislation (January 4, 1991).

### **Chapter 9. Regulation of Forest Use**

#### **History**

**Prior law.** Chapter 9, previously entitled the "Uniform Refuse Receptacles Color Code", was rescinded by CD-40-82, § 2, December 14, 1982.

#### **§ 901. Application of federal laws, rules and regulations**

A. The harvesting of all tree species on lands subject to the jurisdiction of the Navajo Nation shall be conducted in conformity with Navajo Nation and applicable federal laws and regulations.

B. The right of free exercise of religion guaranteed by the Navajo Bill of Rights, the Indian Civil Rights Act,<sup>1</sup> and the U.S. Constitution shall not be infringed by these forest laws and regulations.

#### **History**

CN-84-85, Exhibit A, November 1, 1985.

CD-74-82, Exhibit B, December 14, 1982.

#### **Cross References**

Forest and woodlands violations, see 17 N.N.C. § 520 *et seq.*

#### **§ 902. Authority to regulate forest use**

A. The Forest Manager shall develop and recommend appropriate forest product use standards to become part of all timber sales permits and agreements for any commercial or non-commercial use.

B. The Forest Manager shall develop, recommend and enforce appropriate forest regulations and forest product use and transportation permit requirements.

C. The Resources Committee of the Navajo Nation Council shall have the

authority to establish regulations as proposed by the Forest Manager and set fees for the use, transportation and protection of the Navajo forests and products thereof, under the authority of this Chapter.

D. The Executive Director of the Navajo Division of Natural Resources, in conjunction with the Forest Manager, may issue orders which temporarily close or restrict the use of Navajo forests or woodlands when:

1. Weather and environmental conditions create extreme fire hazards; or

2. Soil saturation limits for Navajo forests or woodlands are such that use of the Navajo forests or woodlands would result in damage to the soil and/or water resources.

#### **History**

CN-84-85, Exhibit A, November 1, 1985.

CD-74-82, Exhibit B, December 14, 1982.

#### **Cross References**

Forest and woodlands violations, see 17 N.N.C. § 520 *et seq.*

#### **§ 903. Permit requirements, noncommercial—Generally**

A. Any person who harvests or attempts to harvest or remove any tree species or other forest and woodland products on lands subject to the jurisdiction of the Navajo Nation for noncommercial purposes shall possess a valid Navajo Nation forest product use or transportation permit. This requirement will become effective only upon approval of forest regulations and procedures by the Resources Committee of the Navajo Nation Council.

B. The procedures and fees for obtaining forest product use or transportation permits shall be outlined in the forest regulations established by the Resources Committee of the Navajo Nation Council.

C. The authority granted, as well as the limitations and restrictions on harvesting methods and other special provisions governing permit possession, shall be outlined in forest regulations established by the Resources Committee of the Navajo Nation Council.

D. The fee and charges for forest product use or transportation permits or associated fees shall be deposited in a special revolving account as outlined in § 907 of this Chapter.

#### **History**

CN-84-85, Exhibit A, November 1, 1985.

CD-74-82, Exhibit B, December 14, 1982.

#### **Cross References**

Forest and woodlands violations, see 17 N.N.C. § 520 *et seq.*

**§ 904. Contract and permit requirements, commercial—Generally**

A. On lands subject to the jurisdiction of the Navajo Nation, all persons harvesting or attempting to harvest any tree species or other forest products for commercial purposes shall have authorization pursuant to a timber sales contract, forest product use permit or agreement approved pursuant to the forest regulations.

B. The procedures for obtaining a timber sales contract or agreement or forest product use permit shall conform with provisions contained in Part 163, Title 25 of the Code of Federal Regulations, and the Forest Regulations.

C. The authority granted, the limitations and restrictions on harvesting methods, and all other special provisions or regulations governing timber and forest product sales shall be outlined in the sales contract or permit.

D. The Forest Manager shall review all timber sales contracts, prepare his or her recommendations, and present the package before the Resources Committee for recommendation to the Navajo Nation Council for approval.

**History**

CN-84-85, Exhibit A, November 1, 1985.

CD-74-82, Exhibit B, December 14, 1982.

**Cross References**

Forest and woodlands violations, see 17 N.N.C. § 520 *et seq.*

**§ 905. Enforcement authority**

A. The Forest Manager may delegate his or her enforcement authority to certain field staff within the Department of Forestry and other Departments or Divisions of the Navajo Nation.

B. The Forest Manager shall be responsible for the identification of such enforcement personnel and shall develop appropriate training standards related to the exercise of enforcement authority.

C. The Forest Manager and the identified enforcement personnel shall, after adequate training, be commissioned by the President of the Navajo Nation with the authority to enforce forest and woodland laws, regulations and tree cutting permit requirements as approved by the Resources Committee of the Navajo Nation Council. Identified enforcement personnel shall have the authority to make arrests and to search for and seize evidence in the same manner as a Navajo Nation police officer, and to cite violators of said laws, regulations and tree cutting permit requirements into the proper court.

D. The scope of enforcement authority and responsibility of Department of Forestry personnel shall be limited to the enforcement of forest laws and

regulations as established by the Resources Committee and the Navajo Nation Council.

E. The Department of Forestry, with the approval of the appropriate oversight Committee, may enter into cooperative agreements with federal, Navajo Nation and state authorities to enforce applicable forest laws and regulations. Specifically, Navajo Nation Tribal Rangers and the Navajo Division of Public Safety are authorized and directed to enforce forest and woodland laws and regulations in addition to commissioned Forestry personnel.

#### **History**

CN-84-85, Exhibit A, November 1, 1985.

CD-74-82, Exhibit B, December 14, 1982.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Intergovernmental Agreements, see 2 N.N.C. § 824(B)(6).

#### **§ 906. Authority to amend**

The Navajo Nation Council shall have the authority to revise or amend this Chapter.

#### **History**

CN-84-85, Exhibit A, November 1, 1985.

ACAU-129-83, § 2, August 9, 1983.

CD-74-82, Exhibit B, December 14, 1982.

#### **§ 907. Revolving fund; establishment; expenditure; report**

All forest product use or transportation permit fees and fines assessed by the Districts Courts of the Navajo Nation for violation of Navajo Nation laws and regulations governing forest management and other similar collections shall be deposited in a special Navajo Nation revolving fund and shall be used for the following purposes:

A. Forest protection, permit operation costs, development and regeneration projects not formally covered by Navajo Nation budget appropriations; and

B. Educational and training programs to develop the technical and managerial capabilities of Department of Forestry personnel.

#### **History**

CN-84-85, Exhibit A, November 1, 1985.



CD-74-82, Exhibit B, December 14, 1982.

## **Chapter 11. Young Adult Conservation Corps [Deleted]**

### **History**

**Note.** Chapter 3, previously entitled "Young Adult Conservation Corps" has been deleted from the Code as the Navajo Nation no longer has a contract with the BIA to administer the ACC program.

## **Title 24**

### **Taxation**

#### **Chapter 1. Uniform Tax Administration Statute**

##### **§ 101. Short title**

This Chapter shall be known as Chapter One of the Navajo Tax Code, the Uniform Tax Administration Statute.

##### **History**

CJY-52-95, July 20, 1995.

##### **§ 102. Purpose**

The purpose of this Chapter is to provide statutory rules applicable to all of the taxes imposed by the Navajo Nation.

##### **History**

CJY-52-95, July 20, 1995.

##### **§ 103. Administration**

A. The Navajo Tax Commission is empowered to administer, and delegate the administration of, all Navajo taxes and, to that end, shall be empowered to adopt substantive and procedural rules and regulations, orders implementing its decisions and rulings, and instructions such as may be necessary to the proper and efficient administration of these laws.

B. The Office of the Navajo Tax Commission shall have day-to-day responsibility for the administration of the Navajo Tax Code, and shall have all powers consistent with its plan of operation.

##### **History**

CJY-52-95, July 20, 1995.

##### **§ 104. Definitions**

Subject to additional definitions (if any) contained in the subsequent

sections of this Chapter or in subsequent chapters:

A. "Code" means the Navajo Tax Code, which includes this Chapter and any tax statute enacted by the Navajo Nation Council.

B. "Control" means the right or any kind of ability to direct the performance or activity of another, whether legally enforceable or not, and however such right may be exercisable or exercised.

C. "Commission" means the Navajo Tax Commission.

D. "Fraud" occurs when any person:

1. Willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe to be true and correct as to every matter;

2. Files any return electronically, knowing that the information in the return is not true and correct as to every material matter; or

3. With intent to evade or defeat the payment or collection of any tax, or knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals, or releases any property on which levy is authorized or that is liable for payment of tax or aids in accomplishing or causes the accomplishment of any of the foregoing.

E. "Month" means any consecutive 30 calendar day time-period for purposes of this Chapter.

F. "Office of the Navajo Tax Commission" is located within the Navajo Nation Executive Branch and is responsible for the administration of the Navajo Tax Code.

G. "Person" means any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government (other than the government of the Navajo Nation and any wholly owned subdivision or enterprise of the Navajo Nation government), or any part, division, or agency of any of the foregoing, and an individual or group of individuals.

H. "Received" means:

1. The postmark date, if action is taken by mail;

2. The date actually received by the Navajo Nation, when documents and/or payments are hand-delivered; or

3. The date of receipt by the Navajo Nation, in the case of wire transfer payments.

I. "Regulations" means the regulations adopted by the Commission.

J. "Related persons" means two or more persons owned or controlled, directly or indirectly, by the same person. As applied to natural persons, "related persons" means two or more natural persons who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.

K. "Return" means any document required to be filed when paying any Navajo Nation tax, as contrasted with other documents required to be filed that are not associated with the actual payment of taxes. Return also includes any attachments, such as schedules or forms that are associated with any return.

L. "Taxes" means any tax, interest, penalties, and costs, imposed or assessed individually or collectively pursuant to the Code.

M. "Taxpayer" means the person liable for the taxes or the person responsible for collecting and remitting the taxes.

### **History**

CD-66-06, December 22, 2006. Added definitions for "Month", "Received", and "Return", and adjusted subsequent subsection designations accordingly.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **Annotations**

#### **1. Occupancy tax**

"The Navajo Nation Hotel Occupancy Tax generally applies to the class of hotel-keepers within the Navajo Nation." *In the Matter of Atkinson Trading Company, Inc.*, 7 Nav. R. 275, 287 (Nav. Sup. Ct. 1997).

#### **§ 105. Assessment of tax**

A. The taxes imposed by the Code are assessed for a statutory period and are the liability of the taxpayers.

B. The Office of the Navajo Tax Commission is authorized to assess taxes against a person and those assessments are presumed to be correct.

1. When it appears that the return filed by a person understates the taxes due under the Code, the Office of the Navajo Tax Commission is authorized to assess the person for any tax deficiency, interest, penalties, and costs. The assessment is binding on the person but may be appealed in accordance with rules and regulations.

2. If no return is timely filed as required, the Office of the Navajo Tax Commission is authorized to make an estimate of the tax due and to assess the person for that tax, interest, penalties, and costs. This assessment is binding on the person unless shown to be clearly erroneous.

3. If a person fails to provide information within its possession or control which is relevant to a determination of taxes due and which it is required to provide under the Code, the Office of the Navajo Tax Commission is authorized to make an estimate of the tax due and to assess the taxpayer for that tax, interest, penalties, and costs. This assessment is binding on the taxpayer unless it is shown that the estimate, on the basis of the best information then available to the Office of the Navajo Tax Commission, was clearly erroneous or unless the Office of the Navajo Tax Commission for other good cause shown relieves the taxpayer from the operation of this Section.

C. Any taxes assessed shall become the liability of the taxpayer on the date due. If the taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If the taxpayer is an association, joint venture, or partnership, or a part thereof, then all the associates, participants, or partners both general and limited, shall be jointly and severally liable for the taxes. Companies shall be treated as corporations or partnerships consistent with their treatment by the Internal Revenue Service.

D. The owners of the interests in a unit or lease shall be jointly and severally liable for the taxes assessed with respect to said unit or lease.

E. Consistent with § 129 of this Chapter, the Office of the Navajo Tax Commission shall have the authority to redetermine incorrect or erroneous assessments, to issue amended assessments, if necessary, and to assess unassessed possessory interests as of the date on which they first became assessable.

#### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

#### **§ 106. Waiver of taxes**

Any waiver of tax or associated interest requires a two-thirds (2/3) vote of the full membership of the Navajo Nation Council. The Office of the Navajo Tax Commission has the authority to relieve a taxpayer of penalties and certain administrative fees, as set out in Sections 112-116 below.

#### **History**

CD-66-06, December 22, 2006.

#### **Library References**

Indians <KEY>32(9).

Westlaw Topic No. 209.

#### **§ 107. Nondiscrimination**

No provision of this Code shall be construed as imposing a tax which discriminates on the basis of whether a taxpayer is owned or controlled by members of the Navajo Nation.

#### **History**

CJY-52-95, July 20, 1995.

#### **§ 108. Designation of Individual**

On an annual basis, each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, by filing a Form 100. The forms must be submitted each year to the Office of the Navajo Tax Commission by January 15, even if no changes have occurred since the prior filing. In addition, an updated form must be filed within 30 days of a change in circumstances. The Commission may by regulation impose requirements as to the individuals who shall be designated under this Section, and may require information or documentation it deems necessary for the proper and efficient administration of these taxes to be provided with the designation. For purposes of this Section only, the term "taxpayers" shall not include persons on whom the Hotel Occupancy Tax is imposed, but shall include persons responsible for collecting and remitting the Hotel Occupancy Tax. In addition, for purposes of this Section only, "taxpayers" shall include all persons owning an interest in a lease subject to the Navajo Possessory Interest Tax.

#### **History**

CD-66-06, December 22, 2006.

CJY-52-95, July 20, 1995.

#### **§ 109. Extension of time**

A. Forms 200 and 245: A taxpayer may request an extension of time for filing. The request must be made to the Office of the Navajo Tax Commission by filing the required extension request form on or before the due date. An automatic extension of 15 days will be granted by the Office of the Navajo Tax Commission.

B. Forms other than Forms 200 and 245: A taxpayer may request an extension of time for filing. The request must be made to the Office of the Navajo Tax Commission by filing the required extension request form on or before the due date, and an estimated payment of the tax due must be made at the time of the request. An automatic extension of 60 days will be granted by the Office of the Navajo Tax Commission.

#### **History**

CJY-52-95, July 20, 1995.

#### **§ 110. Record keeping**

Every taxpayer shall keep full and true records of all taxable activities, in accordance with regulations.

### **History**

CJY-52-95, July 20, 1995.

### **§ 111. Interest imposed**

Rates of interest shall be established by regulation. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received. The Commission is authorized to set different rates of interest for underpayments and overpayments.

### **History**

CJY-52-95, July 20, 1995.

### **§ 112. Penalties for failure to file**

A. If any taxpayer fails to timely file any tax return, a penalty shall be assessed for each month or fraction thereof that the return is not filed, in the amount of five percent (5%) of the tax due for the period; provided, however, that the minimum amount for the total penalty imposed under this Section shall be fifty dollars (\$50.00).

B. The total penalty assessed in Subsection (A) shall not exceed twenty-five percent (25%) of the tax due, except where the fifty dollars (\$50.00) minimum applies.

C. If a person fails to timely file a Form 100, Fuel Excise Tax Retailer Report, Carrier Report, or Refiner Report, a one-time fifty dollar (\$50.00) penalty shall be assessed for each document that is not timely filed.

D. If a person fails to timely file a Possessory Interest Tax Form 200 or 245, a one-time penalty of fifty dollars (\$50.00) shall be assessed for each form that is filed after the due date but within 30 days of that date, and the penalty shall be increased to one-hundred and fifty dollars (\$150.00) if the form is filed more than 30 days after the required date.

E. For the purposes of this Section, a form filed on or before an extended due date for filing is timely filed.

F. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the tax payer from all or part of the penalties imposed under this Section.

### **History**

CD-66-06, December 22, 2006. Amended generally and added subsections E and F.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **§ 113. Penalties for failure to pay**

A. A taxpayer failing to timely pay an amount of tax by the time due shall be assessed an immediate penalty of five percent (5%) of the amount of the underpayment.

B. For each month the payment is overdue, an additional penalty shall be assessed of five-tenths percent (0.5%) of the underpayment.

C. The total penalty imposed under this Section shall not exceed ten percent (10%) of the tax due.

D. For purposes of this Section, a payment received on or before an extended date for payment is timely paid.

E. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this Section.

### **History**

CD-66-06, December 22, 2006. Amended subsections A and B.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **§ 114. Penalties for attempt to evade or defeat tax**

A. Any taxpayer understating the tax imposed by the Code through negligence of the Code and regulations, but without the intent to defraud, may be assessed a penalty of two hundred fifty dollars (\$250.00), plus twenty-five percent (25%) of the underpayment of tax.

B. Any taxpayer understating the tax imposed by the Code through reckless disregard of the Code and regulations, but without the intent to defraud, shall be assessed a penalty of two hundred fifty dollars (\$250.00), plus twenty-five percent (25%) of the underpayment of tax.

C. If any part of an understatement of tax is shown to be due to fraud, the taxpayer shall be assessed a penalty of five hundred dollars (\$500.00), plus fifty percent (50%) of the underpayment of tax.

D. Any person who willfully assists a taxpayer in the fraudulent understatement of tax due under the Code shall be subject to a penalty of five hundred dollars (\$500.00), plus twenty-five percent (25%) of the underpayment of tax.

E. Any liability arising under this Section shall be assessed and collected as taxes imposed by the Code.

F. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this Section.

### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **§ 115. Charges for administrative costs**

A. A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including, but not limited to, attorney fees and other costs of collection.

B. For good cause shown, the Office of the Navajo Tax Commission may relieve the taxpayer from all or part of the charges imposed under this Section.

### **History**

CD-66-06, December 22, 2006. Amended subsection A.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **§ 116. Failure to comply with Code**

A. Any taxpayer who fails to comply with a requirement: to designate an individual, to file a return, to provide information or documents, to allow access to equipment within its possession or control, to furnish a surety bond or other security, to comply with a duly issued subpoena, or to comply with a lawful order of the Office of the Navajo Tax Commission, may have all or some of its rights to engage in productive activity within the Navajo Nation suspended, until compliance is made or for such shorter time as the Office of the Navajo Tax Commission may provide.

B. Upon receipt of a notice of non-compliance issued by the Office of the Navajo Tax Commission, a taxpayer has 30 days in which to come into compliance. If the taxpayer fails to do so, the Office of the Navajo Tax Commission shall issue a notice of intent to suspend. The taxpayer shall have 30 days in which to come into compliance or to appeal only the notice of intent to suspend pursuant to § 131. This right of appeal is the sole remedy. Failure on the taxpayer's part to act within the 30 days shall result in the Office of the Navajo Tax Commission issuing a final order of suspension. In addition, if an appeal is decided adverse to a taxpayer, the Office of the Navajo Tax Commission shall issue a final order of suspension.

C. The Navajo Nation Division of Public Safety shall enforce the final order of suspension, which shall remain in effect until the taxpayer comes into compliance.

### **History**

CJY-52-95, July 20, 1995.



#### **§ 117. Interference with administration**

Information concerning criminal interference with administration of the Code shall be provided to the Office of the Prosecutor or appropriate authorities for appropriate action.

##### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

#### **§ 118. Collection powers**

A. In accordance with the provisions of the Code, the Office of the Navajo Tax Commission has the power to collect any taxes assessed, including the power to attach and seize the assets of a taxpayer or any property subject to lien. In addition, the Office of the Navajo Tax Commission has all other powers available to the Navajo Nation for collection of debts owed it.

B. The Office of the Navajo Tax Commission may request the Attorney General of the Navajo Nation to bring suit or enforcement proceedings in any court of competent jurisdiction. Provided, that the bringing of suit or enforcement proceedings shall not constitute a waiver of sovereign immunity and further provided that the Office of the Navajo Tax Commission shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

##### **History**

CJY-52-95, July 20, 1995.

#### **§ 119. Security for payment**

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Office of the Navajo Tax Commission is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount. The Commission shall prescribe by regulation the terms and conditions for requiring such security. For purposes of § 131, the requirement of security for payment shall be considered an adverse action.

##### **History**

CJY-52-95, July 20, 1995.

#### **§ 120. Lien for taxes**

A. If a taxpayer fails to pay any taxes after demand or assessment by the Office of the Navajo Tax Commission, or fails to provide security as set out in § 119, the amount shall be a lien in favor of the Navajo Nation upon all property or rights to property of those liable under § 105.

B. The lien shall arise at the time the demand or assessment is made,

shall attach to all property then owned and thereafter acquired, and shall continue until the amount of the lien is satisfied or released, and shall be effective against related persons without notice.

C. Provided, that with respect to a required return, a lien shall arise for any unpaid taxes at the time filing is due without further demand or assessment.

D. If a lien is required as a condition for granting an extension or stay of payment, such lien shall arise according to the terms of the extension or stay.

E. A lien shall be effective as against other parties upon notice being recorded in the offices of the Office of the Navajo Tax Commission and the Business Regulatory Department in a form available for inspection by the public.

F. The Commission may by regulation exempt certain property from the operation of the lien created by this Section.

#### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

#### **§ 121. Priority of lien**

A lien arising pursuant to § 120 shall have priority over all other liens imposed by any government other than the Navajo Nation, regardless of the date of perfection.

#### **History**

CJY-52-95, July 20, 1995.

#### **§ 122. Release of lien**

A. The lien shall be released upon payment of the entire liability of the taxpayer on account of whose liability the lien arose.

B. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid.

C. Where a lien has been recorded and the Office of the Navajo Tax Commission thereafter receives all or part of the taxes giving rise to the lien, the Office of the Navajo Tax Commission will cause a notation of the complete or partial release of the lien to be made in the record.

D. The Office of the Navajo Tax Commission may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause and where the interests of the Navajo Nation are adequately protected by other security.

## History

CJY-52-95, July 20, 1995.

### § 123. Foreclosure of lien

A. The Office of the Navajo Tax Commission may foreclose upon any or all items of property or rights to property subject to a lien for taxes by seizure and sale, to be conducted as set forth in this Section and accompanying regulations.

#### B. Seizure:

1. After seizure of property or rights to property, the Office of the Navajo Tax Commission shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

2. Any person shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof, to the Office of the Navajo Tax Commission at any time prior to the sale thereof, and upon payment or furnishing of security, the Office of the Navajo Tax Commission shall restore the property to him, and all further proceedings in connection with the seizure of the property shall cease from the time of the payment.

3. A taxpayer may appeal a seizure, and appeals shall be taken pursuant to § 131 under the following conditions:

a. The seized property shall not be removed from the jurisdiction of the Navajo Nation;

b. The taxpayer must provide an affidavit identifying all property or rights to property owned or controlled by the taxpayer located within the jurisdiction of the Navajo Nation.

4. The effect of a seizure upon any person for obligations due or payable to a taxpayer or persons liable under § 105 shall be continuous from the date the seizure is first made until the liability out of which the seizure arose is satisfied.

5. Any person in possession of or obligated with respect to property or rights to property which has been seized who, upon demand by the Office of the Navajo Tax Commission, surrenders such property or rights to property (or discharges said obligation) to the Office of the Navajo Tax Commission, shall be discharged from any obligation or liability to the taxpayer or persons liable under § 105 whose property or rights to property were seized.

#### C. Sale of Seized Property:

1. The Office of the Navajo Tax Commission shall publish a notice of sale, setting forth the time and place of the sale.

2. Proceedings for the sale of property shall be effective to transfer to the purchaser all right, title, and interest therein of the taxpayer or person whose property or rights to property were seized. Provided, that where required by federal law the sale of property shall not be final without the approval of the Secretary of the Interior or his designee.

D. The Office of the Navajo Tax Commission may delegate and empower persons to carry out the procedures of this Section, including officers of the Navajo Division of Public Safety, who shall render assistance in this regard on request by the Office of the Navajo Tax Commission.

#### **History**

CJY-52-95, July 20, 1995.

#### **§ 124. Application of proceeds**

A. Money seized by the Office of the Navajo Tax Commission, or realized from property or rights to property seized, shall be applied first to the expenses of the seizure and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax, in that order.

B. The balance, if any, shall be remitted to the person or persons who have claimed and proved legal entitlement thereto, provided that the Office of the Navajo Tax Commission may set time limits or other reasonable conditions on the making and proving of such claims.

#### **History**

CJY-52-95, July 20, 1995.

#### **§ 125. Interference with foreclosure**

A. No person shall remove from the jurisdiction of the Navajo Nation any property on which there is a lien for taxes pursuant to § 120.

B. No person in possession of or obligated with respect to property or rights to property which have been seized, shall fail to surrender such property or rights or to discharge such obligation upon demand by the Office of the Navajo Tax Commission therefor, except as to any part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process.

C. Any person violating the provisions of this Section shall be personally liable for the value of the property removed or not surrendered, or for the amount of the obligation not discharged, not exceeding the amount for which the seizure was made. Any liability arising under this section shall be assessed and collected as taxes imposed by the Code.

#### **History**

CJY-52-95, July 20, 1995.

## **§ 126. Transfer of business**

A. If a person buys substantially all of the assets of a taxpayer within the Navajo Nation, that person shall withhold from the purchase price and pay to the Office of the Navajo Tax Commission the amount of taxes due on account of activities of the taxpayer prior to the purchase.

B. Prior to transfer, a buyer may make a written request and, within 45 days after the owner's records are made available for audit, the Office of the Navajo Tax Commission shall send a notice to the buyer for the taxes due. Thereafter, the buyer shall not be personally liable under this Section for any taxes in excess of the amount stated in the notice, or for any such taxes if no notice is given within the time required.

C. Any buyer failing to make such a request or failing to withhold taxes from the purchase price shall be personally liable up to the value of all the property acquired. Any liability arising under this Section shall be assessed and collected as taxes imposed by the Code.

D. No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the Navajo Nation shall be granted by the Navajo Nation unless the Office of the Navajo Tax Commission first certifies that all applicable taxes have been paid, or that payment has been adequately secured.

### **History**

CJY-52-95, July 20, 1995.

## **§ 127. Mutual assistance agreements**

The Office of the Navajo Tax Commission is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force only upon ratification by the Navajo Tax Commission and the Intergovernmental Relations Committee of the Navajo Nation Council; no other committee approval is required.

### **History**

CJY-52-95, July 20, 1995.

## **§ 128. Prohibition of suits**

No suits for the purpose of restraining the assessment or collection of the taxes imposed under the Code shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed. All actions concerning the application of the Code shall be brought pursuant to § 131.

### **History**

CJY-52-95, July 20, 1995.

## **§ 129. Statute of limitations**

A. Except for the Business Activity Tax and the Hotel Occupancy Tax, taxes imposed and required to be collected by the Code shall be assessed within four years after the return is filed, or the Possessory Interest Tax notice of assessment is issued, except as provided in Subsection (B) of this Section. Taxes imposed and required to be collected by the Business Activity Tax and the Hotel Occupancy Tax shall be assessed within six years after the return is filed, except as provided in Subsection (B) of this Section.

B. Exceptions to the statute of limitations on assessment:

1. In the case of fraudulent conduct, no period of limitations shall apply.

2. In the case of failure to file a return, declaration of interest, or other required document, no period of limitations shall apply.

3. The running of the period of limitations on assessment is suspended during any period the Office of the Navajo Tax Commission is prohibited by any court from making an assessment.

4. The running of the period of limitations on assessment may be suspended for any period agreed upon between the taxpayer and the Office of the Navajo Tax Commission.

C. Except for the Business Activity Tax and the Hotel Occupancy Tax, any action in a court or by seizure for collection of taxes imposed by the Code must be commenced within four years of the date of assessment, except as provided in Subsection (D). Any action in a court or by levy for collection of taxes imposed by the Business Activity Tax and the Hotel Occupancy Tax must be commenced within six years of the date of assessment, except as provided in Subsection (D).

D. Exceptions to the statute of limitations on collection:

1. The running of the period of limitations on collection is suspended during any period the Office of the Navajo Tax Commission is prohibited by any court from commencing collection proceedings and during any period of appeal under § 131.

2. The running of the period of limitations on collections may be suspended for any period agreed upon between the taxpayer and the Office of the Navajo Tax Commission.

### **History**

CD-66-06, December 22, 2006.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

**Revision Note.** Partially reworded for clarity.

**§ 130. Procedure for refunds**

Any taxpayer believing it has made an overpayment of taxes may file a written claim for refund with the Office of the Navajo Tax Commission. These refund claims must be filed within one year after the alleged overpayment was made. The procedure for refund claims shall be established in regulations.

**History**

CJY-52-95, July 20, 1995.

**§ 131. Procedure for appeal**

A. Appeals from assessments, denials of refund, or other adverse action shall be made first to the Office of the Navajo Tax Commission according to procedures established in regulations; these procedures shall also apply to any challenges to the validity of the Code. The Commission may permit or require one or more levels of review by the Office of the Navajo Tax Commission or its designees and may provide for hearings before the Commission as a body. The failure to duly proceed to a next required level of review under this Subsection shall constitute a waiver of any further appeal pursuant to this Subsection or Subsection (B).

B. Appeals from final actions of the highest level of administrative review shall be made only to the Supreme Court of the Navajo Nation, according to procedures established in regulations, but in no case may an appeal of an assessment be taken to the Supreme Court until payment of the taxes assessed has first been made.

C. Actions before the Supreme Court:

1. Review of administrative actions in the Supreme Court shall be on the record and not *de novo*, and shall be limited to the determination whether the administrative action was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable Navajo or federal law. However, where affirmation of an administrative action taken pursuant to § 116 would suspend a right of an appellant to engage in productive activity within the Navajo Nation, the appellant shall on request be entitled to a hearing *de novo* on any material question of fact.

2. The Supreme Court shall be empowered to affirm, reverse, or modify any administrative action, or to remand the matter for further action.

D. Procedures for staying the payment of taxes which are being appealed under Subsection (A) of this Section may be established in regulations. The Office of the Navajo Tax Commission in its discretion may condition the grant of a stay on the posting of a bond or provision of other security.

**History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **Annotations**

#### **1. Due process**

" ... [T]he statutory 'pay first, litigate later' requirement satisfies Blaze's due process rights. Blaze was on notice of its obligation to pay the taxes, penalties and interest that were eventually assessed against it. [.... ] Further, we note that although due process does not require the Navajo Nation to provide predeprivation process, taxpayers are afforded an informal conference and a full hearing before the Tax Commission prior to paying their tax liabilities." *Blaze Construction, Inc. v. Navajo Tax Commission*, 7 Nav. R. 435, 438 (Nav. Sup. Ct. 1999).

"24 N.T.C. § 234(b) does not empower the Supreme Court with original jurisdiction to issue injunctions. Neither can the Supreme Court properly use 24 N.T.C. § 234(b) to invoke its supervisory authority over lower courts. An appeal to the Supreme Court of a final Tax Commission decision is the only remedy available under 24 N.T.C. § 234(b)." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 101 (Nav. Sup. Ct. 1986).

#### **§ 132. Abatement authority**

A. In response to a written request for abatement, or when an assessment is found to be incorrect, the Office of the Navajo Tax Commission may abate any part of the assessment determined to have been incorrectly, erroneously, or illegally made.

B. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Office of the Navajo Tax Commission shall abate the appropriate amount of the assessment.

### **History**

CD-66-06, December 22, 2006. Deleted subsection (C).

CJY-52-95, July 20, 1995.

#### **§ 133. Closing agreements**

A. If in good faith the Office of the Navajo Tax Commission at any time is in doubt of the taxpayer's liability, it may enter into a written closing agreement with the taxpayer that adequately protects the interests of the Navajo Nation, provided that such agreement shall be subject to approval by the Attorney General of the Navajo Nation.

B. If entered into after an appeal has been filed pursuant to § 131, a closing agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the Office of



the Navajo Tax Commission may require the provision of security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to the liability or nonliability for payment of taxes relating to the periods referred to in the agreement only, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **§ 134. Confidentiality rules**

A. Nothing in this Section is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of reasonable inquiry.

B. It shall be unlawful for any employee or former employee of the Office of the Navajo Tax Commission to reveal to any person, other than another employee or legal counsel for the Office of the Navajo Tax Commission, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the Office of the Navajo Tax Commission, except:

1. Where the taxpayer has given detailed consent in writing to the release of specific information;

2. To an authorized representative of the taxpayer;

3. To an employee of the government of the Navajo Nation for use in connection with the governmental function of said employee, provided that it shall be unlawful for the Navajo Nation employee to reveal said information except as permitted in this Section;

4. To an authorized representative of another Indian nation or a state, provided that the receiving nation or state has entered into a written agreement with the Office of the Navajo Tax Commission to use the information for tax purposes only and that the receiving nation or state has enacted a confidentiality statute similar to this section;

5. To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;

6. To the taxpayer, in any administrative or judicial proceeding in which that taxpayer has put its own liability for compliance with the Navajo tax laws in issue, as to all information directly reflecting, referring, or relating to that taxpayer that is not otherwise privileged;

7. In compliance with the order of a hearing officer of competent jurisdiction or any court of competent jurisdiction in which the

information sought is material to the inquiry;

8. In recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;

9. In statistical releases not identifying the information provided as applicable to any single taxpayer;

10. To the extent of revealing whether a taxpayer has or has not made a designation (and, if so, the name and address of that designee), or whether a person is or is not a designee (and, if so, by whom he has been designated); and

11. To the extent of revealing to the purchaser or intended purchaser of a taxpayer or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.

C. For purposes of this Section, "employee of the Office of the Navajo Tax Commission" shall include members of the Navajo Tax Commission and any person for whose services the Office of the Navajo Tax Commission has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this Section.

D. Any Navajo Nation employee or former employee who violates any of the provisions of this Section shall be subject to a civil fine not to exceed five hundred dollars (\$500.00). The District Courts of the Navajo Nation shall have jurisdiction to hear cases arising under this Section, which may only be brought by the taxpayer harmed by the violation of this Section.

E. The Office of the Navajo Tax Commission may in its discretion further restrict the disclosure of information, and such restriction shall be considered an adverse action for purposes of § 131.

#### **History**

CD-66-06, December 22, 2006. Deleted previous subsection (B)(1) and renumbered subsequent subsections; also amended subsection (C).

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

#### **§ 135. Notice**

The Office of the Navajo Tax Commission may give notice to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. Where a taxpayer has not designated an individual, notice may be given by mailing the notice to the last known address of the taxpayer, or by mailing the notice to a person who is lessee, permittee, or assignee of the affected property, or to a person holding a permit or license for the conduct of the taxable activity. The use of other methods of providing notice, including publication, may be made so long as the method comports with due process.

### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

### **§ 136. Investigative authority**

A. For the purpose of enforcing the provisions of the Code, the Office of the Navajo Tax Commission is authorized to inspect property, to examine and require the production of any pertinent records, books, information, evidence, or financial data, and to require the presence of any person and require testimony under oath concerning the subject matter of an inquiry, and to make a permanent record of the proceeding.

B. As a means for accomplishing the foregoing, the Office of the Navajo Tax Commission is hereby vested with the power to issue subpoenas and summonses, pursuant to regulations.

C. The Courts of the Navajo Nation shall have the power to enforce administrative subpoenas and summonses issued by the Office of the Navajo Tax Commission.

### **History**

CJY-52-95, July 20, 1995.

### **§ 137. Oaths and affirmations**

Any agent or employee designated by the Office of the Navajo Tax Commission for that purpose is authorized to administer such oaths or affirmations and to certify to such documents as may be necessary under the Code or the regulations.

### **History**

CJY-52-95, July 20, 1995.

### **§ 138. Receipts; disbursements**

A. There is hereby created in the treasury of the government of the Navajo Nation the Tax Administration Suspense Fund.

B. Except as otherwise provided in the Hotel Occupancy Tax, all money received by the Office of the Navajo Tax Commission as taxes shall be deposited forthwith to the credit of said Fund.

C. Payment of claims for refund shall be disbursed from this Fund, except to the extent that there is a pertinent escrow established pursuant to Subsection (E) of this Section.

D. At the end of each month, the balance remaining in the Fund, after the payment of refunds under Subsection (C) of this Section, shall be transferred

to the general fund or to such other funds or the credit of such accounts, as may be provided by Navajo Nation law.

E. Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow, or direct some balance or a percentage of receipts to be maintained in the Tax Administration Suspense Fund from month-to-month in anticipation of disbursements which may have to be made therefrom.

F. Balances maintained pursuant to Subsection (E) may only be reappropriated by a two-thirds (2/3) vote of the full Navajo Nation Council.

#### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

**Revision Note.** Slightly reworded for clarity.

#### **§ 139. Severability**

If any provision of this Code, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

#### **History**

CJY-52-95, July 20, 1995.

#### **§ 140. Effective date**

This Chapter shall take effect upon approval by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

#### **History**

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

#### **§ 141. Repeals**

All laws or parts of laws which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

#### **History**

CJY-52-95, July 20, 1995.

## **Chapter 3. Possessory Interest Tax**

### **History**

Effective date of 1984 revision of Chapter 3. CO-53-84, § 2, October 24, 1984, states as follows: "The Amendments shall take effect upon approval by the Navajo Nation Council for all assessment dates on or after January 01, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any assessment date before January 01, 1985, and further provided, that a lien for assessment dates prior to January 01, 1985, shall not arise except as provided in § 224(a)."

**Note.** See also 24 N.N.C. § 244.

### **§ 201. Short title**

The tax imposed by this Chapter shall be called the "Possessory Interest Tax."

### **History**

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

**Revision note.** "Tribe" and "Tribal" changed to "Nation" throughout this Chapter pursuant to 1 N.N.C. § 301.

### **§ 202. Tax imposed**

A. A tax is hereby imposed on possessory interests within the Navajo Nation at the rate established under § 206.

B. The tax assessed under this Chapter is computed by multiplying the taxable value of a possessory interest on the assessment date by the tax rate.

C. All possessory interests shall be uniformly classified into only one of the five possessory interest classifications, § 204 (I) to (M), to determine the taxable value.

### **History**

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

### **Annotations**

#### **1. Construction with other laws**

Unilateral imposition by Navajo Nation of possessory interest tax (PIT), which applied to mining activity on Navajo Partitioned Lands within former Joint Use Area, did not violate Navajo-Hopi Land Settlement Act, notwithstanding provision for joint management of subsurface mineral estate by Navajo Nation and Hopi Tribe; PIT did not require Hopi approval as Navajo Nation acted under its governmental authority in imposing tax, which did not constitute management of subsurface mineral estate, and Hopi Tribe's management interest in coal did not constitute governmental interest. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457, (9th Cir.(Ariz.) 1996).

## **2. Prior approval**

Possessory interest tax (PIT) imposed by Navajo Nation, which affected coal mining activity on lands partitioned to Navajo pursuant to Navajo-Hopi Land Settlement Act, did not require approval of Secretary of Interior, which was mandated only when "otherwise required by law," as PIT was not a contract or agreement which would have required such approval. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457 (9th Cir.(Ariz.) 1996).

## **§ 203. Administration**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

### **History**

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

### **Annotations**

#### **1. Approval of taxes**

It was not necessary that Secretary of the Interior approve taxes imposed by an Indian tribe on the value of leasehold interests in tribal lands and on receipts from sale of property produced or extracted for the sale of services within those lands. *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 105 S.Ct. 1900, 85 L.Ed.2d 200, (U.S.Ariz.1985).

## **§ 204. Definitions**

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

A. "Possessory interest" means the property rights under a lease approved, consented to, or granted by the Navajo Nation, including the rights to the lease premises and underlying natural resources.

B. "Assessment date" means each January 1st.

C. "Lease" means any agreement conferring rights to use or possess tribal lands or to sever products therefrom, including, but not limited to, a lease, right-of-way, use permit, or a joint venture or operating agreement.

D. "Owner" means any person who owns an interest in a lease, or part thereof, as grantee, lessee, permittee, assignee, sublessee, or transferee, whether of the whole interest or less than the whole. In the case of parties to a joint venture or operating agreement, owners and their interests shall be determined under regulations.

E. "Tertiary recovery project" means an enhanced recovery project by the following means:

1. Alkaline or caustic flooding—an augmented water flooding technique where the water is made chemically basic by the addition of alkali metals;

2. Conventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam into injection wells to effect oil displacement toward production wells. This method may include the supplemental injection of water, solvents, or other fluids;

3. Cyclic steam injection—the alternating injection of at least fifty percent (50%) quality steam and production of oil with condensed steam from the same well or wells;

4. Immiscible gas displacement—the injection of non-hydrocarbon gas into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

5. In situ combustion—the combustion of oil in the reservoir sustained by continuous air injection, to displace unburned oil toward producing wells—provided it continues until at least fifteen percent (15%) of reservoir volume has been served or is burned;

6. Microemulsion flooding—an augmented water flooding technique in which a "surfactant" system is injected to enhance oil displacement toward producing wells;

7. Miscible fluid displacement—an oil displacement process in which fluid is injected into an oil reservoir at pressure levels such that the injected fluid and reservoir oil are miscible. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

8. Polymer augmented waterflooding—an augmented waterflooding technique in which polymers are injected with the water to improve areal and vertical sweep efficiency;

9. Unconventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam to effect oil displacement toward producing wells. This method may include the supplemental

injection of water, solvents, or other fluids and applies only to steam drive projects with an average depth greater than 25,000 feet or which recover oil with a gravity less than 10° API;

F. "Expanded tertiary recovery project" or "expansion" means the addition of injection and producing wells, the change of injection pattern, or other operating changes to an existing tertiary recovery project that will result in the recovery of oil that would not otherwise be recovered;

G. "Incremental production value" means (1) the value of the oil that could be produced by a tertiary recovery project in excess of the base production value established under conditions before production under the tertiary recovery project; or (2) the value of the oil that could be produced by an expanded tertiary recovery project in excess of the base production value established under conditions before production under the expanded tertiary recovery project;

H. "Base production value" means (1) the value of the oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the tertiary recovery project being certified by the Office of the Navajo Tax Commission; or (2) the value of the oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the expanded tertiary recovery project being certified by the Office of the Navajo Tax Commission.

I. "Class one possessory interest" means any lease used to extract, sever, transport or process coal, oil, gas, minerals, and other natural resources.

J. "Class two possessory interest" means any lease used for the generation of electricity, or used for the transportation of electricity upon lines greater than 14.5 kV.

K. "Class three possessory interest" means any lease used for commercial, industrial, manufacturing, assembling or fabricating purposes.

L. "Class four possessory interest" means any lease used for residential purposes.

M. "Class five possessory interest" means any lease used for other purposes.

#### **History**

CO-76-00, October 20, 2000.

CJA-6-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.



## **Annotations**

### **1. Proceeds**

Possessory interest tax (PIT) constituted "proceeds" derived from coal underlying former Joint Use Area, which Navajo Nation thus had to share with Hopi Tribe pursuant to Navajo-Hopi Land Settlement Act, even though Navajo excluded one-half of value of leasehold from PIT in attempt to divide otherwise "undivided" interest in coal, as PIT was tax on rights to "underlying natural resources" granted under lease to mining company and was thus a benefit derived from coal in which Hopi interest was "joint, undivided, and equal" with that of Navajo. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457 (9th Cir.(Ariz.) 1996).

### **§ 205. Valuation**

A. The value of a possessory interest shall be determined as provided in this Section, or by any method adopted by the Office of the Navajo Tax Commission which accurately reflects fair market value. Provided, that the value of a possessory interest shall exclude the value of leasehold improvements.

B. Fair market value method: The value of a possessory interest may be determined on the basis of the selling prices of comparable leases (whether within or without the Navajo Nation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

C. Present value of income method: The value of a possessory interest may be determined by computing the capitalized value of the gross income to be received from the lease less the reasonable expenses to be incurred in producing the income. The allowable expenses shall be set forth in regulations. Such capitalization shall be done for the remaining life of the lease. If the lease term is indefinite, for the purpose of this method, the life of the lease shall be presumed to be 25 years.

D. The Office of the Navajo Tax Commission may engage private appraisal firms for the valuation of possessory interests and determination of valuation factors.

## **History**

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

### **§ 206. Rate of tax**

The tax rate shall be established in regulations. The rate shall not be less than one percent (1%), or more than ten percent (10%). Until another rate is established, the tax rate is three percent (3%). A change in the rate must be announced by July 1st following the assessment date for which it is effective.

### **History**

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

### **§ 207. Assessment**

A. Possessory interests shall be assessed annually as of the assessment date.

B. Taxes assessed shall be a lien against the lease and any leasehold improvements in favor of the Navajo Nation. Such lien shall arise as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances upon the property.

C. Owners of possessory interests shall be liable for the taxes assessed.

### **History**

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

### **§ 208. Exemptions**

A. No possessory interest with a taxable value of less than one hundred thousand dollars (\$100,000) shall be subject to this tax. Provided, however, that all possessory interests of a person who owns interests in more than one lease, and of related persons, shall be combined to determine the eligibility of said possessory interests for this exemption.

B. 1. The portion of the possessory interest value attributable to a tertiary recovery project (certified after 1/1/96) or the portion of the possessory interest value attributable to an expanded tertiary recovery project (certified after 1/1/96) shall be exempt from the Possessory Interest Tax from the date the application is received subject to the following:

a. The operator must file an application with the Office of the Navajo Tax Commission for certification of a tertiary recovery project or an expanded tertiary recovery project. At the time the application is filed, the operator must file its projection of base production value for validation and approval by the Office of the Navajo Tax Commission. The Office of the Navajo Tax Commission will review the application and make a determination if the project qualifies as a tertiary recovery project or an expanded tertiary recovery project. The Office of the Navajo Tax Commission will certify or reject the project in writing to the operator in a reasonable timely manner.

b. Disapproval of the base production value or rejection of the project shall constitute an adverse action appealable pursuant to § 131 of the Uniform Tax Administration Statute.

2. The exemption granted under § 208(B)(1) shall be limited as follows: the value associated with the exemption shall not exceed three-fourths of the total value. The Possessory Interest Tax shall be applied to the greater of the following: the base production value or twenty-five percent (25%) of the total value, including the value associated with the incremental production.

3. The exemption granted by this Subsection shall be separate from and in addition to any exemptions granted under other chapters of Title 24.

#### **History**

CO-76-00, October 20, 2000.

CJA-6-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

#### **§ 209. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

#### **§ 210. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

#### **§ 211. Filing of declaration**

A. Each owner must file a declaration of its interest in any lease on or before April 1st following each assessment date, or in accordance with regulations. The Office of the Navajo Tax Commission may by form or regulation require the information and documents which it deems necessary for proper and efficient administration of the tax and require that the declaration be signed

by specified persons.

B. If an owner fails to provide information or documents within its possession or control which are relevant to a determination of the value of a possessory interest and which it is required to provide under this Chapter, the Office of the Navajo Tax Commission may proceed to determine the value and to assess the taxes. This assessment is binding on the owner unless it is shown that the valuation, on the basis of the best information available to the Office of the Navajo Commission, was clearly erroneous or unless the Office of the Navajo Tax Commission for other good cause shown relieves the owner from the operation of this Subsection.

#### **History**

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

#### **§ 212. Payment of tax**

A. The tax shall be paid in two installments, one-half being due by November 1st of each year and the other one-half being due by May 1st of the following year. Provided, that no payment of tax shall be due less than three months after the time an assessment is made and notice thereof given and that the Commission shall extend the time for payment accordingly.

B. In the case of an oil and gas lease, an operator who has a right to receive monetary payments for products severed for other than its own interest may be required to make payments of tax to the Office of the Navajo Tax Commission on behalf of an owner, and shall credit such amounts paid against monetary payments due to the owner and provide the owner with a statement of the tax paid.

#### **History**

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

#### **§ 213. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

**§ 214. Record keeping**

Records required to be kept must be preserved for four years beyond the time payment of tax is made, or if no payment is due, for four years beyond the due date of the declaration to which the records relate.

**History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

**§ 215. Class one possessory interest**

The taxable value of a Class one possessory interest shall be one hundred percent (100%) of its value.

**History**

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

**§ 216. Class two possessory interest**

The taxable value of a Class two possessory interest shall be one hundred percent (100%) of its value.

**History**

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

**§ 217. Class three possessory interest**

The taxable value of a Class three possessory interest shall be ten percent (10%) of its value.

#### **History**

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978

#### **§ 218. Class four possessory interest**

The taxable value of a Class four possessory interest shall be ten percent (10%) of its value.

#### **History**

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

#### **§ 219. Class five possessory interest**

The taxable value of a Class five possessory interest shall be ten percent (10%) of its value.

#### **History**

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

#### **§§ 220 to 242. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

### **§ 243. Severability**

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

#### **History**

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978

### **§ 244. Effective date**

This Chapter shall become effective in accordance with Title 2 of the Navajo Nation Code.

#### **History**

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

**Note.** Effective date of 1984 revision of Chapter 3. CO-53-84, § 2, October 24, 1984, states as follows: "The Amendments shall take effect upon approval by the Navajo Nation Council for all assessment dates on or after January 01, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any assessment date before January 01, 1985, and further provided, that a lien for assessment dates prior to January 01, 1985, shall not arise except as provided in § 224(a)."

Effective date and application of revisions by CO-79-85, October 31, 1985.

### **§ 245. Repeals**

All laws or parts of laws (or attachments thereto), which are inconsistent with the provisions of this Chapter, are hereby repealed, including, without limitation, any law purporting to waive any rights of taxation by the Navajo Nation.

#### **History**

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978

## **Chapter 4. Oil and Gas Severance Tax**

### **§ 301. Short title**

The tax imposed by this Chapter shall be called the "Oil and Gas Severance Tax."

#### **History**

CO-79-85, October 31, 1985.

### **§ 302. Tax imposed**

A tax is hereby imposed on the severance of products within the Navajo Nation at the rate established under § 306. The tax due for a period is computed by multiplying the value of products severed and sold during the period by the tax rate.

#### **History**

CO-79-85, October 31, 1985.

### **§ 303. Administration**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

### **§ 304. Definitions**

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

A. "Severance" means severing, producing, or taking from the soil in any manner whatsoever.

B. "Products" means oil, natural gas, or other liquid hydrocarbons, individually or any combination thereof.

C. "Value" means the actual price received for the products at the production unit, or the value which is determined under § 305.

D. "Production unit" means a unit of property which is designated and identified under § 305(C).

E. "Interest" means an entire or fractional interest of any kind or nature in products at the time of severance from a production unit.



F. "Operator" means any person engaged in severing products from a production unit, or who owns an interest and receives all or a portion of the products for its interest.

G. "Owner" means any person who owns an interest, or who has a right to a monetary payment which is determined by the value of products.

H. "Purchaser" means any person who is the first purchaser of products after severance from a production unit.

I. "Period" means a calendar month.

J. "Tertiary recovery project" means an enhanced recovery project by the following means:

1. Alkaline or caustic flooding—an augmented water flooding technique where the water is made chemically basic by the addition of alkali metals;

2. Conventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam in to injection wells to effect oil displacement toward production wells. This method may include the supplemental injection of water, solvents, or other fluids;

3. Cyclic steam injection—the alternating injection of at least fifty percent (50%) quality steam and production of oil with condensed steam from the same well or wells;

4. Immiscible gas displacement—the injection of non-hydrocarbon gas into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

5. In situ combustion—the combustion of oil in the reservoir sustained by continuous air injection, to displace unburned oil toward producing wells—provided it continues until at least fifteen percent (15%) of reservoir volume has been served or is burned;

6. Microemulsion flooding—an augmented water flooding technique in which a "surfactant" system is injected to enhance oil displacement toward producing wells;

7. Miscible fluid displacement—an oil displacement process in which fluid is injected into an oil reservoir at pressure levels such that the injected fluid and reservoir oil are miscible. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

8. Polymer augmented waterflooding—an augmented waterflooding technique in which polymers are injected with the water to improve areal and vertical sweep efficiency;

9. Unconventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam to effect oil displacement toward producing wells. This method may include the supplemental injection of water, solvents, or other fluids and applies only to steam drive projects with an average depth greater than 25,000 feet or which recover oil with a gravity less than 10° API;

K. "Expanded tertiary recovery project" or "expansion" means the addition of injection and producing wells, the change of injection pattern, or other operating changes to an existing tertiary recovery project that will result in the recovery of oil that would not otherwise be recovered;

L. "Incremental oil production" means the volume of oil produced by a tertiary recovery project or an expanded tertiary recovery project in excess of the base production established under conditions before production under the tertiary recovery project or expanded tertiary recovery project;

M. "Base production" means (1) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the tertiary recovery project being certified by the Office of the Navajo Tax Commission; or (2) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the expanded tertiary recovery project being certified by the Office of the Navajo Tax Commission.

#### **History**

CJA-7-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§ 305. Value and unit**

A. The Commission may determine the value of products severed from production unit when: The operator and purchaser are affiliated or related persons; or, the sale and purchase of products is not an arm's length transaction; or, products are severed and removed from a production unit and a price is not established for such products.

B. The value determined by the Commission shall be commensurate with the actual price received for products of like quality, character, and use which are severed in the same field or area. If there are no sales of products of like quality, character, or use severed in the same field or area, then the Commission shall establish a reasonable value based upon the best information available.

C. The Commission shall designate the property that will constitute a production unit and assign to each production unit a number or symbol, which shall serve as identification for the purposes of reporting the severance of products and paying taxes. The Commission shall inform the operators of production units as to the designations made and identification so assigned.

If the Commission fails to designate production units and assign numbers, taxpayers are in no way relieved from the liability imposed by this Chapter and the operator shall request that such designations and assignments be made.

#### **History**

CO-79-85, October 31, 1985.

#### **§ 306. Rate of tax**

The tax rate shall be established in regulations. The rate shall not be less than three percent (3%) or more than eight percent (8%). Until another rate is established, the rate is four percent (4%). A change in the tax rate must be announced at least three full periods before its scheduled effective date.

#### **History**

CO-79-85, October 31, 1985.

#### **§ 307. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§ 308. Exemptions**

A. Nothing in this Chapter shall be construed as imposing a tax on actual royalty payments made to the Navajo Nation government or the federal government.

B. The incremental oil production from a tertiary recovery project (certified after January 1, 1996) and the incremental oil production from an expanded tertiary recovery project (certified after January 1, 1996) shall be exempt from the Oil and Gas Severance Tax from the date the application is received subject to the following:

1. The operator must file an application with the Office of the Navajo Tax Commission for certification of a tertiary recovery project or an expanded tertiary recovery project. At the time the application is filed, the operator must file its projection of base production for validation and approval by the Office of the Navajo Tax Commission. The Office of the Navajo Tax Commission will review the application and make a determination if the project qualifies as a tertiary recovery project or an expanded tertiary recovery project. The Office of the Navajo Tax Commission will certify or reject the project in writing to the operator in a reasonable timely manner.

2. Disapproval of the base production or rejection of the project shall constitute an adverse action appealable pursuant to 24 N.N.C. § 131.

3. If the tertiary recovery project or expanded tertiary recovery project is certified by the Office of the Navajo Tax Commission pursuant to the provisions of § 308(B)(1), the taxpayer may claim exemption for the incremental oil production from the date the application is received. Any Navajo severance tax paid on the incremental oil production during the period from the date the application is received to the date of certification shall be creditable against Navajo severance tax for subsequent periods.

4. The exemption granted by this Subsection shall be separate from and in addition to any exemptions granted under other chapters of Title 24.

#### **History**

CJA-7-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§ 309. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§ 310. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§ 311. Filing of reports**

A. Taxpayers must file reports of the severance or purchase of products and the tax due, or withheld and remitted, for the period, by the fifteenth day of the second month after the end of each calendar month, in accordance with Subsections (B), (C), and (D) of this Section. The Commission may by form or regulation require that information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included in or with reports, and that reports be signed by specified persons.

B. Each purchaser shall include in its report the total value, volume, and kind of products purchased during the period, by production unit, and any tax withheld from payments. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to report purchases.

C. Each operator shall include in its report the name of the property and the total value, volume, and kind of products severed and sold, by production unit, the identity of each owner and any tax withheld therefrom. For products severed and taken-in-kind other than for itself, the operator's report need not include the value of the products taken.

D. An owner whose interest in products severed is reported under Subsections (B) or (C) of this Section is not required to file a report. Provided that, where an operator or purchaser has not reported or not included in a report, any part of the value, volume, and kind of products severed and sold or taken with respect to an owner, such owner shall be required to file a report as to its interest, in accordance with this Chapter and the regulations.

E. The Commission may by form or regulation require information reports to be filed by any person it deems necessary for the proper and efficient administration of the tax.

### **History**

CO-79-85, October 31, 1985.

### **§ 312. Withholding and payment of tax**

A. A purchaser making a monetary payment to an owner or an operator for an owner's portion of the value of products purchased shall withhold from such payment the amount of tax due from the owner. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to withhold tax from payments.

B. An operator making a monetary payment to an owner for the owner's portion of the value of products severed and sold shall withhold from such payment the amount of tax due from the owner. Provided that, if a purchaser has withheld the tax, an operator shall not also withhold.

C. Payment of tax is due at the time a report is due. In addition to the tax due for itself as an owner, a taxpayer must remit to the Commission in full any and all amounts which, as an operator or purchaser, it has withheld from owners.

D. An operator or purchaser who withholds the tax and remits it, pursuant to subsections (A), (B), and (C) of this Section, shall credit such amounts against the monetary payment to the owner and shall, in a reasonable time and manner, provide the owner with a statement of the tax withheld.

E. An owner whose tax has been withheld and remitted pursuant to Subsections (A), (B), and (C) of this Section is relieved from liability for the amount withheld. Provided, that where any part of the tax due from an owner of products severed has not been so withheld, or has been withheld and not remitted, such owner shall remain liable for the unpaid tax and must make payment in accordance with this Chapter and the regulations. Further provided, that an owner shall have a cause of action in any court of competent jurisdiction to recover from the operator or purchaser amounts withheld as tax, but not remitted to the Commission.

#### **History**

CO-79-85, October 31, 1985.

#### **§ 313. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§ 314. Record keeping**

Records required to be kept must be preserved for four years beyond the time payment of tax is made, or if no payment is due, for four years beyond the end of the period to which the records relate.

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§§ 315 to 340. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

#### **§ 341. Relief from Business Activity Tax**

A. For any period beginning on or after October 1, 1985, the gross receipts from the sale of products, including those products exempt under § 308(A), shall be excluded from source gains of a branch for the purpose of the Business Activity Tax, 24 N.N.C. §§ 401-445.

B. For any period beginning prior to October 1, 1985, if products are assessed and the tax paid pursuant to this Chapter, then the gross receipts from the sale of such products, including those products exempt under § 308(A), shall be excluded from source-gains of a branch for the purpose of the Business Activity Tax.

C. In any case, that the severance tax must be paid to the Commission in order for any exclusion to apply or be finally effective, and no such exclusion shall apply or be finally effective until the tax determined under this Chapter has been paid to the Commission.

D. For the purpose of § 411(F) of the Business Activity Tax, the proper filing of severance tax reports shall constitute a claim of the exclusions provided in this Section.

**History**

CO-79-85, October 31, 1985.

**§ 342. [Reserved]**

**History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

**§ 343. Severability**

If any provision of this Chapter, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

**History**

CO-79-85, October 31, 1985.

**§ 344. Effective date**

This Chapter shall take effect upon approval by the Navajo Nation Council. The tax imposed hereunder shall be due and payable for periods beginning on or after October 1, 1985, and for the purposes of § 341, may be applied for periods beginning prior to October 1, 1985.

**History**

CO-79-85, October 31, 1985.

**§ 345. Repeals**

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

**History**

CO-79-85, October 31, 1985.

**Chapter 5. Business Activity Tax**

**History**

Effective date and application of 1984 revision of Chapter 5. CS-47-84, § 2, September 20, 1984, states as follows: "This resolution shall take effect upon approval by the Navajo Tribal Council for all calendar quarters, beginning on

or, after July 1, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any quarter beginning before October 1, 1984."

#### **§ 401. Short title**

The tax imposed by this Chapter shall be called the "Business Activity Tax."

#### **History**

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 402. Tax imposed**

A tax is hereby imposed on the source-gains of a branch at the rate established under § 406. The tax due for a period is computed by multiplying the source-gains of the branch for the period by the tax rate.

#### **History**

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Effective date and application of revisions to this Chapter; see 24 N.N.C. § 444 and notes.

#### **Annotations**

##### **1. Construction and application**

"The statutory language in 24 N.T.C. § 402, as defined in section 404, plainly includes the taxing of Navajo Communications." *Navajo Communications Company v. Navajo Tax Commission*, 6 Nav. R. 366, 374 (Nav. Sup. Ct. 1991).

#### **§ 403. Administration**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

#### **History**

CJY-52-95, July 20, 1995.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.



Effective date and application of revisions to this Chapter see notes under 24 N.N.C. § 444.

#### **§ 404. Definitions**

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter and unless the context otherwise requires, in this Chapter:

A. "Branch" means any person engaged in trade, commerce, manufacture, power production, or any other productive activity, whether for profit or not, wholly or in part within the Navajo Nation.

B. "Source-gains" of a branch are the gross receipts of that branch from the sale, either within or without the Navajo Nation, of Navajo goods, or services, as those terms are defined in Paragraphs (C) and (D) of this Section, minus the deductions allowable under § 405.

C. "Navajo goods" are all personal property produced, processed, or extracted within the Navajo Nation, including coal, oil, uranium, gas, and other natural resources and electrical power.

D. "Services" are all services performed within the Navajo Nation, including the transport or transmission by whatever means of coal, oil, uranium, gas, other natural resources and electrical power.

E. "Sale."

1. General rule: A "sale" consists of a transfer of ownership between buyer and seller for a consideration.

2. Intra-branch rule: A "sale" also consists of the delivery of Navajo goods, or the performance of services, by a branch, for the use or benefit of any person of which the branch is a part.

F. "Gross receipts" of a branch means and are to be determined according to the following rules.

1. General rule: Except as provided in Paragraphs (2) and (3) below, the "gross receipts" of a branch are the amount of money or the fair market value of property and services received by the branch on the sale of Navajo goods or services.

2. Sales without the Navajo Nation: For sales without the Navajo Nation, "gross receipts" are determined by the value of the Navajo goods and services at the time and place said goods and services are transported outside the Navajo Nation.

3. Sales among related persons: On the sale of Navajo goods and services by a branch to a related person, "gross receipts" are the fair market value of the Navajo goods or services sold.

4. Estimate of fair market value: When practical, fair market value is to be determined on the basis of consideration paid in

comparable transactions, but if such information is not available, the estimate of fair market value will be made according to regulations.

G. "Period" means a calendar quarter.

H. "New business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in the Navajo Nation on or after January 1, 1999.

I. "New business facility" means a facility in the Navajo Nation that satisfies the following requirements:

1. The facility is used by the taxpayer in the operation of a revenue-producing business. The facility shall not be considered a "new business facility" if the taxpayer's only activity with respect to the facility is to lease it to another person;

2. The facility is acquired by or leased to the taxpayer on or after July 1, 1998. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer, or the commencement of the term of the lease to the taxpayer occurs on or after that date, or if the facility is constructed, erected, or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

3. The facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing business that previously was in operation in the Navajo Nation; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was used in a revenue-producing business in the Navajo Nation immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person, provided that the revenue-producing business of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing business; and

4. The facility is not a replacement business facility for a business facility that existed in the Navajo Nation.

#### **History**

CO-87-98, October 19, 1998.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

### **Annotations**

#### **1. Construction and application**

"The statutory language in 24 N.T.C. § 402, as defined in section 404, plainly includes the taxing of Navajo Communications." *Navajo Communications Company v. Navajo Tax Commission*, 6 Nav. R. 366, 374 (Nav. Sup. Ct. 1991).

#### **§ 405. Deductions**

A. In computing source-gains, a branch may deduct from its gross receipts the expenses set forth in Subsection (B) of this Section and the standard deduction set forth in Subsection (C) of this Section.

B. Deductions are allowed for the following expenses paid or accrued during the period in connection with the business activities giving rise to gross receipts includible in source-gains:

1. Salaries and/or other compensation paid to members of the Navajo Nation;
2. Purchases of Navajo goods and services; and
3. Any payment made to the government of the Navajo Nation, except for taxes paid pursuant to this Chapter and any penalties or fines.

C. A standard deduction is allowed equal to ten percent (10%) of the includible gross receipts for the period, or one hundred twenty-five thousand dollars (\$125,000), whichever is greater; except as provided in Subsections (D) and (E).

D. If a person owns or controls more than one branch or there exists more than one branch owned or controlled by related persons, then either all said branches shall be entitled to one one hundred twenty-five thousand dollars (\$125,000) standard deduction collectively, or each branch must take the ten percent (10%) standard deduction.

E. Except that, a branch which is engaged in construction activity as a general contractor shall not, with respect to said construction activity, be allowed the deductions provided in this Section and, in lieu thereof, shall be subject to the reduced rate of tax provided in § 406.

### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 406. Rate of tax**

The tax rate shall be established in regulations. The rate shall not be less than four percent (4%) or more than eight percent (8%). Until another rate is established, the rate is five percent (5%). A change in the tax rate must be announced at least one full period before its scheduled effective date. Except that, for a branch, which is engaged in construction activity as a general contractor, the tax on the gross receipts from said construction activity shall be computed at sixty percent (60%) of the general rate herein provided.

#### **History**

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 407. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 408. Exemptions and exclusions**

A. For any period beginning on or after January 1, 2001, a branch may exclude from its gross receipts any amounts on which the Navajo Sales Tax has been paid, provided that no such exclusion shall apply or be finally effective until the Sales tax has been paid to the Office of the Navajo Tax Commission. The proper filing of Navajo Sales Tax reports shall constitute a claim of the exclusions provided in this Section.

B. Nothing in this Chapter shall be construed as imposing a tax on the government of the Navajo Nation or on any wholly owned subdivision or enterprise of the government of the Navajo Nation.

C. Nothing in this Chapter shall be construed as imposing on the Federal government a tax, which is prohibited by Federal law.

D. Nothing in this Chapter shall be construed as imposing a tax on the salary or wages of an individual engaged as an employee.

E. A branch may exclude from its gross receipts any amount received under a subcontract and a certificate of exemption issued from the general contractor, provided that the general contractor is a person wholly exempt

under § 408(A) or is a branch which reports the gross receipts for the entire prime contract and is subject to the exception in § 405(E) and the reduced tax rate provided in § 406. The Commission may by form or regulation provide for proper issuance and filing of certificates of exemption.

F. A branch, which is engaged in retail sales, may exclude from its gross receipts any amount received from the sale of non-Navajo goods at retail within the Navajo Nation.

G. A branch may exclude from its gross receipts any amount derived directly from traditional farming or livestock activities within the Navajo Nation.

H. A branch engaged in manufacturing activities may exclude from its gross receipts the cost of raw materials imported into the Navajo Nation to be used in the process of manufacturing Navajo goods.

### **History**

CO-84-01, October 18, 2001.

CJY-53-95, July 20, 1995.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

### **§ 409. Credits**

A. 1. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by a state, the amount of state tax paid and not refunded may be credited against any Business Activity Tax due. The amount of the credit shall be equal to the lesser of twenty-five percent (25%) of the tax imposed by the state on the receipts or twenty-five percent (25%) of the Business Activity Tax.

2. A qualifying gross receipts, sales, business activity or similar tax levied by a state shall be limited to a tax that:

a. Is substantially similar to the Business Activity Tax;

b. (1) for the period July 1, 2001 through June 30, 2002, provides a credit against the state tax equal to the lesser of thirty-seven and one-half percent (37 1/2%) of the tax imposed by the state on the receipts or thirty-seven and one-half percent of the Business Activity Tax imposed on the receipts, and (2) after June 30, 2002, provides a credit against the state tax equal to the lesser of seventy-five percent (75%) of the tax imposed by the state on the receipts or seventy-five percent (75%) of the Business Activity Tax

imposed on the receipts;

c. Is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts for the time period; and

d. Is subject to a cooperative agreement between the Navajo Nation and the state.

B. 1. With respect to the gross receipts of a taxpayer engaged in the transaction of business occurring after January 1, 1999, from a new business in the Navajo Nation, the person who is responsible for the payment of the Business Activity Tax may claim a credit against the Business Activity Tax for the amount of tax paid to a state as corporate income tax, in accordance with this Section.

2. A taxpayer may claim a credit against the Business Activity Tax equal to fifty percent (50%) of the lesser of:

a. The total Business Activity Tax liability of the taxpayer and associated with the activities for which the taxpayer is claiming the credit; or

b. The total state corporate income tax paid by the taxpayer and associated with the activities for which the taxpayer is claiming the credit.

3. For purposes of this section, the total state corporate income tax shall include estimated payments made by the taxpayer and associated with the activities for which the taxpayer is claiming the credit. After the taxpayer has filed the final return for a tax year, the taxpayer may file amended Business Activity Tax returns for the previous four quarters if necessary to accurately reflect the amount of credit to which the taxpayer is entitled.

4. The burden of showing entitlement to a credit authorized by this Section is on the taxpayer claiming the entitlement, and the taxpayer shall furnish to the Office of the Navajo Tax Commission, in the manner determined by the Office of the Navajo Tax Commission, proof of payment of the aggregate amount of tax on which the credit is based.

#### **History**

CAU-67-01, August 7, 2001.

CO-87-98, October 19, 1998.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

**Revision Note.** This Section was renumbered for statutory reform.

#### **§ 410. Designation of individual**

No designation need be made until a branch has gross receipts of one hundred twenty-five thousand dollars (\$125,000) or more in any period after the effective date of this Chapter. This exception shall not apply if the branch is one which is described in § 405(D) and one to which the limitations of that subsection will apply.

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 411. Filing of return**

A. Except as provided in Subsection (B) of this Section, each branch must file a return of source-gains and the tax due for the period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year. The Commission may by form or regulation require that other information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included with the return, and that the return be signed by specified persons.

B. No return need be filed by a branch for any period in which gross receipts are less than one hundred twenty-five thousand dollars (\$125,000). This exception does not apply if the branch had annualized gross receipts of five hundred thousand dollars (\$500,000) or more in any of the three years preceding the period. Nor does this exception apply if the branch is a general contractor subject to the exception in § 405(E) and the reduced tax rate provided in § 406, or if the branch is a subcontractor described in § 408(D) and for any period to which that Subsection applies.

C. If the branch is one which is described in § 405(D) and one to which the limitation of that Subsection will apply, then for Subsection (B) of this Section to apply, all the related branches must in the aggregate meet both qualifications.

D. If a branch is an association, joint venture, or partnership, or a part thereof, the Commission may require that each associate, participant, or partner whether general or limited, file a separate return in accordance with regulations, provided that the limits under § 405(D) shall apply as though each associate, participant, or partner were owned or controlled by the branch and by each other.

E. No return need be filed by any person who is exempt under § 408(A),

(B), and (C), provided that the Commission may require such person to file the information necessary to establish its exempt status.

F. Exclusions from gross receipts shall be claimed in a return. In the case of the exclusion provided in § 408(D), a proper certificate of exemption shall constitute such a claim.

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 412. Payment of tax**

Payment of tax is due at the time the return is due. The Commission, however, may require payment of tax on a monthly basis in appropriate cases.

#### **History**

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 413. [Reserved]**

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

#### **§ 414. Record keeping**

Records required to be kept must be preserved for six years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

#### **History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.



CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

**§§ 415 to 442. [Reserved]**

**History**

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978

**§ 443. Severability**

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

**History**

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

**§ 444. Effective date**

This Chapter shall take effect upon approval by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

**History**

CJY-52-95, July 20, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

**Note.** (1) Effective date and application of 1984 revision of Chapter 5. CS-47-84, § 2, September 20, 1984, states as follows: "This resolution shall take effect upon approval by the Navajo Tribal Council for all calendar quarters, beginning on or, after July 1, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any quarter beginning before October 1, 1984."

(2) Effective date and application of 1985 revision of this Chapter by CO-79-85, October 31, 1985 is for all periods beginning on or after January 1, 1986.

**§ 445. Repeals**

All laws or parts of laws (or attachments thereto), which are inconsistent with the provisions of this Chapter, are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

**History**

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

**Chapter 6. Sales Tax**

**§ 601. Short title**

The tax imposed by this Chapter shall be called the "Sales Tax."

**History**

CO-84-01, October 18, 2001.

**§ 602. Purpose**

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in business activity within the Navajo Nation, and for purposes of defraying necessary governmental expenses at the national and local level incurred in providing for the public welfare.

**History**

CO-84-01, October 18, 2001.

**§ 603. Tax imposed**

A tax is hereby imposed on the gross receipts of a person. The tax due for a period is determined by first calculating applicable gross receipts for a period, and then multiplying those gross receipts by the applicable tax rate.

**History**

CO-84-01, October 18, 2001.

**§ 604. Legal incidence and responsibility for payment**

The person liable for the payment of the tax imposed by this Chapter is the person receiving the gross receipts from a sale.

**History**

CO-84-01, October 18, 2001.

**§ 605. Rate of tax**

A. The tax imposed by this Chapter is imposed at a rate of not less than two percent (2%), nor more than six percent (6%), which shall be specifically established by regulations promulgated by the Navajo Tax Commission. Until another rate is established, the rate shall be four percent (4%) of the applicable gross receipts from all retail sales (.04 × applicable gross receipts).

B. A majority of the registered voters of any governance-certified chapter may enact an ordinance imposing an additional tax rate in addition to the rate approved by the Navajo Tax Commission in accordance with paragraph A, above. This additional rate may be from one-quarter of one percent (.25%) to four percent (4%) and shall be set forth in the ordinance.

**History**

CO-38-09, October 22, 2009. Local Sales Tax Act of 2009. Added subsection B.

CJA-03-07, January 24, 2007. Increased the sales tax rate from 3% to 4%, effective July 1, 2007.

CO-84-01, October 18, 2001.

**§ 606. Administration**

All provisions of the Uniform Tax Administration Statute apply to this Chapter.

**History**

CO-84-01, October 18, 2001.

**§ 607. Definitions**

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

A. "Consideration" means any money or other pecuniary benefit, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.

B. "Construction activity" means any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:

1. Road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;

2. Building, stadium, or other structure;

3. Airport, railway, or similar transportation facility;
4. Park, trail, athletic field, golf course, or similar facility;
5. Dam, reservoir, canal, ditch, culvert, or similar facility;
6. Sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility;
7. Sewerage, water, coal, coal slurry, gas, or other pipeline;
8. Transmission line;
9. Radio, television, microwave, telephone, or other similar tower;
10. Water, oil, gasoline, fuel or other storage tank;
11. Shaft, tunnel, or other mining appurtenance;
12. Microwave station, or similar facility;
13. Leveling, clearing, or other preparation of land;
14. Excavating of earth;
15. Drilling of wells of any type, including seismograph shot holes or core drilling; or
16. Any similar work or activity.

C. "Employee" means a person in the service of another person under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

D. "Enterprise" means any non-corporate business entity created by action of the Navajo Nation Council.

E. "Fair market value" means the amount of consideration at which personal or real property or services would change hands via an arms-length transaction between a willing buyer and a willing seller, or a willing lessor and a willing lessee, neither of whom is under any compulsion to act.

"Fair market value" is to be determined on the basis of consideration in comparable sales, leasing, or rental transactions. If such information is not available, the Office of the Navajo Tax Commission may estimate the fair market value of the subject of a transaction according to procedures established by regulations.

F. "General contract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or

unwritten, which is entered into by a general contractor.

G. "General contractor" means a person primarily responsible for the performance of a construction project pursuant to a contract.

A "General contractor" may enter into subcontracts, but remains primarily responsible for the management, planning, supervision, coordination, and performance of the contract.

H. "Gross receipts" means the total amount of money, credit, or any other pecuniary benefit or advantage, plus the fair market value of any other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, the sale of services of any kind, and any other productive activity of any kind, whether for profit or not, conducted wholly or partially within the Navajo Nation. "Gross receipts" does not include the salary or wages of an individual engaged as an employee.

"Gross receipts" includes those amounts received for any and all personal or real property which is an integral, but not necessarily a significant or primary, component of the service(s) rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such personal or real property.

"Gross receipts" includes those amounts received for any and all services which are an integral, but not necessarily a significant or primary, component of the sale or delivery of personal or real property, such as those amounts received as payment or reimbursement for costs of putting personal or real property into a finished and marketable form, payment for delivery and set-up, and payment for warranty or service contracts, regardless of the date, time, manner, or location of performance of such service(s).

"Gross receipts" does not include amounts received as reimbursement for federal, state, or Navajo Nation taxes.

I. "Manufacturing activity" means combining or processing components or materials into a finished product, whether manually or mechanically, for the purpose of resale in the ordinary course of business, but does not include construction activity.

J. "Navajo Nation" means all areas within the territorial jurisdiction of the Navajo Nation government.

K. "Performance" means the partial or complete fulfillment or accomplishment of a promise, contract, or other obligation according to the terms of such promise or contract.

L. "Period" means a calendar quarter.

M. "Personal property" means any tangible property which may be seen, touched, weighed or measured, or is in any manner perceptible to the human senses, including, but not limited to, electricity, natural gas, goods or merchandise of any kind, goods purchased for consumption or other use, goods purchased for incorporation into other personal or real property, and goods

purchased for use in the performance of any service, whether or not such goods are consumable, movable, separable, affixed to, or incorporated into, other personal or real property, and whether or not such goods retain their original character upon final sale.

"Personal property" also means any intangible property which cannot be physically perceived by the human senses, such as patents, trademarks, copyrights, franchises, licenses, knowledge, information, ideas, advice, and other intangible items of value or legal rights of any kind.

N. "Sale" means any transaction, including a lease or rental, for consideration of any kind that results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal or real property, or the performance of any service.

A "Sale" includes circumstances where the title to personal or real property is retained as security for payment, and includes circumstances where no actual physical transfer of personal or real property or services occurs.

O. "Sale for resale" means a sales transaction for purposes of any further sale, processing, manufacturing, or other commercial or industrial purposes, as distinguished from a retail sale.

P. "Services" means manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.

Q. "Subcontract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, between a general contractor and a subcontractor.

R. "Subcontractor" means a person who takes from the general contractor a specific part of the work undertaken by the general contractor.

#### **History**

CO-84-01, October 18, 2001.

#### **§ 608. Navajo Nation government**

A. Sales by corporations owned by the Navajo Nation government or any political subdivision thereof shall be fully subject to the tax imposed by this Chapter.

B. Sales by the government of the Navajo Nation, or political subdivisions or enterprises thereof, shall be subject to the tax imposed by this Chapter according to the following schedule:

1. For all periods during calendar years 2001 and 2002, the Navajo Nation government, political subdivisions, and enterprises shall not be subject to the tax;

2. For all periods during calendar year 2003, the Navajo Nation government, political subdivisions, and enterprises shall be subject to

the tax at a rate equal to twenty-five percent (25%) of the rate imposed under § 605 of this Chapter;

3. For all periods during calendar year 2004, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to fifty percent (50%) of the rate imposed under § 605 of this Chapter;

4. For all periods during calendar year 2005, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to seventy-five percent (75%) of the rate imposed under § 605 of this Chapter;

5. For all periods during calendar year 2006 and all periods thereafter, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to one hundred percent (100%) of the rate imposed under § 605 of this Chapter;

C. In cases where a person is partially owned by the Navajo Nation government or any of its political subdivisions or enterprises, gross receipts shall be prorated if necessary.

#### **History**

CO-84-01, October 18, 2001.

#### **§ 609. Exemptions and exclusions**

A. Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor, provided that:

1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter by signing and issuing a certificate of exemption to the subcontractor; and,

2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Office of the Navajo Tax Commission. This certificate must be signed by the general contractor, and must indicate that the general contractor has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter.

3. The Commission may by form or regulation provide for the proper issuance and filing of the certificate of exemption.

B. In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:

1. Navajo Nation Oil and Gas Severance Tax;
2. Navajo Tobacco Products Tax; or

3. Navajo Nation Fuel Excise Tax.

C. The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:

1. Sales for resale;
2. Sales related to agricultural, farming, or livestock activities conducted within the Navajo Nation;
3. Sales, other than sales from an unrelated trade or business as defined in §§ 511-513 of the Internal Revenue Code,<sup>1</sup> by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to § 501(c)(3) and 501(c)(19) of the United States Internal Revenue Code<sup>2</sup> at the time of sale;
4. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
5. Sales of stocks, private or government-issued bonds, mutual funds, or other investments, including income received as dividends or interest;
6. Sales by itinerant salespersons;
7. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services;
8. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
9. Sales by hospitals and health-care organizations or facilities, such as nursing care institutions, residential care and mental health facilities, senior citizen care facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities which provide medical care and services;
10. Sales from coin-operated vending machines of any type;
11. Sales related to traditional Native American ceremonies or services;
12. Sales of prescription medicines, prosthetic devices, or other medical devices, including medical oxygen, monitoring devices, dentures, hearing aids, crutches, insulin syringes, blood sugar monitoring strips or devices, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition;
13. Sales related to funerals and human burials;
14. Sales paid for by coupons issued by the United States Department of Agriculture under the Foods Stamp Act of 1977 (P.L. 95-



113);<sup>3</sup>

15. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);<sup>4</sup>

16. Sales of newspapers or other daily publications; or

17. Sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for private use, possession, or enjoyment, provided that such items are not resold or used in any business activity or service.

D. Nothing in this Chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.

E. Through December 31, 2005, a person may exclude from gross receipts any amount received from a transaction on which the Hotel Occupancy Tax has been paid.

#### **History**

CO-84-01, October 18, 2001.

#### **§ 610. Credits**

A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government subunit, provided that revenues from such excise tax are utilized to provide essential governmental services.

#### **History**

CO-84-01, October 18, 2001.

#### **§ 611. [Reserved]**

#### **§ 612. Filing of return**

A. Each person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter for each period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year.

B. The Commission may by form or regulation require that other information, records or relevant documents which it deems necessary for the proper and efficient administration of this Chapter be included with the return, and that the return be signed by a specified person.

C. No return need be filed by any person who is exempt under § 609, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.

D. In the case of the exemption provided for in § 609(A), the filing by a

person of a proper certificate of exemption with the Office of the Navajo Tax Commission shall constitute a claim for exemption.

**History**

CO-84-01, October 18, 2001.

**§ 613. Payment of tax**

Payment in full of the taxes owed for a particular period is due on the same date that the completed return for that same period is due. The Office of the Navajo Tax Commission, however, may require payment of any taxes due on a monthly basis.

**History**

CO-84-01, October 18, 2001.

**§ 614. Record keeping**

A. Each person shall keep all records which pertain to or relate in any manner to all sales from any business activity engaged in at any time by such person. Such records shall be maintained separately for each reporting period during which a person is engaged in business activity.

B. Records required to be kept must be preserved for four years beyond the end of the period to which the records relate.

**History**

CO-84-01, October 18, 2001.

**§§ 615 to 619. [Reserved]**

**§ 620. Allocation of revenue**

After allocation to permanent or special revenue funds as required by Navajo Nation law, and allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed as follows:

A. To the extent that any amount is collected pursuant to Section 605(B) above, that amount shall be transmitted by the Office of the Navajo Tax Commission to the chapter in a timely manner, to be expended in accordance with the ordinance referred to in Section 605(B), above.

B. Except as otherwise provided in Subsection (C), seventy-five percent (75%) of the revenue collected shall be deposited into the General Fund of the Navajo Nation, and twenty-five percent (25%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

C. Seventy-five percent (75%) of the revenue collected from retail

establishments located in the Navajo Nation shall be deposited into a trust fund to be appropriated pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee of the Navajo Nation Council; and twenty-five percent (25%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

#### **History**

CO-38-09, October 22, 2009. Local Sales Tax Act of 2009.

CJA-03-07, January 24, 2007. Increased the sales tax rate from 3% to 4%, effective July 1, 2007.

CO-84-01, October 18, 2001.

#### **§ 621. No conflict with Local Governance Act**

The provisions of this Chapter and corresponding regulations shall not be construed inconsistently with the Local Governance Act, 26 N.N.C. §§ 1-2008.

#### **History**

CO-84-01, October 18, 2001.

#### **§ 622. Severability**

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

#### **History**

CO-84-01, October 18, 2001.

#### **§ 623. Effective date**

This Chapter shall take effect in accordance with 2 N.N.C. § 1005.

#### **History**

CO-84-01, October 18, 2001.

#### **§ 624. Repeals**

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

## History

CO-84-01, October 18, 2001.

## Chapter 7. Hotel Occupancy Tax

### § 700. Definitions

A. "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, or nursing home.

B. "Branch" means any person owning, operating, managing or controlling any hotel.

C. "Period" means a calendar quarter any other reporting period established by regulation.

## History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

### § 701. Tax imposed

A. A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing two dollars (\$2.00) or more each day.

B. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.

## History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

## Annotations

### 1. Validity

While as a general proposition the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers on non-Indian fee land located within reservation boundaries, under *Montana* rule, two possible bases exist for tribal jurisdiction over non-Indian fee land: first, a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with tribe or its members, through commercial

dealings, contracts, leases, or other arrangements, and second, a tribe may exercise civil authority over conduct of nonmembers on fee lands within reservation when that conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of tribe. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889, (U.S.N.M. 2001).

Indian tribe lacked authority to impose hotel occupancy tax on nonmember guests staying in hotel rooms located on non-Indian fee land that was within boundaries of tribe's reservation; neither exception to general *Montana* rule that inherent sovereign powers of an Indian tribe do not extend to the activities of nonmember was applicable, as no consensual relationship between tribe and hotel guests sufficient to justify taxation existed, and tax was not necessary to vindicate tribe's political integrity. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889, (U.S.N.M. 2001).

#### **§ 702. Rate of tax**

The rate of tax imposed by this Chapter is five percent (5%) of the price paid for a room in a hotel. On January 1, 1994, the rate of the tax imposed by this Chapter will increase to eight percent (8%) of the price paid for a room in a hotel.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 703. Collection of tax**

A branch owning, operating, managing, or controlling a hotel shall collect for the Commission the tax that is imposed by this Chapter and that is calculated on the amount paid for room in the hotel.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 704. Exception: Permanent resident**

This Chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 705. Exception: Navajo Nation**

Nothing in this Chapter shall be construed as imposing a tax on the government of the Navajo Nation. For the purposes of this Chapter, the term Navajo Nation does not include tribal enterprises.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 706. Return and payment**

On the last day of each period, a branch required to collect the tax imposed by this Chapter shall pay the Commission the tax collected during the preceding period, and at the same time shall file with the Commission a return stating:

A. The total amount of the payments made for rooms at the branch's hotel during the preceding period;

B. The amount of the tax collected by the branch during the preceding period; and

C. Other information that the Commission requires to be in the return. Provided, that the Commission shall be authorized to assess against a branch responsible for the collection of taxes under this Chapter, and that such assessments are presumed to be correct.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 707. Administration**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 708. Reimbursement for tax collection**

The branch required to file a return under this Chapter may deduct and withhold from the taxes otherwise due to the Navajo Nation on the quarterly return, as reimbursement for the cost of collecting the tax, one percent (1%) of the amount of the tax due as shown on the return. If taxes due under this Chapter are not paid to the Navajo Nation within the time required or if the branch required to file a return fails to file the return when due, the branch forfeits the claim to reimbursement that could have been taken if the tax had

been paid or the return filed when due.

**History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

**§ 709. [Reserved]**

**History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

**§ 710. Record keeping**

Records required to be kept must be preserved for six years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

**History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

**§§ 711 to 737. [Reserved]**

**History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

**§ 738. Severability**

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

**History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

**§ 739. Effective dates**

This Chapter shall take effect upon approval by the Navajo Nation

Council. The tax imposed by this Chapter shall be due and payable for calendar quarters beginning January 1, 1993.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 740. Repeals**

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

#### **History**

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

#### **§ 741. Allocation**

A. Except as provided in Subsection B, the tax imposed by this Chapter is imposed for the purposes of promoting tourism and tourism development. To accomplish this end, this tax shall be retained in a special fund entitled the "Navajo Nation Tourism Fund" which shall be administered by the Navajo Tourism Department, and which shall, consistent with the laws of the Navajo Nation and utilizing the prudent person rule, be applied for the advancement of local tourism promotion, and to develop projects throughout the Navajo Nation. The Division of Economic Development and the Navajo Tourism Department are hereby authorized to develop and recommend to the Budget and Finance Committee of the Navajo Nation Council the Fund's management plan.

B. Any tax imposed by this Chapter that is collected within any duly established Navajo Tribal Park shall be retained within the Navajo Nation Tourism Fund for the exclusive use of the Navajo Parks and Recreation Department for maintenance and improvement of facilities within Navajo Tribal Parks, in accordance with the fund management plan for the Navajo Nation Tourism Fund, which shall be amended by the Budget and Finance Committee to accommodate this provision.

#### **History**

CJA-06-09, January 28, 2009. Added Subsection B.

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

### **Chapter 8. Tobacco Products Tax and Licensing Act**



**§ 800. Short title**

This Chapter shall be called the "Tobacco Products Tax and Licensing Act."

**History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

**§ 801. Administration**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

**History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

**§ 802. Definitions**

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

1. "Tobacco" means commercially cultivated tobacco, the leaves of which are processed chiefly for use in cigarettes, cigars, snuff, plug or chewing tobacco, or for smoking in pipes.

2. "Tobacco product" means any commercially processed and/or manufactured product for human consumption which contains tobacco, including cigarettes.

3. "License" means a certificate issued by the Office of the Navajo Tax Commission which authorizes a distributor or retailer to engage in the sale or resale of tobacco products.

4. "Distributor" means any person within the Navajo Nation who manufactures, produces, ships, transports, or imports tobacco products into the Navajo Nation or in any manner acquires or possesses tobacco products for the purpose of making the first sale.

5. "First sale" means the first sale or distribution within the Navajo Nation or the first use or consumption of tobacco products within the Navajo Nation.

6. "Retailer" means any person engaged in the sale or resale of tobacco products within the Navajo Nation.

7. "Sale" means a transfer of possession or ownership between buyer and seller for a consideration.

8. "Consumer" means any person who comes into possession or ownership of a tobacco product by purchasing or otherwise acquiring it for the purpose of using, consuming, or giving away such product.

9. "Period" means one calendar month.

#### **History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

#### **§ 803. Tax imposed—rates**

There is hereby levied and imposed by this Chapter for each period, the following tax upon the first sale by any retailer or distributor of tobacco products:

1. On each cigarette, two (2 cents);
2. On smoking tobacco, snuff, chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut tobacco, refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, four and five-tenths (4.5 cents per ounce or major fraction thereof;
3. On all cavendish, plug or twist tobacco, one and one-tenth (1.1 cents per ounce or fractional part thereof;
4. On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, eight and nine-tenths (8.9 cents;
5. On cigars of all descriptions except those included in paragraph 4 of this Subsection, made of tobacco or any substitute therefore, if manufactured to retail at not more than five (5 cents each, four and four-tenths (4.4 cents on each three cigars, but if manufactured to retail at more than five (5 cents each, four and four-tenths (4.4 cents on each cigar.

#### **History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

#### **§ 804. Legal incidence**

The tax imposed by this Chapter is presumed to be a direct tax on retailers and distributors of commercially processed and/or manufactured tobacco products.

#### **History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

**§ 805. Liability for remittance and payment of tax**

Distributors and retailers are responsible for the collection and remittance of the tax imposed under this Chapter. Distributors and retailers are liable for taxes regardless of whether the taxes are collected from the consumer.

**History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

**§ 806. Licensing—requirements**

1. All distributors and retailers shall obtain from the Office of the Navajo Tax Commission a license, as defined in § 802(3).

2. The application procedures for obtaining a license and the licensing requirements shall be prescribed in regulations adopted by the Navajo Tax Commission.

3. The Office of the Navajo Tax Commission shall issue a license upon the condition that the applicant fully complies with the provisions of this Chapter and the regulations adopted by the Navajo Tax Commission pursuant to this Chapter.

4. Refusal by the Office of the Navajo Tax Commission to issue or renew a license shall be considered an adverse action under § 131 of the Uniform Tax Administration Statute.

**History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

**§ 807. Licensing—enforcement**

A. A license may be revoked if the licensee fails to fully comply with this Chapter or the Uniform Tax Administration Statute. If the licensee comes into full compliance within 15 calendar days from the date of the notice of revocation from the Office of the Navajo Tax Commission, the revocation shall be withdrawn. Revocation of a license shall be considered an adverse action.

B. It is unlawful for any person to sell or resell, or have available for sale, tobacco product within the Navajo Nation without a license.

C. Any person engaging in the unlawful action described in Subsection (B)

shall be subject to an initial fine of five hundred thousand dollars (\$500.00), plus an additional fine of five hundred dollars (\$500.00) for each calendar month or part thereof during which the person operates without a license. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the person from all or part of the fine imposed under this Section. Imposition of a fine shall be considered an adverse action.

D. 1. The Office of the Navajo Tax Commission shall issue an order to any person engaging in the unlawful action described in Subsection (B) to cease and desist from such sales. Violation of this order shall subject the tobacco product to seizure by the Office of the Navajo Tax Commission or its designee. Issuance of an order or seizure of the tobacco product shall be considered an adverse action.

2. If the person from whom the tobacco product was seized obtains a license within 10 working days of the seizure, the seized product shall be released to that person. The Office of the Navajo Tax Commission shall act in a timely fashion to grant or deny the issuance of a license. The Office of the Navajo Tax Commission may require the posting of a bond before a license is issued. The requirement of the posting of a bond shall be considered an adverse action.

3. Following a final decision that no license will be issued, the seized tobacco product shall be sold to the highest bidder after public advertisement. Only licensed persons shall be eligible to bid. The proceeds of any sale, less the amount retained by the Office of the Navajo Tax Commission to cover any taxes due and the costs of confiscation and sale, shall be deposited into the General Fund of the Navajo Nation.

#### **History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

#### **§ 808. Use of funds**

Tax, interest, and penalties collected by the Office of the Navajo Tax Commission pursuant to this Chapter shall be deposited in the General Fund of the Navajo Nation.

#### **History**

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

#### **§ 809. Effective date**

The tax imposed by this Chapter shall be effective as of the date of adoption by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

#### **History**

CAP-39-98, April 27, 1998.

**§ 810. Severability**

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

**History**

CAP-39-98, April 27, 1998.

**Chapter 9. Fuel Excise Tax**

**Part I. General Provisions**

**§ 901. Purpose and short title**

A. Purpose. The Navajo Nation Council hereby enacts this tax for purposes of defraying necessary governmental expenses incurred in providing for the public welfare.

B. Short title. The tax imposed by this Chapter shall be called the "Fuel Excise Tax."

**History**

CAU-85-99, August 26, 1999.

**§ 902. Administration and definitions**

A. Administration. All provisions of the Uniform Tax Administration Statute shall apply to this Chapter.

B. Definitions. Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

1. "Authorized carrier" means any person issued a current and valid authorized carrier's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who obtains fuel from a supplier on or for the account of an authorized distributor for importation into and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

"Authorized carrier" does not include any person who imports into, and transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or

transportation.

2. "Authorized carrier's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

3. "Authorized distributor" means any person issued a current and valid authorized distributor's license, properly issue by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who distributes by any method any amount of fuel within the Navajo Nation.

"Authorized distributor" does not include any person who imports into, and transports within the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation, nor any common carrier who obtains, imports into, or transports and delivers within, the Navajo Nation, on behalf of any distributor, any fuel which is not owned by such common carrier.

4. "Authorized distributor's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

5. "Authorized refiner" means any person issued a current and valid authorized refiner's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who refines fuel at any refinery located within the Navajo Nation, and sells, resells, uses or gives away such fuel to distributors, retailers, or consumers.

6. "Authorized refiner's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

7. "Authorized retailer" means any person issued a current and valid authorized retailer's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who sells, resells, uses or gives away fuel from any retail facility located within the Navajo Nation or any refinery located within the Navajo Nation, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

8. "Authorized retailer's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

9. "Bill of lading" means any document, way bill, shipping paper, certificate, consignment contract, billing statement, invoice or other written record issued by a supplier, which evidences the obtaining of any amount of fuel from such supplier by any distributor, or any common carrier thereof.

10. "Cargo tank" means any liquid fuel container mounted on or attached to a truck, trailer, wagon, or any other mobile vehicle used for

transporting fuel, but does not include the fuel supply tank of motor vehicles.

11. "Common carrier" means any person, whether an Authorized Carrier or an Unauthorized Carrier, who obtains fuel from a supplier on or for the account of any distributor, for importation into, and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

"Common Carrier" does not include any person who imports into, or transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

12. "Consumer" means any person who purchases, acquires, holds, possesses, uses, or consumes any amount of fuel for use by such person and not for resale or transfer to, or use by, any other person(s).

13. "Deliver" or "Delivery" means the physical transfer of any amount of fuel by dispensing or transferring it by any method from a cargo tank, pipeline, or any other container into a fuel storage tank, terminal device, or any other container for purposes of sale, resale, use or giving away of such fuel.

14. "Distribute" means to own by any means any amount of fuel and:

a. To import by any method such fuel into the Navajo Nation for delivery of the fuel to any person(s) at any location(s) within the Navajo Nation; or,

b. At any refinery located within the Navajo Nation, to receive such fuel by any method, which fuel is transferred or dispensed from any container at the refinery into a cargo tank for further transportation in bulk quantities and subsequent delivery to any person(s) at any location(s) within the Navajo Nation.

"Distribute" does not include the importation into, or transportation within, the Navajo Nation of any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

15. "Distributor" means any person, whether an Authorized Distributor or an Unauthorized Distributor, who distributes by any method any amount of fuel within the Navajo Nation.

"Distributor" does not include any person who imports into, and transports within, the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation.

16. "Fuel" means flammable hydrocarbon liquid used primarily in internal combustion engines for the generation of power for the propulsion of motor vehicles, and generally dispensed into the fuel supply tank of a motor vehicle, including any blended gasoline of any

type, and diesel fuel.

"Fuel" does not include kerosene, liquefied petroleum gas, compressed or liquefied natural gas, butane, propane, non-fuel stove oil, and fuel products used for the propulsion of aircraft.

17. "Fuel supply tank" means any receptacle on a motor vehicle designed for containing fuel from which such fuel is supplied directly to the engine of a motor vehicle for purposes of propulsion of the motor vehicle.

18. "Gallon" means the quantity of fuel, which fills a standard United States gallon liquid measurement.

19. "Government vehicle" means any motor vehicle, which is owned and operated exclusively by the government of the Navajo Nation or any political subdivision, chapter, enterprise, or instrumentality thereof.

20. "Import" or "Importation" means to cause, by any means, to be transported across the exterior boundaries of, and into, the jurisdiction of the Navajo Nation.

21. "Manifest" means the original individually-numbered document, or non-carbon reproduction thereof (Form NN-MANF- ), issued by the Office of the Navajo Tax Commission to an Authorized Distributor authorizing the Authorized Distributor, or an Authorized Carrier thereof, to obtain a fuel load from a supplier for distribution of such fuel within the Navajo Nation.

22. "Motor vehicle" means any self-propelled motor-driven mobile vehicle operated primarily or incidentally on a highway, and includes vehicles designed for grading, paving, earth moving, or other construction or demolition purposes, all-terrain vehicles, motor scooters and cycles, motor boats, jet skis or other watercraft, snowmobiles, and any other recreational motor vehicle designed primarily for use off-road, or any other motor vehicle which may not be subject to license for operation on a highway, but does not include aircraft of any kind.

23. "Period" means one calendar month.

24. "Refine" or "Refining" means to produce, manufacture, blend or compound, or otherwise prepare as a finished product by any method, any amount of fuel for purposes of sale, resale, use or giving away as such finished product.

25. "Refiner" means any person, whether an Authorized Refiner or an Unauthorized Refiner, who refines any amount of fuel at any refinery and sells, resells, uses or gives away such fuel to consumers, distributors, or retailers.

26. "Refinery" means any plant, facility, or other location where any amount of fuel is refined by any method.

27. "Regulations" means the regulations adopted by official



resolution of the Navajo Tax Commission for purposes of administering the letter and intent of this Chapter.

28. "Retail Facility" means any place of business where any amount of fuel is delivered and/or received by any method for purposes of sale, resale, use or giving away by any retailer.

29. "Retailer" means any person, whether an Authorized Retailer or an Unauthorized Retailer, who sells, resells, uses or gives away any amount of fuel from any retail facility or any refinery, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

30. "Retailing" means to sell, resell, use or give away any amount of fuel from any retail facility or any refinery, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

31. "Sale" or "Sell" means the transfer of ownership, title, or possession to another in exchange for a consideration and includes the transfer of possession on a consignment basis.

32. "Supplier" means any person engaged in the business of selling bulk quantities of fuel to other persons for purposes of further transportation of such fuel in bulk quantities for subsequent delivery and sale.

33. "Unauthorized Carrier" means any person not issued a current and valid Authorized Carrier's License, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who obtains fuel from a supplier on or for the account of any distributor, for importation into and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

"Unauthorized Carrier" does not include any person who imports into, or transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

34. "Unauthorized Distributor" means any person not issued a current and valid Authorized Distributor's License, issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who distributes by any method any amount of fuel within the Navajo Nation.

"Unauthorized Distributor" does not include any person who imports into, and transports within, the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation.

35. "Unauthorized Refiner" means any person not issued a current and valid Authorized Refiner's License, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who refines fuel at any refinery located within the Navajo Nation, and sells, resells, uses or gives away fuel to

consumers, distributors, or retailers.

36. "Unauthorized Retailer" means any person not issued a current and valid Authorized Retailer's License, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who sells, resells, uses or gives away fuel from any retail facility located within the Navajo Nation or any refinery located within the Navajo Nation, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

#### **History**

CAU-85-99, August 26, 1999.

### **Part II. Tax Administration**

#### **§ 903. Tax imposed**

For the privilege of distributing or retailing any amount of fuel within the Navajo Nation, there is imposed an excise tax on each gallon of fuel, or fraction thereof, at the rate fixed by § 905 of this Chapter.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 904. Taxable unit**

The unit of fuel on which the fuel excise tax is imposed is the gallon, with the tax computed to the nearest mill on all amounts of fuel.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 905. Rate of tax**

The rate of tax imposed by this Chapter shall be set in regulations, provided that the rate shall not be less than ten (10 cents per gallon and no more than twenty-five (25 cents per gallon. Until another rate is established, the rate shall be eighteen (18 cents per gallon (.18 x number of gallons or fraction thereof).

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 906. Legal incidence**

A. Fuel imported into the Navajo Nation.

1. Time and place of importation. Any and all fuel that is imported into the Navajo Nation for purposes of delivery to any person(s)

at any location(s) within the Navajo Nation, other than in the fuel supply tank of a motor vehicle, is taxed at the time and place such fuel is imported.

2. Distributors liable for tax. The tax imposed by this Chapter is presumed to be a tax on all distributors of any amount of fuel imported into the Navajo Nation, notwithstanding the use of any common carrier. The distributor owning fuel at the time and place of importation of such fuel is the taxpayer.

3. Payment by distributors. For each period, all distributors shall pay any and all fuel excise tax or taxes due on all amounts of imported fuel, less the applicable discount, if any, taken pursuant to § 915(A)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by the distributor until paid in full to the Office of the Navajo Tax Commission.

B. Fuel refined within the Navajo Nation.

1. Time and place of transfer at a refinery. Fuel refined at a refinery located within the Navajo Nation by any person is taxable at the time and place of transfer at the refinery of such fuel by any method from one container into a separate fuel container, and is taxable to the person owning such fuel immediately after its transfer, so long as there is no further transportation of the fuel in bulk quantities for purposes of sale, resale, use or giving away directly from such container.

2. Payment by refiners or retailers. For each period, the person owning the fuel immediately after its transfer as described in § 906(B)(1) of this Chapter, shall pay directly to the Office of the Navajo Tax Commission any and all fuel excise tax or taxes due on all amounts of transferred fuel, less the applicable discount, if any, taken pursuant to § 915(C)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by such person(s) until paid in full to the Office of the Navajo Tax Commission.

3. Time and place of loading into a cargo tank. Fuel that is loaded by any method from any refinery located within the Navajo Nation into a cargo tank is taxable at the time and place of such loading to the distributor on or for whose account such fuel was loaded for further transportation in bulk quantities and subsequent delivery to any person(s) at any location(s) within the Navajo Nation.

4. Payment by distributors. For each period, all distributors, on or for whose account fuel was loaded as described in § 906(B)(3) of this Chapter, shall pay any and all fuel excise tax or taxes due on all amounts of such fuel, less the applicable discount, if any, taken pursuant to § 915(A)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by such distributors until paid in full to the Office of the Navajo Tax Commission.

C. Fuel retailed within the Navajo Nation. Any retailer, whether authorized or unauthorized, who has controlled or obtained by any method any amount of fuel on which the fuel excise tax has not been timely paid in full,

shall be liable for payment of any and all fuel excise tax or taxes due for all such fuel received or obtained by the retailer.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 907. Retailer notice requirement**

A. Tax must be indicated. All retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Navajo Nation, a notice reading substantially as follows:

**"THE PRICE OF MOTOR VEHICLE FUEL INCLUDES APPLICABLE NAVAJO NATION FUEL EXCISE TAX COMPUTED TO THE NEAREST MILL ON EACH GALLON OR FRACTION THEREOF."**

B. Notice regarding other applicable fuel taxes. In accordance with regulations, all retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Navajo Nation an appropriate notice regarding any other applicable fuel tax.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 908. Fuel inventories and payment of tax**

A. Inventory requirement. The fuel excise tax imposed by this Chapter applies to all fuel within the Navajo Nation other than fuel contained in the fuel supply tank of a motor vehicle, as of the date that the tax becomes effective or the tax rate is increased. By the close of business on such day, each and every owner of fuel storing, controlling, transporting, holding or otherwise possessing any amount of fuel shall take a complete inventory of the total amount of gallons of such fuel on hand, including any fuel loads in transit, and record such inventory.

B. Reporting and payment requirement. Within 10 days of taking fuel inventory as required by § 908(A) of this Chapter, each and every person owning any amount of fuel inventory shall prepare and submit to the Office of the Navajo Tax Commission a written record of such inventory, in form and content prescribed by regulations, which report shall be accompanied by a Fuel Excise Tax Return and payment in full of all fuel excise tax or taxes due on such inventory, as required by § 915 of this Chapter and corresponding regulations.

C. Discount for timely reporting and payment. Any person owning any amount of fuel inventory who is in compliance with all applicable provisions of this Chapter and corresponding regulations, and who timely submits a fuel inventory record accompanied by a Fuel Excise Tax Return and timely submits payment in full of all fuel excise tax or taxes due on such inventory, as required by § 908(B) of this Chapter, may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent

(1/2%) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

D. Regulations. The procedure for administration of this § 908 shall be prescribed and governed by regulations.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 909. Exemptions**

The fuel excise tax imposed by this Chapter does not apply to any amount of fuel used solely and exclusively for the following:

A. Propulsion and operation of a farm tractor or other farm machinery designed primarily for agricultural use;

B. Operation of electricity-producing generators for private residential or household use;

C. Operation of chainsaws, lawn mowers, or other landscaping or wood-cutting machinery;

D. Propulsion of any government vehicle.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 910. Refunds**

A. Consumer refunds. A refund of the fuel excise tax, if based on any exemption(s) listed in § 909 of this Chapter, shall be available only to a consumer who provides adequate proof that the fuel excise tax has been charged to and paid in full by such consumer for any and all fuel purchases for which the consumer seeks a fuel excise tax refund.

B. Refunds due to loss or destruction.

1. Authorized distributors and authorized retailers only. A refund of the fuel excise tax shall be available only to an authorized distributor or an authorized retailer for fuel which has been lost or destroyed by fire, accident, leakage, acts of God, or other mishap while such fuel was owned, at the time of such loss or destruction, by the authorized distributor or authorized retailer seeking a fuel excise tax refund.

2. Requirements of proof. Refunds under this § 910(B) shall be available only upon adequate proof of the following:

a. That the fuel excise tax on any and all such fuel lost or destroyed has been charged to and paid in full by the authorized distributor or the authorized retailer seeking a refund; and

b. Full compliance by the authorized distributor or the authorized retailer seeking a refund, both at the time of loss or destruction of fuel and at the time the application for refund is received by the Office of the Navajo Tax Commission, with all applicable provisions of this Chapter; and

c. Full compliance at the time of loss or destruction, by any person(s) possessing the fuel at the time of such loss or destruction, with all applicable provision(s) of § 911 of this Chapter; and

d. Proof that such loss or destruction was not due to the negligence or recklessness of the authorized distributor or the authorized retailer seeking a refund, or of any person(s) possessing the fuel at the time of loss or destruction; and

e. Proof that such loss or destruction was not due to any violation(s) of applicable Navajo Nation law or any applicable federal law, with a fine or any other punishment constituting a violation; and

f. Any other requirements adopted by regulations.

C. Regulations. The procedure for refunds under this § 910 shall be prescribed and governed by regulations.

#### **History**

CAU-85-99, August 26, 1999.

### **Part III. Enforcement**

#### **§ 911. Licensing**

A. Licenses required. Except for fuel contained in the fuel supply tank of a motor vehicle, licenses must be obtained from the Office of the Navajo Tax Commission as follows:

1. Authorized distributors. For the privilege of distributing within the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized distributor's license.

2. Authorized carriers. For the privilege of importing into, or carrying or transporting within, the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized carrier's license.

3. Authorized refiners. For the privilege of refining within the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized refiner's license.

4. Authorized retailers. For the privilege of retailing within the

Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized retailer's license.

B. Term and fee.

1. Licenses required yearly. A separate license must be secured and maintained for each calendar year, or fraction thereof, ending on December 31st, during which a person seeks to operate as a licensee. In the case of an existing licensee, the deadline for receipt of an application by the Office of the Navajo Tax Commission for a new license to operate for the subsequent year shall be 10 calendar days prior to the date of expiration of the existing license.

2. License fee. The application fee for any license applied for under this § 911 shall be set by regulations, but shall not be less than one hundred dollars (\$100.00) per calendar year, or fraction thereof, ending on December 31st. Until another fee is set, the license fee shall be one hundred dollars (\$100.00). A separate application fee must be paid for each calendar year, or fraction thereof, ending on December 31st, for which a person seeks to secure and maintain a license. The application fee is non-refundable and shall be retained by the Office of the Navajo Tax Commission whether or not the applicant is issued a license.

C. Criteria of licensees. As a condition of securing and maintaining any license under this § 911, any person(s) applying for a license, shall, from the date of receipt of a license application by the Office of the Navajo Tax Commission to the time of issuance of such license, or the issuance of a Letter of License Denial, satisfy in full all of the following criteria:

1. No felony conviction of the applicant, or any officer or any director thereof, in any Navajo Nation court or any other court of competent jurisdiction, within 10 years prior to the issuance of a license by the Office of the Navajo Tax Commission; and

2. No permanent or temporary suspension or revocation of any license or other authorization granted or issued to the license applicant, or any officer or any director thereof, which pertains in any manner to the distribution, carrying or transportation of fuel via cargo tank, refining, or retailing of fuel, which was issued by the Office of the Navajo Tax Commission or any other jurisdiction, within 10 years prior to the issuance of a license by the Office of the Navajo Tax Commission; and

3. Disclosure of all principal and primary persons involved in any way with the license applicant; and

4. Proof of insurance, in an amount prescribed and governed by regulations, for purposes of indemnification for any loss of, destruction of, or damage caused by, any amount of fuel which will be imported into, or distributed, transported, delivered, refined, or retailed within, the Navajo Nation, by or on behalf of the license applicant; and

5. Adequate proof that the license applicant, or any employees, agents, or other personnel thereof who will be engaged in the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, have been certified by a recognized and accredited program as trained in appropriate safety procedures pertaining to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel; and

6. Adequate proof that any and all fuel transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, to be used by the license applicant or any employees, agents, or other personnel thereof, have been fully inspected and certified as fully complying with all applicable laws and/or regulations pertaining to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, of the federal government and any state(s) where such vehicles or other personal property were licensed, manufactured or constructed, leased, purchased or obtained by any means; and

7. In the case of an applicant for an authorized distributor's license, the posting of a bond with the Office of the Navajo Tax Commission as follows:

a. Such bond may be in the form of a cash payment or a bond issued by a surety, or may be in the form of any other acceptable negotiable instrument in lieu thereof; and

b. The dollar amount of such bond shall be equal to or greater than double the full amount of fuel excise tax which the Office of the Navajo Tax Commission estimates to be due for the first period in which the license applicant proposes to operate as an authorized distributor; and

c. The bond shall be retained by the Office of the Navajo Tax Commission for a minimum time of at least two calendar years from the date of posting of the bond, and thereafter shall be released only to an authorized distributor who is in full compliance, for the entire duration such bond is held, with all applicable provisions of this Chapter and corresponding regulations; and

d. The bond shall be released by the Office of the Navajo Tax Commission in accordance with procedures prescribed and governed by regulations; and

8. In the case of an applicant for an authorized carrier's license, proof of such applicant's possession of a current and valid transportation and/or common carrier's license issued by the United States Interstate Commerce Commission or equivalent state agency; and

9. No violation(s) of any applicable Navajo Nation law or any



applicable federal law, with a fine or any other punishment constituting a violation, within 10 years prior to the receipt by the Office of the Navajo Tax Commission of the application for a license; and

10. Any other requirements for licensing adopted by regulations.

D. Licenses non-transferable. No license issued by the Office of the Navajo Tax Commission pursuant to this Chapter shall be assigned or transferred in any manner, except as specifically provided by resolution of the Navajo Tax Commission in its discretion.

E. License or letter of denial. The Office of the Navajo Tax Commission shall issue a license, or shall issue a Letter of License Denial within 30 days after the application for license is received by the Office of the Navajo Tax Commission. Failure of the Office of the Navajo Tax Commission to issue a license or Letter of License Denial within the 30 day period shall be deemed a Letter of License Denial.

F. Regulations. The procedure for administration of licensing under this § 911 shall be prescribed and governed by regulations.

G. Appeal. A Letter of License Denial shall be considered an adverse action which may be appealed pursuant to § 131 of the Uniform Tax Administration Statute.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 912. Restrictions on fuel importation, distribution, transportation, refining and retailing**

A. Persons authorized to import, distribute, and/or transport fuel. Other than in the fuel supply tank of a motor vehicle, fuel shall not be imported into, and/or transported or distributed within, by any method, the Navajo Nation, except by the following persons as hereby authorized:

1. Any authorized distributor who is in full compliance with all requirements of § 911, § 913(A), and any other applicable provision(s) of this Chapter and corresponding regulations; and/or

2. Any authorized carrier who is in fully compliance with all applicable requirements of § 911, § 913(B), and any other applicable provision(s) of this Chapter and corresponding regulations.

B. Persons authorized to refine fuel. Only authorized refiners in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations, are hereby authorized to refine any amount of fuel within the Navajo Nation.

C. Persons authorized to retail fuel. Only authorized retailers in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations, are hereby authorized to retail any amount of fuel within the Navajo Nation.

## **History**

CAU-85-99, August 26, 1999.

### **§ 913. Procedures for lawful importation and distribution**

A. Importation and distribution by authorized distributors. Any authorized distributor in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations is hereby authorized to distribute fuel within the Navajo Nation by fully complying with all of the following provisions:

1. Issuance of manifests. In the case of distribution of fuel by cargo tank, the authorized distributor must first notify the Office of the Navajo Tax Commission of its proposed importation of each and every single load or shipment of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

The Office of the Navajo Tax Commission may then issue a manifest for such fuel authorizing the authorized distributor to acquire the fuel from the supplier. The manifest must be in the form and content prescribed by regulations and must identify the authorized distributor as the buyer of fuel.

2. Bill of lading required. In the case of distribution of fuel by cargo tank, the authorized distributor must secure a valid bill of lading issued by the supplier for each and every single shipment or load of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

3. Authorized Distributor responsible for tax. In the case of distribution of fuel by any method, the authorized distributor shall be deemed the distributor of fuel imported under this § 913(A), and shall timely remit to the Office of the Navajo Tax Commission any and all fuel excise tax or taxes due on such imported fuel along with a fully completed Fuel Excise Tax Return for such fuel, as required by regulations.

B. Importation by authorized carriers. Any authorized carrier in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations is hereby authorized to import fuel into, and/or transport and deliver fuel within, the Navajo Nation, by fully complying with all of the following provisions:

1. Authorized carrier contract with authorized distributor. The authorized carrier must first contract only with an authorized distributor who is in full compliance with all requirements of § 911, § 913(A), and any other applicable provision(s) of this Chapter and corresponding regulations.

2. Issuance of a manifest. The authorized carrier, or authorized

distributor employing such authorized carrier, must notify the Office of the Navajo Tax Commission of its proposed importation of each and every single load or shipment of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation. The Office of the Navajo Tax Commission may then issue a manifest for such fuel authorizing the authorized carrier to obtain the fuel from the supplier. The manifest must be in the form and content prescribed by regulations and must identify the authorized distributor as the buyer of fuel, and must identify the authorized carrier as the carrier of fuel.

3. Bill of lading required. The authorized carrier, or authorized distributor employing such authorized carrier, must secure a valid bill of lading issued by the supplier for each and every single shipment or load of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

4. Authorized distributor remains liable. Notwithstanding the use of an authorized carrier, the authorized distributor shall be deemed, for purposes of this § 913(B), the distributor of fuel imported and shall comply with all requirements of § 913(A) of this Chapter and corresponding regulations.

C. Authority to issue manifests. The Office of the Navajo Tax Commission is hereby authorized to issue a Navajo Nation manifest (Form NN-MANF- ), to any authorized distributor in full compliance with all applicable requirements of this Chapter and corresponding regulations or to any authorized carrier in full compliance with all applicable requirements of this Chapter and corresponding regulations, for each and every single load or shipment of any amount of fuel obtained for importation into, and/or transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

### **History**

CAU-85-99, August 26, 1999.

CD-81-03, December 23, 2003.

### **§ 914. Detention and inspection**

A. Carrying of documents. A current and valid original of the following documents, completed in full, shall be kept on file at the Office of the Navajo Tax Commission, and an exact copy thereof must be carried at all times in any vehicle in which any amount of fuel is being imported into, and transported within, the Navajo Nation:

1. Authorized carrier's license; and
2. In the case of a distributor who is also acting as a common carrier, an authorized distributor's license; and
3. Bill(s) of lading pertaining to the fuel load being imported and

transported, issued by the supplier; and

4. Manifest(s) pertaining to the fuel load being imported and transported, issued by the Office of the Navajo Tax Commission.

B. Presentation of documents. Any license, bill of lading, manifest, application, report, return, form, inventory record, or any other document required to be secured and maintained, filed, and/or carried under any applicable provision(s) of this Chapter and corresponding regulations must be immediately delivered up and presented upon request by a representative or designee of the Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety.

C. Authorization to stop, detain, and inspect. For purposes of determining compliance by any person(s) with any and all applicable provision(s) of this Chapter and corresponding regulations, the representative, designee, or officer is hereby authorized and directed to stop, detain and/or inspect at any time, any fuel transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel.

D. Presentation of vehicles or other property. Any fuel inventory, transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel must be immediately delivered up and presented upon request by a representative or designee of the Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety.

E. Notification of violation. Upon discovery of any failure to comply by any person(s) with any and all applicable provision(s) of this Chapter and corresponding regulations, the representative, designee, or officer is hereby authorized and directed to immediately notify the Office of the Navajo Tax Commission of the violation(s) and identify the violator(s).

### **History**

CAU-85-99, August 26, 1999.

### **§ 915. Filing of returns and payment of tax**

A. Distributors.

1. Monthly returns. All distributors, whether authorized or unauthorized, shall prepare and submit, on a monthly basis, to the Office of the Navajo Tax Commission a Fuel Excise Tax Return (Form 900), for each period for any fuel excise tax or taxes that arise, as prescribed by regulation. Returns are due on the twentieth day of each month immediately following the end of each period.

2. Payment of tax. All distributors, whether authorized or

unauthorized, shall timely remit to the Office of the Navajo Tax Commission all fuel excise tax or taxes imposed by this Chapter. Payment in full of the tax or taxes owed is due at the time the Fuel Excise Tax Return is due. The returns required to be filed under § 915(A)(1) of this Chapter shall be accompanied by payment in full of all fuel excise tax or taxes due.

3. Discount for timely remittance. Any authorized distributor who is in compliance, both at the time the fuel excise tax arises and at the time the return and payment are due, with all applicable provisions of this Chapter and corresponding regulations, and who timely files a Fuel Excise Tax Return and timely remits all fuel excise tax due with respect to such return may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent (1/2 %) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

B. Carriers. All common carriers, whether authorized or unauthorized, shall prepare and submit, on a monthly basis, to the Office of the Navajo Tax Commission a Carrier's Reporting Form (Form NN-CAR- ), for each period, as prescribed by regulation. Forms are due on the twenty-fifth day of each month immediately following the end of each period.

C. Refiners.

1. Quarterly reports. All refiners, whether authorized or unauthorized, shall prepare and submit, on a quarterly basis, to the Office of the Navajo Tax Commission a Refiner's Reporting Form (Form NN-REF- ), for each quarter, as prescribed by regulation. Forms are due on the twentieth day of each month immediately following the end of each quarter.

2. Filing of returns and payment of tax. All refiners, whether authorized or unauthorized, who own fuel immediately after its transfer as described in § 906(B)(1)-(2) of this Chapter shall timely remit to the Office of the Navajo Tax Commission fuel excise tax returns accompanied by payment in full of all fuel excise tax or taxes due, as required of distributors by all provisions of § 915(A) of this Chapter and corresponding regulations.

3. Discount for timely remittance. Any authorized refiner who is in compliance, both at the time the fuel excise tax arises and at the time the return and payment are due, with all applicable provisions of this Chapter and corresponding regulations, and who timely files a Fuel Excise Tax Return and timely remits all fuel excise tax due with respect to such return may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent (1/2 %) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

D. Retailers.

1. Quarterly reports. All retailers, whether authorized or unauthorized, and whether or not obtaining fuel as described in § 906(C) of this Chapter, shall prepare and submit, on a quarterly basis, to the Office of the Navajo Tax Commission a Retailer's Reporting Form (Form NN-RET- ), for each quarter, as prescribed by regulation. Forms are due on the twenty-fifth day of each month immediately following the end of each quarter.

2. Filing of returns and payment of tax. All retailers, whether authorized or unauthorized, who have controlled or obtained by any method any amount of fuel on which the fuel excise tax has not been timely paid in full shall immediately remit to the Office of the Navajo Tax Commission fuel excise tax returns accompanied by payment in full of all fuel excise tax or taxes due, as required of distributors by all provisions of § 915(A) of this Chapter and corresponding regulations.

3. No discount for fuel on which the fuel excise tax has not been timely paid. No discount shall be available to retailers for the payment of fuel excise tax as required by § 915(D)(2) of this Chapter, for fuel on which the fuel excise tax has not been timely paid in full which fuel has been controlled or obtained by a retailer.

E. Regulations administering discount. The procedure for claiming a discount under any applicable provision of this § 915 shall be prescribed and governed by regulations.

#### **History**

CAU-85-99, August 26, 1999.

CD-81-03, December 23, 2003.

#### **§ 916. Record keeping**

Where appropriate, any and all distributors, common carriers, refiners, and retailers required by this Chapter to file any application, report, return, and/or form shall maintain full, true, legible, and accessible records, for four years beyond the period to which the records relate, pertaining in any manner to the following:

A. All incidents of receipt, acquisition, delivery, or distribution of fuel by any method;

B. All incidents, with dates and volumes, of fuel transfers and/or sales;

C. All suppliers, distributors, common carriers, refiners, retailers, sellers, and/or buyers of fuel;

D. All person(s) and location(s) within the Navajo Nation to which fuel was delivered by any method; and

E. Any other information required by regulations.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 917. Violations**

In addition to violations described in the Uniform Tax Administration Statute, the following violations of this Chapter shall apply:

A. Presentation of documents. Each single act of refusal or failure by any person(s) to present, upon request by a representative or designee of the Office of the Navajo Tax Commission or an on-duty officer of the Navajo Nation Division of Public Safety, any license, bill of lading, manifest, application, report, return, form, inventory record, or any other document required to be secured and maintained, filed, and/or carried under any applicable provision(s) of this Chapter shall constitute a separate violation.

B. Permission to inspect. Each single act of refusal or failure by any person(s) to permit, upon request by a representative or designee of the Office of the Navajo Tax Commission or an on-duty officer of the Navajo Nation Division of Public Safety, the inspection of any and all fuel inventory, transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel shall constitute a separate violation.

C. Unlawful distribution of fuel. Each single act by any person(s) of importation into, or transportation, delivery, or distribution within, the Navajo Nation of any amount of fuel shall constitute a separate violation by such person(s) who, at the time of importation, transportation, delivery, or distribution of such fuel, owns the fuel and:

1. Fails to secure, maintain, carry, or deliver up a valid authorized distributor's license as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. Fails to secure, maintain, carry, or deliver up any manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 914 of this Chapter and corresponding regulations;

3. In such case where any common carrier is employed by any distributor to transport fuel, such distributor shall be deemed vicariously liable for the failure of such common carrier thereof to secure, maintain, carry, or deliver up a valid authorized carrier's license or any manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 911 and § 914 of this Chapter and corresponding regulations;

4. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

D. Unlawful transportation of fuel. Each single act by any person(s) of

importation into, or transportation or delivery within, the Navajo Nation of any amount of fuel shall constitute a separate violation by such person(s) who, at the time of importation, transportation, or delivery of fuel:

1. Fails to secure, maintain, carry, or deliver up a valid authorized carrier's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. Fails to secure, maintain, carry, or deliver up a valid manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 914 of this Chapter and corresponding regulations, which violation applies in addition to the vicarious liability of any distributor under § 917(C)(3) of this Chapter, if any;

3. Has failed to prepare and timely submit a Carrier's Reporting Form (Form NN-CAR- ), as required by § 915(B) of this Chapter and corresponding regulations;

4. In such case where any common carrier transports fuel on behalf of any distributor, such common carrier shall be deemed vicariously liable for the failure of such distributor to secure and maintain a valid authorized distributor's license, as required by § 911 of this Chapter and corresponding regulations.

E. Unlawful refining of fuel. Each single act by any person(s) of refining of any amount of fuel at any refinery located within the Navajo Nation shall be considered a separate violation if such person(s) at the time of refining:

1. Fails to secure, maintain, carry, or deliver up a valid authorized refiner's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. Has failed to prepare and timely submit a Refiner's Reporting Form (Form NN-REF- ), as required by this Chapter and corresponding regulations;

3. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

F. Unlawful retailing of fuel. Each single act by any person(s) of retailing of any amount of fuel shall be considered a separate violation if such person(s) at the time of retailing:

1. Fails to secure, maintain, carry, or deliver up a valid authorized retailer's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. In the case of fuel delivery by cargo tank, has acquired such fuel from any person(s) who was not an authorized distributor duly licensed at the time of such fuel acquisition, or who was not an authorized carrier thereof duly licensed at the time of such fuel



acquisition;

3. Fails to post a notice as required by § 907 of this Chapter and corresponding regulations;

4. Has failed to prepare and timely submit a Retailer's Reporting Form (Form NN-RET- ), as required by this Chapter and corresponding regulations;

5. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

G. Other violations. Each act or omission, or any document filed or submitted, shall be considered a separate violation by any person(s) who knowingly:

1. Has failed to prepare and timely submit a completed Fuel Excise Tax Return for any tax or taxes due, as required by this Chapter and corresponding regulations;

2. Has failed to timely remit payment in full of any fuel excise tax or taxes due, as required by this Chapter and corresponding regulations;

3. Refuses or fails to file a report or return as required by any applicable provision(s) of this Chapter and/or corresponding regulations;

4. Knowingly makes a false statement in connection with the administration of any provision(s) of this Chapter and/or corresponding regulations;

5. Fails to keep any and all records as required by § 916 of this Chapter and/or corresponding regulations;

6. Collects a refund or discount of fuel excise tax or taxes without being lawfully entitled under this Chapter and/or corresponding regulations to receive such refund or discount;

7. Causes to be paid to any other person(s) a refund or discount of the fuel excise tax or taxes which refund or discount such person(s) is not lawfully entitled under this Chapter and/or corresponding regulations to receive;

8. Violated any applicable Navajo Nation law or any applicable federal law, with a fine or any other punishment constituting a violation, at any time during which the violator ostensibly possesses a license issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter;

9. Violates any other applicable provision(s) of this Chapter and/or corresponding regulations.

H. Regulations. The procedure for administration of this § 917 shall be prescribed and governed by regulations.

### **History**

CAU-85-99, August 26, 1999.

### **§ 918. Penalties**

In addition to the penalties provided for in the Uniform Tax Administration Statute, the following penalties shall apply whenever any activity by any person(s) constitutes an immediate and substantial threat to the collection of taxes imposed by this Chapter and is attributable to the activity:

A. Suspension and revocation of license. Regardless of the date of discovery of any violation(s), the license(s) (if any) of the violator(s) shall be deemed automatically suspended pending a preliminary review by the Office of the Navajo Tax Commission. The suspension shall be deemed effective as of the date of the first act, omission, or date of any document filed or submitted, in violation of this Chapter and corresponding regulations.

B. Closure of refinery. The Office of the Navajo Tax Commission is hereby authorized to immediately close any refinery that is in violation of any applicable provision(s) of this Chapter and corresponding regulations, by issuing a Notice of Closure to the alleged violator(s). Thereafter, the privilege of any violator(s) to engage in productive activity within the Navajo Nation may be immediately suspended according to procedures found in the Uniform Tax Administration Statute.

C. Closure of retail facility. The Office of the Navajo Tax Commission is hereby authorized to immediately close any retail facility that is in violation of any applicable provision(s) of this Chapter and corresponding regulations, by issuing a Notice of Closure to the alleged violator(s). Thereafter, the privilege of any violator(s) to engage in productive activity within the Navajo Nation may be immediately suspended according to procedures found in the Uniform Tax Administration Statute.

D. Impoundment of fuel, vehicles, or other property. The Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety, is hereby authorized to immediately detain and/or impound any fuel load, fuel inventory on hand, transportation vehicles, cargo tanks, storage tanks, equipment paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the distribution, transportation, delivery, refining, storage, possession, or retailing of fuel, which fuel or property is owned or possessed by any person(s) discovered violating or having violated any applicable provision(s) of this Chapter and corresponding regulations.

E. Preliminary review.

1. Request for preliminary review. Within 10 calendar days from receipt by the alleged violator(s) of a Notice of License Suspension or a Notice of Closure, the alleged violator(s) may request a preliminary

review of the action taken by the Office of the Navajo Tax Commission. Upon receipt by the Office of the Navajo Tax Commission of a written request for review by the alleged violator(s), a preliminary review shall be held within 30 calendar days after receipt by the Office of the Navajo Tax Commission of the request for review.

2. Purpose of preliminary review. The preliminary review shall be held for the purpose of determining the following:

a. A license suspension occurring pursuant to § 918(A) is to be lifted or continued for any amount of time specified in regulations, or the suspended license is to be revoked permanently, or for any amount of time specified in regulations; or

b. A closure of a refinery or retail facility is to be rescinded or continued for any amount of time specified in regulations, or the refinery or retail facility is to be permanently closed.

3. Burden of proof at preliminary review. At the preliminary review, the alleged violator(s) shall bear the burden of demonstrating, by a preponderance of the evidence, good cause why the action taken by the Office of the Navajo Tax Commission under § 918 (A)-(D) of this Chapter should not be continued.

F. Action after preliminary review. Notwithstanding the filing of an appeal by an alleged violator(s) under § 918(G) of this Chapter, upon determination by the Office of the Navajo Tax Commission after the preliminary review conducted pursuant to § 918(E) of this Chapter that any adverse action taken by the Office of the Navajo Tax Commission under § 918(A)-(D) of this Chapter is not to be lifted or rescinded, the Office of the Navajo Tax Commission is hereby authorized to take the following action(s):

1. Sale to satisfy tax liability.

a. Sale of fuel or property after 15 days. Unless proof is presented to the Office of the Navajo Tax Commission within 15 calendar days of impoundment under § 918(D) of this Chapter that all fuel excise tax or taxes due on the impounded fuel, or due on any fuel to which the impounded personal property relates, have been paid in full, the impounded fuel and/or property may be sold by the Office of the Navajo Tax Commission to satisfy any unpaid and outstanding fuel excise tax or taxes owed.

b. Return of excess revenue from sale. Any amount of fuel and/or property remaining after such sale shall be returned to the person(s) from whom it was impounded within 10 working days of the final date of such sale. In lieu thereof, the Office of the Navajo Tax Commission may, in its discretion, determine the fair market value of such fuel and/or property and apply this amount as a credit against any subsequent fuel excise tax or taxes owing, provided that the person(s) to receive such credit has, within 60 days after impoundment, demonstrated full compliance with all applicable provision(s) of this Chapter and corresponding regulations.

2. Civil penalties. In addition to any other applicable penalties provided for in this Chapter, the following penalties shall apply:

a. Standard penalty. A civil penalty of no less than five hundred dollars (\$500.00) and no more than one thousand five hundred dollars (\$1500) for each single and separate violation shall be assessed against any violator(s) for each month, or fraction thereof, in which the violation has occurred. The standard penalty amount shall be specified in regulations.

b. Penalty on each gallon. In addition to any other applicable penalties provided for in this Chapter, a civil penalty of five dollars (\$5.00) per gallon of fuel, or fraction thereof, shall be assessed against any violator(s) for each single and separate violation involving any amount of fuel owned or possessed by, or under the control of, the violator(s) at the time of such violation(s).

G. Appeal. Failure to lift a license suspension, failure to rescind the closure of a refinery or retail facility, or the imposition of a standard or per-gallon penalty by the Office of the Navajo Tax Commission, after conclusion of the preliminary hearing conducted pursuant to § 918(E) of this Chapter, shall be considered an adverse action which may be appealed pursuant to § 131 of the Uniform Tax Administration Statute.

H. Relief of penalties. Upon receipt of an appeal and upon written recommendation of the Director of the Compliance Department of the Office of the Navajo Tax Commission, the Office of the Navajo Tax Commission may in its discretion relieve the appealing person(s) of all or part of the penalties assessed under this Chapter.

I. Regulations. The procedure for the determination, assessment, and/or relief of penalties under this § 918 shall be prescribed and governed by regulations.

#### **History**

CAU-85-99, August 26, 1999.

### **Part IV. Miscellaneous**

#### **§ 919. Effective date**

This Chapter shall take effect October 1, 1999.

#### **History**

CAU-85-99, August 26, 1999.

#### **§ 920. Severability**

If any provision of this Chapter, as amended, or its application to any person or factual circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or

applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

**History**

CAU-85-99, August 26, 1999.

**§ 921. Repeals**

All laws or parts of laws (or amendments or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

**History**

CAU-85-99, August 26, 1999.

**§ 922. No conflict with Local Governance Act**

The provisions of this Chapter and corresponding regulations shall not be construed inconsistent with the Local Governance Act, adopted April 20, 1998 by Navajo Nation Council Resolution No. CAP-34-98.

**History**

CAU-85-99, August 26, 1999.

**§ 923. Disbursements**

The net revenue generated from this Chapter, after 1) payment to any state pursuant to a fully executed and valid intergovernmental agreement between the Navajo Nation and such state; 2) allocation to permanent or special revenue funds as required by Navajo Nation law; and 3) allocation to the Tax Administration Suspense Fund, as required by the fiscal policy adopted by the Navajo Tax Commission in accordance with the Uniform Tax Administration Statute, shall be deposited into the Navajo Nation Road Fund.

**History**

CJY-55-01, July 20, 2001.

CAU-85-99, August 26, 1999.

**Chapter 10. Fuel Distributor's Licensing Act [Repealed]**

**History**

**Repealed.** Pursuant to CAU-85-99, August 26, 1999.

**Title 25**

[Reserved]

**Title 26**

**Navajo Nation Local Governance Act**

**Chapter 1. Navajo Nation Chapters**

**Subchapter 1. Generally**

**§ 1. Title; Purpose; Authorization; Prior Inconsistent Law Superseded; Amendment**

A. Title. This Act shall be cited as the "Navajo Nation Local Governance Act" and herein codified in Title 26 of the Navajo Nation Code.

B. Purpose.

1. The purpose of the Local Governance Act is to recognize governance at the local level. Through adoption of this Act, the Navajo Nation Council delegates to chapters governmental authority with respect to local matters consistent with Navajo law, including custom and tradition. This Act clearly defines the executive and legislative functions of the chapter as well as the duties and responsibilities of chapter officials and administrators consistent with the Navajo Nation's policy of "separation of powers" and "checks and balances."

2. Enactment of the Local Governance Act allows Chapters to make decisions over local matters. This authority, in the long run, will improve community decision making, allow communities to excel and flourish, enable Navajo leaders to lead towards a prosperous future, and improve the strength and sovereignty of the Navajo Nation. Through adoption of this Act, Chapters are compelled to govern with responsibility and accountability to the local citizens.

C. Authorization. The Navajo Nation Council, by Resolution CAP-34-98, hereby approves the Navajo Nation Local Governance Act.

D. Prior Inconsistent Law Superseded. Upon the effective date of the Navajo Nation Local Governance Act, all inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof are superseded hereby and/or amended to comply herewith.

E. Amendment. This Act may be amended by the Navajo Nation Council subject to approval of a majority of all chapters of the Navajo Nation; or this Act may be amended by referendum vote of a majority of all chapters as set forth in 11 N.N.C., Navajo Nation Election Code.

**History**

CAP-34-98, April 20, 1998.

## **Cross Reference**

Navajo Election Code of 1990, apportionment, see 11 N.N.C. § 9.

### **§ 2. Definitions**

The language contained in this Section applies generally to all chapters except as otherwise provided in this Act.

1. "Accounting system" means the methods and records established and maintained to identify, assemble, analyze, classify, record and report a chapter's financial transactions and to maintain accountability, in accordance with generally accepted governmental accounting principles (GAGAP), or another comprehensive basis of accounting, other than (GAGAP) of such transactions and for the related assets and liabilities.

2. "Administrative functions" are those activities of the chapter government which are non-legislative, and involve the conduct of programs.

3. "Allotment" means a parcel of land either owned by the United States in trust for an Indian (trust allotment) or owned by an Indian subject to restriction imposed by the United States against alienation (restricted fee allotment).

4. "Alternative form of chapter governance" means to give a new design, function or organization to the existing chapter government.

5. "Attendance" means to be present.

6. "Chapters" are units of local government which are political subdivisions of the Navajo Nation.

7. "Chapter Certification" means the process required of a community group, pursuant to Section 3, seeking to establish a certified chapter of the Navajo Nation Government.

8. "Chapter employee" means any person or entity working for, or rendering or exchanging any services or performing any act for or on behalf of the chapter in return for any form of payment or other compensation or thing of value received or to be received at any time temporarily, permanently or indefinitely, in any capacity; whether as agent, servant, representative, consultant, advisor, independent contractor or otherwise.

9. "Chapter meeting minutes" means the record of all action taken at a duly called meeting of the chapter.

10. "Chapter membership" means:

a. For voting purposes and participation in the chapter government, all registered voters of the chapter, or those representing such voters pursuant to governing models adopted by the Transportation and Community Development Committee of the Navajo Nation Council pursuant

to this Act.

b. For purposes of services and benefits, all tribal members, young and old, who either reside within or are registered in the chapter. An individual may not be a member of more than one chapter.

11. "Chapter officials"-The President, Vice-President, and Secretary/Treasurer of a certified chapter, or, for purposes of the Election Code, other officials who may be locally elected based upon governing models adopted by the Transportation and Community Development Committee of the Navajo Nation Council pursuant to this Act.

12. "Chapter ballot measure" means the official action of a chapter's registered voters on a proposed resolution or ordinance pursuant to §§ 1003(B) and 2001(H) *et seq.* of this Act.

13. "Chapter resident" means one who dwells permanently or continuously within the boundaries of a chapter.

14. "Chapter resolution" means the document recording the official action taken by the chapter membership at a duly called chapter meeting.

15. "Community based land use plan" means a document adopted by chapter resolution setting forth current and proposed uses of land within chapter boundaries, illustrating such uses by map or plat.

16. "Contracting" means the act of entering into written agreements which impose legal obligations on the parties who are signatories to the agreement.

17. "Custodian" means having day to day charge of official books, records, documents, equipment, property and funds of the chapter.

18. "Eminent domain" means the taking of land used by an individual, or legal person or entity, in which an individual, or legal person or entity, has an interest for a governmental purpose. "Just compensation" must be paid to the user for taking of such as prescribed by Navajo law.

19. "Filing system" means the system by which all chapter documents are maintained.

20. "Five Management System" means a management system which includes: accounting, procurement, filing, personnel and property management.

21. "Governance procedure requirements" means the process chapters must complete pursuant to § 102 to begin exercising authorities pursuant to this Act.

22. "Governmental purposes" means activities carried out by the chapter for the general health, safety and welfare of the chapter membership.



23. "Local governance" means governance by and through chapter governmental bodies as set forth by this Act.

24. "Manager" means the individual who is responsible for administering the Five Management System and the administration of the chapter.

25. "Navajo Nation law" means Navajo statutes, administrative regulations and Navajo common law.

26. "Ordinance" means a local law, rule or regulation enacted by a chapter pursuant to this Act.

27. "Oversight" means the general supervision of administrative functions by the chapter officials and/or the manager to ensure accountability.

28. "Personal property" is all supplies, materials, equipment and other property, including expendable and nonexpendable property, capitalized and non-capitalized, but does not include real property or fixtures. Capitalized property is nonexpendable property having acquisition value of one thousand dollars (\$1,000) or more.

29. "Personnel management" means the system by which recruitment, retention and termination of employees is administered at the chapter.

30. "Property management" means the system by which the chapter administers accounts for real and personal property obtained or controlled as a result of past transactions, events or circumstances.

31. "Real property" is any interest in land, together with the improvements, structures and fixtures located thereon.

32. "Registered voter" means having one's name officially placed on a list of eligible voters.

33. "Subcontract" means the act of entering into a written agreement between a Navajo Nation chapter and a Navajo Nation division, program or entity.

34. "Technical assistance" means services rendered by the central Navajo Nation government with respect to the authority to be exercised by chapters as described herein.

### **History**

CO-51-04, October 18, 2004. Amended subsections 10(a) "Chapter membership," 11 "Chapter officials," and 12 "Chapter ballot measure." Majority chapter approval of Resolution CO-51-04 obtained on August 26, 2007.

CJY-42-04, July 23, 2004. Majority chapter approval of Resolution CJY-42-04 obtained on October 7, 2004.

CAP-34-98, April 20, 1998.

## **Annotations**

### **1. Chapter employee**

"It is clear to this Court, then, that the CSC position is an administrative position, and that the duties of the position fall within the definition of 'chapter employee' in 26 N.N.C. § 2(8). Whether the chapter receiving those services is certified pursuant to the LGA or not does not change the nature of the services nor the position of the employee. A CSC is a chapter employee." *In the Matter of the Termination of: Yazzie and Barney v. Division of Community Development, Local Governance Support Center*, No. SC-CV-37-05 and No. SC-CV-42-05, slip op. at 5 (Nav. Sup. Ct. June 14, 2007).

### **§ 3. Chapter certification**

A. There shall be certified at least one chapter organization in each chapter precinct which elects delegates to the Navajo Nation Council. The list of certified chapters is at 11 N.N.C. § 10.

B. Until increased by certification by the Navajo Nation Council, the number of certified chapters shall not exceed 110.

C. Additional chapters may be certified only if all of the following are met:

1. Upon presentation of evidence to the Navajo Nation Council that the proposed chapter represents a community group which has existed and functioned as a community for four continuous years.

2. Upon presentation of evidence that the population of the area exceeds 1,000 persons for each of the existing chapters and that there is a need to establish others.

3. Upon presentation of evidence that the topography or the unique demography of the chapter area makes it necessary to have more than one chapter to allow residents access to chapter meetings.

## **History**

CAP-34-98, April 20, 1998.

### **Subchapter 3. Navajo Nation Chapter Governance**

#### **§ 101. Chapter government requirements**

A. To ensure accountability, all chapters are required to adopt and operate under a Five Management System. Chapters shall develop policies and procedures for the Five Management System consistent with applicable Navajo Nation law.

B. Chapters wanting to administer land, pursuant to this Act, are required to develop a community based land use plan based upon results of a

community assessment.

#### **History**

CAP-34-98, April 20, 1998.

#### **§ 102. Governance procedure requirements**

A. The Navajo Nation Auditor General's office shall review the chapter's Five Management System policies and procedures and recommend governance certification of the policies and procedures to the Transportation and Community Development Committee.

B. Upon review and recommendation by the Auditor General's office, the Transportation and Community Development Committee of the Navajo Nation Council shall certify the Five Management System policies and procedures. Also, the committee shall review, if applicable, the chapter's community based land use plan. Upon governance certification by the Transportation and Community Development Committee, the chapter may exercise authorities pursuant to § 103 of this Act.

C. Chapters subsequently approving a community based land use plan must receive certification from the Transportation and Community Development Committee. Certification by the Transportation and Community Development Committee authorizes chapters to administer land pursuant to § 103(D) (1).

#### **History**

CAP-34-98, April 20, 1998.

#### **§ 103. Chapter authority**

A. The members of each chapter, at a duly called meeting, are authorized to oversee the authority delegated to the chapter pursuant to this Act.

B. All authority exercised by a chapter shall be consistent with Navajo Nation law.

C. All authority exercised by a chapter, pursuant to this Act, may be preempted by Navajo Nation Council statutes and/or resolutions.

D. All chapters, by chapter resolution, may exercise the following authorities, including, but not limited to:

1. Issue home and business site leases or permits. The issuance of leases and permits shall be done in accordance with uniform rules and regulations promulgated by the Resources Committee and the Economic Development Committee of the Navajo Nation Council. This provision shall not apply to allotments.

2. Acquire, sell or lease property of the chapter.

3. Enter into agreements for the provision of goods and services.

4. Enter into agreements with other chapters to undertake a common goal or interest which will benefit the chapters.

5. Enter into intergovernmental agreements with federal, state, tribal entities and/or their agencies, subject to the approval of the Intergovernmental Relations Committee of the Navajo Nation Council.

6. Enter into contracts or subcontracts with the Navajo Nation for federal, state, county and other funds, subject to the approval of the Intergovernmental Relations Committee. This provision is not intended to alter federal contracts between chapters and the United States which pre-date the enactment of this Act.

7. Enter into contracts or subcontracts for Navajo Nation general funds, with appropriate Navajo Nation divisions, programs or agencies for service delivery programs.

8. Appropriate funds, according to conditions set forth by the Navajo Nation Council, divisions, departments or other funding sources, including chapter claims funds and chapter scholarship funds.

9. Retain legal counsel.

10. Establish a peacemaking system or administrative procedure for resolving disputes arising from chapter resolutions, ordinances, or administrative action; including matters arising from personal disputes. The peacemaking system should emphasize Navajo custom for resolving disputes not otherwise contrary to Navajo law and/or custom.

11. Generate revenue through means established by the chapter consistent with this Act.

E. Chapters may adopt the following ordinances pursuant to § 2001 of this Act.

1. Amend the land use plan to meet the changing needs of the community.

2. Acquire property by eminent domain, pursuant to § 2005 of this Act. This provision shall not apply to allotments.

3. Acquire and administer capital improvement project funds.

4. Zoning ordinances consistent with the chapter's community based land use plan.

5. Regulatory ordinances for governmental purposes, enforcement of which shall be by the chapter, for the general health, safety and welfare of the chapter membership, consistent with Navajo Nation law.

6. An alternative form of chapter governance based upon models provided by the Transportation and Community Development Committee of the Navajo Nation Council.

7. A municipal form of government or chapter subunits based upon models provided by the Transportation and Community Development Committee of the Navajo Nation Council.

8. Local taxes pursuant to a local tax code developed by the Navajo Tax Commission and approved by the Navajo Nation Council.

9. Local fees based upon guidelines established by the Navajo Nation Council.

10. Issue community bonds.

11. Compensate the chapter president, the vice president, and the secretary/treasurer.

12. Others, subject to the approval of the Transportation and Community Development Committee of the Navajo Nation Council.

F. Chapter members may delegate the resolution authority to the chapter administration through the chapter ordinance process. The delegation of authority specifically applies to: the issuance of home, business and other site leases, contracting, the authority to acquire, sell or lease personal property of the chapter, and to appropriate funds.

G. The chapter officials and/or the chapter membership are prohibited from granting monetary loans and approving per capita distribution of chapter funds to the chapter membership.

H. All residents of the chapter, whether registered voters or not, are subject to the jurisdiction of the chapter pursuant to this Section.

### **History**

CJY-42-04, July 23, 2004. Majority chapter approval of Resolution CJY-42-04 obtained on October 7, 2004.

CAP-34-98, April 20, 1998.

### **Cross References**

Navajo Election Code, referendum, see 11 N.N.C. § 401 *et seq.*

## **Chapter 2. Chapter Government**

### **Subchapter 5. Navajo Nation Chapters, Officials and Administration—Generally**

#### **§ 1001. Duties and responsibilities of chapter officials**

A. Chapter officials are elected by the chapter membership to facilitate the conduct of chapter meetings and guide policy making within the chapter. The administrative functions of the chapter government are to be left to the chapter employees. An individual may not serve as both a chapter official and chapter employee at the same time.

B. The duties and responsibilities of the chapter officials are as follows:

1. The chapter president shall:

a. Consult with the chapter vice president, secretary/treasurer, council delegate(s), and chapter staff in preparation of the agenda for each chapter meeting. If applicable, the president shall also consider proposed agenda items from the planning meeting.

b. Preside and maintain order over chapter meetings. All chapter meetings shall be conducted according to the standard order of business pursuant to § 1003 of this Act.

c. Provide all residents of the community with equal opportunity to speak on issues before the chapter.

d. Recommend the establishment of and appointment to the standing and special committees of the chapter to the membership for approval.

e. Adjourn or postpone a chapter meeting in the event of:

(1) A lack of quorum;

(2) Disorder at the meeting;

(3) Unforeseen emergency;

(4) When a chapter meeting is adjourned or postponed, the chapter president shall provide notice to the chapter members as to the time and place of the next or continued chapter meeting.

f. Vote in case of a tie.

g. Call emergency or special chapter meetings.

h. Coordinate, plan and organize to improve chapter functions and activities.

i. Ensure that the duties and responsibilities of the vice president and the secretary/treasurer are carried out in the best interest of the chapter community.

j. Work closely with the vice president, and secretary/treasurer, to ensure that the chapter administration is adequately meeting the chapter's directives and expending funds according to conditions of the Navajo Nation Council and/or the chapter's annual budgetary objectives; and shall report to the chapter membership.

k. Follow-up with Tribal, Federal and State governments or their agencies on resolutions, ordinances, recommendations, proposals and projects of the chapter.

l. Take action to protect the life and property of the members of the chapter in case of an emergency or other crisis.

m. Carry out the decisions of the chapter and not frustrate those decisions in any way.

n. Work closely with council members, chapter elected officials, committees and other concerned groups or agencies.

o. Encourage and promote community participation in planning and development.

p. Mediate disputes, if appropriate, of families residing within the chapter and/or refer such family disputes to appropriate social service or law enforcement authorities, as the circumstances may require.

q. Represent the chapter at meetings which the chapter has interest.

r. Keep informed of all chapter related activities and acts to advance the interests of the community in all matters.

s. Have authority to sign all contracts, leases and all other official documents of the chapter, unless otherwise stated.

t. Delegate to the vice president certain duties and responsibilities of the presidency, when the president is otherwise incapacitated or is unavailable to perform his duties.

2. The chapter vice president shall:

a. Automatically assume the duties and responsibilities of the chapter president, in the absence of the president during chapter meetings.

b. In the event of an unforeseen situation, assume delegated duties and responsibilities of the chapter president for a reasonable time period.

c. Assist the president and secretary/treasurer with their duties and responsibilities.

d. Work closely with chapter elected officials, committees and other concerned groups or agencies.

e. Monitor community projects.

f. Represent the chapter at meetings of which the chapter has interest.

g. Support and assist the president and secretary/treasurer in carrying out the decisions of the chapter and not act to frustrate

those decisions.

3. The chapter secretary/treasurer shall:

a. Maintain complete and accurate records of all chapter activities and provide written information when called upon.

b. Assist the president and vice president in preparing the agenda.

c. Prepare and finalize all resolutions, proposals, letters and other important documents for distribution to appropriate agencies.

d. Take the minutes of chapter meetings and record in detail all resolutions, votes and other official actions of the chapter. Discussion of all action items shall be recorded with a tape recording machine.

e. Follow up with the chapter president and vice president on all referrals of resolutions, proposals, correspondence and other related matters.

f. Represent the chapter at meetings of which the chapter has an interest.

g. Work closely with the chapter president, vice president, and other chapter committees.

h. Monitor the maintenance of an adequate accounting system to ensure accountability of all funds and expenditures; and shall report to the chapter president and membership.

i. Shall, in consultation with the chapter president and vice president, ensure that the administration prepares monthly financial reports of all transactions and expenditures of the chapter by categories. The secretary/treasurer is responsible for providing all financial reports to the chapter membership at duly called chapter meetings.

j. Keep records of meeting claims, attendance and payment of chapter officials.

k. Turn over, to the chapter manager, within 10 working days of the official action, all resolutions, minutes and other official documents finalized by the secretary/treasurer.

l. Co-sign all chapter checks along with the chapter manager. In the event that the secretary/treasurer is unavailable, the chapter president or the vice president may co-sign chapter checks.

C. Elected officials of the Navajo Nation chapters shall serve for a term of four years and shall not be limited to the number of terms he or she may serve.



D. Elected officials of the Navajo Nation chapters shall take the oath of office before assuming official duties.

E. Elected officials are prohibited from direct involvement in the management and operations of the chapter administration.

F. Elected officials, immediately upon resignation, removal or expiration of the term of office, shall turn over to the duly certified successor, all books, records, and property in his/her possession belonging to the chapter.

G. Elected officials shall comply with all Navajo Nation laws, chapter ordinances and resolutions. These officials shall perform the duties enumerated above, and such other duties as may be consistent with Navajo law, including this Act and applicable plans of operation enacted by the chapter membership.

H. Elected officials of the Navajo Nation chapters shall attend, upon taking the oath of office, a training session on Ethics in Government sponsored by the Ethics and Rules Office of the Navajo Nation. Chapter officials shall maintain a high standard of conduct in all chapter business consistent with Navajo law, including this law, and the Navajo Nation Ethics and Government law. Chapter officials are prohibited from rendering opinions, directions or decisions contrary to the sound practice of leadership or contrary to the best interest of the chapter.

### **History**

CJY-43-04, July 23, 2004. Majority chapter approval of Resolution CJY-43-04 obtained on October 7, 2004.

CAP-34-98, April 20, 1998.

### **Annotations**

#### **1. Construction and application**

"In this case, the law is clear and unambiguous. The Local Governance Act, 26 N.N.C. § 1001(A) prohibits an individual from serving both as a chapter official and chapter employee at the same time. A general provision within the personnel manual cannot supersede provisions in the Code appropriately considered and approved by the Council. Therefore, a CSC is a chapter employee, and that position cannot be held simultaneously with that of a chapter official." *In the Matter of the Termination of: Yazzie and Barney v. Division of Community Development, Local Governance Support Center*, No. SC-CV-37-05 and No. SC-CV-42-05, slip op. at 4 (Nav. Sup. Ct. June 14, 2007).

"The Local Governance Act, 26 N.N.C. § 1001(A) is clear and unambiguous, and will be held to mean what it says. 'An individual may not serve as both a chapter official and chapter employee at the same time.' 26 N.N.C. § 1001(A). There are no conditions precedent to the implementation of that prohibition. A CSC is a chapter employee. Therefore, all appellees were simultaneously serving as both chapter employees and as chapter officials. That is prohibited by law." *In the Matter of the Termination of: Yazzie and Barney v. Division of Community Development, Local Governance Support Center*, No. SC-CV-37-05 and No. SC-CV-42-05, slip op. at 5 (Nav. Sup. Ct. June 14, 2007).

**§ 1002. Meetings; Meeting notice requirement; Compensation of chapter officials**

A. Number of meetings. Each chapter shall determine the number of meetings to be held each month and the time and place for such meetings (subject to the right of the chapter president to call special or emergency meetings when necessary).

B. Meeting notice. The chapter officials shall post all chapter meeting agendas within the chapter boundaries at least 48 hours prior to the meeting.

C. Compensation of chapter officials

1. Chapter officials shall be compensated for only the number of meetings provided for in the Navajo Nation approved budget. It is nonetheless the obligation of chapter officials to be present at all chapter meetings.

2. A chapter meeting claim form signed only by the claimant shall be attached to each of the regularly scheduled chapter meeting reports filed by the chapter secretary/treasurer with the chapter Government Development Department, Division of Community Development, or if applicable, by the chapter administration.

a. Each regularly scheduled chapter meeting report and claim form shall be correctly filled out before it will be accepted and processed for payment by the Chapter Government Development Department, Division of Community Development, or if applicable, by the chapter administration;

b. Each chapter president, vice president, secretary/treasurer (the appointed acting secretary and/or the chapter president pro-tempore) shall be paid in accordance with the approved fiscal year budget;

c. No chapter official shall be compensated for a chapter meeting unless he or she was in official attendance at that meeting; and

d. Reports will be furnished for all chapter meetings, regular or special, and state whether or not chapter officials are to be compensated for attendance at such meetings.

**History**

CAP-34-98, April 20, 1998.

**§ 1003. Order of business**

A. The chapter president or in the absence of the president, the vice president shall chair all regular or special chapter meetings. In the absence of the president and vice president, the chapter members present may select a chairperson pro tempore for that meeting only.

B. All chapter meetings require a quorum of twenty-five (25) registered chapter members to conduct official chapter business. Chapters, whether governance-certified or not, may amend the quorum requirement, based upon models and procedural regulations adopted by the Transportation and Community Development Committee of the Navajo Nation Council. Adoption of an amended quorum requirement requires approval by chapter ballot measure in accordance with 11 N.N.C. §§ 401-408.

C. Chapters may adopt standard rules for conducting chapter meetings.

D. Procedural Rules for Motions.

1. The approval or amendments to the agenda, minutes, report(s) and resolution(s) under old and new business of the agenda shall be done in the following manner:

a. Upon presenting the agenda, minutes, report(s), resolution(s) and/or issue(s) of the agenda, the chapter president shall request a motion to accept the matter before the chapter membership and recognize a second to the main motion.

b. Upon receiving a motion and a second to the main motion, the chapter president shall provide an opportunity to members of the chapter to address the matter before the chapter membership.

c. Any member of the chapter may propose an amendment to the main motion which would require a second. The chapter membership shall vote on the proposed amendment motion. If the amendment motion passes, it shall take precedence over the part of the main motion subject to a proposed amendment. Only one motion to amend the main motion shall be on the floor.

d. Any member of the chapter may propose a substitute motion and if it passes, it shall take the place of the main motion. The substitute motion shall be seconded and voted on.

e. Any member of the chapter may propose to table the legislation or issue before the chapter. The motion to table the matter shall be seconded and voted on. If the tabling motion passes, it shall take precedence over other motions.

2. The chapter president, vice president, and secretary/treasurer, at a duly called chapter meeting, are prohibited from making main motions and second motions on substantive and administrative matters. They may make motions and second motions during planning meetings.

#### **History**

CO-51-04, October 18, 2004. Amended subsection B. Majority chapter approval of Resolution CO-51-04 obtained on August 26, 2007.

CAP-34-98, April 20, 1998.

#### **Cross References**

Navajo Election Code, referendum, see 11 N.N.C. § 401 *et seq.*

**§ 1004. Chapter administration**

A. The chapter shall enact, by resolution, plans of operation for all executive functions and administrative policies of the chapter, including but not limited to: record keeping, accounting, personnel, payroll, property management, contracting procurement and program management. The Five Management System shall be the basis of enacting the plans of operation and administrative policies. The chapter administration shall follow the duties and responsibilities prescribed in the plans of operation and shall comply with all administrative policies and procedures enacted by the chapter.

B. The chapter manager shall co-sign all chapter checks.

C. The chapter manager shall be the custodian of all official books, records, documents, and funds of the chapter. Failure of the manager to safeguard these items is cause for removal and assessment of applicable penalties pursuant to Navajo Nation law.

D. Members of the chapter, individually, are prohibited from direct involvement in the management and operations of the government or administration.

**History**

CAP-34-98, April 20, 1998.

**Subchapter 7. Navajo Nation Chapter Regulations and Procedure**

**§ 2001. Chapter ordinance procedure**

A. All proposed ordinance(s) shall contain the following:

1. An ordinance number;
2. A title which indicates the nature of the subject matter of the ordinance;
3. A preamble which states the intent, need or reason for the ordinance;
4. The subject of the ordinance;
5. Rules and regulations governing the enforcement of the ordinance, budgetary information, and where applicable, a statement indicating the penalty for violation of the ordinance;
6. A statement indicating the date when the ordinance shall become effective;
7. The signature of the chapter president to make an official

recording of the transaction or writing.

B. The proposed ordinance shall be read into the record at two consecutive chapter meetings, of which one may be designated a special meeting, to provide information and an opportunity to discuss and comment on the proposed ordinance(s).

C. All proposed ordinances shall be read in both English and Navajo.

D. After the final reading, the proposed ordinance shall be posted at public places within the chapter boundaries a minimum of 14 days prior to the vote. The date of the vote shall be decided upon at this time.

E. Passage of all ordinance(s), except those listed in subsection H, requires a majority of the votes cast, by the chapter membership during a regular or special meeting.

F. All ordinances shall be compiled and maintained at the chapter for public information. Copies of ordinances shall be filed with the central Records Management Department of the Navajo Nation.

G. Ordinances shall be amended or rescinded by the process provided in this Section. All ordinances proposing amendments shall clearly indicate new language by underscoring and deletions by overstriking.

H. A chapter ballot measure shall be used for the adoption of an alternative form of chapter governance, a municipal form of government, chapter subunits, local taxes and fees, issuance of community bonds and compensation of chapter officials. Adoption of a chapter ballot measure shall be in accordance with 11 N.N.C. §§ 401-408.

I. Challenges to ordinances shall be pursuant to 1 N.N.C. § 501 *et seq.*

#### **History**

CO-51-04, October 18, 2004. Amended subsections E and H. Majority chapter approval of Resolution CO-51-04 obtained on August 26, 2007.

CAP-34-98, April 20, 1998.

#### **Cross References**

Navajo Election Code, referendum, see 11 N.N.C. § 401 *et seq.*

#### **§ 2002. Chapter contract requirements**

A. Except as otherwise provided in this Act, all contracts authorized to be executed on behalf of a chapter, and utilizing Navajo Nation funds shall:

1. Expressly state the liability of the chapter under the contract;
2. Be approved by the chapter membership, before being executed on behalf of the Chapter;

3. Have sufficient funds appropriated and available;

4. Comply with the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*, the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.* and rules and regulations promulgated thereto;

5. Be awarded only after public advertisement and bidding;

6. Not waive the sovereign immunity of the Navajo Nation;

7. Provide access to all contracts or papers to the public; and, if applicable

8. Not exceed ten percent (10%) of the accepted bid. If the ten percent (10%) cap is exceeded by change orders, modifications or amendments, such change orders, modifications or amendments shall be subject to the provisions of § 2002(A)(5) above.

B. All executed contracts and papers, and any modifications thereof, shall be filed at the chapter.

#### **History**

**Note (2005).** Reference to "Business Preference Act" at Subsection(A)(4) changed to "Navajo Nation Business Opportunity Act" pursuant to CAP-37-02, April 19, 2002.

CAP-34-98, April 20, 1998.

#### **§ 2003. Chapter Accounting System; Chapter Appropriations; Budget Process; Chapter Insurance**

A. The chapter shall adopt an accounting system deemed acceptable by the Auditor General.

B. In accordance with the exception provided in 12 N.N.C. § 820(N), funds appropriated to the chapters by the Navajo Nation Council shall not be subject to a lapse of appropriation at the end of the fiscal year provided that chapters shall budget those funds in the subsequent fiscal year in accordance with the purposes and conditions originally set forth by the Navajo Nation Council in its appropriations.

C. Budget Process

1. At least one month before the end of the Navajo Nation fiscal year, the manager, in consultation with the chapter officials, shall prepare, schedule and explain the annual chapter budget to the membership. Chapters are required to follow the annual budget instruction of the Navajo Nation Office of Management and Budget when formulating the annual chapter budget and when the budget concerns Navajo general funds. At a duly called planning meeting, the manager shall present a proposed annual budget for the ensuing fiscal year. The manager shall, to the extent allowed by law, include the objectives of the membership in the

proposed budget.

2. The budget shall consist of financial information, including but not limited to: a statement on prior financial expenditures; capital improvement funds; debts; encumbrances; and budget objectives from the current year and the status of those objectives.

3. The manager, in consultation with the chapter officials, shall finalize the budget for approval by the chapter membership. The chapter membership shall vote upon the budget at a duly called chapter meeting in which reasonable notice has been given to the chapter membership that said meeting will include approval of the annual budget. The budget expenditures shall not exceed the total of the estimated income for the fiscal year. No payments shall be made or obligated except in accordance with the appropriation duly enacted by the chapter or adopted by the Navajo Nation Council.

D. To protect the interests of the chapter, the chapter shall participate in the Navajo Nation's insurance and employee benefit programs, subject to the terms and conditions of such programs. In the event that a chapter elects not to participate in the Navajo Nation's programs, the chapter shall establish adequate coverage through the creation of a self-insurance program or the procurement of appropriate policies.

E. Chapter funds shall not be used for personal, business or other forms of loans. Per capita distribution of funds by the chapter is prohibited.

F. Any person, agent, or chapter official misappropriating or misusing chapter funds or property shall be subject to prosecution under the applicable laws of the Navajo Nation, and, if appropriate, under the laws of the United States federal government.

#### **History**

CJY-42-04, July 23, 2004. Majority chapter approval of Resolution CJY-42-04 obtained on October 7, 2004.

CJY-43-04, July 23, 2004. Majority chapter approval of Resolution CJY-43-04 obtained on October 7, 2004.

CAP-34-98, April 20, 1998.

#### **§ 2004. Zoning; Community Based Land Use Plan; Land Use Variations**

##### **A. Zoning**

1. Chapters may enact zoning ordinances provided that the membership adopt and implement a community based land use plan pursuant to § 2004(B).

2. Adoption of all local zoning ordinances shall be done pursuant to § 103(E)(4) of this Act.

3. The chapter shall be responsible for the enforcement of all

zoning ordinances adopted by the membership. The chapter shall provide and maintain information relative to all matters arising from adopted zoning ordinances.

4. All proposed amendments to zoning ordinances shall first be reviewed by the Community Land Use Planning Committee (CLUPC), and shall require approval by the chapter membership before becoming effective.

B. Community Based Land Use Plan. The chapter, at a duly-called chapter meeting shall by resolution, vote to implement a community based land use plan, after the CLUPC has educated the community on the concepts, needs, and process for planning and implementing a community based land use plan. The community based land use plan shall project future community land needs, shown by location and extent, of areas identified for residential, commercial, industrial, and public purposes. The land use plan shall be based upon the guiding principles and vision as articulated by the community; along with information revealed in inventories and assessments of the natural, cultural, human resources, and community infrastructure; and, finally with consideration for the land-carrying capacity. Such a plan may also include the following:

1. An open space plan which preserves for the people certain areas to be retained in their natural state or developed for recreational purposes.

2. A thoroughfare plan which provides information about the existing and proposed road network in relation to the land use of the surrounding area.

3. A community facilities plan which shows the location, type, capacity, and area served, of present and projected or required community facilities including, but not limited to, recreation areas, schools, libraries, and other public buildings. It will also show related public utilities and services and indicate how these services are associated with future land use.

C. Establishment and Duties of the Community Land Use Planning Committee.

1. Upon approval and passage of a chapter resolution stating the chapter's desire to develop and implement a community based land use plan, the chapter shall establish a Community Land Use Planning Committee (CLUPC) to approve the processes for planning and to oversee planning activities. The CLUPC shall be comprised of voting members of the chapter that have expertise to provide valuable contributions to the overall land planning process. Subcommittees such as technical, and public advisory committees, comprising of voting and non-voting members may be established to assist the CLUPC.

2. The CLUPC may hire a planner, subject to availability of funds, to be responsible for preparing the community based land use plan. At a minimum, the planner shall exhibit leadership qualities and organizational abilities along with experience or education in the discipline of land planning.

3. The planner shall work under the supervision of the CLUPC and



with the community residents. The duties and responsibilities of the planner shall include the following:

a. Coordinating all land planning activities.

b. Developing a community education and participation plan describing methods that will foster public education and participation through public hearings, newspaper and radio. Chapter members will be informed periodically on the progress of the land planning activities. All information pertaining to the plan shall be available to the public. The CLUPC shall approve the community participation plan.

c. Developing and implementing a community assessment ascertaining the goals, priorities, and vision for the future of the community.

d. Inventorying and assessing pertinent data. The planner shall request data and seek technical assistance when necessary for compilation of all available data from tribal, federal, and state agencies for inventorying and assessing natural, cultural, and human resources, as well as community infrastructure. In addition, chapters may hire consultants to assist with the inventory and assessments.

e. In the event a chapter lacks the resources to hire a planner, the CLUPC shall be responsible for conducting the duties described in this Subsection.

D. Presentation and Approval of the Community Based Land Use Plan by the Chapter and Certification by the Transportation and Community Development Committee

1. Upon completion of the resource inventory, assessments, and community assessment, the CLUPC shall prepare a community based land use plan as described in § 101. Local planning and zoning ordinances may also be presented at this time. The community based land plan shall be presented to the local residents in one or more public meetings and through various multimedia. The community members shall have 60 days to comment in writing or in testimony at a final public hearing. Upon compliance with the notice requirements, the chapter, at a duly-called chapter meeting, shall by resolution, vote to adopt the community based land use plan.

2. The CLUPC shall make necessary adjustments, as approved by the chapter membership, and shall submit the plan to the Transportation and Community Development Committee of the Navajo Nation Council. The Transportation and Community Development Committee by resolution shall certify the community based land use plan. Every five years the plan shall be reevaluated and readjusted to meet the needs of the changing community.

E. Land Use Variations. The utilization of all withdrawn lands of the community as defined by the adopted Community Based Land Use Plan shall be in accordance with applicable Navajo Nation and federal law, and the provisions of said plan; variations to said plan must be consistent with § 103(E) (4).

## **History**

CJY-41-04, July 23, 2004. Majority chapter approval of Resolution CJY-41-04 obtained on October 4, 2004.

CAP-34-98, April 20, 1998.

## **Cross Reference**

Regarding zoning and land use, see also 6 N.N.C. § 1051 *et seq.*, and 16 N.N.C. § 1 *et seq.*

### **§ 2005. Eminent domain requirements**

#### **A. Damages to Improvements of Individual Navajo Indians**

1. Whenever a Navajo Nation chapter disposes of land containing any improvement belonging to a Navajo Indian who will not donate the same, whether the disposition is made by surface lease, permit, consent to grant of right-of-way or consent to commencement of construction on a proposed right-of-way, or in any other manner that gives the grantee or proposed grantee exclusive use of the surface of the land containing such improvement, or authorizes the grantee or proposed grantee to use the surface of the land in such manner that said improvement or improvements must be removed, damaged, or destroyed, the chapter will pay damages to the rightful claimant of such improvement or improvements.

2. As used in this Section, "improvement" means houses, hogans, sunshades, stables, storage sheds, dugouts, and sweathouses; sheep and horse corrals, and pens, and fences lawfully maintained; irrigation ditches, dams, development work on springs, and other water supply developments; any and all structures used for lawful purposes and other things having economic value. Where any improvement by a Navajo Indian is readily removable and such person has an opportunity to remove the same, damages payable on account of said improvement shall be limited to the reasonable cost of removal, if any, even though the claimant thereof may have failed to remove such improvement and it may have been destroyed or damaged in the authorized course of use of the land on which it is located.

3. No damages shall be paid to any person for any improvement, when such person at the time of building or acquiring said improvement knew or with reasonable diligence ought to have known that the area in which it was located was proposed to be disposed of by the chapter adversely to such person's interest.

4. Damages to be paid to individual Navajo Indians under this Section shall be fixed by negotiation and consent between the chapter president of the chapter or his or her authorized representative and the individual involved. If no agreement satisfactory to the chapter president or his or her representative can be reached within a reasonable time, the chapter president shall appoint one appraiser, the individual shall appoint one appraiser, and the two appraisers so appointed shall

appoint a third appraiser; but if they cannot agree upon the third appraiser within 10 days, the chapter president may appoint him or her. The three appraisers shall examine the improvement alleged to be damaged and shall appraise and determine the damages. Their determination shall be submitted to the Resources Committee of the Navajo Nation Council and when, if, and as approved by said Committee the amount thereof shall be final. The chapter shall pay the fees of said appraisers, except where they are regular Navajo Nation employees, in which case they shall not be entitled to any fees. In addition, the chapter shall pay the reasonable and necessary expenses of said appraisers, whether or not such appraisers are Navajo Nation employees.

#### B. Economic Damage to Intangible Interests of Navajo Indians

1. Whenever as a result of a Navajo Nation chapter granting any lease or permit embracing Navajo Nation land, or granting permission by the chapter for the use of Navajo Nation land, or as a result of the use of Navajo Nation land under such lease, permit or permission, the value of any part of such land for its customary use by any Navajo Indian formally lawfully using the same is destroyed or diminished, the chapter will compensate the former Navajo Indian user in the manner hereinafter specified.

2. When the livelihood of the former Navajo Indian user is gravely affected by the new use, such user shall have first priority in resettling on other lands acquired by the Navajo Nation, except the area acquired pursuant to the Act of September 2, 1958 (72 Stat. 1686); and the chapter shall pay the expense of removing said person, his or her family, and property to any new land made available for his or her use, and such shall constitute full compensation to such Navajo.

3. In all other cases involving damages under this Paragraph, the amount thereof shall be fixed and determined in the manner specified in 26 N.N.C. § 2005(A) (4) above.

4. Whereby reseeding, irrigation, or otherwise, the remaining land in the customary use area of any individual damaged by the governmental exercise of eminent domain is within a reasonable time made able to provide the same economic return as his or her former entire customary use area, no damages shall be payable to such person, except for the period, if any, between adverse disposition of the land in the customary use area and the time when the productivity of the remaining land achieves equality with the entire former customary use area.

5. Only lawful and authorized use shall be compensated under this Section. Thus, no person shall be compensated for loss of use of land for grazing animals in excess of his or her permitted number, or without a permit.

6. Every person otherwise entitled to damages under Subsection (3) of this Section shall not be entitled to receive any payment thereof until that person has surrendered for cancellation that person's grazing permit as to all animal units in excess of the carrying capacity of the land remaining in that person's customary use area. Persons so

surrendering their grazing permits shall be entitled to an immediate lump sum payment based on the current market value for each sheep unit canceled.

C. Adverse Disposition of Navajo Nation Land Not to be Made Until Individual Damages are Estimated. Neither lessee, permittee, or the grantee of a right-of-way or other interest in or right to use Navajo Nation lands shall commence any construction thereon, nor make any change in the grade or contour thereof or remove any surface vegetation thereon until the damages to the improvements thereon or the customary use rights of all the individuals affected thereby have been estimated by the Navajo Land Department of the Navajo Nation. Unless the chapter membership has previously authorized the payment of such damages from nonreimbursable funds of the chapter, the chapter president shall require the applicant for such lease, permit or grant of a right-of-way or other interest in or right to use Navajo Nation lands to deposit with the chapter secretary/treasurer an amount equal to at least double the estimate of damage made by the Navajo Land Department. After the lease, permit, or grant of right-of-way or user has become final and the damages have been determined, either by appraisal, estimate or by consent as hereinbefore provided, the chapter president shall cause the secretary/treasurer to pay, from and out of this deposit, to the person or persons damaged thereby such sum as he, she or they may be entitled to under the terms of this Section, and to return to the applicant the excess thereof, except that where the individual damaged has not consented to the determination of the amount thereof, it shall be withheld in order to satisfy the excess amount, if any, determined under 26 N.N.C. § 2005(A)(4). Such disbursements shall be made without further appropriation of the Navajo Nation chapter membership. All sums held by the secretary/treasurer of the Navajo Nation chapter, pursuant to the terms of this Section, for a period of more than 30 days shall be deposited in a Federal Savings and Loan Association or invested in the bonds of the United States until needed for disbursement.

#### **History**

CAP-34-98, April 20, 1998.

**Note:** Slightly reworded for clarity.

§§ 2006 to 2008. [Reserved]

**Subchapter 9. [Reserved]**

**Subchapter 11. [Reserved]**

**Subchapter 13. [Reserved]**

#### **Appendix**

#### **Intergovernmental Relations**

TREATY OF 1850  
TREATY of 1868

## Part 1. Treaties

### Treaty of 1850

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE NAVAJO TRIBE OF INDIANS

(Ratified by the Senate September 9, 1850;  
Proclaimed by the President September 24, 1850)

(9 Stat. 974)

The following acknowledgments, declarations, and stipulations have been duly considered, and are now solemnly adopted and proclaimed by the undersigned: that is to say, John M. Washington, Governor of New Mexico, and Lieutenant-Colonel commanding the troops of the United States in New Mexico, and James S. Calhoun, Indian agent, residing at Santa Fe, in New Mexico, representing the United States of America, and Mariano Martinez, head chief, and Chapitone, second chief, on the part of the Navajo tribe of Indians:

I. The said Indians do hereby acknowledge that, by virtue of a treaty entered into by the United States of America and the United Mexican States, signed on the second day of February, in the year of our Lord eighteen hundred and forty-eight, at the city of Guadalupe Hidalgo, by N.P. Trist, of the first part, and Luis G. Cuevas, Bernardo Couto, and Mgl Atristain, of the second part, the said tribe was lawfully placed under the exclusive jurisdiction and protection of the Government of the said United States, and that they are now, and will forever remain, under the aforesaid jurisdiction and protection.

II. That from and after the signing of this treaty, hostilities between the contracting parties shall cease, and perpetual peace and friendship shall exist; the said tribe hereby solemnly covenanting that they will not associate with, or give countenance or aid to, any tribe or band of Indians, or other persons or powers, who may be at any time at enmity with the people of the said United States; that they will remain at peace, and treat honestly and humanely all persons and powers at peace with the said States; and all cases of aggression against said Navajos by citizens or others of the United States, or by other persons or powers in amity with the said States, shall be referred to the Government of said States for adjustment and settlement.

III. The Government of the said States having the sole and exclusive right of regulating the trade and intercourse with the said Navajos, it is agreed that the laws now in force regulating the trade and intercourse, and for the preservation of peace with the various tribes of Indians under the protection and guardianship of the aforesaid Government, shall have the same force and efficiency, and shall be as binding and as obligatory upon the said Navajos, and executed in the same manner, as if said laws had been passed for their sole benefit and protection; and to this end, and for all other useful purposes, the government of New Mexico, as now organized, or as it may be by the Government of the United States, or by the legally constituted authorities of the people of New Mexico, is recognized and acknowledged by the said Navajos; and for the due enforcement of the aforesaid laws, until the Government of the United States shall otherwise order, the territory of the Navajos is hereby annexed to New Mexico.

IV. The Navajo Indians hereby bind themselves to deliver to the military authority of the United States in New Mexico, at Santa Fe, New Mexico, as soon as he or they can be apprehended, the murderer or murderers of Micente Garcia, that said fugitive or fugitives from justice may be dealt with as justice may decree.

V. All American and Mexican captives, and all stolen property taken from Americans or Mexicans, or other persons or powers in amity with the United States, shall be delivered by the Navajo Indians to the aforesaid military authority at Jemez, New Mexico, on or before the 9th day of October next ensuing, that justice may be meted out to all whom it may concern; and also all Indian captives and stolen property of such tribe or tribes of Indians as shall enter into a similar reciprocal treaty, shall, in like manner, and for the same purposes, be turned over to an authorized officer or agent of the said States by the aforesaid Navajos.

VI. Should any citizen of the United States, or other person or persons subject to the laws of the United States, murder, rob, or otherwise maltreat any Navajo Indian or Indians, he or they shall be arrested and tried, and, upon conviction, shall be subjected to all the penalties provided by law for the protection of the persons and property of the people of the said States.

VII. The people of the United States of America shall have free and safe passage through the territory of the aforesaid Indians, under such rules and regulations as may be adopted by authority of the said States.

VIII. In order to preserve tranquility, and to afford protection to all the people and interests of the contracting parties, the Government of the United States of America will establish such military posts and agencies, and authorize such trading-houses, at such time and in such places as the said Government may designate.

IX. Relying confidently upon the justice and the liberality of the aforesaid Government, and anxious to remove every possible cause that might disturb their peace and quiet, it is agreed by the aforesaid Navajos that the Government of the United States shall, at its earliest convenience, designate, settle, and adjust their territorial boundaries, and pass and execute in their territory such laws as may be deemed conducive to the prosperity and happiness of said Indians.

X. For and in consideration of the faithful performance of all the stipulations herein contained by the said Navajo Indians, the Government of the United States will grant to said Indians such donations, presents, and implements, and adopt such other liberal and humane measures, as said Government may deem meet and proper.

XI. This treaty shall be binding upon the contracting parties from and after the signing of the same, subject only to such modifications and amendments as may be adopted by the Government of the United States; and, finally, this treaty is to receive a liberal construction, at all times and in all places, to the end that the said Navajo Indians shall not be held responsible for the conduct of others, and that the Government of the United States shall so legislate and act as to secure the permanent prosperity and

happiness of said Indians.

In faith whereof, we, the undersigned, have signed this treaty, and affixed thereunto our seals, in the valley of Cheille, this the ninth day of September, in the year of our Lord one thousand eight hundred and forty-nine.

J. M. WASHINGTON, [L.S.]

*Brevet Lieutenant-Colonel Commanding.*

JAMES S. CALHOUN, [L.S.]

*Indian Agent, residing at Santa Fe.*

MARIANO MARTINEZ, his x mark, [L.S.]

*Head Chief.*

CHAPITONE, his x mark, [L.S.]

*Second Chief.*

J. L. COLLINS.

JAMES CONKLIN.

LORENZO FORCE.

ANTONIO SANDOVAL, his x mark,

FRANCISCO JOSTO, his x mark,

Governor of Jemez.

Witnesses—

H.L. KENDRICK, Brevet Major, U.S.A.

J.N. WARD, Brevet 1st Lieut. 3d Inf'ry.

JOHN PECK, Brevet Major U.S.A.

J.F. HAMMOND, Assistant Surg'n U.S.A.

H.L. DODGE, Capt. comd'g Eut. Rg's.

RICHARD H. KERN.

J.H. NONES, Second Lieut. 2d Artillery.

CYRUS CHOICE.

JOHN H. DICKERSON, Second Lieut. 1st Art.

W.E. LOVE.

JOHN G. JONES.

J.H. SIMPSON, First Lieut. Corps Top. Engrs.

### **Treaty of 1868**

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE NAVAJO TRIBE OF INDIANS

(Concluded June 1, 1868;  
Ratification advised July 25, 1868;  
Proclaimed August 12, 1868)

(15 Stat. 667)

ANDREW JOHNSON,

President of the United States of America,

To all and singular to whom these presents shall come, greeting:

WHEREAS a treaty was made and concluded at Fort Sumner, in the territory of New Mexico, on the first day of June, in the year of our Lord, one thousand eight hundred and sixty-eight, by and between Lieutenant-General W.T. Sherman and Samuel F. Tappan, commissioners, on the part of the United States and Barboncito Armijo, and other chiefs and headmen of the Navajo tribe of Indians, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:



ARTICLES of a treaty and agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, one thousand eight hundred and sixty-eight, by and between the United States, represented by its commissioners, Lieutenant-General W.T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo Nation or tribe of Indians, represented by their chiefs and head-men, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said chiefs and headmen being hereto subscribed,) of the other part, witness:

ARTICLE I. From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damage shall be adjusted and paid until examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss whilst violating, or because of his violating, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

ARTICLE II. The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Canon Bonito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-deoso, Bear Spring, and west by a parallel of longitude about 109° 30' west of Greenwich, provided it embraces the outlet of the Canyon-de-Chelly, which canon is to be all included in this reservation, shall be, and the same is hereby, set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no persons except those herein so authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

ARTICLE III. The United States agrees to cause to be built, at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter-shop and blacksmith-shop, not to cost exceeding one thousand dollars each; and a schoolhouse and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

ARTICLE IV. The United States agrees that the agent for the Navajos shall make his home at the agency building; that he shall reside among them, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

ARTICLE V. If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land-book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon, that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Navajo Land-Book."

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each.

The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper.

ARTICLE VI. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they

therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher.

The provisions of this article to continue for not less than ten years.

ARTICLE VII. When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of two years, he shall be entitled to receive seeds and implements to the value of twenty-five dollars.

ARTICLE VIII. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit:

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian--each Indian being encouraged to manufacture their own clothing, blankets, etc.; to be furnished with no article which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

And in addition to the articles herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the article, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

ARTICLE IX. In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as

herein defined, but retain the right to hunt on any unoccupied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to justify the chase; and they, the said Indians, further expressly agree:

1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built across the continent.

2nd. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

3rd. That they will not attack any persons at home or travelling, nor molest or disturb any wagon-trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. That they will never capture or carry off from the settlements women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They will not in the future oppose the construction of railroads, wagon-roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head-man of the tribe.

7th. They will make no opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE X. No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article [5] of this treaty.

ARTICLE XI. The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence en route, and providing a reasonable amount of transportation for the sick and feeble.

ARTICLE XII. It is further agreed by and between the parties to this agreement that the sum of one hundred fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any condition provided in the law, to wit:

1st. The actual cost of the removal of the tribe from the Bosque Redondo reservation to the reservation, say fifty thousand dollars.

2nd. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

3rd. The purchase of five hundred beef cattle and a million pounds of corn, to be collected and held at the military post nearest the reservation, subject to the orders of the agent, for the relief of the needy during the coming winter.

4th. The balance, if any, of the appropriation to be invested for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

5th. The removal of this tribe to be made under the supreme control and direction of the military commander of the Territory of New Mexico, and when completed, the management of the Tribe to revert to the proper agent.

ARTICLE XIII. The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induce Indians now away from reservations set apart for the exclusive use and occupation of the Indians, leading a nomadic life, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations set apart for the exclusive use and occupation of the Indians.

In testimony of all which the said parties have hereunto, on this the first day of June, one thousand eight hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

W. T. SHERMAN,

*Lt. Gen'l, Indian Peace Commissioner.*

S. F. TAPPAN,

*Indian Peace Commissioner.*

BARBONCITO, *Chief.* his x mark

ARMIJO. his x mark

DELGADO. his x mark

MANUELITO. his x mark  
LARGO. his x mark  
HERRERO. his x mark  
CHIQUETO. his x mark  
MUERTO DE HOMBRE. his x mark  
HOMBRO. his x mark  
NARBONO. his x mark  
NARBONO SEGUNDO. his x mark  
GANADO MUCHO. his x mark

COUNCIL:

RIQUO. his x mark  
JUAN MARTIN. his x mark  
SERGINTO. his x mark  
GRANDE. his x mark  
INOETENITO. his x mark  
MUCHACHOS MUCHO. his x mark  
CHIQUETO SEGUNDO. his x mark  
CABELLO AMARILLO. his x mark  
FRANCISCO. his x mark  
TORIVIO. his x mark  
DESDENDADO. his x mark  
JUAN. his x mark  
GUERO. his x mark  
GUGADORE. his x mark  
CABASON. his x mark  
BARBON SEGUNDO. his x mark  
CABARES COLORADOS. his x mark

Attest:

GEO. W. G. GETTY,

*Col. 37th Inf'y, Bt. Maj. Gen'l U.S.A.*

B. S. ROBERTS,,

*Bt. Brg. Gen'l U.S.A., Lt. Col. 3d Cavy.*

J. COOPER MCKEE,

*Bt. Lt. Col. Surgeon U.S.A.*

THEO. H. DODD,

*U.S. Indian Ag't for Navajos*

CHAS. MCCLURE,

*Bt. Maj. and C.S. U.S.A.*

JAMES F. WEEDS,

*Bt. Maj. and Asst. Surg. U.S.A.*

J. C. SUTHERLAND,

*Interpreter*

WILLIAM VAUX,

*Chaplain, U.S.A.*

#### **Annotations**

##### **1. Historical**

"On June 1, 1868, a treaty was signed between General William T. Sherman, for the United States, and numerous chiefs and headmen of the 'Navajo nation or tribe of Indians.' At the time this document was signed the Navajos were an exiled people, forced by the United States to live crowded together on a small piece of land on the Pecos River in eastern New Mexico, some 300 miles east of the area they had occupied before the coming of the white man. In return for their promises to keep peace, this treaty 'set apart' for 'their permanent home' a portion of what had been their native country, and provided that no one, except United States Government personnel, was to enter the reserved area. Implicit in these treaty terms, as it was in the treaties with the Cherokees involved in Worcester v. State of Georgia, was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed. Since then, Congress and the Bureau of Indian Affairs have assisted in strengthening the Navajo tribal government and

its courts." See the Navajo-Hopi Rehabilitation Act of 1950, § 6, 64 Stat. 46. 25 U.S.C. § 636, 25 U.S.C.A. § 636; 25 CFR § 11.1 through 11.87NH. *Williams v. Lee* (S.Ct. of U.S. 1959) 358 U.S. 2-17, 79 S.Ct. 269, 3 L.Ed.2d 261.

See *Oliver v. Udall* (C.A.D.C. 1962) 306 F.2d 819, and *In re Lynch's Estate* (1962) 92 Ariz. 354, 377 P.2d 199, quoting from *Williams v. Lee*.

One of the last treaties with Indians was entered into with the Navajo Indians in 1868. *Warren Trading Post Co. v. Moore* (1963) 95 Ariz. 110, 387 P.2d 809, reversed on other grounds. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 86 S.Ct. 1242.

The Navajo Reservation was set apart as a "permanent home for the Navajos" in a treaty made with the "Navajo nation or tribe of Indians" on June 1, 1868. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

Long before the Treaty of 1868, in fact from the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference, and had exercised through statutes and treaties a sweeping and dominant control over persons who wished to trade with Indians and Indian Tribes. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the Reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

## **2. Education, roads and other services**

In compliance with its treaty obligations the Federal Government has provided for roads, education and other services needed by the Indians. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

## **3. Authority over Reservation**

"Congress has not clearly expressed its intent that 42 U.S.C. § 656 (determination of child support absent a court order), nor any section of the AFDC legislation, is meant to abrogate Indian tribal sovereignty. A congressional intent to allow states to decide the child support obligations of Indians living on a reservation is not clearly expressed on the face of the AFDC legislation." *Billie v. Abbott*, 6 Nav. R. 66, 69 (Nav. Sup. Ct. 1988).

"Implicit in the Treaty of 1868 is the understanding that the internal affairs of the Navajo people are within the exclusive jurisdiction of the Navajo Nation government. [ ... ] Because Navajo domestic relations is the core of the tribe's 'internal and social relations' the Navajo Nation has exclusive power over domestic relations among Navajos living on the reservation." *Billie v. Abbott*, 6 Nav. R. 66, 68-69 (Nav. Sup. Ct. 1988), citing *Williams v. Lee*, 358 U.S. 217, 221-222 (1959) and *Fisher v. District Court*, 424 U.S. 382 (1976).



Congress recognized the authority of the Navajos over their Reservation in the Treaty of 1868, and has done so ever since, and if this power is to be taken away from them, it is for Congress to do it. *Williams v. Lee* (S.Ct. of U.S. 1959) 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed. 2d 251.

National Labor Relations Board had jurisdiction to order the holding of representation election in a mining plant located on the Navajo Reservation even though under Treaty of 1868 Tribe has broad powers of self government, including right to exclude outsiders, and Tribal Council had decided to prevent union activity on the Reservation. *Navajo Tribe v. National Labor Relations Board* (C.A.D.C. 1961) 288 F.2d 162, cert. den. 366 U.S. 928, 81 S.Ct. 1649, 6 L.Ed.2d 387.

To same effect as *Williams v. Lee*. *Oliver v. Udall* (C.A.D.C. 1962) 306 F.2d 819, cert. den. 372 U.S. 908, 83 S.Ct. 720, 9 L.Ed.2d 418.

The provisions of Article II of the Treaty of 1868 between United States and the Navajo Tribe of Indians reserves to the Navajo Tribe the power to exclude non-Navajos from the Navajo Reservation, with the exception of those persons authorized to enter thereon by virtue of the treaty itself, a law of the United States, or an order of the President of the United States. *Dodge v. Nakai* (1969) 298 F.Supp. 26.

The Civil Rights Act relating to Indians imposed new responsibilities upon the Navajo Tribe with respect to both the manner in which it could exercise its governmental powers and the objectives that it could pursue through their implementation. *Dodge v. Nakai* (1969) 298 F.Supp. 26.

Congress may modify the manner in which Indian Tribes may exercise their quasi-sovereign powers. *Dodge v. Nakai* (1969) 298 F.Supp. 26.

When Navajo Tribe adopted as Tribal law the Code of regulations of Department of Interior generally applicable to Indian Tribes and Secretary of Interior approved the action by the Navajo Tribe, the Secretary's law and order Code no longer applied to Navajo Tribe. *Dodge v. Nakai* (1969) 298 F.Supp. 26.

#### **4. State authority and jurisdiction**

"The Navajo Nation does not grant immunity from suit to any state as a matter of comity. We have also not found any agreement, express or implied, between the Navajo Nation and Utah which would require this Court to recognize Utah's defense of sovereign immunity. We have previously said that the states of the Union are foreign governments in relation to the Navajo Nation." *Billie v. Abbott*, 6 Nav. R. 66, 72 (Nav. Sup. Ct. 1988).

"The AFDC legislation does not explicitly authorize Utah to decide tribal domestic relations, thus, Utah's determination of Billie's support obligation is an unlawful interference with Billie's right to be regulated by Navajo law. Billie can seek the protection of Navajo law to preserve his right to have his support obligation decided by Navajo law." *Billie v. Abbott*, 6 Nav. R. 66, 70 (Nav. Sup. Ct. 1988).

The Navajo Indian Reservation is not a completely separate entity existing

outside the political and governmental jurisdiction of the State of New Mexico. *Montoya v. Bolack* (1962) 70 N.M. 196, 372 P.2d 387.

The test of state court jurisdiction is whether the state action impinges on the Reservation Indians to make their own laws and be governed by them. *Batchelor v. Charley* (1965) 74 N.M. 717, 398 P.2d 49; *Warren Trading Post Co. v. Moore* (1963) 96 Ariz. 110, 387 P.2d 809, reversed on other grounds *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

The levy by Arizona of a tax on the gross proceeds or gross income as applied to a federally licensed Indian trader with respect to sales made to Reservation Indians on the Navajo Reservation cannot stand. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

The assessment and collection of such a tax would to a substantial extent frustrate evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians on the reservations except as authorized by Acts of Congress or by valid regulations promulgated under those Acts. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

This state tax on gross income would put financial burdens on the Indian trader or the Indians with whom he deals in addition to those Congress or the Tribes have prescribed, and could thereby disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable by the Indian Commissioner. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

Indian traders trading on the Reservation with Reservation Indians are immune from a state tax like Arizona's, not simply because those activities take place on the Reservation, but rather because Congress in the exercise of its power granted in Art. I, § 8, cl. 3, of the Constitution has undertaken to regulate Reservation trading in so comprehensive a way that there is no room for the states to legislate on the subject. *Warren Trading Post Co. v. Arizona State Tax Commission* (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

State laws apply on the Reservation unless such application would interfere with self-government of reservation or impair a right granted or reserved by federal law. *Industrial Uranium Co. v. State Tax Commission* (1963) 95 Ariz. 120, 387 P.2d 1013.

Article 11 of the Treaty of 1868, did not exclude Arizona from collecting transaction privilege taxes from mining company in connection with mining, producing and shipping uranium and vanadium ores from lands in Arizona held in trust by the United States for the Navajo Tribe. *Industrial Uranium Co. v. State Tax Commission* (1963) 95 Ariz. 120, 387 P.2d 1013.

## **5. Federal law**

" ... [T]he application of the federal [ERISA] statute to the present matter and the resulting divestiture of Navajo control over the issue would violate treaty provisions and would dilute treaty-recognized rights of sovereignty and self-government. Specifically, applying ERISA to this matter would (1) touch

upon the Navajo Nation's exclusive rights of self-governance over internal affairs; (2) usurp the Navajo Nation's decision-making power; and (3) abrogate rights over internal matters as guaranteed by the Treaty of 1868." *MacDonald, et al. v. Ellison, et al.*, 7 Nav. R. 429, 432 (Nav. Sup. Ct. 1999).

"Indian treaties are an exercise of the treaty powers of the United States under its Constitution, and they have the same dignity as treaties with foreign nations." *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 249 (Nav. Sup. Ct. 1990).

## **6. Tribal authority**

"... [U]sing the Treaty of 1868, the Navajo Nation has the power to regulate non-Indian businesses. Even if the tribe has entered into a leasing or other commercial arrangement by contract in its capacity as a "commercial partner," it still retains the governmental power to regulate that business." *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 256 (Nav. Sup. Ct. 1990).

"The treaty clearly envisaged the ability of the Navajo Nation to hire its own employees and agents, and to the extent that APS is considered to fall within this provision, the Navajo Nation has the power to regulate it or exclude it for disobedience to the sovereign." *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 252 (Nav. Sup. Ct. 1990).

## **7. Jurisdiction of courts**

"The Court holds that the Navajo Nation courts have authority to hear a claim against a motor vehicle manufacturer alleging that a vehicle defect resulted in the death of a Navajo police officer on a road located on trust land within the Navajo Reservation." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 1 (Nav. Sup. Ct. December 18, 2008).

"The Navajo Nation retains civil jurisdiction over claims arising within the Nation by inherent sovereignty under Article II of the Treaty." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 4 (Nav. Sup. Ct. December 18, 2008).

"As we stated in *Dale Nicholson Trust*, Article II specifically recognizes the Navajo Nation's authority to regulate all non-members other than certain federal employees on its lands. [...] The Nation's Article II authority is no different whether on the original Reservation or later extensions." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 6 (Nav. Sup. Ct. December 18, 2008).

"Under the circumstances, the Court holds that Ford is present through its vehicles that entered the Nation's territory. Ford actively participated in the sale and financing of the vehicles to the Navajo Nation government through a Ford dealer and Ford financing subsidiary. Ford had full knowledge that the vehicles were intended for the specific use of tribal officials performing official tribal activities. This Court has previously recognized inherent jurisdiction over a products liability claim when a diabetes drug entered the Nation through prescription, provision and/or ingestion within Nation. *Cf.*

*Nelson v. Pfizer*, 8 Nav. R. 369, 373 (Nav. Sup. Ct. 2003). That one of those police vehicles crashed while performing official duties on a dirt road on trust land within the Nation is enough to invoke the Nation's absolute civil jurisdiction under the Treaty. It is for these types of cases that the Navajo Nation Council enacted the Navajo Long-Arm Civil Jurisdiction and Service of Process Act, 7 N.N.C. § 253a." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 9 (Nav. Sup. Ct. December 18, 2008).

"The Court takes judicial notice that the Long Arm Civil Jurisdiction and Service of Process Act enacted in 2001 does not establish Navajo civil jurisdiction over non-members. The Act codified the inherent authority of the Navajo Nation as affirmed in Article II of the Treaty of 1868. As such, the Act clarified the modern application of this authority." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 9-10, footnote 5 (Nav. Sup. Ct. December 18, 2008).

"Under the Treaty of 1868 the Nation has authority to regulate non-Indian activity on trust lands." *Thinn v. Navajo Generating Station, Salt River Project; and Gonnie v. Headwaters Resources*, No. SC-CV-25-06 and No. SC-CV-26-06, slip op. at 4 (Nav. Sup. Ct. October 19, 2007), citing *Dale Nicholson Trust v. Chavez*, No. SC-CV-69-00, slip op. at 11-12 (Nav. Sup. Ct. January 6, 2004).

"The petitioner entered the Navajo Nation, married a Navajo woman, conducted business activities, engaged in political activities by expressing his right to free speech, and otherwise satisfied the Article II conditions for entry and residence and Articles I and II court jurisdiction." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 391 (Nav. Sup. Ct. 1999).

"There are two foundations for criminal jurisdiction in the Treaty of 1868, the history of its negotiation, and its application: those who assume relations with Navajos with the consent of the Navajo Nation and the United States are permitted to enter and reside within the Navajo Nation, subject to its laws, and non-Navajos Indians who enter and commit offenses are subject to punishment." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 391 (Nav. Sup. Ct. 1999).

"The plain language of Article II indicates that the Navajo Reservation exists for the exclusive use of not only Navajos, but other Indians, either as tribes or as individuals, where both the Navajo Nation and the United States agree to their admission. Given that jurisdiction of our courts is recognized in the Article II language, Indians such as the petitioner who are permitted to reside within the Navajo Nation fall within the same grouping as Navajo Indians in terms of the Treaty's coverage." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 390 (Nav. Sup. Ct. 1999).

See, also, annotations under Treaties in digest.

## **Part 2. Acts of Congress**

ACT OF 1864

### **History**

**Revision note.** This part 2 of the Appendix contains the text of the Acts of Congress which refer specifically to the Navajo Tribe, except the general appropriation acts and other acts cited below.

**General appropriation acts.** The following Acts making appropriations for the Bureau of Indian Affairs contained provisions relating to the Navajo Tribe:

1876-19 Stat. 185

1877-19 Stat. 280

1878-20 Stat. 73

1879-20 Stat. 304

1880-21 Stat. 121

1881-21 Stat. 499

1882-22 Stat. 83, 278

1883-22 Stat. 447

1884-23 Stat. 77, 90

1885-23 Stat. 363, 378

1886-24 Stat. 30, 42, 293

1887-24 Stat. 450, 462

1888-25 Stat. 218, 231

1889-25 Stat. 981, 995

1890-26 Stat. 337, 351

1891-26 Stat. 990, 1005

1892-27 Stat. 121, 135

1893-27 Stat. 613, 627

1894-28 Stat. 287, 303, 484

1895-28 Stat. 877

1896-29 Stat. 322

1897-30 Stat. 63

1898-30 Stat. 572

1899-30 Stat. 925  
1900-31 Stat. 222  
1901-31 Stat. 1059  
1902-32 Stat. 246, 264, 265  
1903-32 Stat. 983  
1906-34 Stat. 38  
1908-35 Stat. 76, 86  
1909-35 Stat. 787, 799  
1910-36 Stat. 273  
1911-36 Stat. 1062  
1912-37 Stat. 522, 528  
1913-38 Stat. 78, 84-86, 91  
1914-38 Stat. 582, 587-589  
1915-38 Stat. 1157  
1916-39 Stat. 124, 125, 130-132, 144  
1917-39 Stat. 969, 970, 974, 975, 981; 40 Stat. 380  
1918-40 Stat. 562, 564, 568-570, 575, 576, 840, 1039  
1919-41 Stat. 3, 5, 10, 11, 18, 31, 348  
1920-41 Stat. 408, 410, 416, 417, 422, 423, 433, 434, 523, 1042  
1921-41 Stat. 1172, 1225-1227, 1232, 1233, 1239; 42 Stat. 45  
1922-42 Stat. 559-561, 566, 567, 572, 1054  
1923-42 Stat. 1181, 1182, 1187, 1188, 1193, 1194, 1538, 1539  
1924-43 Stat. 42, 398, 400, 401, 403, 407, 408, 411, 707  
1925-43 Stat. 1148, 1150-1153, 1158, 1159, 1161, 1163  
1926-44 Stat. 174, 460, 462-464, 466, 471, 472, 474  
1927-44 Stat. 943, 946, 950, 951, 953  
1928-45 Stat. 209, 210, 213, 215, 216, 219, 223, 225, 899, 900, 934

1929-45 Stat. 1567, 1569, 1572, 1573, 1575, 1578, 1581, 1584, 1617, 1638, 1641

1930-46 Stat. 103, 284-286, 289, 292, 294, 298, 299, 301, 303, 304

1931-46 Stat. 1070, 1122, 1125, 1128, 1131, 1135, 1140

1932-47 Stat. 22, 96, 99, 102, 104, 108, 109, 113

1933-47 Stat. 825, 828, 829, 831, 836, 837, 840, 1608

1934-48 Stat. 367, 369, 375, 378, 1033

1935-49 Stat. 183, 184, 186, 188, 192, 193, 196

1936-49 Stat. 1118, 1765, 1766, 1768, 1770, 1771, 1776, 1779

1937-50 Stat. 572, 576, 579, 580, 589, 590

1938-52 Stat. 298-300, 303, 304, 306, 307, 312, 316, 1131

1939-53 Stat. 693-695, 697, 699, 701, 702, 708, 711, 712, 1316

1940-54 Stat. 413, 414, 417, 419, 421, 422, 426, 427, 430, 431

1941-55 Stat. 311, 312, 315-317, 319, 324, 325, 328, 329

1942-56 Stat. 513, 514, 516-518, 521, 524, 526, 529, 530

1943-57 Stat. 457, 459, 460, 466, 468, 471

1944-58 Stat. 470, 472, 473, 476, 477, 480, 485

1945-59 Stat. 325-328, 331, 337

1946-60 Stat. 355, 357, 358

1947-61 Stat. 21, 466-468, 943

1948-62 Stat. 220, 1117

1949-63 Stat. 770, 773

1950-64 Stat. 684

1951-65 Stat. 761

1954-68 Stat. 813

1955 to 1960-69 Stat. to 74 Stat.

**Bridges and roads.** The various general appropriation acts contain provisions relating to bridges and roads on the Navajo Reservation. In addition, the following specific acts contain appropriations for bridges and roads:

February 20, 1917, ch. 100, 39 Stat. 926. Bridge, San Juan River, Farmington, N.M.

February 26, 1923, ch. 116, 42 Stat. 1288. Bridge, Little Colorado River, Leupp, Ariz.

January 30, 1925, ch. 117, 43 Stat. 800. Bridge, San Juan River, Bloomfield, N.M.

February 26, 1925, ch. 343, 43 Stat. 994. Bridge, Colorado River, Lee Ferry, Ariz.

June 27, 1924, ch. 318, 43 Stat. 606, 607, as amended by May 28, 1941, ch. 137, 55 Stat. 207, and repealed by June 4, 1956, ch. 369, 70 Stat. 249. Authorized annual appropriations for the maintenance of the Gallup-Shiprock and Gallup-Window Rock highways.

**Telephone line.** Act January 24, 1929, ch. 70, 45 Stat. 1080, made an appropriation for construction of a telephone line from Flagstaff to the Western Indian Agency at Tuba City, with a continuation to the Tuberculosis Sanatorium at Kayenta, Ariz.

#### **1864. Settlement of Navajo Indian captives upon reservation in New Mexico**

**June 30, 1864, ch. 177, 13 Stat. 323**

CHAP. 177. An Act To aid in the settlement, subsistence, and support of the Navajo Indian captives upon a reservation in the Territory of New Mexico.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, to be expended under the direction of the Secretary of the Interior, for the purpose of settling the Navajo Indians, now captives in New Mexico, upon a reservation upon the Pecos River, in New Mexico, for the purchase of agricultural implements, seeds, and other articles necessary for such purpose, for breaking the ground, and for subsistence of said Indians to the end of the next fiscal year, the sum of one hundred thousand dollars.*

SEC. 2. And be it further enacted, That the said reservation may, under the direction of the Secretary of the Interior, be so extended and enlarged on the South, as to include the entire valley of the Pecos River, known as the Bosque Grande, and that the whole of said reservation, so enlarged, shall be designated and known as the Navajo and Apache Reservation, and as such shall, until otherwise ordered by law, be exempt from sale, and free from all occupancy except by the said Indians for the purposes herein mentioned; excepting such portion of the said land as is now occupied by Fort Sumner, or as may be needed for the use of said post.

SEC. 3. And be it further enacted, That the southern Apache agency of New Mexico is hereby abolished, and that an agent for the Kiowa, Apache, and Comanche Indians be appointed, at a salary of fifteen hundred dollars per annum.



Approved, June 30, 1864.

**1902. Adjustment of settlers' rights under 1880 Executive Order**

**July 1, 1902, ch. 1363, 32 Stat. 657**

CHAP. 1363. An Act Authorizing the adjustment of rights of settlers on the Navajo Indian Reservation, Territory of Arizona.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all lands claimed by actual settlers or persons to whom valid rights attach, who settled upon or occupied any part of the public lands of the United States prior to the date of the Executive order of January sixth, eighteen hundred and eighty, extending the boundaries of the Navajo Indian Reservation, in the Territory of Arizona, and which were included in said Executive order, are hereby excepted from the operations thereof, and said settlers are hereby granted authority to establish their rights and secure patents for any of said lands to which they have a valid title under the public-land laws of the United States.

Approved, July 1, 1902.

**History**

**References in text.** Executive Order of January 6, 1880, see table of contents for part three of these United States Relations.

**1908. Patent of land for Sisters of Blessed Sacrament; surplus lands under 1907 and 1908 Executive Orders**

**May 29, 1908, ch. 216, § 9, 25, 35 Stat. 444, 447, 457**

CHAP. 216. An Act to authorize the Secretary of the Interior to issue patents in fee to purchasers of Indian lands under any law now existing or hereafter enacted, and for other purposes.

\* \* \*

SEC. 9. That the Secretary of the Interior be, and he is hereby, authorized to issue a patent to "The Sisters of the Blessed Sacrament for Indians and Colored People," a charitable corporation organized under the laws of the State of Pennsylvania, for and covering the following described lands, amounting to approximately two hundred and eighty acres, now and for many years occupied by the said "The Sisters of the Blessed Sacrament for Indians and Colored People" as an Indian school, to wit: The southwest quarter of the southwest quarter of southwest quarter of section thirteen, the south half of the northeast quarter of section fourteen, and the east half of the northwest quarter and the south half of the northeast quarter of section twenty-four, all in township twenty-six north, range thirty east, Gila and Salt River meridian, on the Navajo Indian Reservation, in Arizona Territory.

\* \* \*

SEC. 25. That whenever the President is satisfied that all the Indians in

any part of the Navajo Indian Reservation in New Mexico and Arizona created by Executive orders of November ninth, nineteen hundred and seven, and January twenty-eighth, nineteen hundred and eight, have been allotted, the surplus lands in such part of the reservation shall be restored to the public domain and opened to settlement and entry by proclamation of the President.

Approved, May 29, 1908.

\* \* \*

### **History**

**References in text.** Executive Orders of November 9, 1907, and January 28, 1908, see table of contents for part three of United States Relations.

### **1913. Relief of Indians occupying railroad land**

**March 4, 1913, ch. 153, 37 Stat. 1007, 1008**

CHAP. 153. An Act For the relief of Indians occupying railroad lands in Arizona, New Mexico, or California.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized in his discretion to request of the present claimant under any railroad land grant a relinquishment or reconveyance of any lands situated within the States of Arizona, New Mexico, or California passing under the grant which are shown to have been occupied for five years or more by an Indian entitled to receive the tract in allotment under existing law but for the grant to the railroad company, and upon the execution and filing of such relinquishment or reconveyance the lands shall thereupon become available for allotment, and the company relinquishing or reconveying shall be entitled to select within a period of three years after the approval of this Act and have patented to it other vacant nonmineral, nontimbered, surveyed public lands of equal area and value situated in the same State, as may be agreed upon by the Secretary of the Interior, provided that the total area of land that may be exchanged under the provisions of this Act shall not exceed three thousand acres in Arizona, sixteen thousand acres in New Mexico, and five thousand acres in California.*

Approved, March 4, 1913.

### **History**

**Amendment and extension.** Act April 11, 1916, ch. 65, 39 Stat. 65, provided: "That all of the provisions of an Act entitled 'An Act for the relief of Indians occupying railroad lands in Arizona, New Mexico, or California,' approved March fourth, nineteen hundred and thirteen, be, and the same are hereby, extended for a period of two (2) years from and after the fourth day of March, nineteen hundred and sixteen: *Provided*, That there may be exchanged under the provisions of the Act named herein a total area not exceeding ten thousand acres in Arizona and twenty-five thousand acres in New Mexico."

The appropriation act of June 30, 1919, ch. 4, 41 Stat. 9, provided: "That all

of the provisions of an act entitled 'An act for the relief of Indians occupying railroad lands in Arizona, New Mexico, or California,' approved March 4, 1913 (Thirty-seventh Statutes at Large, page 1007), as extended by the act approved April 11, 1916 (Thirty-ninth Statutes at Large, page 48), be, and the same are hereby, extended for a period of one (1) year from and after the 4th day of March, 1919."

**1916. Adjustment of settlers' rights under 1900 Executive Order**

**August 11, 1916, ch. 315, 39 Stat. 504**

CHAP. 315. An Act Authorizing the adjustment of rights of settlers on a part of the Navajo Indian Reservation in the State of Arizona.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands which were occupied by settlers or persons who were entitled to make entries thereof, and submit final proof under the provisions of the general homestead law of the United States prior to the hereinafter mentioned Executive order and upon the making and approval of the public surveys of such lands, said Executive order being of date January eighth, nineteen hundred, and withdrawing from sale and settlement a tract of country lying west of the Navajo and Moqui Reservations in Arizona, and which lands were included in the said Executive order, are hereby excepted from the operations thereof, and such settlers are hereby granted authority at any time within ninety days from the approval hereof to make homestead entry of not to exceed one hundred and sixty acres of such land, and submit final proof of the existence of their rights at the date of such Executive order of extension, and patents therefor shall issue upon payment to the United States of the legal fees and purchase price.*

Approved, August 11, 1916.

**History**

**References in text.** Executive Order of January 8, 1900, see table of contents for part three of United States Relations.

**1924. Proceeds from sale of allotment of a Navajo who died without heirs**

**April 12, 1924, ch. 88, 43 Stat. 91**

CHAP. 88. An Act To authorize the deposit of certain funds in the Treasury of the United States to the credit of Navajo Tribe of Indians and to make same available for appropriation for the benefit of said Indians.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of \$995 derived from the sale of land allotted to Pete Coberly, a Navajo Indian, who has been adjudged by the Secretary of the Interior to be legally dead and to have died without heirs, may be deposited in the Treasury of the United States to the credit of the Navajo Tribe of Indians and is hereby made available for appropriation by Congress for the benefit of said Indians.*

Approved, April 12, 1924.

## **1925. Withdrawal of 40-acre tract of land**

**March 3, 1925, ch. 432, 43 Stat. 1114, 1115**

CHAP. 432. An Act To provide for the permanent withdrawal of a certain forty-acre tract of public land in New Mexico for the use and benefit of the Navajo Indians.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described tract in the State of New Mexico, temporarily withdrawn from settlement, entry, sale, or other disposition until March 5, 1927, by presidential order dated October 24, 1924, in aid of proposed legislation, be, and it hereby is, permanently withdrawn for the use and benefit of Navajo Indians residing in that immediate vicinity: Southeast quarter southeast quarter, section 8, township 11 north, range 3 west, New Mexico principal meridian, New Mexico.*

Approved, March 3, 1925.

## **1925. Exchanges of lands under 1900 and 1901 Executive Orders**

**March 3, 1925, ch. 433, 43 Stat. 1115**

CHAP. 433. An Act To provide for exchanges of Government and privately owned lands in the additions to the Navajo Indian Reservation, Arizona, by Executive orders of January 8, 1900, and November 14, 1901.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized, in his discretion, under rules and regulations to be prescribed by him, to accept reconveyance to the Government of privately owned and State school lands, and relinquishments of any valid filings under the homestead laws, or of other valid claims within the additions to the Navajo Indian Reservation, Arizona, by Executive orders of January 8, 1900, and November 14, 1901, and to permit lieu selections within the boundaries of the said reservation additions by those surrendering their rights, so that the lands retained for Indian purposes may be consolidated and held in a solid area so far as may be possible: *Provided*, That the title or claim of any person or company who refuses to reconvey to the Government shall not be hereby affected.*

Approved, March 3, 1925.

### **History**

**References in text.** Executive Orders of January 8, 1900, and November 14, 1901, see table of contents for part three of United States Relations.

## **1930. Tusayan National Forest; transfer of land to reservation**

**May 23, 1930, ch. 317, 46 Stat. 378, 379**

CHAP. 317. An Act To eliminate certain land for the Tusayan National Forest, Arizona, as an addition to the Western Navajo Indian Reservation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described land be, and the same is hereby, eliminated from the Tusayan National Forest, Arizona, and added to and made a part of the Western Navajo Indian Reservation, subject to all valid rights and claims of individuals initiated prior to the approval of this Act: All that part of the Tusayan National Forest lying east of the Colorado River and north of the Little Colorado River, unsurveyed, but which will probably be when surveyed in townships 32, 33, 34, 35, and 36 north, ranges 5 and 6 east; all lands in township 31 north, range 6 east, which are now a part of the Tusayan National Forest; sections 1, 2, 3, 4, and 10 to 14, inclusive, east half section 23, sections 24 and 25, east half section 26 and sections 35 and 36, township 30 north, range 6 east; sections 27 to 34, inclusive, township 30 north, range 7 east; sections 1, 2, and 11 to 14, inclusive, sections 23 to 26, inclusive, sections 35 and 36, township 29 north, range 6 east; sections 3 to 10, inclusive, and sections 15 to 36, inclusive, township 29 north, range 7 east; section 1 and north half section 12, township 28 north, range 6 east; sections 1 to 23, inclusive, and sections 29 to 32, inclusive, township 28 north, range 7 east; Gila and Salt River base and meridian, Arizona: *Provided, That all unappropriated and unreserved public lands in sections 24 to 28, inclusive, and sections 33 to 36, inclusive, in township 28 north, range 7 east, Gila and Salt River base and meridian, Arizona, be, and the same are hereby, added to and made a part of the Western Navajo Indian Reservation, subject to all valid rights and claims of individuals initiated prior to approval of this Act.**

SEC. 2. That upon conveyance to the United States of a good and sufficient title to any privately owned land within the areas described in this Act, the owners or their assigns thereof are hereby authorized under regulations of the Secretary of the Interior, to select at any time within fifteen years after the approval of this Act, from the surveyed, unappropriated, unreserved, nonmineral public lands of the United States, in the State of Arizona, lands approximately equal in value to the lands thus conveyed, such values to be determined by the Secretary of the Interior, and the Secretary of the Interior is hereby authorized to issue patents for the lands thus selected: *Provided, That the lands conveyed to the United States under authority of this Act shall thereupon become a part of the Western Navajo Indian Reservation.*

SEC. 3. That before any exchange of lands as above provided is effected, notice of such exchange describing the lands involved therein shall be published once each week for four consecutive weeks in some newspaper of general circulation in the county or counties within which the selected lands are situated.

SEC. 4. That the State of Arizona shall have the right to select other public lands in lieu of sections 2, 16, 32, and 36 within said addition to the Western Navajo Indian Reservation, in the same manner as is provided in the Enabling Act of June 20, 1910 [36 Stat. L. 557].

Approved, May 23, 1930.

#### **History**

**Amendments-1931.** See Act February 21, 1931, ch. 269, 46 Stat. 1204, listed in table of contents for this part of United States Relations.

**1931. Canyon De Chelly National Monument**

**February 14, 1931, ch. 188, 46 Stat. 1161, as amended; 16 U.S.C. §§ 445-445b**

**TITLE 16, UNITED STATES CODE**

§ 445. Canyon De Chelly National Monument; establishment; boundaries

With the consent of the tribal council of the Navajo Tribe of Indians, the President of the United States is authorized to establish by presidential proclamation the Canyon De Chelly National Monument, within the Navajo Indian Reservation, Arizona, including the lands hereinafter described.

All lands in Del Muerto, De Chelly, and Monument Canyons, in the canyons tributary thereto, and the lands within one-half mile of the rims of the said canyons, situated in unsurveyed townships 4 and 5 north, range 7 west; townships 4, 5, and 6 north, range 8 west; townships 4 and 5 north, range 9 west; and in surveyed townships 4 and 5 north, range 6 west; townships 3, 6, and 7 north, range 7 west; township 6 north, range 9 west; and township 5 north, range 10 west, embracing about eighty-three thousand eight hundred and forty acres, all of the Navajo meridian, in Arizona. (February 14, 1931, ch. 188, § 1, 46 Stat. 1161; March 1, 1933, ch. 161, 47 Stat. 1419.)

**History**

Amendments-1933. Amended description of land in second paragraph of this section.

§ 445a. Same; rights and privileges of Navajo Indians therein

Nothing in section 445 or 445b of this Title shall be construed as in any way impairing the right, title, and interest of the Navajo Tribe of Indians which they now have and hold to all lands and minerals, including oil and gas, and the surface use of such lands for agricultural, grazing, and other purposes, except as defined in section 445b of this Title; and the said tribe of Indians is granted the preferential right, under regulations to be prescribed by the Secretary of the Interior, of furnishing riding animals for the use of visitors to the monument. (February 14, 1931, ch. 188, § 2, 46 Stat. 1161.)

§ 445b. Same, administration by National Park Service; powers and duties

The National Park Service, under the direction of the Secretary of the Interior, is charged with the administration of the area of said national monument, so far as it applies to the care, maintenance, preservation and restoration of the prehistoric ruins, or other features of scientific or historical interest within the area, and shall have right to construct upon the lands such roads, trails, or other structures or improvements as may be

necessary in connection with the administration and protection of the monument, and also the right to provide facilities of any nature whatsoever required for the care and accommodation of visitors to the monument. (February 14, 1931, ch. 188, § 3, 46 Stat. 1161.)

**1931. Tusayan National Forest; transfer of land to reservation; amendment**

**February 21, 1931 ch. 269, 46 Stat. 1204**

CHAP. 269. An Act To amend the Act of May 23, 1930 (46 Stat. 378).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1 of the Act of May 23, 1930 (46 Stat. 378), entitled "An Act to eliminate certain lands from the Tusayan National Forest, Arizona, as an addition to the Western Navajo Indian Reservation," be, and the same is hereby, amended so as to include the following-described lands subject to all the conditions and provisions of said Act: Sections 10 to 15, inclusive, sections 22 to 27, inclusive, sections 34 to 36, inclusive, township 27 north, range 6 east, all of township 27 north, range 7 east; sections 4 to 9, 16 to 21, 29 to 32, all inclusive, in township 27 north, range 8 east; sections 1 and 2, the east half of section 3, the east half of section 10, sections 11 and 12, township 26 north, range 7 east; sections 5 to 8, inclusive, township 26 north, range 8 east, Gila and Salt River meridian, Arizona.

SEC. 2. That for the purpose of arriving at the values and areas of lieu lands to which private landowners are entitled under the Act of May 23, 1930 as hereby amended, the value of the improvements on all privately owned lands to be conveyed or relinquished to the United States for the benefit of the Indians shall be taken into consideration and full credit in the form of lands shall be allowed therefor: *Provided,* That the State of Arizona may relinquish such lands as it sees fit, acquired pursuant to the Enabling Act of June 20, 1910 (36 Stat. L. 557), which may be desired as lieu land, and the State shall have the right to select other unreserved and undisposed of nonmineral public lands within the State of Arizona equal in area to that relinquished, the lieu selections to be made by the State in the same manner as is provided for in said Enabling Act.

Approved, February 21, 1931.

**Cross References**

Act May 23, 1930, ch. 317, 46 Stat. 378, 379, which is amended by this Act, is set out in this part. See tables of contents for this part of United States Relations.

**1933. Additions to Navajo Reservation in Utah**

**March 1, 1983, ch. 160,47 Stat. 1418,1419**

**May 17, 1968, Pub. L. 90-306, 82 Stat. 121.**

**AN ACT**

To permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all vacant, unreserved, and undisposed of public lands within the areas in the southern part of the State of Utah, bounded as follows: Beginning at a point where the San Juan River intersects the one hundred and tenth degree of west longitude; thence down said river to its confluence with the Colorado River; thence down the Colorado River to a point where said river crosses the boundary line between Utah and Arizona; thence east along said boundary line to the one hundred and tenth degree of west longitude; thence north to the place of beginning; also beginning at a point where the west rim of Montezuma Creek or wash intersects the north boundary line of the Navajo Indian Reservation in Utah; thence northerly along the western rim of said creek or wash to a point where it intersects the section line running east and west between sections 23 and 26, township 39 south, range 24 east, Salt Lake base and meridian in Utah; thence eastward along said section line to the northwest section corner of section 26, township 39 south, range 25 east; thence south one mile along the section line between sections 25 and 26 to the southeast section corner of section 26, township 39 south, range 25 east; thence eastward along the section line between sections 25 and 36, township 39 south, range 25 east, extending through township 39 south, range 26 east, to its intersection with the boundary line between Utah and Colorado; thence south along said boundary line to its intersection with the north boundary line of the Navajo Indian Reservation; thence in a westerly direction along the north boundary line of said reservation to the point of beginning be, and the same are hereby, permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon: *Provided,* That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, for the health, education, and general welfare of the Navajo Indians residing in San Juan County. Planning for such expenditures shall be done in cooperation with the appropriate departments, bureaus, commissions, divisions, and agencies of the United States, the State of Utah, the county of San Juan in Utah, and the Navajo Tribe, insofar as it is reasonably practicable, to accomplish the objects and purposes of this Act. Contribution may be made to projects and facilities within said area that are not exclusively for the benefits of the beneficiaries hereunder in proportion to the benefits to be received therefrom by said beneficiaries, as may be determined by the State of Utah through its duly authorized officers, commissions, or agencies. An annual report of its accounts, operations, and recommendations concerning the funds received hereunder shall be made by the State of Utah, through its duly authorized officers, commissions, or agencies, to the Secretary of the Interior and to the Area Director of the Bureau of Indian Affairs for the information of said beneficiaries.

SEC. 2. That the State of Utah may relinquish such tracts of school land within the areas added to the Navajo Reservation by section 1 of this Act as it may see fit in favor of the said Indians, and shall have the right to select other unreserved and nonmineral public lands contiguously or noncontiguously located within the State of Utah, equal in area and approximately of the same value to that relinquished, said lieu selections to be made in the same manner as is provided for in the Enabling Act of July 16, 1894 (28 Stat. L. 107),



except as to the payment of fees or commissions which are hereby waived.

Approved, March 1, 1933; approved May 17, 1968.

### **History**

The proviso in first sentence of § 1 of this Act appears in 25 U.S.C. § 337a and 43 U.S.C. § 190a.

**Amendments-1968.** Amended Act by deleting all of that part of last proviso of section 1 after the word "Utah" and inserting new provisions.

### **Cross References**

Extinguishment of certain rights outside boundaries described in this Act, see Act September 2, 1958, Pub. L. 85-868, 1(d), 72 Stat. 1686-1690, listed in table of contents for this part.

### **Annotations**

#### **1. Expenditure of royalties**

The three types of expenditures authorized from royalties under the provisions of the Act of March 1, 1933, in tuition of Indian children, for the building or maintenance of roads, or for the benefit of Indians residing on the Reservation, must be considered homogeneous and did not give the Utah State Indian Affairs Commission unlimited power to spend money for roads having no relationship to the welfare of the Indians. *Sakezzie v. Utah State Indian Affairs Commission* (D.C. Utah 1963) 215 F.Supp. 12.

It is not required that a road be built expressly for the benefit of the Indians from royalty funds, and an expenditure for a road was within the power of the Commission even though the Indians may not be exclusively or even primarily benefited. *Sakezzie v. Utah State Indian Affairs Commission* (D.C. Utah 1963) 215 F.Supp. 12.

The term "tuition" within the provision that royalties be expended in the tuition of Indian children, is broad enough to encompass charges necessary or incidental to attendance, such as for books, board and room and traveling expense, within the reasonable discretion of the Commission. *Sakezzie v. Utah State Indian Affairs Commission* (D.C. Utah 1963) 215 F.Supp. 12.

The contribution of seventy thousand dollars (\$70,000) by the Commission toward the construction of a medical clinic was proper even though the clinic was not built exclusively or even primarily for Indians residing on the Reservation where the Indians would benefit to the extent of the Commission's contribution. *Sakezzie v. Utah State Indian Affairs Commission* (D.C. Utah 1963) 215 F.Supp. 12.

The Commission has an affirmative duty not only to make reasonably available to the Navajo Indians adequate information concerning the administration of the funds, but to seek out their advice and consultation before coming to determinations as to the expenditure of the funds. *Sakezzie v. Utah State Indian Affairs Commission* (D.C. Utah 1963) 215 F.Supp. 12.

**1934. Exterior boundaries of Navajo Reservation in Arizona**

**June 14, 1934, ch. 521, 48 Stat. 960-962**

**AN ACT**

To define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the exterior boundaries of the Navajo Indian Reservation, in Arizona, be, and they are hereby, defined as follows: Beginning at a point common to the States of Arizona, New Mexico, Colorado, and Utah, thence west along the boundary line between the States of Arizona and Utah to a point where said boundary line intersects the Colorado River; thence down the south bank of that stream to its confluence with the Little Colorado River; thence following the north bank of the Little Colorado River to a point opposite the east boundary of the Grand Canyon National Park; thence south along said east boundary to the southeast corner of section 5, township 30 north, range 6 east, Gila and Salt River base and meridian, Arizona; thence east to the southeast corner of section 4; thence south to the southwest corner of section 10; thence east to the southeast corner of section 10; thence south to the southwest corner of section 14; thence east to the northwest corner of the northeast quarter section 23; thence south two miles to the southeast corner of the southwest quarter section 26; thence west one half mile to the southeast corner of section 27, township 30 north, range 6 east, Gila and Salt River base and meridian, Arizona; thence south 7 miles to the southwest corner of section 35, township 29 north, range 6 east; thence east one mile; thence south one and one half miles to the southwest corner of the northwest quarter section 12, township 28 north, range 6 east; thence east through the center of section 12 to the range line between ranges 6 and 7 east; thence south along said range line five and one half miles to the southeast corner of section 1, township 27 north, range 6 east; thence west 3 miles to the southwest corner of section 3, township 27 north, range 6 east; thence south 5 miles to the southeast corner of section 33, township 27 north, range 6 east; thence east along township line between townships 26 and 27, six and one half miles, to the northeast corner of the northwest quarter section 3, township 26 north, range 7 east; thence south two miles to the southeast corner of the southwest quarter section 10, township 26 north, range 7 east; thence east four and one half miles to the southeast corner of section 8, township 26 north, range 8 east; thence north four miles to the northwest corner of section 28, township 27 north, range 8 east, Gila and Salt River base and meridian; thence east one mile to the southeast corner of section 21; thence north four miles to the northeast corner of section 4, township 27 north, range 8 east; thence east along township line between townships 27 and 28 north to its intersection with the Little Colorado River; thence up the middle of that stream to the intersection of the present west boundary of the Leupp Extension Reservation created by Executive order of November 14, 1910; thence south along the present western boundary of said extension to where it intersects the fifth standard parallel north; thence east along said standard parallel to the southwest corner of township 21 north, range 26 east, Gila and Salt River base and meridian; thence north six miles to the northwest corner of township 21 north, range 26 east; thence east 12 miles to the northeast

corner of township 21 north, range 27 east; thence south 2 miles; thence east 12 miles; thence south four miles; thence east along the township line between townships 20 and 21 north to the boundary line between the States of New Mexico and Arizona; thence north along said boundary line to the point of beginning. All vacant, unreserved, and unappropriated public lands, including all temporary withdrawals of public lands in Arizona heretofore made for Indian purposes by Executive order or otherwise within the boundaries defined by this Act, are hereby permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as may already be located thereon; however, nothing herein contained shall affect the existing status of the Moqui (Hopi) Indian Reservation created by Executive order of December 16, 1882. There are hereby excluded from the reservation as above defined all lands heretofore designated by the Secretary of the Interior pursuant to section 28 of the Arizona Enabling Act of June 20, 1910 (36 Stat. L. 575), as being valuable for water-power purposes and all lands withdrawn or classified as power-site lands, saving to the Indians, nevertheless, the exclusive right to occupy and use such designated and classified lands until they shall be required for power purposes or other uses under the authority of the United States: *Provided*, That nothing in this Act contained shall be construed as authorizing the payment of proceeds or royalties to the Navajo Indians from water power developed within the areas added to the Navajo Reservation pursuant to section 1 of this Act; and the Federal Water Power Act of June 10, 1920 (41 Stat. L. 1063 [16 U.S.C. § 791a et seq.]), and amendments thereto, shall operate for the benefit of the state of Arizona as if such lands were vacant, unreserved, and unappropriated public lands. All valid rights and claims initiated under the public land laws prior to approval hereof involving any lands within the areas so defined, shall not be affected by this Act.

SEC. 2. The Secretary of the Interior is hereby authorized in his discretion, under rules and regulations to be prescribed by him, to accept relinquishments and reconveyance to the United States of such privately owned lands, as in his opinion are desirable for and should be reserved for the use and benefit of the Navajo Tribe of Indians, including patented and nonpatented Indian allotments and selections, within the counties of Apache, Navajo, and Coconino, Arizona; and any Indian so relinquishing his or her right shall be entitled to make lieu selections within the areas consolidated for Indian purposes by this Act. Upon conveyance to the United States of a good and sufficient title to any such privately owned land, except Indian allotments and selections, the owners thereof, or their assigns, are hereby authorized, under regulations of the Secretary of the Interior, to select from the unappropriated, unreserved, and nonmineral public lands of the United States within said counties in the State of Arizona lands approximately equal in value to the lands thus conveyed, and where surrendered lands contain springs or living waters, selection of other lands taken in lieu thereof may be of like character or quality, such values to be determined by the Secretary of the Interior, who is hereby authorized to issue patents for the lieu lands so selected. In all selections of lieu lands under section 2 of this Act notice to any interested party shall be by publication. Any privately owned lands relinquished to the United States under section 2 of this Act shall be held in trust for the Navajo Tribe of Indians; and relinquishments in Navajo County, Arizona, excluding Indian allotments and selections, shall not extend south of the township line between townships 20 and 21 north, Gila and Salt River base and meridian. The State of Arizona may relinquish such tracts of school land within the boundary of the Navajo Reservation, as defined by section 1 of this

Act, as it may see fit in favor of said Indians, and shall have the right to select other unreserved and nonmineral public lands contiguous or noncontiguous, located within the three counties involved equal in value to that relinquished, said lieu selections to be made in the same manner as is provided for in the Arizona Enabling Act of June 20, 1910 (36 Stat. L. 558), except as to the payment of fees or commissions which are hereby waived. Pending the completion of exchanges and consolidations authorized by section 2 of this Act, no further allotments of public lands to Navajo Indians shall be made in the counties of Apache, Navajo and Coconino, Arizona, nor shall further Indian homesteads be initiated or allowed in said counties to Navajo Indians under the Act of July 4, 1884 (23 Stat. L. 96 [43 U.S.C. § 190]); and thereafter should allotments to Navajo Indians be made within the above-named counties, they shall be confined to land within the boundaries defined by section 1 of this Act.

SEC. 3. Upon the completion of exchanges and consolidations authorized by section 2 of this Act, the State of Arizona may, under rules and regulations to be prescribed by the Secretary of the Interior, relinquish to the United States such of its remaining school lands in Coconino, Navajo, and Apache Counties as it may see fit; and shall have the right to select from the vacant, unreserved, and nonmineral public lands in said counties lieu lands equal in value to those relinquished without the payment of fees or commissions.

SEC. 4. For the purpose of purchasing privately owned lands, together with the improvements thereon, within the boundaries above defined, there is hereby authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, the sum of \$481,879.38, which sum shall be reimbursable from funds accruing to the Navajo tribal funds as and when such funds accrue and shall remain available until expended: *Provided*, That title to the land so purchased may, in the discretion of the Secretary of the Interior, be taken for the surface only: *Provided further*, That said funds may be used in purchasing improvements on any land within said boundaries or on leased State school land within the boundaries above defined, provided the State of Arizona agrees to the assignment of said leases to the Navajo Tribe of Indians on a renewable and preferential basis, and provided the Legislature of said State enacts such laws as may be necessary to avail itself of the exchange provisions contained in section 2 of this Act, and disclaim any right, title or interest in and to any improvements on said lands.

Approved, June 14, 1934.

### **History**

**References in text.** Executive Orders of December 16, 1882, and November 14, 1901, see table of contents for part three of United States Relations.

#### **1934. Land acquisition; restrictions (Wheeler-Howard Act)**

**June 18, 1934, ch. 576, § 5, 48 Stat. 985; 25 U.S.C. § 465**

#### **TITLE 25, UNITED STATES CODE**

§ 465. Acquisition of lands, water rights, or surface rights; appropriation

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed \$2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to sections 461, 462, 463, 464, 465, 466-470, 471-473, 475, 476-478, and 479 of this title shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation. (June 18, 1934, ch. 676, § 5, 48 Stat. 985.)

#### **Annotations**

See annotations under Allotted Lands in digest.

#### **1940. Exchange of lands for privately owned mineral lands**

**July 10, 1940, ch. 565, 54 Stat. 746**

#### **AN ACT**

To authorize exchanges of lands within the Navajo Indian Reservation, Arizona.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to exchange tribal lands within the Navajo Indian Reservation in Arizona for privately owned mineral lands of approximately equal value within the boundary of such reservation. Upon conveyance to the United States in trust for the Navajo Indians of the lands being acquired by the United States, the Secretary of the Interior is authorized to issue a patent in fee covering the lands granted in exchange: *Provided*, That the sufficiency of title to all such lands acquired by the United States shall be approved by the Secretary of the Interior.

Approved, July 10, 1940.

#### **1944. Exchanges of lands with Presbyterian Church**

**May 29, 1944, ch. 212, 58 Stat. 257**

**AN ACT**

To authorize the Secretary of the Interior to exchange certain lands within the Navajo Indian Reservation, Arizona.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to exchange approximately six acres of Navajo Tribal land located in section 26, township 27 north, range 26 east, Gila and Salt River meridian, Apache County, Arizona, for a tract of Mission land containing approximately four and fourteen-one-hundredths acres in section 27, township 27 north, range 26 east, Gila and Salt River meridians, Apache County, Arizona, being a portion of the land fee patented to the Woman's Board of Home Missions of the Presbyterian Church in the United States of America.*

SEC. 2. Title to the land received in the exchange shall be satisfactory to the Secretary of the Interior and shall be taken in the name of the United States of America in trust for the Navajo Indian Tribe.

Approved, May 29, 1944.

**1947. Helium-bearing gas lands**

**June 27, 1947, ch. 158, 61 Stat. 189, as amended**

**July 29, 1954, ch. 617, 68 Stat. 580-582**

**AN ACT**

Authorizing certain agreements with respect to rights in helium-bearing gas lands in the Navajo Indian Reservation, New Mexico, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, acting through the Bureau of Mines, and the Navajo Tribe of Indians are authorized to enter into an agreement dated December 1, 1945, entitled "An agreement serving certain formations from oil and gas leases and substituting new leases as to those formations" and an "Amending agreement", affecting lands in the Navajo Indian Reservation, New Mexico, copies of which are published in House of Representatives Document Numbered 212, Eightieth Congress, first session; and said agreements are ratified and approved. If said Navajo Tribe of Indians shall, after investigation, deem the total consideration payable to it by the United States pursuant to such agreement dated December 1, 1945, as amended, to be in any respect less than reasonable, fair, just, and equitable, said tribe shall be entitled within three years after the date of enactment of this Act to institute suit against the United States in the Court of Claims for the recovery of such additional sum, if any, as may be necessary to compensate said tribe for the reasonable, fair, just, and equitable value of all right, interest, and property passing from said tribe to the United States under such agreement, as amended. Jurisdiction is hereby conferred upon the Court of Claims to hear and determine any suit so instituted and to enter final judgment against the United States therein for such sum if any, in excess of the total*

consideration payable pursuant to such agreement, as amended, as such court may determine to be necessary to provide consideration in all respects reasonable, fair, just, and equitable: *Provided*, That interest shall be allowed on such sum at the rate of 4 per centum per annum from October 20, 1947, to the date of payment and no offsets shall be deducted by the court from any sum determined by the court to be a reasonable, fair, just, and equitable consideration for the right, interest, and property passing to the United States under and pursuant to said agreement of December 1, 1945, as amended, and the interest thereon: *Provided further*, That the foregoing provision relating to interest and offsets shall not extend to any other claim or claims asserted in any such suit, whether or not the same arise out of the subject matter of said agreement, but such other claim or claims, if any, shall be governed by the law relating to actions brought pursuant to title 28, United States Code, section 1505. Appellate review of any judgment so entered shall be in the same manner, and subject to the same limitations, as in the case of claims over which the Court of Claims has jurisdiction under section 1491 of Title 28, United States Code. Notwithstanding any contract to the contrary, not more than 10 per centum of the amount received or recovered by said tribe in satisfaction of any claim asserted under this section shall be paid to or received by any agent or attorney on account of services rendered in connection with such claim. [June 27, 1947, ch. 158, § 1, 61 Stat. 189, as amended July 29, 1954, ch. 617, § 1, 68 Stat. 580, 581.]

SEC. 2. The Secretary of the Interior, acting through the Bureau of Mines, is authorized to enter into an agreement dated September 19, 1946, with Continental Oil Company and Santa Fe Corporation entitled "Agreement for assignments of interests in oil and gas leases and for operations on the leaseholds" and two agreements supplemental thereto, affecting lands in the Navajo Indian Reservation, New Mexico, copies of which are published in House of Representatives Document Numbered 212, Eightieth Congress, first session; and said agreements are ratified and approved. [June 27, 1947, ch. 158, § 2, 61 Stat. 189.]

SEC. 3. Jurisdiction is hereby conferred on the Court of Claims to determine, notwithstanding any statute of limitations or laches, in any suit instituted pursuant to section 1 of this Act, (1) whether the assignment dated December 1, 1942, accepted and approved December 17, 1942, of oil and gas lease 149-ind-5337, covering the lands denominated "1942 lands" in section 4 of said agreement dated December 1, 1945, as amended, should in law or in equity, taking into consideration such fiduciary relationship as may exist between the United States and the Navajo Tribe, have been accepted by the United States for the account of the Navajo Tribe instead of for its own account, and, if such assignment should have been so accepted, whether the property interest or any part thereof covered by such assignment was taken by the United States from the said tribe at any time prior to the effective date of said agreement; (2) whether, and in what amount, if any, the Navajo Tribe is entitled on the basis of such determination to compensation for the acquisition or taking, by the United States, of the property interest or any part thereof covered by such assignment; and (3) whether, and in what amount, if any, the United States is entitled to credit against such compensation for rentals on such lease or for other expenditures, borne by the United States, for the benefit of such lease prior to any such acquisition or taking by the United States; and to enter judgment in accordance with such determinations. No offsets shall be deducted by the court from any net sum, and the interest thereon, if any, that the court

awards under this section. The provisions of the last two sentences of section 1 of this Act shall be applicable to any judgment entered pursuant to this section. [June 27, 1947, ch. 158, § 3, as added July 29, 1954, ch. 617, § 21, 68 Stat. 581, 582.]

### **History**

**Amendments-1954.** Amended section 1 of the 1947 Act by adding the two provisos relating to interest and offsets and revising the citation of 28 U.S.C. 1491; and added section 3 to the 1947 Act.

### **Annotations**

#### **1. Agreements generally**

An agreement entered into in 1945 by the United States and the Navajo Tribe permitted the United States to increase its control over the reserve of helium-bearing gas, and became effective on July 1, 1947, after its approval by Congress. *Navajo Tribe of Indians v. United States* (Ct. Cl. 1966) 364 F.2d 320.

#### **2. Additional compensation**

Where issues relating to government's counterclaim in suit by Navajo Tribe seeking additional compensation for oil and gas rights acquired by government in area within Navajo Reservation were not dealt with in briefs and arguments, it was inappropriate for court to determine status of counterclaim, and payment of Navajo Tribe's judgment against United States would be stayed until final disposition of counterclaim. *Navajo Tribe of Indians v. United States* (Ct. Cl. 1966) 364 F.2d 320.

#### **1947. Appropriation for relief of Navajo and Hopi Indians**

**December 19, 1947, ch. 521, 61 Stat. 940**

#### **AN ACT**

To authorize an appropriation for the immediate relief of the Navajo and Hopi Indians, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby authorized to be appropriated the sum of \$2,000,000, or so much thereof as may be necessary, to enable the Secretary of the Interior to provide immediate relief for needy Navajo and Hopi Indians who are on their reservations or allotted holdings and for those who leave their reservations for employment as hereinafter provided. Not to exceed \$500,000 of such amount shall be available for relief of the children, the blind, aged, sick, and disabled, who are needy, and the needy able-bodied where work is not available; and not to exceed \$1,500,000 (a) to provide useful employment on permanent construction projects duly authorized for the Navajo and Hopi Indians and (b) to secure employment off their reservations for Navajo and Hopi Indians.

SEC. 2. The Secretary of the Interior is authorized and directed at the



earliest practicable date to submit to the Congress his recommendations for necessary legislation for a long-range program dealing with the problems of the Navajo and Hopi Indians.

Approved, December 19, 1947.

**1948. Sale of certain lands to Southwest Indian Mission**

**April 28, 1948, ch. 238, 62 Stat. 203, 204**

**AN ACT**

To authorize the sale of certain public lands in San Juan County, Utah, to the Southwest Indian Mission, Incorporated.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Southwest Indian Mission, Incorporated, is hereby authorized for a period of one year from and after the effective date of this Act to file with the Secretary of the Interior an application to purchase, and the Secretary of the Interior is hereby authorized and directed to issue a patent to it, for use by Saint Christopher's Mission to the Navajo, for the following-described lands in San Juan County, Utah: The east half of the southeast quarter of the southeast quarter of section 20, the west half of the southwest quarter of the southwest quarter of section 21, lot 4 and the northwest quarter of the northwest quarter of section 28 and lots 1, 2, and 5 of section 29, township 40 south, range 22 east, Salt Lake meridian, containing one hundred and sixty-five and five-tenths acres.

SEC. 2. The patent shall not be issued until after payment has been made by the Southwest Indian Mission, Incorporated, to the Secretary of the Interior for the land at its reasonable appraised price of not less than \$1.25 per acre, to be determined by the Secretary in accordance with the provisions of the Act of December 22, 1928 (45 Stat. 1069 [43 U.S.C. §§ 1068, 1068a]). The patent shall reserve to the United States all of the oil, gas, and all other mineral deposits in the land, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary of the Interior may prescribe.

Approved, April 28, 1948.

**1949. Lands for Pueblo and Canoncito Navajo Indians**

**August 13, 1949, ch. 425, 63 Stat. 604, 605; 25 U.S.C. §§ 621-623**

TITLE 25, UNITED STATES CODE

PUEBLO AND CANONCITO NAVAJO INDIANS

§ 621. Portions of tribal lands to be held in trust by the United States; remainder to become part of the public domain

Title to the lands and the improvements thereon, lying and situated within the State of New Mexico, which have been acquired by the United States under authority of title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935

(49 Stat. 115), section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781), the Bankhead-Jones Farm Tenant Act (50 Stat. 522, 525) and subsequent emergency relief appropriation Acts administrative jurisdiction over which has heretofore been transferred by the President from the Secretary of Agriculture to the Secretary of the Interior, to be administered through the Commissioner of Indian Affairs for the benefit of the Indians, by Executive Orders Numbered 7792, 7975, 8255, 8471, 8696, and 8472 and that title to the public domain lands and improvements thereon, lying and situated within the State of New Mexico, which were withdrawn in aid of proposed legislation by the Secretary of the Interior on December 23, 1938, and May 31, 1939, and now in use by Pueblo or Canoncito Navajo Indians, excepting those portions thereof used by the United States for administrative purposes, is declared to be in the United States of America in trust for the respective tribes, bands, or groups of Indians occupying and using same as a part of their respective existing reservations, subject to valid existing rights. The remainder of the aforesaid land is declared to be a part of the public domain of the United States and shall be transferred by the Secretary of the Interior to the Bureau of Land Management for administration under the provisions of the Act of Congress of June 28, 1934, generally known as Taylor Grazing Act (48 Stat. 1269, as amended). The boundaries and descriptions of the areas to become Indian lands and those which are to be transferred to the Bureau of Land Management are set out in sections III and IV, respectively, of the memorandum of information which is attached to and a part of the report of the Secretary of the Interior to the Senate Committee on Interior and Insular Affairs on sections 621-623 of this Title, and such boundaries and descriptions are adopted as part of said sections and shall be published in the Federal Register: *Provided*, That before said boundaries and descriptions are published in the Federal Register as provided in this section, the Secretary of the Interior may correct any clerical errors in section III of said memorandum of information and shall revise the same so as to define the areas on that portion of the lands conveyed by sections 621-623 of this Title and known as Bell Rock Mesa used and occupied respectively by the Laguna Pueblo Indians and the Canoncito Navajo Indians. (August 13, 1949, ch. 425, § 1, 63 Stat. 604.)

### **History**

**References in text.** Title II of the National Industrial Recovery Act of June 16, 1933, (48 Stat. 200), referred to in text, was formerly classified to 40 U.S.C. §§ 401-414. These sections were terminated by the provisions of act June 27, 1942, ch. 450, § 101, 56 Stat. 410.

The Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), referred to in the text, was not classified to U.S.C.

Section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781), referred to in the text, was not classified to U.S.C.

The Bankhead-Jones Farm Tenant Act (50 Stat. 52-2, 525), referred to in the text, is classified to 7 U.S.C. §§ 1001-1005d, 1006c, 1006d, 1007, 1008-1012, 1014-1025, and 1027-1029.

Taylor Grazing Act (48 Stat. 1269, as amended), referred to in the text, is classified to 43 U.S.C. chapter 8A.

§ 622. Exchange of tribal lands; title to lands

For the purpose of consolidation of Indian lands the Secretary of the Interior is authorized, under such regulations as he may prescribe, to exchange any lands or interests therein, including improvements and water rights with the consent of the Pueblo or Navajo tribal authorities for other lands, water rights, and improvements of similar value in the area set apart for the Pueblos and Canoncito Navajos or in the areas declared to be public domain or within any public domain within New Mexico. Title to all lands acquired under the provisions of sections 621-623 of this title shall be taken in the name of the United States in trust for the respective Pueblo Indians and the Navajo Canoncito group. (August 13, 1949, ch. 425, § 2, 63 Stat. 605.)

§ 623. Disbursement of deposits in the United Pueblos Agency

The funds now on deposit in the United Pueblos Agency in "special deposits" which have accrued from issuance of livestock-crossing permits and fees collected for grazing permits on the lands which have been under the jurisdiction of the Department of the Interior shall be expended or disbursed for the benefit of the Indians under such rules and regulations as the Secretary of the Interior may prescribe. (August 13, 1949, ch. 425, § 3, 63 Stat. 605.)

**Annotations**

**1. Title**

Indian lands may not be annexed to and be made a part of a municipality theretofore lying outside the boundaries of such Indian lands. *Your Food Stores, Inc. v. Village of Espanola, N.M.* (1961) 68 N.M. 327, 361 P.2d 950.

Lease by Indian Tribe of a portion of its land did not divest said Tribe of title to the leased land, and village could not extend its boundaries to include the leased land and thus impose sales taxes on sales and services on such leased land. *Your Food Stores, Inc. v. Village of Espanola, N.M.* (1961) 68 N.M. 327, 361 P.2d 950.

**1949. Exchanges of lands with State of Utah**

**September 7, 1949, ch. 567, 63 Stat. 695**

**AN ACT**

To authorize the Secretary of the Interior to exchange certain Navajo tribal Indian land for certain Utah State land.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior or his authorized representative is authorized, with the consent of the governing body of the Navajo Indian Tribe, to exchange the surface rights in Navajo tribal Indian land described as the south half southwest quarter section 24; northwest quarter, northeast quarter, southeast quarter, and north half*

southwest quarter section 25, township 43 south, range 15 east, S. L. B. & M., containing six hundred and forty acres, more or less, for the surface rights in land of the State of Utah described as all of section 32, township 43 south, range 16 east, S. L. B. M., all in San Juan County, Utah. Title to the Indian land exchanged shall be transferred by the Secretary of the Interior to the State of Utah by the issuance of a patent in fee. Title to the State lands to be conveyed to the Indians shall be taken in the name of the United States in trust for the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon, and shall be satisfactory to the Secretary of the Interior.

SEC. 2. In the event the lands acquired by the State of Utah under the provisions of this Act shall be used for airport purposes, members of the Navajo Tribe of Indians shall be given preference in employment in every phase of construction, operation, and maintenance of the airport for which they are qualified, notwithstanding any provisions to the contrary contained in the Federal Airport Act of May 13, 1946 (60 Stat. 170 [49 U.S.C. § 1101 et seq.]), or any other Act of Congress.

Approved, September 7, 1949.

#### **1950. Navajo-Hopi Rehabilitation Act**

**April 19, 1950, ch. 92, 64 Stat. 44-46, as amended; 25 U.S.C. §§ 631-638**

#### **TITLE 25, UNITED STATES CODE**

#### **Chapter 14. Miscellaneous**

#### **Subchapter XXI. Navajo and Hopi Tribes: Rehabilitation**

#### **§ 631. Basic program for conservation and development of resources; projects; appropriations**

In order to further the purposes of existing treaties with the Navajo Indians, to provide facilities, employment, and services essential in combating hunger, disease, poverty, and demoralization among the members of the Navajo and Hopi Tribes, to make available the resources of their reservations for use in promoting a self-supporting economy and self-reliant communities, and to lay a stable foundation on which these Indians can engage in diversified economic activities and ultimately attain standards of living comparable with those enjoyed by other citizens, the Secretary of the Interior is authorized and directed to undertake, within the limits of the funds from time to time appropriated pursuant to this subchapter, a program of basic improvements for the conservation and development of the resources of the Navajo and Hopi Indians, the more productive employment of their manpower, and the supplying of means to be used in their rehabilitation, whether on or off the Navajo and Hopi Indian Reservations. Such program shall include the following projects for which capital expenditures in the amount shown after each project listed in the following subsections and totaling \$108,570,000 are authorized to be appropriated:

- (1) Soil and water conservation and range improvement work, \$10,000,000.

(2) Completion and extension of existing irrigation projects, and completion of the investigation to determine the feasibility of the proposed San Juan-Shiprock irrigation project, \$9,000,000.

(3) Surveys and studies of timber, coal, mineral, and other physical and human resources, \$500,000.

(4) Development of industrial and business enterprises, \$1,000,000.

(5) Development of opportunities for off-reservation employment and resettlement and assistance in adjustments related thereto, \$3,500,000.

(6) Relocation and resettlement of Navajo and Hopi Indians (Colorado River Indian Reservation), \$5,750,000.

(7) Roads and trails, \$40,000,000; of which not less than \$20,000,000 shall be (A) available for contract authority for such construction and improvement of the roads designated as route 1 and route 3 on the Navajo and Hopi Indian Reservations as may be necessary to bring the portion of such roads located in any State up to at least the secondary road standards in effect in such State, and (B) in addition to any amounts expended on such roads under the \$20,000,000 authorization provided under this clause prior to amendment.

(8) Telephone and radio communication systems, \$250,000.

(9) Agency, institutional, and domestic water supply, \$2,500,000.

(10) Establishment of a revolving loan fund, \$5,000,000.

(11) Hospital buildings and equipment, and other health conservation measures, \$4,750,000.

(12) School buildings and equipment, and other educational measures, \$25,000,000.

(13) Housing and necessary facilities and equipment, \$820,000.

(14) Common service facilities, \$500,000.

Funds so appropriated shall be available for administration, investigations, plans, construction, and all other objects necessary for or appropriate to the carrying out of the provisions of this subchapter. Such further sums as may be necessary for or appropriate to the annual operation and maintenance of the projects herein enumerated are also authorized to be appropriated. Funds appropriated under these authorizations shall be in addition to funds made available for use on the Navajo and Hopi Reservations, or with respect to Indians of the Navajo Tribes, out of appropriations heretofore or hereafter granted for the benefit, care, or assistance of Indians in general, or made pursuant to other authorizations now in effect.

(Apr. 19, 1950, c. 92, § 1, 64 Stat. 44; Aug. 23, 1958, Pub.L. 85-740, 72 Stat. 834.)

**§ 632. Character and extent of administration; time limit; reports on use of funds**

The foregoing program shall be administered in accordance with the provisions of this subchapter and existing laws relating to Indian affairs, shall include such facilities and services as are requisite for or incidental to the effectuation of the projects herein enumerated, shall apply sustained-yield principles to the administration of all renewable resources, and shall be prosecuted in a manner which will provide for completion of the program, so far as practicable, within ten years from April 19, 1950. An account of the progress being had in the rehabilitation of the Navajo and Hopi Indians, and of the use made of the funds appropriated to that end under this subchapter, shall be included in each annual report of the work of the Department of the Interior submitted to the Congress during the period covered by the foregoing program.

(Apr. 19, 1950, c. 92, § 2, 64 Stat. 45.)

**§ 633. Preference in employment; on-the-job training**

Navajo and Hopi Indians shall be given, whenever practicable, preference in employment on all projects undertaken pursuant to this subchapter, and, in furtherance of this policy may be given employment on such projects without regard to the provisions of the civil-service and classification laws. To the fullest extent possible, Indian workers on such projects shall receive on-the-job training in order to enable them to become qualified for more skilled employment.

(Apr. 19, 1950, c. 92, § 3, 64 Stat. 45.)

**§ 634. Loans to Tribes or individual members; loan fund**

The Secretary of the Interior is authorized, under such regulations as he may prescribe, to make loans from the loan fund authorized by section 631 of this title to the Navajo Tribe, or any member or association of members thereof, or to the Hopi Tribe, or any member or association of members thereof, for such productive purposes as, in his judgment, will tend to promote the better utilization of the manpower and resources of the Navajo or Hopi Indians. Sums collected in repayment of such loans and sums collected as interest or other charges thereon shall be credited to the loan fund, and shall be available for the purpose for which the fund was established.

(Apr. 19, 1950, c. 92, § 4, 64 Stat. 45.)

**§ 635. Disposition of lands**

(a) Lease of restricted lands; renewals

Any restricted Indian lands owned by the Navajo Tribe, members thereof, or associations of such members, or by the Hopi Tribe, members thereof, or associations of such members, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, or business purposes, including the development or utilization of

natural resources in connection with operations under such leases. All leases so granted shall be for a term of not to exceed twenty-five years, but may include provisions authorizing their renewal for an additional term of not to exceed twenty-five years, and shall be made under such regulations as may be prescribed by the Secretary. Restricted allotments of deceased Indians may be leased under this section, for the benefit of their heirs or devisees, in the circumstances and by the persons prescribed in section 380 of this title. Nothing contained in this section shall be construed to repeal or affect any authority to lease restricted Indian lands conferred by or pursuant to any other provision of law.

(b) Lease, sale, or other disposition of lands owned in fee simple by Navajo Tribe

Notwithstanding any other provision of law, land owned in fee simple by the Navajo Tribe may be leased, sold, or otherwise disposed of by the sole authority of the Navajo Tribal Council, in any manner that similar land in the State in which such land is situated may be leased, sold, or otherwise disposed of by private landowners, and such disposition shall create no liability on the part of the United States.

(c) Transfer of unallotted lands to tribally owned or municipal corporations

The Secretary of the Interior is authorized to transfer, upon request of the Navajo Tribal Council, to any corporation owned by the tribe and organized pursuant to State law, or to any municipal corporation organized under State law, legal title to or a leasehold interest in any unallotted lands held for the Navajo Indian Tribe, and thereafter the United States shall have no responsibility or liability for, but on request of the tribe shall render advice and assistance in, the management, use, or disposition of such lands.

(Apr. 19, 1950, c. 92, § 5, 64 Stat. 46; June 11, 1960, Pub.L. 86-505, § 1, 74 Stat. 199.)

#### **§ 636. Adoption of constitution by Navajo Tribe; method; contents**

In order to facilitate the fullest possible participation by the Navajo Tribe in the program authorized by this subchapter, the members of the tribe shall have the right to adopt a tribal constitution in the manner herein prescribed. Such constitution may provide for the exercise by the Navajo Tribe of any powers vested in the tribe or any organ thereof by existing law, together with such additional powers as the members of the tribe may, with the approval of the Secretary of the Interior, deem proper to include therein. Such constitution shall be formulated by the Navajo Tribal Council at any regular meeting, distributed in printed form to the Navajo people for consideration, and adopted by secret ballot of the adult members of the Navajo Tribe in an election held under such regulations as the Secretary may prescribe, at which a majority of the qualified votes cast favor such adoption. The constitution shall authorize the fullest possible participation of the Navajos in the administration of their affairs as approved by the Secretary of the Interior and shall become effective when approved by the Secretary. The constitution may be amended from time to time in the same manner as herein provided for its adoption, and the Secretary of the Interior shall approve any amendment which

in the opinion of the Secretary of the Interior advances the development of the Navajo people toward the fullest realization and exercise of the rights, privileges, duties, and responsibilities of American citizenship.

(Apr. 19, 1950, c. 92, § 6, 64 Stat. 46.)

**§ 637. Use of Navajo tribal funds**

Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter placed to the credit of the Navajo Tribe of Indians in the United States Treasury shall be available for such purposes as may be designated by the Navajo Tribal Council and approved by the Secretary of the Interior.

(Apr. 19, 1950, c. 92, § 7, 64 Stat. 46.)

**§ 638. Participation by Tribal Councils; recommendations**

The Tribal Councils of the Navajo and Hopi Tribes and the Indian communities affected shall be kept informed and afforded opportunity to consider from their inception plans pertaining to the program authorized by this subchapter. In the administration of the program, the Secretary of the Interior shall consider the recommendations of the tribal councils and shall follow such recommendations whenever he deems them feasible and consistent with the objectives of this subchapter.

(Apr. 19, 1950, c. 92, § 8, 64 Stat. 46.)

**§ 639. Repealed. Pub.L. 104-193, Title I, § 110(u), Aug. 22, 1996, 110 Stat. 2175**

**§ 640. Repealed. Pub.L. 93-531, § 26, Dec. 22, 1974, 88 Stat. 1723**

**1950. Surplus property at Wingate Ordnance Depot, New Mexico**

**June 20, 1950, ch. 320, 64 Stat. 248**

**AN ACT**

To make available for Indian use certain surplus property at the Wingate Ordnance Depot, New Mexico

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Army is hereby authorized and directed to transfer to the Department of the Interior, for use by the Bureau of Indian Affairs, that portion of the Fort Wingate Military Reservation, New Mexico, comprising approximately thirteen thousand one hundred and fifty acres, heretofore determined to be surplus to the requirements of the Department of the Army. Title to the land so transferred shall remain in the United States for the use of the Bureau of Indian Affairs.

SEC. 2. All contractual rights and all property, right, title, and interest of the United States in and with respect to structures and improvements in Veterans Temporary Housing Project NM-VN-29166, located on land



of the Navajo Tribe of Indians, and known as Wingate Navajo Village, Gallup, New Mexico, are hereby relinquished and transferred to the Navajo Tribe of Indians. After the date of enactment of this Act, the provisions of the Act entitled "An Act to expedite the provision of housing in connection with national defense, and for other purposes", approved October 14, 1940 (54 Stat. 1125 [42 U.S.C. § 1521 et seq.]), as amended, shall not apply to said temporary housing project.

Approved, June 20, 1950.

**1955. Leases of restricted lands; length of term**

**August 9, 1955, ch. 615, § 1, 69 Stat. 539, as amended; 25 U.S.C. § 415**

**TITLE 25, UNITED STATES CODE**

§ 415. Leases of restricted lands for public, religious, educational, recreational, residential, business, and other purposes

Any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Spokane Reservation, the Hualapai Reservation, the San Carlos Apache Reservation, the Pyramid Lake Reservation, the Gila River Reservation, and the Navajo Reservation which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. (August 9, 1955, ch. 615, § 1, 69 Stat. 539; September 21, 1959, Pub. L. 86-326, 73 Stat. 597; June 11, 1960, Pub. L. 86-505, § 2, 74 Stat. 199; October 4, 1961, Pub. L. 87-375) 75 Stat. 804; October 10, 1962, Pub. L. 87-785, 76 Stat. 805; November 4, 1963, Pub. L. 88-167, 77 Stat. 301; April 27, 1966, Pub. L. 89-408, 80 Stat. 132; December 8, 1967, Pub. L. 90-182, 81 Stat. 559; December 10, 1967, Pub. L. 90-184) 1 Stat. 560; June 10, 1968, Pub. L. 90-335, § 1(f), 82 Stat. 175; June 20, 1968, Pub. L. 90-355, 82 Stat. 242; September 28, 1968, Pub. L. 90-534, § 6, 82 Stat. 884.)

**History**

**Amendments-1968.** Public Law 90-534 added words "the Swinomish Indian Reservation" following words "Dania Reservation".

Public Law 90-335 added words "the Spokane Reservation" following words "the Fort Mojave Reservation".

Public Law 90-355 added words "the Hualapai Reservation" following words "Spokane Reservation".

**1967.** Public Law 90-184 added words "the San Carlos Apache Reservation" following words "Fort Mojave Reservation".

Public Law 90-182 added words "the Gila River Reservation" following words "Pyramid Lake Reservation".

**1966.** Public Law 89-408 added words "the Pyramid Lake Reservation" following words "Fort Mojave Reservation".

**1963.** Public Law 88-167 added words "the Fort Mojave Reservation" following words "Southern Ute Reservation".

**1962.** Public Law 87-785 authorized leases for not more than ninety-nine (99) years of lands on the Southern Ute Reservation.

**1961.** Public Law 87-375 authorized longer term leases of Indian lands on the Dania Reservation and excepted from renewal leases the initial term of which extends for more than seventy-four (74) years.

**1960.** Public Law 86-505 authorized leases for not more than ninety-nine (99) years of lands on the Navajo Reservation.

**1959.** Public Law 86-326 substituted "except leases of land on the Agua Caliente (Palm Springs) Reservation which may be for a term of not to exceed ninety-nine (99) years, and except leases of land for grazing purposes which may" for "excepting leases for grazing purposes, which shall", in second sentence.

**1955. Sale of lands by certain Pueblos to Navajo Tribe**

**August 9, 1955, ch. 636, 69 Stat. 555, 556, as amended July 11, 1956, ch. 559, 70 Stat. 522**

**AN ACT**

To authorize the Pueblos of San Lorenzo and Pojoaque in New Mexico to sell certain lands to the Navajo Tribe, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Pueblo of San Lorenzo, sometimes known as the Pueblo of Picuris, and the Pueblo of Pojoaque in New Mexico are hereby severally authorized to sell to the Navaho Tribe of Indians all of the right, title, and interest of each of said Pueblos in and to any of the lands situated in townships 6, 7, and 8 north, range 14 west, townships 7 and 8 north, range 15 west, and township 7 north, range 16 west, New Mexico principal meridian, in Valencia County, New Mexico, the title to which is now held by the United States in trust for either of said Pueblos; and the Navajo Tribe is hereby authorized to purchase all of the right, title, and interest of said Pueblos in and to any of the above-described lands, whereupon the title to

the lands so purchased shall be held by the United States in trust for the Navaho Tribe. All sales under this section shall be for such prices and on such terms as may be agreed upon by the governing bodies of the Pueblo making the sale and of the Navaho Tribe, and as may be approved by the Secretary of the Interior. The consideration for each sale, when so agreed upon and approved, shall be paid out of such funds of the Navaho Tribe as may be designated for this purpose by its governing body. The Secretary of the Interior and the appropriate officers of said Pueblos are authorized to execute such instruments of conveyance as may be necessary or appropriate to effectuate the transfer of title to any lands purchased by the Navaho Tribe under this section. [As amended July 11, 1956, ch. 559, 70 Stat. 522.]

SEC. 2. All proceeds received from each of the sales authorized by section 1 of this Act shall be deposited in the Treasury of the United States to the credit of the Pueblo making the sale in the account established for such Pueblo pursuant to section 19 of the Act of June 7, 1924 (43 Stat. 636, 642), and, together with any other funds heretofore or hereafter deposited in the same account, shall be available for expenditure or advanced for such purposes, except per capita payments, as may be designated by the governing body of such Pueblo and approved by the Secretary of the Interior.

SEC. 3. For the purpose of consolidating the lands of the Navaho Tribe, the Secretary of the Interior, with the consent of the governing body of said tribe, may exchange any lands purchased under section 1 of this Act for any other lands situated in McKinley or Valencia Counties, New Mexico, that are owned by the United States, by the State of New Mexico, or a political subdivision thereof, or by any person; and, for the same purpose, the head of any department or agency having administrative jurisdiction over lands situated in said counties that are owned by the United States may exchange any such lands for lands purchased under section I of this Act.

Approved, August 9, 1955.

### **History**

**Amendments-1956.** Amended section 1 of this 1955 Act by inserting after "townships 6, 7, and 8 north", the following: "range 14 west, townships 7 and 8 north,".

### **1958. Rights of Navajo and Hopi Tribes in lands under 1882 Executive Order**

**July 22, 1958, Pub. L. 85-547, 72 Stat. 402**

#### **AN ACT**

To determine the rights and interests of the Navaho Tribe, Hopi Tribe, and individual Indians to the area set aside by Executive order of December 16, 1882, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That lands described in the Executive order dated December 16, 1882, are hereby declared to be held by the United States in trust for the Hopi Indians and such other Indians, if any, as heretofore have been settled thereon by the Secretary of the Interior pursuant

to such Executive order. The Navaho Indian Tribe and the Hopi Indian Tribe, acting through the chairmen of their respective tribal councils for and on behalf of said tribes, including all villages and clans thereof, and on behalf of any Navaho or Hopi Indians claiming an interest in the area set aside by Executive order dated December 16, 1882, and the Attorney General on behalf of the United States, are each hereby authorized to commence or defend in the United States District Court for the District of Arizona an action against each other and any other tribe of Indians claiming any interest in or to the area described in such Executive order for the purpose of determining the rights and interests of said parties in and to said lands and quieting title thereto in the tribes or Indians establishing such claims pursuant to such Executive order as may be just and fair in law and equity. The action shall be heard and determined by a district court of three judges in accordance with the provisions of title 28, United States Code, section 2284, and any party may appeal directly to the Supreme Court from the final determination by such three judge district court.

SEC. 2. Lands, if any, in which the Navaho Indian Tribe or individual Navaho Indians are determined by the court to have the exclusive interest shall thereafter be a part of the Navaho Indian Reservation. Lands, if any, in which the Hopi Indian Tribe, including any Hopi village or clan thereof, or individual Hopi Indians are determined by the court to have the exclusive interest shall thereafter be a reservation for the Hopi Indian Tribe. The Navaho and Hopi Tribes, respectively, are authorized to sell, buy, or exchange any lands within their reservations, with the approval of the Secretary of the Interior, and any such lands acquired by either tribe through purchase or exchange shall become a part of the reservation of such tribe.

SEC. 3. Nothing in this Act shall be deemed to be a congressional determination of the merits of the conflicting tribal or individual Indian claims to the lands that are subject to adjudication pursuant to this Act, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

Approved, July 22, 1958.

### **History**

**References in text.** Executive Order of December 16, 1882, see table of contents for part three of these United States Relations.

**Negotiating Committee.** Tribal Council Res. CMY-47-65, passed May 3, 1965, reactivated a negotiating committee to meet with representatives of the Hopi Tribe to deal with disagreement concerning the disputed area and also appointed a subcommittee to act as liaison between the committee and the Navajo people.

Tribal Council Res. CF-13-66, passed February 4, 1966, instructed Negotiating Committee with respect to certain disputes between members of the Hopi Tribe and members of the Navajo Tribe in meeting with representatives of the Hopi Tribe.

**Hopi Partition Bill or similar bills.** For text of Tribal Council Res. CJA-12-65, passed January 19, 1965, asserting full proprietary right to areas defined as belonging to Navajo Tribe under Ex. Ord. December 16, 1882, see note under

Part 3, Executive Orders, Executive Order of December 16, 1882.

### **Annotations**

#### **1. Nature and determination of interests**

Congress undertook by enactment of Act of July 22, 1958, to convey to certain Indians equitable interests in lands theretofore described in Executive Order of December 16, 1882, by declaring all such lands to be held by the United States in trust for such Indians, and Congress could not thereafter, in exercise of its political judgment, deprive the beneficiaries of this trust of their interest therein without compensating them for such taking. *Healing v. Jones* (D.C. Ariz. 1962) 210 F.Supp. 125, affirmed 373 U.S. 758, 83 S.Ct. 1559.

From this date of the enactment of Act of July 22, 1958, the beneficiaries of this trust had a vested interest therein capable of judicial recognition and protection. *Healing v. Jones* (D.C. Ariz. 1959) 174 F.Supp. 211; *Healing v. Jones* (D.C. Ariz. 1962) 210 F.Supp. 125, affirmed 373 U.S. 758, 83 S.Ct. 1559.

The Act of July 22, 1958, placed no mandatory duty on court to accomplish a complete division of the reservation, as between Hopis and Navajos, and did not prevent adjudication of joint interests or grant jurisdiction to partition such interests, and fact that Congress hoped that litigation would put an end to Navajo-Hopi controversy did not warrant court in disregarding facts and law which dictated a different result. *Healing v. Jones* (D.C. Ariz. 1962) 210 F.Supp. 125, affirmed 373 U.S. 758, 83 S.Ct. 1559.

See, also, annotations under Executive Order of December 16, 1882.

#### **1958. Exchanges of lands between United States and Navajo Tribe**

**September 2, 1958, Pub. L. 85-868, 72 Stat. 1686-1690**

##### **AN ACT**

To provide for the exchange of lands between the United States and the Navajo Tribe, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the Secretary of the Interior shall, in consideration of and as just compensation for the transfer made by section 2 of this Act as well as for the use and occupancy of the lands therein described under terms of the right-of-way granted March 22, 1957, by the Secretary pursuant to the Act of February 5, 1948 (62 Stat. 17 [25 U.S.C. §§ 323-328]), transfer to the Navajo Tribe so much of the block of public lands (exclusive of the minerals therein, but inclusive of all range improvements constructed thereon) described in subsection (c) of this section, as shall constitute a reasonably compact area equal in acreage to the lands transferred to the United States under section 2, and the lands so transferred shall constitute a part of the Navajo Reservation and shall be held by the United States in trust for the Navajo Tribe and shall be subject to all laws and regulations applicable to that reservation. The owners of range improvements of a permanent nature placed, under the authority of a permit from or agreement with the United States, on lands transferred pursuant to this section shall be

compensated for the reasonable value of such improvements, as determined by the Secretary out of appropriations available for the construction of the Glen Canyon unit, Colorado River storage project. To the extent that the Secretary is unable to transfer, from the lands described in subsection (c), lands equal in acreage to the lands transferred to the United States under section 2, because of the existence of valid rights in other parties than the United States (other than the rights described in subsection (d) of this section), he shall transfer to the Navajo Tribe such other available public lands (exclusive of the minerals therein but inclusive of all range improvements thereon) in reasonable proximity to the Navajo Reservation and to the lands described in subsection (c) as the tribe, with the concurrence of the Secretary, may select and as may be necessary to transfer to the tribe equal acreage in exchange for the lands transferred under section 2, and those lands so transferred shall be treated in the same manner as other lands transferred pursuant to this section.

(b) Subject to valid, existing rights, in addition to other requirements under applicable laws and regulations, mineral activities affecting the land transferred pursuant to this section shall be subject to such regulations, which may include, among others, a requirement for the posting of bond or other undertaking, as the Secretary may prescribe for protection of the interests of the Indians. Patents issued with respect to mining claims on the lands transferred pursuant to this section shall be limited to the minerals only, and for a period of ten years after the effective date of this Act, none of the lands described in subsection (c) of this section shall be open to location and entry under the general mining laws.

(c) The block of public lands (which lies to the north and west of the portion of the present Navajo Reservation in San Juan County, Utah, and abuts the reservation's boundaries within the county) from which the transfer under this section is to be made, is described as follows:

**SALT LAKE MERIDIAN**

Township 38 south, range 23 east: Sections 26, 33, 34, and 35.

Township 38 south, range 24 east: Section 28; section 29, east half; sections 31, 33, 34, and 35.

Township 39 south, range 22 east: Sections 13, 24, 25, and 35, those portions lying east of Recapture Creek.

Township 39 south, range 23 east: Sections 1, 3, 4, and 5; sections 8 to 15 inclusive; section 17; sections 18 and 19, those portions lying east of Recapture Creek; sections 20 to 31, inclusive, sections 33, 34, and 35.

Township 39 south, range 24 east: Section 1; sections 3 to 15, inclusive; sections 17 to 24, inclusive; sections 26 and 27, those portions lying north and west of the present Navajo Indian Reservation; sections 28, 29, 30, 31, and 33; section 34, that portion lying north and west of the present Navajo Indian Reservation.

Township 39 south, range 25 east: Sections 5, 6, 7, 8, and 18.

Township 40 south, range 22 east: Section 1; sections 11, 12, 13, 23,

24, 25, and 26, those portions lying east of Recapture Creek and north of the present Navajo Indian Reservation.

Township 40 south, range 23 east: Section 1; sections 3 to 15, inclusive; sections 17 to 23, inclusive; section 26; sections 24, 25, 27, 28, 29, 30, 34, and 35, those portions lying north and west of the present Navajo Indian Reservation.

Township 40 south, range 24 east: Sections 3, 4, 5, those portions lying north and west of the present Navajo Indian Reservation; section 6; sections 7, 8, 18, and 19, those portions lying north and west of the present Navajo Indian Reservation.

(d) The transfer hereinabove provided for shall also be deemed to constitute full and complete satisfaction of any and all rights which are based solely upon Indian use and occupancy or possession claimed by or on behalf of any individual members of the Navajo Tribe in their individual capacities or any groups or identifiable bands thereof to any and all public lands in San Juan County, Utah, outside the exterior boundaries of the Navajo Indian Reservation as the same are described in:

1. The Act of March 1, 1933 (ch. 160, 47 Stat. 1418);
2. Executive Order 324A of May 15, 1905;
3. Executive Order of May 17, 1884; and

all such rights to such lands are hereby extinguished from and after January 1, 1963. Subject to the provision of section 2 of this Act, and subject to valid existing rights, all public lands of the United States within said exterior boundaries of said reservation are hereby declared to be held in trust for the benefit of the Navajo Tribe of Indians. The term "public lands" as used herein shall be deemed to include, but in no way to be limited to lands and the mineral deposits which originally may have been excluded from said reservation by reason of settlement or occupancy or other valid rights then existing, but since relinquished, extinguished, or otherwise terminated. The tribe is hereby authorized to adopt such rules and regulations as it deems appropriate, with the approval of the Secretary, for residence and use of the lands transferred pursuant to this section: *Provided*, That the tribal council shall give preference until January 1, 1963, in granting residence and use rights to: (1) those Navajos who, prior to the effective date of this Act, have used or occupied the transferred lands and (2) those Navajos who, prior to the effective date of this Act, have used or occupied other public lands in San Juan County, Utah.

(e) Upon application of the Navajo Tribe, the Secretary shall grant to the tribe, to be held in trust by the United States for use of tribal members grazing livestock upon the lands transferred under this section, a nonexclusive easement, of suitable width and location as he determines, for a livestock driveway across the public lands in sections 21, 22, 23, and 24, township 39 south, range 22 east, and in section 19, township 39 south, range 23 east, Salt Lake meridian, to connect with United States Highway Numbered 47. Use of said nonexclusive easement shall be in accordance with regulations prescribed by the Secretary, and future uses and dispositions of the public lands affected shall

be subject to said easement.

(f) The transfer of lands to the Navajo Tribe, as provided in this section, shall not affect the status of rights-of-way for public highways traversing such lands, which rights-of-way shall remain available for public use, including the movement of livestock thereon.

(g) The Secretary of the Interior shall compensate persons whose grazing permits, licenses or leases covering lands transferred to the Navajo Tribe pursuant to this section are canceled because of such transfer. Such compensation shall be determined in accordance with the standard prescribed by the Act of July 9, 1942, as amended (43 U.S.C. 315q). Such compensation shall be paid from appropriations available for the construction of the Glen Canyon unit, Colorado River storage project.

SEC. 2. (a) There is hereby transferred to the United States all the right, title, and interest of the Navajo Tribe in and to the lands (exclusive of the minerals therein) described in subsection (b) of this section. These lands shall no longer be "Indian country" within the meaning of title 18, United States Code, section 115, and they shall have the status of public lands withdrawn and being administered pursuant to the federal reclamation laws and shall be subject to all laws and regulations governing the use and disposition of public lands in that status. The rights herein transferred shall not extend to the utilization of the lands hereinafter described under the heading "parcel B" for public recreational facilities without the approval of the Navajo Tribal Council. No permit, lease, license, or other right covering the exploration for or extraction of the minerals herein reserved to the tribe shall be granted or exercised by or on behalf of the tribe except under such conditions and with such restrictions, limitations, or stipulations as the Secretary deems appropriate, in connection with the Glen Canyon unit, to protect the interests of the United States and of its grantees, licensees, transferees, and permittees, and their heirs and assigns. Subject to the mineral rights herein reserved to the tribe as aforesaid, the Secretary may dispose of lots in townsites established on the lands transferred under this section, together with improvements thereon, under such terms and conditions as he determines to be appropriate, including provisions for payment for the furnishing of municipal facilities and services while such facilities and services are provided by the United States and for the establishment of liens in connection therewith, but no disposition shall be at less than the current fair market value, and he may dedicate portions of lands in such townsites, whether or not improved, for public purposes and transfer the land so dedicated to appropriate State or local public bodies and nonprofit corporations. He may also enter into contracts with State or local public bodies and nonprofit corporations whereby either party may undertake to render to the other such services in aid of the performance of activities and functions of a municipal, governmental, or public or quasipublic nature as will, in the Secretary's judgment, contribute substantially to the efficiency or the economy of the operations of the Department of the Interior in connection with the Glen Canyon unit.

(b) The lands which are transferred under this section are described as follows:

**PARCEL A**



The following tract of unsurveyed land situated in Arizona: Beginning on the easterly bank of the Colorado River at a point where said easterly bank is intersected by the south line of section 9, township 40 north, range 8 east, Gila and Salt River base and meridian; thence upstream along the said easterly bank of the Colorado River to a point where said bank intersects the east line of section 16, township 41 north, range 9 east, Gila and Salt River base and meridian; thence south along the east line of sections 16, 21, 28, and 33 of said township 41 north, range 9 east, to the south line of said section 33; thence west along the south line of said section 33 to the east line of section 4, township 40 north, range 9 east, Gila and Salt River base and meridian; thence south along the east line of sections 4 and 9 of said township 40 north, range 9 east, to the south line of said section 9; thence west along the south line of sections 9, 8, and 7 of said township 40 north, range 9 east, and along the south line of sections 12, 11, 10, and 9 of said township 40 north, range 8 east, Gila and Salt River base and meridian to the point of beginning.

**PARCEL B**

The following tract of land in part unsurveyed situated in Arizona and Utah: Beginning at a point where the east line of section 16, township 41 north, range 9 east, Gila and Salt River base and meridian intersects the north boundary of the Navajo Indian Reservation in Arizona; thence upstream in Arizona and Utah along the north boundary of the reservation to a point where said north boundary intersects a contour line the elevation of which is 3,720 mean sea level (United States Coast and Geodetic Survey datum), said point being at approximate river mile 72.7 on the San Juan River above its confluence with the Colorado River, and also being near the east line of township 40 south, range 15 east, Salt Lake base and meridian; thence generally southwesterly within the Navajo Indian Reservation along said contour line the elevation of which is 3,720, to the point where said contour line intersects the east line of section 16, township 41 north, range 9 east, Gila and Salt River base and meridian; thence north along said east line to the point of beginning.

(c) The Secretary and the tribe may enter into such agreements as are appropriate for the utilization, under permits or easements, of such tribal lands, in the vicinity of Rainbow Bridge National Monument, as may be necessary in connection with the carrying out of any measures undertaken to preclude impairment of the monument as provided by section 1 of the Act of April 11, 1956 (70 Stat. 105 [43 U.S.C. § 620]).

(d) As used in this and in the preceding section of this Act, the term "minerals" shall not be construed to include sand, gravel, or other building or construction materials.

SEC. 3. (a) The State of Utah may convey to the United States title to any State-owned lands within the area described in subsection (b) of this section or subsection (c) of section 1 of this Act as base lands for indemnity selections under sections 2275 and 2276 of the Revised Statutes (43 U.S.C., §§ 851, 852). The Secretary of the Interior shall give priority to indemnity selection applications made pursuant to this subsection by the State of Utah. However, all conveyances made pursuant to this subsection, whether by the United States or by the State of Utah, shall contain a reservation of the minerals to the grantor. Lands conveyed to the United States under this

section shall be subject to selection by the Secretary of the Interior, and transfer to, the Navajo Tribe in the same manner as, and under the same terms and conditions as, lands described in subsection (c) of section 1 of this Act. Notwithstanding a conveyance to the United States of State-owned lands in accordance with the provisions of this subsection, such conveyance shall not prevent the Navajo Tribe from asserting, in any manner that would have been available to the tribe if the conveyance had not been made, a claim of title, if any, to the lands conveyed by the State that the tribe asserts is superior to the title asserted by the State of Utah. If a claim of title so asserted by the Navajo Tribe determined to be superior to the title asserted by the State of Utah, and if the Navajo Tribe has selected such lands as a part of the transfer authorized by section 1 of this Act, the Navajo Tribe shall be permitted to select other lands described in subsection (c) of section 1 in lieu thereof.

(b) The lands referred to in subsection (a) of this section and not described in subsection (c) of section 1 of this Act are described as follows:

**SALT LAKE MERIDIAN**

Township 38 south, range 23 east: section 36.

Township 38 south, range 24 east: section 32.

Township 39 south, range 22 east: section 36.

Township 39 south, range 23 east: sections 2, 16, 32, and 36.

Township 39 south, range 24 east: sections 2, 16, and 32.

Township 40 south, range 22 east: section 2.

Township 40 south, range 23 east: sections 2, 16, and 36.

C. The right of the State of Utah to make indemnity selections under the terms of this section shall expire five years after the date of approval of this Act.

Approved, September 2, 1958.

**History**

**References in text.** Act March 1, 1933, ch. 160, 47 Stat. 1418, is set out in this part. See table of contents for this part.

Executive Orders of May 17, 1884, and No. 324A of May 15, 1905, see table of contents for part three of these United States Relations.

**Annotations**

**1. San Juan River in Utah**

In an action by United States to quiet title in United States to land constituting bed of San Juan River in Utah from boundary line between Colorado

and Utah downstream to mouth of Chinle Creek, a distance of 55 miles, evidence was sufficient to support finding that such part of San Juan River was not navigable at time of Utah's admission to the Union, and hence title to bed of San Juan River remained in United States. *State of Utah v. United States* (C.A. 10th 1962) 304 F.2d 23, cert. den. 371 U.S. 826, 83 S.Ct. 47, 9 L.Ed.2d 65.

**1960. Conveyance of lands in McKinley County, N.M., to Navajo Tribe**

**April 9, 1960, Pub. L. 86-421, 74 Stat. 40, 41**

**AN ACT**

To convey certain land in McKinley County, New Mexico, to the Navajo Tribe of Indians.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in order that the Navajo Indian Tribe might enjoy the continued use of lands described in section 2 hereof upon which they have expended considerable funds in improvements and in order that they might construct further extensive community improvements and facilities, all of the right, title, and interest of the United States in the lands described in section 2 hereof are hereby conveyed to the Navajo Indian Tribe, and such land shall not, because of Indian ownership, be subject to any exemption from taxation or to any restriction on use, management, or disposition.

SEC. 2. The lands are described as follows: A plot of land containing 81.33 acres, more or less, lying in the west half of section 30, township 17 north, range 12 west, New Mexico principal meridian, being more particularly described as follows: Beginning at the quarter corner on the west side of section 30; thence south 00 degrees 10 minutes 11 seconds east along the section line 1,186.8 feet; thence east 1,939.6 feet; thence north 1,210.2 feet; thence north 15 degrees 44 minutes east 476.2 feet; thence west 202.1 feet; thence north 145.1 feet; thence west 1,873.6 feet to a point on the section line between said section 30 and section 25; thence south 00 degrees 10 minutes 11 seconds east 624.6 feet to the place of beginning, containing 81.33 acres, more or less. All points are marked by an iron stake surrounded by a mound of rocks.

Approved, April, 9, 1960.

**1960. Transfer of irrigation project works to Navajo Tribe**

**July 12, 1960, Pub. L. 86-636, 74 Stat. 470**

**AN ACT**

To authorize the transfer to the Navajo Tribe of irrigation project works on the Navajo Reservation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior is authorized to transfer to the Navajo Tribe all of the right, title, and interest of the United States to any irrigation project works, except the

Reservoir Canyon and Moencopi Tuba project works, constructed or under construction by the United States within the Navajo Reservation prior to the date of approval of this Act, including machinery, equipment, tools, supplies, buildings, facilities, and improvements which are usable for the care, operation, and maintenance of such works and which are not needed for the continued efficient operation of the irrigation construction program within the Navajo Reservation: *Provided*, That no such transfer shall be made without the prior approval of the Navajo Tribe: *Provided further*, That the exclusion of Reservoir Canyon and Moencopi Tuba works from the scope of this Act shall not be construed to affect in any way present ownership of or right to use the land and water thereof.

SEC. 2. Prior to or at the time of each such transfer, the Secretary and the chairman of the Navajo Tribal Council shall agree on the number of Department of Interior personnel who shall be provided by the Secretary to train tribal personnel and to assist in operating irrigation project works transferred to the tribe until such time as tribal personnel are trained and qualified to assume full responsibility for any such irrigation project works. The Secretary and the chairman shall also agree on the time during which such Department personnel shall be provided. The cost of their employment shall be paid by the tribe.

SEC. 3. The transfer to the Navajo Tribe pursuant to this Act of any irrigation project works located in whole or in part within the boundaries of the reservation established by executive order dated December 16, 1882, for the use and occupancy of the Moqui (Hopi) and such other Indians as the Secretary of the Interior may see fit to settle thereon shall not be construed to affect in any way the merits of the conflicting claims of the Navajo and the Hopi Indians to the use or ownership of the lands within said 1882 reservation.

SEC. 4. The irrigation project works transferred to the tribe pursuant to this Act and the land on which such works are located, shall be subject to no restriction on use, management, or disposition because of Indian ownership, but any such lands and project works and the income therefrom shall be exempt from all forms of taxation as long as, but no longer than, such lands and irrigation project works remain in the ownership of the Navajo Tribe or in the ownership of a legal entity controlled by the Navajo Tribe or its membership, unless otherwise provided by Congress.

Approved, July 12, 1960.

#### **History**

**References in text.** Executive Order of December 16, 1882, see table of contents for part three of these United States Relations.

#### **1962. Navajo Indian Irrigation Project**

**June 13, 1962, Pub. L. 87-483, 76 Stat. 96; 43 U.S.C. § 615ii et seq.**

#### **AN ACT**

To authorize the Secretary of the Interior to construct, operate, and maintain the Navajo Indian irrigation project and the initial stage of the San

Juan-Chama project as participating projects of the Colorado River storage project, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of furnishing water for the irrigation of irrigable and arable lands and for municipal, domestic, and industrial uses, providing recreation and fish and wildlife benefits, and controlling silt, and for other beneficial purposes, the Congress approves as participating projects of the Colorado River storage project (Act of April 11, 1956, 70 Stat. 105, as amended, 43 U.S.C. 620-620o) the Navajo Indian irrigation project, New Mexico, and the initial stage of the San Juan-Chama project, Colorado-New Mexico. The Navajo Indian irrigation project and the initial stage of the San Juan-Chama project herein approved are substantially those described in the proposed coordinated report of the Acting Commissioner of Reclamation and the Commissioner of Indian Affairs, approved and adopted by the Secretary of the Interior on October 16, 1957, as conditioned, modified, and limited herein.*

#### **NAVAJO INDIAN IRRIGATION PROJECT**

SEC. 2. Pursuant to the provisions of the Act of April 11, 1956, as amended, the Secretary of the Interior is authorized to construct, operate, and maintain the Navajo Indian irrigation project for the principal purpose of furnishing irrigation water to approximately one hundred and ten thousand six hundred and thirty acres of land, said project to have an average annual diversion of five hundred and eight thousand acre-feet of water and the repayment of the costs of construction thereof to be in accordance with the provisions of said Act of April 11, 1956, as amended, including, but not limited to, section 4(d) thereof.

SEC. 3. (a) In order to provide for the most economical development of the Navajo Indian irrigation project, the Secretary shall declare by publication in the Federal Register that the United States of America holds in trust for the Navajo Tribe of Indians any legal subdivisions or unsurveyed tracts of federally owned land outside the present boundary of the Navajo Indian Reservation in New Mexico in townships 28 and 29 north, ranges 10 and 11 west, townships 27 and 28 north, ranges 12 and 13 west, townships 26 and 27 north, range 11 west, and townships 24, 25, and 26 north, ranges 12 and 13 west, New Mexico principal meridian, susceptible to irrigation as part of the project or necessary for location of any of the works or canals of such project: *Provided, however,* That no such legal subdivision or unsurveyed tract shall be so declared to be held in trust by the United States for the Navajo Tribe until the Navajo Tribe shall have paid the United States the full appraised value thereof: *And provided further,* That in making appraisals of such lands the Secretary shall consider their values as of the date of approval of this Act, excluding therefrom the value of minerals subject to leasing under the Act of February 25, 1920, as amended (30 U.S.C. 181-286), and such leasable minerals shall not be held in trust for the Navajo Tribe but shall continue to be subject to leasing under the Act of February 25, 1920, as amended, after the lands containing them have been declared to be held in trust by the United States for the Navajo Tribe.

(b) The Navajo Tribe is authorized to convey to the United States, and the Secretary shall accept on behalf of the United States, title to any land or

interest in land within the above-described townships, susceptible to irrigation as part of the Navajo Indian irrigation project or necessary for location of any of the works or canals of such project, acquired in fee simple by the Navajo Tribe, and after such conveyance said land or interest in land shall be held in trust by the United States for the Navajo Tribe as a part of the project.

(c) The Secretary is authorized to acquire by purchase, exchange, or condemnation any other land or interest in land within the townships above described susceptible to irrigation as part of the Navajo Indian irrigation project or necessary for location of any of the works or canals of such project. After such acquisition, said lands or interest in lands shall be held by the United States in trust for the Navajo Tribe of Indians.

(d) Each permit that is in effect on lands declared to be held in trust for the Navajo Tribe pursuant to section 3(a) of this Act shall continue in effect for the term thereof unless the land is needed for irrigation purposes, subject to regulations applicable to permits of Indian lands, and upon its expiration it shall only be renewed on an annual basis until the land is required for irrigation purposes. When, in the judgment of the Secretary of the Interior, such land is required for irrigation purposes. When, in the judgment of the Secretary of the Interior, such land is required for irrigation purposes, the Secretary shall notify the permittee and the permit shall be deemed to be canceled, with no right of appeal. The permittee shall be compensated by the Navajo Tribe for the reasonable value of any range improvements of a permanent nature placed on the lands under authority of a permit or agreement with the United States, as determined by the Secretary of the Interior. Amounts paid to the United States by the Navajo Tribe out of Tribal funds for the full appraised value of lands declared to be held in trust for the Navajo Tribe pursuant to section 3(a) of this Act shall be reduced by the amount of compensation paid by the Navajo Tribe to permittees pursuant to this subsection.

SEC. 4. In developing the Navajo Indian irrigation project, the Secretary is authorized to provide capacity for municipal and industrial water supplies or miscellaneous purposes over and above the diversion requirements for irrigation stated in section 2 of this Act, but such additional capacity shall not be constructed and no appropriation of funds for such construction shall be made until contracts have been executed which, in the judgment of the Secretary, provide satisfactory assurance of repayment of all costs properly allocated to the purposes aforesaid with interest as provided by law.

SEC. 5. Payment of operation and maintenance charges of the irrigation features of the Navajo Indian irrigation project shall be in accordance with the provisions of the Act of August 1, 1914 (38 Stat. 582, 583), as amended (25 U.S.C. 385): Provided, That the Secretary may transfer to the Navajo Tribe of Indians the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as he may prescribe and, in such event, the Secretary may transfer to the Navajo Tribe title to movable property necessary to the operation and maintenance of those works.

SEC. 6. For the period ending ten years after completion of construction of the Navajo Indian irrigation project no water from the project shall be delivered to any water user for the production on newly irrigated lands of any

basic agricultural commodity, as defined in section 408(c) of the Agricultural Act of 1949 (63 Stat. 1056, 7 U.S.C. 1428), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938 (52 Stat. 41), as amended (7 U.S.C. 1281), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

SEC. 7. There are hereby authorized to be appropriated to the Bureau of Indian Affairs such sums as may be required to construct the Navajo Indian Irrigation project, including the purchase of lands under section 3, subsection (c), of this Act, but not more than \$206,000,000 (April 1970 prices) plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

**SAN JUAN-CHAMA RECLAMATION PROJECT**

**(INITIAL STAGE)**

SEC. 8. Pursuant to the provisions of the Act of April 11, 1956, as amended, the Secretary is authorized to construct, operate, and maintain the initial stage of the San Juan-Chama project, Colorado-New Mexico, for the principal purposes of furnishing water supplies to approximately thirty-nine thousand three hundred acres of land in the Cerro, Taos, Llano, and Pojoaque tributary irrigation units in the Rio Grande Basin and approximately eighty-one thousand six hundred acres of land in the existing middle Rio Grande Conservancy District and for municipal, domestic, and industrial uses, and providing recreation and fish and wildlife benefits. The diversion facilities of the initial stage authorized herein shall be so constructed and operated as to divert only natural flow of the Navajo, Little Navajo, and Blanco Rivers in Colorado as set forth in the supplemental project report dated May, 1957. The principal engineering works of the initial stage development, involving three major elements, shall include diversion dams and conduits, storage and regulation facilities at the Heron Numbered 4 Reservoir site, enlarged outlet works of the existing El Vado Dam, and water use facilities consisting of reservoirs, darns, canals, lateral and drainage systems, and associated works and appurtenances. The construction of recreation facilities at the Nambe Reservoir shall be contingent upon the Secretary's making appropriate arrangements with the governing body of the Nambe Pueblo for the operation and maintenance of such facilities, and the construction of recreation facilities at the Heron Numbered 4, Valdez, and Indian Camp Reservoirs shall be contingent upon his making appropriate arrangements with a State or local agency or organization for the operation and maintenance of those facilities: *Provided*, That:

(a) The Secretary shall so operate the initial stage of the project authorized herein that diversions to the Rio Grande Valley shall not exceed one million three hundred and fifty thousand acre-feet of water in any period of ten consecutive years, reckoned in continuing progressive series starting with the first day of October after the project shall have commenced operation: *Provided, however*, That not more than two hundred and seventy thousand acre-feet shall be diverted in any one year;

(b) the Secretary shall operate the project so that there shall be no injury, impairment, or depletion of existing or future beneficial uses of water within the State of Colorado, the use of which is within the apportionment made to the State of Colorado by article III of the Upper Colorado River Basin compact, as provided by article IX of the Upper Colorado River Basin compact and article IX of the Rio Grande compact;

(c) all works of the project shall be constructed so as to permit compliance physically with all provisions of the Rio Grande compact, and all such works shall be operated at all times in conformity with said compact;

(d) the amount of water diverted in the Rio Grande Basin for uses served by the San Juan-Chama project shall be limited in any calendar year to the amount of imported water available to such uses from importation to and storage in the Rio Grande Basin in that year;

(e) details of project operation essential to accounting for diverted San Juan and Rio Grande flows shall be developed through the joint efforts of the Rio Grande Compact Commission, the Upper Colorado River Commission, the appropriate agencies of the United States and of the States of Colorado, New Mexico, and Texas, and the various project entities. In this connection the States of Texas and New Mexico shall agree, within a reasonable time, on a system of gauging devices and measurements to secure data necessary to determine the present effects of tributary irrigation, as well as present river channel losses: *Provided*, That if the State of Texas shall require, as a condition precedent to such agreement, gauging devices and measurements in addition to or different from those considered by the Department of the Interior and the State of New Mexico to be necessary to this determination, the State of Texas shall pay one-half of all costs of constructing and operating such additional or different devices and making such additional or different measurements which are not borne by the United States. The results of the action required by this subsection shall be incorporated in a written report transmitted to the States of Colorado, Texas, and New Mexico for comment in the manner provided in the Flood Control Act of 1944 before any appropriation shall be made for project construction;

(f) The Secretary shall operate the project so that for the preservation of fish and aquatic life the flow of the Navajo River and the flow of the Blanco River shall not be depleted at the project diversion points below the values set forth at page D2-7 of appendix D of the United States Bureau of Reclamation report entitled "San Juan-Chama Project, Colorado-New Mexico", dated November 1955;

(g) The Secretary is hereby authorized to construct the tunnel and conduit works of the initial stage of the San Juan-Chama project with sufficient capacity for future diversion of an average of two hundred and thirty-five thousand acre-feet per annum: *Provided, however*, That nothing contained in this Act shall be construed as committing the Congress of the United States to future authorization of any additional stage of the San Juan-Chama project.

SEC. 9. For the period ending ten years after completion of construction of the initial stage of the San Juan-Chama project no water from the project shall be delivered to any water user for the production on newly irrigated



lands of any basic agricultural commodity, as defined in section 408(c) of the Agricultural Act of 1949 (63 Stat. 1056, 7 U.S.C. 1428), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938 (52 Stat. 41), as amended (7 U.S.C. 1281), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

SEC. 10. The amount which section 12 of Act of April 11, 1956, authorizes to be appropriated is hereby increased by \$85,828,000 (June 1961 prices) plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction involved, which increase shall be available solely for construction of the San Juan-Chama project and shall not be used for any other purpose.

#### **GENERAL**

SEC. 11. (a) No person shall have or be entitled to have the use for any purpose, including uses under the Navajo Indian irrigation project and the San Juan-Chama project authorized by sections 2 and 8 of this Act, of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries originating above Navajo Reservoir to the use of which the United States is entitled under these projects except under contract satisfactory to the Secretary and conforming to the provisions of this Act. Such contracts, which, in the case of water for Indian uses, shall be executed with the Navajo Tribe, shall make provision, in any year in which the Secretary anticipates a shortage, taking into account both prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, for a sharing of the available water in the following manner: The prospective runoff shall be apportioned between the contractors diverting above and those diverting at or below Navajo Reservoir in the proportion that the total nominal diversion requirement of each group bears to the total of all normal diversion requirements. In the case of contractors diverting above Navajo Reservoir, each such contract shall provide for a sharing of the runoff apportioned to said group in the same proportion as the normal diversion requirement under said contract bears to the total normal diversion requirements of all such contracts that have been made hereunder: *Provided*, That for any year in which the foregoing sharing procedure either would apportion to any contractor diverting above Navajo Reservoir an amount in excess of the runoff anticipated to be physically available at the point of his diversion, or would result in no water being available to one or more such contractors, the runoff apportioned to said group shall be reapportioned, as near as may be, among the contractors diverting above Navajo Reservoir in the proportion that the normal diversion requirements of each bears to the total normal diversion requirements of the group. In the case of contractors diverting from or below Navajo Reservoir, each such contract shall provide for a sharing of the remaining runoff together with the available storage in the same proportion as then normal diversion requirement under said contract bears to the total normal diversion requirements under all such contracts that have been made hereunder.

The Secretary shall not enter into contracts for a total amount of water beyond that which, in his judgment, in the event of shortage, will result in a

reasonable amount being available for the diversion requirements for the Navajo Indian irrigation project and the initial stage of the San Juan-Chama project as specified in sections 2 and 8 of this Act.

No long-term contract, except contracts for the benefit of the lands and for the purposes specified in sections 2 and 8 of this Act, shall be entered into for the delivery of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries, as aforesaid, until the Secretary has determined by hydrologic investigations that sufficient water to fulfill said contract is reasonably likely to be available for use in the State of New Mexico during the term thereof under the allocations made in articles III and XIV of the Upper Colorado River Basin compact, and has submitted such determination to the Congress of the United States and the Congress has approved such contracts: *Provided*, That nothing contained in the foregoing shall be construed to forbid the Secretary from entering into temporary water supply contracts in the San Juan River Basin for any year in which he determines that water legally available for use in the upper basin of the Colorado River system would otherwise not be used there and is not needed to fulfill the obligations of the upper division States with respect to delivery of water at Lee Ferry.

(b) If contracts are entered into for delivery from storage in Navajo Reservoir of water not covered by subsection (a) of this section, such contracts shall be subject to the same provision for sharing of available water supply in the event of shortage as in the case of contracts required to be made pursuant to subparagraph (a) of this section.

(c) This section shall not be applicable to the water requirements of the existing Fruitland, Hogback, Cudai, and Cambridge Indian irrigation projects, nor to the water required in connection with the extension of the irrigated acreages of the Fruitland and Hogback Indian irrigation projects in a total amount of approximately eleven thousand acres.

SEC. 12. (a) None of the project works or structures authorized by this Act shall be so operated as to create, implement, or satisfy any preferential right in the United States or any Indian tribe to the waters impounded, diverted, or used by means of such project works or structures, other than contained in those rights to the uses of water granted to the States of New Mexico or Arizona pursuant to the provisions of the Upper Colorado River basin compact.

(b) The projects authorized by this Act shall be so operated that no waters shall be diverted or used by means of the project works, which, together with all other waters used in or diverted from the San Juan River Basin in New Mexico, will exceed the water available to the States of New Mexico and Arizona under the allocation contained in article III of the Upper Colorado River Basin compact for any water year.

SEC. 13. (a) The use of water, including that diverted from the Colorado River system to the Rio Grande Basin, through works constructed under authority of this Act, shall be subject to and controlled by the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, and the Mexican Water Treaty (Treaty Series 994), and shall be included within

and shall in no way increase the total quantity of water to the use of which the State of New Mexico is entitled and limited under said compacts, statutes, and treaty, and every contract entered into under this Act for the storage, use, and delivery of such water shall so recite.

(b) All works constructed under authority of this Act, and all officers, employees, permittees, licensees, and contractees of the United States and of the State of New Mexico acting pursuant thereto and all users and appropriators of water of the Colorado River system diverted or delivered through the works constructed under authority of this Act and any enlargements or additions thereto shall observe and be subject to said compacts, statutes, and treaty, as hereinbefore provided, in the diversion, delivery, and use of water of the Colorado River system, and such condition and covenant shall attach as a matter of law whether or not set out or referred to in the instrument evidencing such permit, license, or contract and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming and the users of water therein or thereunder by way of suit, defense, or otherwise in any litigation respecting the water of the Colorado River system.

(c) No right or claim of right to the use of the waters of the Colorado River system shall be aided or prejudiced by this Act, and Congress does not, by its enactment, construe or interpret any provision of the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act, or the Mexican Water Treaty or subject the United States to, or approve or disapprove any interpretation of, said compacts, statutes, or treaty, anything in this Act to the contrary notwithstanding.

SEC. 14. In the operation and maintenance of all facilities under the jurisdiction and supervision of the Secretary of the Interior authorized by this Act, the Secretary is directed to comply with the applicable provisions of the Colorado River compact, the Upper Colorado River Basin compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Colorado River Storage Project Act and the treaty with the United Mexican States in the storage and release of water from reservoirs in the Colorado River Basin. In the event of the failure of the Secretary of the Interior to so comply, any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States to enforce the provisions of this section, and consent is given to the joinder of the United States as a party in such suit or suits, as a defendant or otherwise.

SEC. 15. The Secretary of the Interior is directed to continue his studies of the quality of water of the Colorado River system, to appraise its suitability for municipal, domestic, and industrial use and for irrigation in the various areas in the United States in which it is used or proposed to be used, to estimate the effect of additional developments involving its storage and use (whether heretofore authorized or contemplated for authorization) on the remaining water available for use in United States, to study all possible means of improving the quality of such water and of alleviating the ill effects of water of poor quality, and to report the results of his studies and estimates to the Eighty-seventh Congress and every two years thereafter.

SEC. 16. (a) The diversion of water for either or both of the projects

authorized in this Act shall in no way impair or diminish the obligation of the "States of the upper division" as provided in article III(D) of the Colorado River compact "not to cause the flow of the river at Lee Ferry to be depleted below an aggregate of seventy-five million acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact".

(b) The diversion of water for either or both of the projects authorized in this Act shall in no way impair or diminish the obligation of the "States of the upper division" to meet their share of the Mexican Treaty burden as provided in article III(C) of the Colorado River compact.

SEC. 17. Section 12 of the Act of April 11, 1956, shall not apply to the works authorized by this Act except as otherwise provided by section 10 of this Act.

SEC. 18. The Act of April 11, 1956, as amended, is hereby further amended as follows: (i) In section 1, subsection (2), after the words "Central Utah (initial phase)" delete the colon and insert in lieu thereof a comma and the words "San Juan-Chama (initial stage)," and after the word "Lyman" insert the words "Navajo Indian,"; (ii) in section 2 delete the words "San Juan-Chama, Navajo," from the first sentence; (iii) in section 5, subsection (e), in the phrase "herein or hereinafter authorized" delete the word "hereinafter" and insert in lieu thereof the word "hereafter"; (iv) in section 7 in the phrase "and any contract lawfully entered unto under said compacts and Acts" delete the word "unto" and insert in lieu thereof the word "into".

Approved, June 13, 1962; amended September 25, 1970, Pub. L. 91-416; 84 Stat. 867; 43 U.S.C. § 615kk, 615oo.

#### **History**

**Water standards.** Act September 25, 1970, Pub. L. 91-416; 84 Stat. 867, provided in § 2: "The Navajo Indian irrigation project shall be operated in such manner that identifiable flows of water will not cause the project to be in violation of water quality standards promulgated pursuant to the Water Quality Act of 1965 (79 Stat. 903)."

#### **1963. Navajo Indian Tribe—Oil and Gas Leases**

**November 20, 1963, Pub. L. 88-182, 77 Stat. 337**

#### **AN ACT**

Approving a compromise and settlement agreement of the Navajo Tribe of Indians and authorizing the Tribe to execute and the Secretary of the Interior to approve any oil and gas leases entered into pursuant to the agreement.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the agreement entered into by the Navajo Indian Tribe, Shell Oil Company (a corporation), and Humble Oil & Refining Company (a corporation), dated May 1, 1959, as amended by subsequent agreements dated September 14, 1960, November 7, 1962, and January 7, 1963, respectively, and on file with the Secretary of the Interior, is hereby

approved, such agreement having been entered into for the purpose of compromising and settling, among such Tribe and corporations, certain matters arising out of disputed title claims between the Navajo Indian Tribe and the State of Utah to the oil and gas rights in section 16, township 40 south, range 24 east, Salt Lake meridian, and in section 16, township 40 south, range 26 east, Salt Lake meridian, both in San Juan County, Utah.

SEC. 2. Notwithstanding any other provision of law, the Navajo Tribe of Indians is hereby authorized to lease, in accordance with the undertakings of such tribe in the aforementioned agreement, as amended, any interests which it might have or hereafter acquire in those lands described in the first section of this Act, and the Secretary of the Interior shall approve any lease so made.

SEC. 3. Nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress of the validity or invalidity of the respective claims of the Navajo Indian Tribe and the State of Utah to the lands described in the first section of this Act, and the determination of such conflicting claims shall be unaffected by anything in this Act.

Approved, November 20, 1963.

**1964. Puertocito Navajo Indians-Alamo Band**

**April 30, 1964, Pub. L. 88-303, 78 Stat. 189**

**AN ACT**

To provide that the United States shall hold certain land in trust for the members of the Alamo Band of Puertocito Navajo Indians.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, (a) All right, title, and interest of the United States in and to those lands lying within the Alamo Navajo community area, New Mexico, more particularly described in subsection (b) of this section and the improvements thereon, are hereby declared to be held in trust by the United States for the use of the members of the Alamo Band of Puertocito Navajo Indians, subject to the right of the United States to use said lands and improvements located thereon for administrative purposes.*

(b) Lot 3 and the southeast quarter northwest quarter of section 6, township 2 north, range 6 west, New Mexico principal meridian, and improvements located thereon.

SEC. 2. The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the extent to which the value of the title conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.

Approved, April 30, 1964.

**1968. Navajo-Ute Boundary Dispute Act**

February 14, 1968, Pub. L. 90-256, 82 Stat. 15

AN ACT

To determine the rights and interest of the Navajo Tribe and the Ute Mountain Reservation in and to certain lands in the State of New Mexico, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Navajo-Ute Boundary Dispute Act".

SEC. 2. The consent of the United States is hereby given to either or both the Navajo Tribe of Indians and the Ute Mountain Tribe of the Ute Mountain Reservation to bring suit against each other, and against any other tribe of Indians, persons, or entities, to quiet the beneficial title in and to such lands in the State of New Mexico as are common to the description contained in article II of the treaty concluded June 1, 1868, between the United States and the Navajo Nation or Tribe of Indians and proclaimed August 12, 1868 (15 Stat. 667), setting apart certain lands for the use and occupation of the Navajo Tribe of Indians, and to the description contained in section 3 of the Act approved February 20, 1895 (28 Stat. 677), setting apart certain lands for the sale and exclusive use and occupancy of the Southern Ute Indians described therein. The United States asserts no beneficial claim to or interest in such land, acknowledges that it holds the legal title to the land in trust, recognizes that the beneficial title cannot be litigated without the consent of the United States, and consents to litigation between the two Indian tribes only in order that their conflicting claims of beneficial title may be conclusively determined. The United States shall not be joined as a party defendant in the litigation, and nothing in this Act shall be construed to authorize a claim against the United States. The Secretary of the Interior shall administer the land in accordance with the judicial determination of beneficial title.

SEC. 3. Any action commenced pursuant to section 2 of this Act shall be heard and determined by a district court of three judges in the United States District Court for the District of New Mexico, in accordance with the provisions of Title 28, United States Code, section 2284, and, subject to the provisions of section 4 of this Act, any party may appeal as of right directly to the Supreme Court of the United States from the final determination by such three-judge district court.

SEC. 4. It is hereby declared to be the intent and the objective of the Congress that the relative rights and interests of all parties making claims against each other in and to the surface and the subsurface of the lands identified in section 2 of this Act be judicially determined in accordance with such principles as may be just and fair in law and equity, including a consistent award or awards or release or releases to either or both the Navajo Tribe and the Ute Mountain Tribe of the Ute Mountain Reservation of such bonus sums, rentals, and royalties, or other moneys paid or received on account of the leasing of any portion of such lands and now held in a joint account in the Treasury of the United States pursuant to the agreement dated May 9, 1957, between the two tribes, approved by the Area Director of the Bureau of Indian Affairs. In furtherance of the accomplishment of this intent and the

attainment of this objective, the parties are hereby authorized to enter into a settlement agreement, in which provision may be made for a recognition in perpetuity of their relative rights to use and to enjoy the surface and the subsurface of the lands identified in section 2 of this Act, including the division of any and all of such bonus sums, rentals, and royalties, or other moneys paid or received on account of the leasing of any portion of said lands for any purpose or purposes. Such settlement agreement may be embodied in and be made a part of any decree of the court, which thereupon shall be final and conclusive with respect to the rights and interest of all parties.

SEC. 5. Nothing in this Act shall be deemed to be a congressional determination of the merits of the conflicting tribal, individual Indian, or other claims with respect to the lands that are the subject of this Act.

Approved, February 14, 1968.

**1968. Navajo Indian Tribe—Centennial of 1868 Treaty of Peace**

**May 17, 1968, Pub. L. 90-309, 82 Stat. 123**

**AN ACT**

To provide for the observance of the centennial of the signing of the 1868 Treaty of Peace between the Navajo Indian Tribe and the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is requested (1) to issue a proclamation designating the calendar year 1968 as the centennial of the signing of the Treaty of Peace between the Navajo Indian Tribe and the United States, and calling upon the Governors of the States, mayors of cities, and other- public officials, as well as other persons, organizations, and groups, to observe such centennial by appropriate celebrations and ceremonies and (2) to provide, in such manner as he deems appropriate, for participation by federal agencies and officials in such observance.*

SEC. 2. The President of the Senate is authorized to appoint eight Members of the Senate, and the Speaker of the House of Representatives is authorized to appoint eight Members of the House of Representatives, to represent the Congress in connection with observances and activities of the Navajo Indian Tribe commemorating the historic events that preceded, and are associated with, the signing of the 1868 Treaty of Peace between the Navajo Indian Tribe and the United States.

Approved, May 17, 1968.

**1971. Navajo Community College**

**December 15, 1971, Pub. L. 92-189, 85 Stat. 646**

**AN ACT**

To authorize grants for the Navajo Community College, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Navajo Community College Act".*

**PURPOSE**

SEC. 2. It is the purpose of this Act to assist the Navajo Tribe of Indians in providing education to the members of the tribe and other qualified applicants through a community college, established by that tribe, known as the Navajo Community College.

**GRANTS**

SEC. 3. The Secretary of Interior is authorized to make grants to the Navajo Tribe of Indians to assist the tribe in the construction, maintenance, and operation of the Navajo Community College. Such college shall be designed and operated by the Navajo Tribe to insure that the Navajo Indians and other qualified applicants have educational opportunities which are suited to their unique needs and interests.

**AUTHORIZATION OF APPROPRIATIONS**

SEC. 4. For the purpose of making grants under this Act, there are hereby authorized to be appropriated not to exceed \$5,500,000 for construction, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations from 1971 construction costs as indicated by engineering cost indexes applicable to the types of construction involved, and an annual sum for operation and maintenance of the college, that does not exceed the average amount of the per capita contribution made by the Federal Government to the education of Indian students at federally operated institutions of the same type.

Approved, December 15, 1971

**1973. Increase in Social Security Benefits**

**December 30, 1973, Pub. L. 93-233, 87 Stat. 947**

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**MODIFICATION OF PROVISIONS ESTABLISHING SUPPLEMENTAL SECURITY INCOME PROGRAM**

Sec. 19(a) Section 303(c) of the Social Security Amendments of 1972 [25 U.S.C.A. § 639] is amended to read as follows:

"(c) Section 9 of the Act of April 19, 1950 (64 Stat. 47) [25 U.S.C.A. § 639] is amended to read as follows:

"SEC. 9. Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under section 403(a) of the Social Security Act) an amount, in addition to the amount prescribed to be paid to such State under such section, equal to 80 per centum of the total amount of



contributions by the State toward expenditures during the preceding quarter by the State, under the State plan approved under the Social Security Act for aid to dependent children to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under section 403(a) of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such section.'."

(b) Notwithstanding the provisions of section 301 of the Social Security Amendments of 1972, the Secretary of Health, Education, and Welfare shall make payments to the 50 States and the District of Columbia after December 31, 1973, in accordance with the provisions of the Social Security Act as in effect prior to January 1, 1974, for (1) activities carried out through the close of December 31, 1973, under State plans approved under title I, X, XIV, or XVI, of such Act, and (2) administrative activities carried out after December 31, 1973, which such Secretary determines are necessary to bring to a close activities carried out under such State plans.

\* \* \*

#### **History**

**Amended act [25 U.S.C.A. § 639].** The act amended by the above provision was codified to 25 U.S.C.A. § 639. Such section, as amended through the above provision, reads:

§ 639. Additional Social Security contributions to States

Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under section 603(a) of Title 42) an amount, in addition to the amount prescribed to be paid to such State under such section, equal to 80 per centum of the total amount of contributions by the State toward expenditures during the preceding quarter by the State, under the State plan approved under the Social Security Act for aid to dependent children to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under section 603(a) of Title 42, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such section.

April 19, 1950, c. 92, § 9, 64 Stat. 47, amended October 30, 1972, Pub.L. 92-603, Title III, § 303(c), 86 Stat. 1484; December 30, 1973, Pub.L. 92-233, § 19(a), 87 Stat. 974.

**1974. Transfer of Land to United States to be Held in Trust for the Navajo Tribe**

**October 27, 1974, Pub. L. 93-493, 88 Stat. 1486**

This act is known as "The Reclamation Development Act of 1974". Sections 109 and 110 of Title 1 of the act affect the Navajo Tribe and are set out below, along with section 101 of Title 1 of the act, which gives the purpose of

that title.

**TITLE I**

**INCORPORATION OF PAGE, ARIZONA**

SEC. 101. It is the purpose of this title to separate that unincorporated area in Coconino County in the State of Arizona, commonly known as the town of Page, Arizona, from the Colorado River storage project in order that the United States may withdraw from the ownership and operation of the town and the people of that area may enjoy self-government, and to facilitate the establishment by the people of a municipal corporation under the laws of the State of Arizona by the transfer of certain federal property described in section 103 of this title.

\* \* \*

"SEC. 109. The Secretary of the Interior is authorized to transfer to the United States to be held in trust for the Navajo Tribe title to a tract of land situated within the southeast quarter of the southeast quarter, section 8, the southwest quarter, section 9, section 16, the east half of the northeast quarter, section 17, section 21, and the northeast quarter of the northeast quarter, section 28, all in township 41 north, range 9 east, Gila and Salt River meridian, Coconino County, Arizona, and containing eight hundred and eight acres, more or less, of which the particular description and drawing (Numbered 557-431-38 "Navajo Tribe-Antelope Creek Recreation Development Area Survey Traverse" dated May 22, 1969) are on file and available for public inspection in the office of the Bureau of Reclamation, Department of the Interior. The transfer of title to such land is made in consideration of Navajo Council Resolution Numbered CJN-50-69 dated June 3, 1969, and with the understanding that the land so transferred shall thereafter constitute a part of the Navajo Reservation and shall be subject to all laws and regulations applicable to that reservation.

"SEC. 110. The Congress hereby directs the Secretary of the Interior to facilitate the effectuation of Navajo Tribal Council Resolutions CD 108-68 and CJN-50-69, subject to the provisions of the Colorado River Basin Project Act (82 Stat. 885).

\* \* \*

Approved October 27, 1974.

**1974. Navajo-Hopi Land Dispute**

**December 22, 1974, Pub. L. 93-531, 88 Stat. 1712**

**AN ACT**

An Act to provide for final settlement of the conflicting rights and interests of the Hopi and Navajo Tribes to and in lands lying within the joint use area of the reservation established by the Executive order of December 16, 1882, and lands lying within the reservation created by the Act of June 14, 1934, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

(a) Within thirty days after enactment of this Act, the Director of the Federal Mediation and Conciliation Service shall appoint a Mediator (hereinafter referred to as the "Mediator") who shall assist in the negotiations for the settlement and partition of the relative rights and interests, as determined by the decision in the case of *Healing v. Jones* (210 F.Supp. 125, D.Ariz., 1962, aff'd 363 U.S. 758, 1963) (hereinafter referred to as the "Healing case"), of the Hopi and Navajo Tribes (hereinafter referred to as the "tribes") to and in lands within the reservation established by the Executive order of December 16, 1882, except land management district no. 6 (such lands hereinafter referred to as the "joint use area"). The Mediator shall not have any interest, direct or indirect, in the settlement of the interests and rights set out in this subsection. The duties of the Mediator shall cease upon the entering of a full agreement into the records of the supplemental proceedings pursuant to section 3 or the submission of a report to the District Court after a default in negotiations or a partial agreement pursuant to section 4.

(b) The proceedings in which the Mediator shall be acting under the provisions of this Act shall be the supplemental proceedings in the *Healing* case now pending in the United States District Court for the District of Arizona (hereinafter referred to as "the District Court").

(c)(1) The Mediator is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information, personnel, service, or materials he deems necessary to carry out his responsibilities under the provisions of this Act. Each such department, agency, or instrumentality is authorized to cooperate with the Mediator and to comply with such requests to the extent permitted by law, on a reimbursable or nonreimbursable basis.

(2) To facilitate the expeditious and orderly compilation and development of factual information relevant to the negotiating process, the President shall, within fifteen days of enactment of this Act, establish an interagency committee chaired by the Secretary of the Interior (hereinafter referred to as the "Secretary") to develop relevant information and to respond to the requests of the Mediator.

(d) The Secretary shall appoint a full-time representative as his liaison with the Mediator to facilitate the provision of information and assistance requested by the Mediator from the Department of the Interior.

(e) The Mediator may retain the services of such staff assistants and consultants as he shall deem necessary, subject to the approval of the Director of the Federal Mediation and Conciliation Service.

SEC. 2. (a) Within thirty days after enactment of this Act, the Secretary shall communicate in writing with the tribal councils of the tribes directing the appointment of a negotiating team representing each tribe. Each negotiating team shall be composed of not more than five members to be certified by appropriate resolution of the respective tribal council. Each

tribal council shall promptly fill any vacancies which may occur on its negotiating team. Notwithstanding any other provision of law, each negotiating team, when appointed and certified, shall have full authority to bind its tribe with respect to any other matter concerning the joint use area within the scope of this Act.

(b) In the event either or both of the tribal councils fail to select and certify a negotiating team within thirty days after the Secretary communicates with the tribal council under subsection (a) of this section or to select and certify a replacement member within thirty days of the occurrence of a vacancy, the provisions of subsection (a) of section 4 shall become effective.

(c) Within fifteen days after formal certification of both negotiating teams to the Mediator, the Mediator shall schedule the first negotiating session at such time and place as he deems appropriate. The negotiating sessions, which shall be chaired by the Mediator, shall be held at such times and places as the Mediator deems appropriate. At such sessions, the Mediator may, if he deems it appropriate, put forward his own suggestions for procedure, the agenda, and the resolution of the issues in controversy.

(d) In the event either negotiating team fails to attend two consecutive sessions or, in the opinion of the Mediator, either negotiating team fails to bargain in good faith or an impasse is reached, the provisions of subsection (a) of section 4 shall become effective.

(e) In the event of a disagreement within a negotiating team the majority of the members of the team shall prevail and act on behalf of the team unless the resolution of the tribal council certifying the team specifically provides otherwise.

SEC. 3. (a) If, within one hundred and eighty days after the first session scheduled by the Mediator under subsection (c) of section 2, full agreement is reached, such agreement shall be put in such form as the Mediator determines best expresses the intent of the tribes and shall then be submitted to the Secretary and the Attorney General of the United States for their comments as they relate to the interest of the United States in the proceedings. These comments are to be submitted to the Mediator and the negotiating teams within thirty days. The negotiating teams and the Mediator shall then consider the comments and, if agreement can still be reached on terms acceptable to the negotiating teams and the Mediator within sixty days of receipt by him of the comments, the agreement shall be put in final written form and shall be signed by the members of the negotiating teams and the Mediator. The Mediator shall then cause the agreement to be entered into the records of the supplemental proceedings in the Healing case. The provisions of the agreement shall be reviewed by the District Court, modified where necessary, and put into effect immediately thereafter.

(b) If, within the one hundred and eighty day period referred to in subsection (a) of this section, a partial agreement has been reached between the tribes and they wish such partial agreement to go into effect, they shall follow the procedure set forth in said subsection (a). The partial agreement shall then be considered by the Mediator in preparing his report, and the District Court in making a final adjudication, pursuant to section 4.

(c) For the purpose of this section, the negotiating teams may make any provision in the agreement or partial agreement not inconsistent with existing law. No such agreement or any provision in it shall result in a taking by the United States of private property compensable under the Fifth Amendment of the Constitution of the United States.

SEC. 4. (a) If the negotiating teams fail to reach full agreement within the time period allowed in subsection (a) of section 3 or if one or both of the tribes are in default under the provisions of subsections (b) or (d) of section 2, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his recommendations for the settlement of the interests and rights set out in subsection (a) of section 1 which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this Act. Following the District Court's review of the report and recommendations (which are not binding thereon) and any further proceedings which the District Court may schedule, the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgments in the supplemental proceedings in the Healing case.

(b) Any proceedings as authorized in subsection (a) hereof shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the District Court at that time, and shall be expedited in every way by the Court.

SEC. 5. (a) For the purpose of facilitating an agreement pursuant to section 3 or preparing a report pursuant to section 4, the Mediator is authorized-

(1) notwithstanding the provisions of section 2 of the Act of May 25, 1918 (40 Stat. 570), to recommend that, subject to the consent of the Secretary, there be purchased or otherwise acquired additional lands for the benefit of either tribe from the funds of either tribe or funds under any other authority of law;

(2) to recommend that, subject to the consent of the Secretary, there be undertaken a program of restoration of lands lying within the joint use area, employing for such purpose funds authorized by this Act, funds of either tribe, or funds under any other authority of law;

(3) to recommend that, subject to the consent of the Secretary, there be undertaken a program for relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area;

(4) to recommend, in exceptional cases where necessary to prevent personal hardship, a limited tenure for residential use, not exceeding a life estate, and a phased relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area; and

(5) to make any other recommendations as are in conformity with this Act and the Healing case to facilitate a settlement.

(b) The authorizations contained in subsection (a) of this section shall be discretionary and shall not be construed to represent any directive of the

Congress.

SEC. 6. The Mediator in preparing his report, and the District Court in making the final adjudication, pursuant to section 4, shall consider and be guided by the decision of the Healing case, under which the tribes have joint, undivided, and equal interests in and to all of the joint use area; by any partial agreement reached by the parties under subsection (b) of section 3; by the last best offer for a complete settlement as a part of the negotiating process by each of the tribes; and by the following:

(a) The rights and interests, as defined in the Healing case, of the Hopi Tribe in and to that portion of the reservation established by the Executive order of December 16, 1882, which is known as land management district no. 6 (hereinafter referred to as the "Hopi Reservation") shall not be reduced or limited in any manner.

(b) The boundary lines resulting from any partitioning of lands in the joint use area shall be established so as to include the higher density population areas of each tribe within the portion of the lands partitioned to such tribe to minimize and avoid undue social, economic, and cultural disruption insofar as practicable.

(c) In any division of the surface rights to the joint use area, reasonable provision shall be made for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

(d) In any partition of the surface rights to the joint use area, the lands shall, insofar as is practicable, be equal in acreage and quality: *Provided*, That if such partition results in a lesser amount of acreage, or value, or both to one tribe such differential shall be fully and finally compensable to such tribe by the other tribe. The value of the land for the purposes of this subsection shall be based on not less than its value with improvements and its grazing capacity fully restored: *Provided further*, That, in the determination of compensation for any such differential, the Federal Government shall pay any difference between the value of the particular land involved in its existing state and the value of such land in a fully restored state which results from damage to the land which the District Court finds attributable to a failure of the Federal Government to provide protection where such protection is or was required by law or by the demands of the trust relationship.

(e) Any lands partitioned to each tribe in the joint use area shall, where feasible and consistent with the other provisions of this section, be contiguous to the reservation of each such tribe.

(f) Any boundary line between lands partitioned to the two tribes in the joint use area shall, insofar as is practicable, follow terrain which will facilitate fencing or avoid the need for fencing.

(g) Any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as trader license fees or commissions, lease rental or proceeds, or other similar charges for doing business or for damages in the use of lands within

the joint use area, shall be for a one-half share in such sums.

(h) Any claim the Hopi Tribe may have against the Navajo Tribe for the determination and recovery of the fair value of the grazing and agricultural use of the lands within the joint use area by the Navajo Tribe and its individual members, since September 28, 1962, shall be for one-half of such value.

SEC. 7. Partition of the surface of the lands of the joint use area shall not affect the joint ownership status of the coal, oil, gas, and all other minerals within or underlying such lands. All such coal, oil, gas, and other minerals within or underlying such lands shall be managed jointly by the two tribes, subject to supervision and approval by the Secretary as otherwise required by law, and the proceeds therefrom shall be divided between the tribes, share and share alike.

SEC. 8. (a) Either tribe, acting through the chairman of its tribal council for and on behalf of the tribe, is each hereby authorized to commence or defend in the District Court an action against the other tribe and any other tribe of Indians claiming any interest in or to the area described in the Act of June 14, 1934, except the reservation established by the Executive Order of December 16, 1882, for the purpose of determining the rights and interests of the tribes in and to such lands and quieting title thereto in the tribes.

(b) Lands, if any, in which the Navajo Tribe or Navajo individuals are determined by the District Court to have the exclusive interest shall continue to be a part of the Navajo Reservation. Lands, if any, in which the Hopi Tribe, including any Hopi village or clan thereof, or Hopi individuals are determined by the District Court to have the exclusive interest shall thereafter be a reservation for the Hopi Tribe. Any lands in which the Navajo and Hopi Tribes or Navajo or Hopi individuals are determined to have a joint or undivided interest shall be partitioned by the District Court on the basis of fairness and equity and the area so partitioned shall be retained in the Navajo Reservation or added to the Hopi Reservation, respectively.

(c) The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations.

(d) Nothing in this section shall be deemed to be a Congressional determination of the merits of the conflicting claims to the lands that are subject to adjudication pursuant to this section, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

(e) The Secretary of the Interior is authorized to pay any or all appropriate legal fees, court costs, and other related expenses arising out of, or in connection with, the commencing of, or defending against, any action brought by the Navajo or Hopi Tribe under this section.

SEC. 9. Notwithstanding any other provision of this Act, the Secretary is authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Tribe, who are located within the area described in the Act of June 14, 1934 (48 Stat. 960), and who were located within such area, or are direct descendants of Paiute Indians who were located within such area, on the

date of such Act, land in quantities as specified in section 1 of the Act of February 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 331), and patents shall be issued to them for such lands having the legal effect and declaring that the United States holds such land in trust for the sole use and benefit of each allottee and, following his death, of his heirs according to the laws of the State of Arizona.

SEC. 10. (a) Subject to the provisions of section 9 and subsection (a) of section 17, any lands partitioned to the Navajo Tribe pursuant to section 3 or 4 and the lands described in the Act of June 14, 1934 (48 Stat. 960), except the lands as described in section 8, shall be held in trust by the United States exclusively for the Navajo Tribe and as a part of the Navajo Reservation.

(b) Subject to the provisions of section 9 and subsection (a) of section 17, any lands partitioned to the Hopi Tribe pursuant to section 3 or 4 and the lands as described in section 8 shall be held in trust by the United States exclusively for the Hopi Tribe and as a part of the Hopi Reservation.

SEC. 11. (a) The Secretary is authorized and directed to transfer not to exceed 250,000 acres of lands under the jurisdiction of the Bureau of Land Management within the States of Arizona or New Mexico to the Navajo Tribe: *Provided*, That the Navajo Tribe shall pay to the United States the fair market value for such lands as may be determined by the Secretary. Such lands shall, if possible, be contiguous or adjacent to the existing Navajo Reservation. Title to such lands which are contiguous or adjacent to the Navajo Reservation shall be taken by the United States in trust for the benefit of the Navajo Tribe.

(b) Any private lands the Navajo Tribe acquires which are contiguous or adjacent to the Navajo Reservation may be taken by the United States in trust for the benefit of the Navajo Tribe: *Provided*, That the land acquired pursuant to subsection (a) and this subsection shall not exceed a total of 250,000 acres.

SEC. 12. (a) There is hereby established as an independent entity in the executive branch the Navajo and Hopi Indian Relocation Commission (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of three members appointed by the Secretary within sixty days of enactment of this Act.

(c) The Commission shall elect a Chairman and Vice-Chairman from among its members.

(d) Two members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Each member of the Commission who is not otherwise employed by the United States Government shall receive an amount equal to the daily rate paid a GS-18 under the General Schedule contained in section 5332 of title 5, United States Code, for each day (including time in travel) or portion thereof during which such member is engaged in the actual performance of his duties as a



member of the Commission. A member of the Commission who is an officer or employee of the United States shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other expenses incurred by them in the performance of their duties.

(f) The first meeting of the Commission shall be called by the Secretary forthwith following the date on which a majority of the members of such Commission are appointed and qualified under this Act, but in no event later than sixty days following such date.

(g) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to-

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$150.00 a day for individuals.

(h) The Department of the Interior shall furnish, on a nonreimbursable basis, necessary administrative and housekeeping services for the Commission.

(i) The Commission shall cease to exist when the President determines that its functions have been fully discharged.

SEC. 13. (a) Within the twenty-four month period following the date of issuance of an order of the District Court pursuant to section 3 or 4, the Commission shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of each tribe, and their personal property, including livestock, from lands partitioned to the other tribe pursuant to sections 8 and 3 or 4.

(b) Such report shall contain, among other matters, the following:

(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe; and

(2) the fair market value of the habitations and improvements owned by the heads of households identified by the Commission as being among the persons named in clause (1) of this subsection.

(c) Such report shall include a detailed plan providing for the relocation of the households and their members identified pursuant to clause (1) of subsection (b) of this section. Such plan (hereinafter referred to as the "relocation plan") shall-

(1) be developed to the maximum extent feasible in consultation with persons involved in such relocation and appropriate representatives of their tribal councils;

(2) take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts;

(3) identify the sites to which such households shall be relocated, including the distance involved;

(4) assure that housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for such households shall be available at their relocation sites; and

(5) take effect thirty days after the date of submission to the Congress pursuant to subsection (a) of this section: *Provided, however,* That the Commission is authorized and directed to proceed with voluntary relocations as promptly as practicable following its first meeting.

SEC. 14. (a) Consistent with section 8 and the order of the District Court issued pursuant to section 3 or 4, the Commission is authorized and directed to relocate pursuant to section 8 and such order all households and members thereof and their personal property, including livestock from any lands partitioned to the tribe of which they are not members. The relocation shall take place in accordance with the relocation plan and shall be completed by the end of five (5) years from the date on which the relocation plan takes effect. No further settlement of Navajo individuals on the lands partitioned to the Hopi Tribe pursuant to this Act or on the Hopi Reservation shall be permitted unless advance written approval of the Hopi Tribe is obtained. No further settlement of Hopi individuals on the lands partitioned to the Navajo Tribe pursuant to this Act or on the Navajo Reservation shall be permitted unless advance written approval of the Navajo Tribe is obtained. No individual shall hereafter be allowed to increase the number of livestock he grazes on any area partitioned pursuant to this Act to the tribe of which he is not a member, nor shall he retain any grazing rights in any such area subsequent to his relocation therefrom.

(b) In addition to the payments made pursuant to section 15, the Commission shall make payments to heads of households identified in the report prepared pursuant to section 13 upon the date of relocation of such households, as determined by the Commission, in accordance with the following schedule:

(1) the sum of \$5,000 to each head of a household who, prior to the expiration of one year after the effective date of the relocation plan, contracts with the Commission to relocate;

(2) the sum of \$4,000 to each head of a household who is not eligible for the payment provided for in clause (1) of this subsection but who, prior to the expiration of two years after the effective date of the relocation plan, contracts with the Commission to relocate;

(3) the sum of \$3,000 to each head of a household who is not eligible for the payments provided for in clause (1) or (2) of this

subsection but who, prior to the expiration of three years after the effective date of the relocation plan, contracts with the Commission to relocate; and

(4) the sum of \$2,000 to each head of a household who is not eligible for the payments provided for in clause (1), (2), or (3) of this subsection but who, prior to the expiration of four years after the effective date of the relocation plan, contracts with the Commission to relocate.

(c) No payment shall be made pursuant to this section to or for any person who, after May 29, 1974, moved into an area partitioned pursuant to section 8 or section 3 or 4 to a tribe of which he is not a member.

SEC. 15. (a) The Commission shall purchase from the head of each household whose household is required to relocate under the terms of this Act the habitation and other improvements owned by him on the area from which he is required to move. The purchase price shall be the fair market value of such habitation and improvements as determined under clause (2) of subsection (b) of section 13.

(b) In addition to the payments made pursuant to subsection (a) of this section, the Commission shall:

(1) reimburse each head of a household whose household is required to relocate pursuant to this Act for the actual reasonable moving expenses of the household as if the household members were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894);

(2) pay to each head of a household whose household is required to relocate pursuant to this Act an amount which, when added to the fair market value of the habitation and improvements purchased under subsection (a) of this section, equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such household: *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed \$17,000 for a household of three or less and not more than \$25,000 for a household of four or more, except that the Commission may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing development and construction costs, other than costs of land, during the preceding year: *Provided further*, That the additional payment authorized by this subsection shall be made only to a head of a household required to relocate pursuant to this Act who purchases and occupies such replacement dwelling not later than the end of the two-year period beginning on the date on which he receives from the Commission final payment for the habitation and improvements purchased under subsection (a) of this section, or on the date on which such household moves from such habitation, whichever is the later date. The payments made pursuant to this paragraph (2) shall be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate the households relocated pursuant to this Act.

(c) In implementing subsection (b) of this section, the Commission shall

establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894). No payment shall be made pursuant to this section to or for any person who, later than one year prior to the date of enactment of this Act, moved into an area partitioned pursuant to section 8 or section 3 or 4 to a tribe of which he is not a member.

(d) The Commission shall be responsible for the provision of housing for each household eligible for payments under this section in one of the following manners:

(1) Should any head of household apply for and become a participant or homebuyer in a mutual help housing or other home ownership opportunity project undertaken under the United States Housing Act of 1937 (50 Stat. 888), as amended (42 U.S.C. 1401), or in any other federally assisted housing program now or hereafter established, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to the local housing agency or sponsor involved as a voluntary equity payment and shall be credited against the outstanding indebtedness or purchase price of the household's home in the project in a manner which will accelerate to the maximum extent possible the achievement by that household of debt free homeownership.

(2) Should any head of household wish to purchase or have constructed a dwelling which the Commission determines is decent, safe, sanitary, and adequate to accommodate the household, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to such head of household in connection with such purchase or construction in a manner which the Commission determines will assure the use of the funds for such purpose.

(3) Should any head of household not make timely arrangements for relocation housing, or should any head of household elect and enter into an agreement to have the Commission construct or acquire a home for the household, the Commission may use the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section for the construction or acquisition (including enlargement or rehabilitation if necessary) of a home and related facilities for such household: *Provided, That,* the Commission may combine the funds for any number of such households into one or more accounts from which the costs of such construction or acquisition may be paid on a project basis and the funds in such account or accounts shall remain available until expended: *Provided further,* That the title to each home constructed or acquired by the Commission pursuant to this paragraph shall be vested in the head of the household for which it was constructed or acquired upon occupancy by such household, but this shall not preclude such home being located on land held in trust by the United States.

(e) The Commission is authorized to dispose of dwellings and other improvements acquired or constructed pursuant to this Act in such manner, including resale of such dwellings and improvements to members of the tribe

exercising jurisdiction over the area at prices no higher than the acquisition or construction costs, as best effects section 8 and the order of the District Court pursuant to section 3 or 4.

SEC. 16. (a) The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all use by Navajo individuals of any lands partitioned to the Hopi Tribe pursuant to sections 8 and 3 or 4 subsequent to the date of the partition thereof.

(b) The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to sections 8 and 3 or 4 subsequent to the date of the partition thereof.

SEC. 17. (a) Nothing in this Act shall affect the title, possession, and enjoyment of lands heretofore allotted to Hopi and Navajo individuals for which patents have been issued. Such Hopi individuals living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and such Navajo individuals living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe.

(b) Nothing in this Act shall require the relocation from any area partitioned pursuant to this Act of the household of any Navajo or Hopi individual who is employed by the Federal Government within such area or to prevent such employees or their households from residing in such areas in the future: *Provided*, That any such federal employee who would except for the provisions of this subsection, be relocated under the terms of this Act may elect to be so relocated.

SEC. 18. (a) Either tribe, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof, is hereby authorized to commence or defend in the District Court an action or actions against the other tribe for the following purposes if such action or actions are not settled pursuant to section 3 or 4:

(1) for an accounting of all sums collected by either tribe since the 17th day of September, 1957 as trader license fees or commissions, lease proceeds, or other similar charges for the doing of business or the use of lands within the joint use area, and judgment for one-half of all sums so collected, and not paid to the other tribe, together with interest at the rate of 6 per centum per annum compounded annually;

(2) for the determination and recovery of the fair value of the grazing and agricultural use by either tribe and its individual members since the 28th day of September 1962 of the undivided one-half interest of the other tribe in the lands within the joint use area, together with interest at the rate of 6 per centum per annum compounded annually, notwithstanding the fact that the tribes are tenants in common of such lands; and

(3) for the adjudication of any claims that either tribe may have against the other for damages to the lands to which title was quieted as aforesaid by the United States District Court for the District of Arizona in such tribes, share and share alike, subject to the trust title of the

United States, without interest, notwithstanding the fact that such tribes are tenants in common of such lands: *Provided*, That the United States may be joined as a party to such an action and, in such case, the provisions of sections 1346(a) (2) and 1505 of title 28, United States Code shall not be applicable to such action.

(b) Neither laches nor the statute of limitations shall constitute a defense to any action authorized by this Act for existing claims if commenced within two years from the effective date of this Act or one hundred and eighty days from the date of issuance of an order of the District Court pursuant to section 3 or 4, whichever is later.

(c) Either tribe may institute such further original, ancillary, or supplementary actions against the other tribe as may be necessary or desirable to insure the quiet and peaceful enjoyment of the reservation lands of the tribes by the tribes and the members thereof, and to fully accomplish all objects and purposes of this Act. Such actions may be commenced in the District Court by either tribe against the other, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof.

(d) Except as provided in clause (3) of subsection (a) of this section, the United States shall not be an indispensable party to any action or actions commenced pursuant to this section. Any judgment or judgments by the District Court in such action or actions shall not be regarded as a claim or claims against the United States.

(e) All applicable provisional and final remedies and special proceedings provided for by the Federal Rules of Civil Procedure and all other remedies and processes available for the enforcement and collection of judgments in the district courts of the United States may be used in the enforcement and collection of judgments obtained pursuant to the provisions of this Act.

SEC. 19. (a) Notwithstanding any provision of this Act, or any order of the District Court pursuant to section 3 or 4, the Secretary is authorized and directed to immediately commence reduction of the numbers of all the livestock now being grazed upon the lands within the joint use area and complete such reductions to carrying capacity of such lands, as determined by the usual range capacity standards as established by the Secretary after the date of enactment of this Act. The Secretary is directed to institute such conservation practices and methods within such area as are necessary to restore the grazing potential of such area to the maximum extent feasible.

(b) The Secretary, upon the date of issuance of an order of the District Court pursuant to sections 8 and 3 or 4, shall provide for the survey location of monuments, and fencing of boundaries of any lands partitioned pursuant to sections 8 and 3 or 4.

SEC. 20. The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown on USGS 7 1/2 minute Quad named Toh Ne Zhonnie Spring, Arizona Navajo County, dated 1968; and located 1,250 feet west and 200 feet south of the intersection of 36 degrees, 17 minutes, 30 seconds north latitude and 110 degrees, 9 minutes west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing

within a 2-mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress, and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 minutes, 30 seconds north latitude 500 feet west of its intersection with 110 degrees, 9 minutes west longitude, the point of beginning;

thence north 46 degrees west, 500 feet to a point on the rim top at elevation 6,900 feet;

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet contour;

thence south 46 degrees east, 600 feet;

thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less: *Provided, That, if and when such spring is fenced, the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within such 2-mile radius shall be conserved for such religious purposes.*

SEC. 21. Notwithstanding anything contained in this Act to the contrary, the Secretary shall make reasonable provision for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

SEC. 22. The availability of financial assistance or funds paid pursuant to this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying a household or member thereof participation in any federally assisted housing program or (2) for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other federal or federally assisted program. None of the funds provided under this Act shall be subject to federal or State income taxes.

SEC. 23. The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations.

SEC. 24. If any provision of this Act, or the application of any provision to any person, entity or circumstance, is held invalid, the remainder of this Act shall not be affected thereby.

SEC. 25. (a) (1) For the purpose of carrying out the provisions of section 15, there is hereby authorized to be appropriated not to exceed \$31,500,000.

(2) For the purpose of carrying out the provisions of subsection (a) of section 19, there is hereby authorized to be appropriated not to exceed \$10,000,000.

(3) For the purpose of carrying out the provisions of subsection (b) of section 19, there is hereby authorized to be appropriated not to exceed \$500,000.

(4) For the purpose of carrying out the provisions of subsection (b) of section 14, there is hereby authorized to be appropriated not to exceed \$5,500,000.

(5) There is hereby authorized to be appropriated annually not to exceed \$500,000 for the expenses of the Commission.

(6) There is hereby authorized to be appropriated not to exceed \$500,000 for the services and expenses of the Mediator and the assistants and consultants retained by him: *Provided, That,* any contrary provision of law notwithstanding, until such time as funds are appropriated and made available pursuant to this authorization, the Director of the Federal Mediation and Conciliation Service is authorized to provide for the services and expenses of the Mediator from any other appropriated funds available to him and to reimburse such appropriations when funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt thereof.

(b) The funds appropriated pursuant to the authorizations provided in this Act shall remain available until expended.

SEC. 26. Section 10 of the Act entitled "An Act to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and a better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes", approved April 19, 1950 (64 Stat. 47; 25 U.S.C. 640) is repealed effective close of business December 31, 1974.

Approved December 22, 1974.

#### **History**

**Amendment of P.L. 93-531, 88 Stat. 1712.** Section 25(a)(5) of P.L. 93-531 was amended by P.L. 96-40, 93 Stat. 318, by deleting the figure "\$500,000" and inserting the figure "\$1,000,000", so that such section 25(a)(5) reads, as amended: "There is hereby authorized to be appropriated not to exceed \$1,000,000 for the expenses of the Commission."

#### **Code of Federal Regulations**

Navajo and Hopi Indian Relocation,

Commission operations and relocation procedures, see 25 CFR 700.1 *et seq.*

Code of Offenses for Navajo-Hopi Settlement Act Secretarial Responsibilities, see 25 CFR 12.1 *et seq.*

**1975. Land Held by United States in Trust for Indian Tribes<sup>1</sup>**

**October 17, 1975, Pub. L. 94-114, 89 Stat. 577**



**AN ACT**

An Act to declare that certain submarginal land of the United States shall be held in trust for certain Indian tribes and be made a part of the reservations of said Indians, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land, and the improvements now thereon, that was acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), and section 55 of the Act of August 24, 1935 (49 Stat. 750, 781), and that are now administered by the Secretary of the Interior for the use or benefit of the Indian tribes identified in section 2(a) of this Act, together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, are hereby declared to be held by the United States in trust for each of said tribes, and (except in the case of the Cherokee Nation) shall be a part of the reservations heretofore established for each of said tribes.

(b) The property conveyed by this Act shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663), and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311): Provided, That this Act shall not convey the title to any part of the lands or any interest therein that prior to enactment of this Act have been included in the authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: Provided further, That such lands included in Missouri River Basin projects shall be treated as former trust lands are treated.

SEC. 2. (a) The lands, declared by section I of this Act to be held in trust by the United States for the benefit of the Indian tribes named in this section, are generally described as follows:

TRIBE	RESERVATION	SUBMARGINAL LAND PROJECT DONATED TO SAID TRIBE OR GROUP	APPROXIMATE ACREAGE
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin	Bad River	Bad River LI-WI-8	13,148.81

2.Blackfeet Tribe	Blackfeet	Blackfeet LI-MT-9	9,036.73
3.Cherokee Nation of Oklahoma		Delaware LI-OK-4 Adair LI-OK-4	18,749.19
4.Cheyenne River Sioux Tribe	Cheyenne River	Cheyenne Indian LI-SD-13	3,738.47
5.Crow Creek Sioux Tribe	Crow Creek	Crow Creek LI-SD-10	19,169.89
6.Lower Brule Sioux Tribe	Lower Brule	Lower Brule LI-SD-10	13,209.22
7.Devils Lake Sioux Tribe	Fort Totten	Fort Totten LI-ND-11	1,424.45
8.Fort Belknap Indian Community	Fort Belknap	Fort Belknap LI-MT-8	25,530.10
9.Assiniboine and Sioux Tribes	Fort Peck	Fort Peck LI-MT-6	85,835.52
10.Lac Courte Oreilles Band of Lake Superior Chippewa Indians	Lac Courte Oreilles	Lac Courte LI-WI-9	13,184.65
11.Keweenaw Bay Indian Community	L'Anse	L'Anse LI-MI-8	4,016.49
12.Minnesota Chippewa Tribe	White Earth	Twin Lakes LI-MN-6 Flat Lake LI-MN-15	28,544.80
13.Navajo Tribe	Navajo	Gallup-TwoWells LI-NM-18	69,947.24
14.Oglala Sioux Tribe	Pine Ridge	Pine Ridge LI-SD-7	18,064.48
15.Rosebud Sioux Tribe	Rosebud	Cutmeat LI-SD-8 Antelope LI-SD-9	28,734.59
16.Shoshone-Bannock Tribes	Fort Hall	Fort Hall LI-ID-2	8,711
17.Standing Rock Sioux Tribe	Standing Rock	Standing Rock LI-ND-10 Standing Rock LI-SD-10	10,255.5

B. The Secretary of the Interior shall cause to be published in the Federal Register the boundaries and descriptions of the lands conveyed by this Act. The acreages set out in the preceding subsection are estimates and shall not be construed as expanding or limiting the grant of the United States as defined in section 1 of this Act.

SEC. 3. (a) All of the right, title, and interest of the United States in

all the minerals including gas and oil underlying the submarginal lands declared to be held in trust for the Stockbridge Munsee Indian Community by the Act of October 9, 1972 (86 Stat. 795), are hereby declared to be held by the United States in trust for the Stockbridge Munsee Indian Community.

B. Section 2 of said Act of October 9, 1972, is hereby repealed.

C. Section 5 of the Act of October 13, 1972 (86 Stat. 806), relating to the Burns Indian Colony is amended by striking the words "conveyed by this Act" and inserting in lieu thereof the words "conveyed by section 2 of this Act".

SEC. 4. (a) Nothing in this Act shall deprive any person of any existing valid right of possession, contract right, interest, or title he may have in the land involved, or of any existing right of access to public domain lands over and across the land involved, as determined by the Secretary of the Interior. All existing mineral leases, including oil and gas leases, which may have been issued or approved pursuant to section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), or the Mineral Leasing Act of 1920 (41 Stat. 437), as amended prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. All applications for mineral leases, including oil and gas leases, pursuant to such Acts, pending on the date of enactment of this Act and covering any of the minerals conveyed by sections 1 and 3 of this Act shall be rejected and the advance rental payments returned to the applicants.

B. Subject to the provisions of subsection (a) of this section, the property conveyed by this Act shall hereafter be administered in accordance with the laws and regulations applicable to property held in trust by the United States for Indian tribes, including but not limited to the Act of May 11, 1938 (52 Stat. 347), as amended.

SEC. 5. (a) Any and all gross receipts derived from, or which relate to, the property conveyed by this Act, the Act of July 20, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806) which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 1 of this Act and prior to such conveyance, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), shall as of the date of enactment of this Act be deposited to the credit of the Indian tribe receiving such land and may be expended by the tribe for such beneficial programs as the tribal governing body may determine: Provided, That this section shall not apply to any such receipts received prior to enactment of this Act from the leasing of public domain minerals which were subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and supplemented.

B. All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 4(a) of this Act, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property conveyed to tribes pursuant to this Act and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other federal or federally assisted program.

Approved October 17, 1975.

#### **1978. Navajo Community College**

**October 17, 1978, Pub. L. 95-471, 92 Stat. 1325**

**Amendment of 1971 Act.** Title II of Public Law 95-471, set out below, amended, in sec. 203(a), the 1971 Navajo Community College Act, by striking out § 4 of that act and adding a new § 4 and a § 5.

#### **TITLE II-NAVAJO COMMUNITY COLLEGE**

##### **SHORT TITLE**

SEC. 201. This title may be cited as the "Navajo Community College Assistance Act of 1978".

##### **CONGRESSIONAL FINDINGS**

SEC. 202. The Congress after careful study and deliberation, finds that:

(1) the Navajo Tribe constitutes the largest American Indian tribe in the United States;

(2) the Navajo Tribe has, through its duly constituted tribal council and representatives, established a community college within the boundaries of the reservation;

(3) the population of the Navajo Tribe and the best area of the Navajo reservation requires that the Navajo Community College expand to better serve the needs of such population; and

(4) the Congress has already recognized the need for this institution by the passage of the Navajo Community College Act.

##### **AMENDMENT**

SEC. 203. A. The Navajo Community College Act (25 U.S.C. 640c) is amended by striking out section 4 and inserting in lieu thereof the following:

##### **STUDY OF FACILITIES NEEDS**

"SEC. 4. (a) The Secretary shall conduct a detailed survey and study of the academic facilities needs of the Navajo Community College, and shall report

to the Congress not later than August 1, 1979, the results of such survey and study. Such report shall include any recommendations or views submitted by the governing body of such College and by the governing body of the Navajo tribe, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are required, ranking each such required facility by relative need.

"(b) Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after the date of enactment of the Tribally Controlled Community College Assistance Act of 1978.

#### **AUTHORIZATION OF APPROPRIATIONS**

"SEC. 5. (a)(1) For the purpose of making construction grants under this Act, there are hereby authorized to be appropriated such sums as may be necessary for the fiscal year beginning October 1, 1979, and for the two succeeding fiscal years.

"(2) Sums appropriated pursuant to this subsection for construction shall, unless otherwise provided in appropriations Acts, remain available until expended.

"(b)(1) There is further authorized to be appropriated for grants to the Navajo Community College, for any fiscal year beginning on or after October 1, 1979, for operation and maintenance of the college, an amount equal to \$4,000 for each full-time equivalent Indian student (determined in accordance with section 2(7) of the Tribally Controlled Community College Assistance Act of 1978) which the Secretary of the Interior estimates will be in attendance at such college during such year.

"(2) No grant under this subsection shall exceed-

"(A) \$4,000 for each such full-time equivalent Indian student in actual attendance at such college; or

"(B) the total annual cost of the education program provided by such college, whichever is less.

"(3) The Secretary shall make payments, pursuant to grants under this subsection, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

"(c) The Secretary of the Interior is authorized and directed to establish by rule procedures to insure that all funds appropriated under this Act are properly identified for grants to the Navajo Community College and that such funds are not commingled with appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries."

(b) Nothing in this title or in the amendment made by this title shall be deemed to authorize appropriations for the fiscal year beginning October 1, 1978.

Approved October 17, 1978.

**1980. Navajo and Hopi Indian Relocation Amendments Act of 1980**

**July 8, 1980, Pub. L. 96-305, 94 Stat. 929**

**AN ACT**

An Act relating to the relocation of the Navajo Indians and the Hopi Indians, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Navajo and Hopi Indian Relocation Amendments Act of 1980".

SEC. 2. Section 8 of the Act of December 22, 1974 (88 Stat. 1712; 25 U.S.C. 640d), hereinafter referred to as the "Act of December 22, 1974, is amended by striking all of subsection (c) and inserting, in lieu thereof, the following:

"(c) (1) Either as a part of or in a proceeding supplementary to the action authorized in subsection (a) of this section, either tribe, through the chairman of its tribal council for and on behalf of the tribe, including all villages, clans, and individual members thereof, may prosecute or defend an action for the types of relief, including interest, specified in section 18 of this Act, including all subsections thereof, against the other tribe, through its tribal chairman in a like representative capacity, and against the United States as to the types of recovery specified in subsection (a) (3) of such section 18 and subject to the same provisions as contained in said subsection, such action to apply to the lands in issue in the reservation established by the Act of June 14, 1934 (48 Stat. 960).

"(2) In the event the Hopi Tribe or Navajo Tribe is determined to have any interest in the lands in issue, the right of either tribe to recover hereunder shall be based upon that percentage of the total sums collected, use made, waste committed, and other amounts of recovery, which is equal to the percentage of lands in issue in which either tribe is determined to have such interest.

"(3) Neither laches nor the statute of limitations shall constitute a defense to such proceedings if they are either prosecuted as a part of the action authorized by this section or in a proceeding supplemental thereto, if instituted not later than twenty-four months following a final order of partition and exhaustion of appeals in an action filed pursuant to this section."

SEC. 3. Section 10 of the Act of December 22, 1974, is amended by adding at the end thereof the following new subsections:

"(c) The Secretary shall take such action as may be necessary in order to assure the protection, until relocation, of the rights and property of individuals subject to relocation pursuant to this Act, or any judgment of partition pursuant thereto, including any individual authorized to reside on land covered by a life estate conferred pursuant to section 30 of this Act.

"(d) With respect to my individual subject to relocation, the Secretary shall take such action as may be necessary to assure that such individuals are not deprived of benefits or services by reason of their status as an individual subject to relocation.

"(e) (1) Lands partitioned pursuant to this Act, whether or not the partition order is subject to appeal, shall be subject to the jurisdiction of the tribe to whom partitioned and the laws of such tribe shall apply to such partitioned lands under the following schedule:

"(A) Effective ninety days after the date of enactment of this subsection, all conservation practices, including grazing control and range restoration activities, shall be coordinated and executed with the concurrence of the tribe to whom the particular lands in question have been partitioned, and all such grazing and range restoration matters on the Navajo Reservation lands shall be administered by the Bureau of Indian Affairs Navajo Area Office and on the Hopi Reservation lands by the Bureau of Indian Affairs Phoenix Area Office, under applicable laws and regulations.

"(B) Notwithstanding any provision of law to the contrary, each tribe shall have such jurisdiction and authority over any lands partitioned to it and all persons located thereon, not in conflict with the laws and regulations referred to in paragraph (A) above, to the same extent as is applicable to those other portions of its reservation. Such jurisdiction and authority over partitioned lands shall become effective April 18, 1981.

The provisions of this subsection shall be subject to the responsibility of the Secretary to protect the rights and property of life tenants and persons awaiting relocation as provided in subsections (c) and (d) of this section.

"(f) Any development of lands in litigation pursuant to section 8 of this Act and further defined as 'that portion of the Navajo Reservation lying west of the Executive Order Reservation of 1882 and bounded on the north and south by westerly extensions, to the reservation line, of the northern and southern boundaries of said Executive Order Reservation,' shall be carried out only upon the written consent of each tribe except for the limited areas around the village of Moenkopi and around Tuba City. Each such area has been heretofore designated by the Secretary. 'Development' as used herein shall mean any new construction or improvement to the property and further includes public works projects, power and water lines, public agency improvements, and associated rights-of-way."

"SEC. 4. Section 11 of the Act of December 22, 1974, is amended to read as follows:

"SEC. 11. (a) The Secretary is authorized and directed to—

"(1) transfer not to exceed two hundred and fifty thousand acres of lands under the jurisdiction of the Bureau of Land Management within the State of Arizona and New Mexico to the Navajo Tribe: Provided, That, in order to facilitate such transfer, the Secretary is authorized to exchange such lands for State or private lands of equal value or, if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands transferred out of federal ownership. The Secretary shall try to reduce the payment to as small an amount as possible. Such lands will be transferred without cost to the Navajo Tribe and title thereto shall be taken by the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation;

"(2) on behalf of the United States, accept title to not to exceed one hundred and fifty thousand acres of private lands acquired by the Navajo Tribe. Title thereto shall be taken in the name of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation.

"(b) A border of any parcel of land so transferred or acquired shall be within eighteen miles of the present boundary of the Navajo Reservation: Provided, That, except as limited by subsection (g) hereof, Bureau of Land Management lands anywhere within the States of Arizona and New Mexico may be used for the purpose of exchanging for lands within eighteen miles of the present boundary of the reservation.

"(c) Lands to be so transferred or acquired shall, for a period of three years after the date of enactment of this subsection, be selected by the Navajo Tribe after consultation with the Commission: Provided, That, at the end of such period, the Commission shall have the authority to select such lands after consultation with the Navajo Tribe: Provided further, That not to exceed thirty-five thousand acres of lands so transferred or acquired shall be selected within the State of New Mexico.

"(d) The Commission, in consultation with the Secretary, shall within sixty days following the first year of enactment of this subsection report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs, on the progress of the land transfer program authorized in subsection (a) of this section. Sixty days following the second year of enactment of this subsection the Commission, in consultation with the Secretary, shall submit a report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs giving the status of the land transfer program authorized in subsection (a) of this section, making any recommendations that the Commission deems necessary to complete the land transfer program.

"(e) Payments being made to any State or local government pursuant to the provisions of the Act of October 20, 1976 (90 Stat. 2662; 31 U.S.C. 1601 *et seq.*), on any lands transferred pursuant to subsection (a)(1) of this section shall continue to be paid as if such transfer had not occurred.

"(f) (1) For a period of three years after the date of enactment of



this subsection, the Secretary shall not accept title to lands acquired pursuant to subsection (a)(2) of this section unless fee title to both surface and subsurface has been acquired or the owner of the subsurface interest consents to the acceptance of the surface interest in trust by the Secretary.

"(2) If, ninety days prior to the expiration of such three year period, the full entitlement of private lands has not been acquired by the Navajo Tribe and accepted by the Secretary in trust for the Navajo Tribe under the restrictions of paragraph (1) of this subsection, the Commission, after public notice, shall, within thirty days, make a report thereon to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs.

"(3) In any case where the Secretary accepts, in trust, title to the surface of lands acquired pursuant to subsection (a)(2) of this section where the subsurface interest is owned by third parties, the trust status of such surface ownership and the inclusion of the land within the Navajo Reservation shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

"(g) No public lands lying north and west of the Colorado River in the State of Arizona shall be available for transfer under this section.

"(h) The lands transferred or acquired pursuant to this section shall be administered by the Commission until relocation under the Commission's plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of the date of this subsection who are awaiting relocation under this Act.

"(i) The Commission shall have authority to enter into negotiations with the Navajo and Hopi Tribes with a view to arranging and carrying out land exchanges or leases, or both, between such tribes; and lands which may be acquired or transferred pursuant to this section may, with the approval of the Commission, be included in any land exchange between the tribes authorized under section 23 of this Act."

SEC. 5. Section 12 of the Act of December 22, 1974, is amended by-

(1) inserting, in paragraph (1) of subsection (g), the phrase "an independent legal counsel after the phrase "Executive Director,";

(2) amending subsection (h) to read as follows:

"(h) The Commission is authorized to provide for its own administrative, fiscal, and housekeeping services.";

(3) redesignating subsection (i) as subsection (j) and inserting new subsection (i) as follows:

"(i) (1) The Commission is authorized to call upon any department or agency of the United States to assist the Commission in implementing its relocation plan and completing relocation within the

time required by law, except that the control over and responsibility for completing relocation shall remain in the Commission. In any case in which the Commission calls upon any such department or agency for assistance under this section, such department or agency shall provide reasonable assistance so requested.

"(2) On failure of any agency to provide reasonable assistance as required under paragraph (1) of this subsection, the Commission shall report such failure to the Congress."

SEC. 6. Clause (5) of section 13(c) of the Act of December 22, 1974, is amended by striking the word "thirty" and inserting, in lieu thereof, the word "ninety".

SEC. 7. Section 15 of the Act of December 22, 1974, is amended by adding at the end thereof a new subsection (f) as follows:

"(f) Notwithstanding any other provision of law to the contrary, the Commission shall on a preferential basis provide relocation assistance and relocation housing under subsections (b), (c), and (d) of this section to the head of each household of members of the Navajo Tribe who were evicted from the Hopi Indian Reservation as a consequence of the decision in the case of *United States v. Kabinto* (456 F. 2d 1087 (1972)): Provided, That such heads of households have not already received equivalent assistance from federal agencies."

SEC. 8. Section 19 of the Act of December 22, 1974, is amended by adding a new subsection (c) as follows:

"(e)(1) Surveying, monumenting, and fencing as required by subsection (b) of this section shall be completed within twelve months after the date of enactment of this subsection with respect to lands partitioned pursuant to section 4 of this Act and within twelve months after a final order of partition with respect to any lands partitioned pursuant to section 8 of this Act.

"(2) The livestock reduction program required under subsection (a) of this section shall be completed within eighteen months after the date of enactment of this subsection."

SEC. 9. Section 23 of the Act of December 22, 1974, is amended by adding the following sentence at the end thereof: "In the event that the tribes should negotiate and agree on an exchange of lands pursuant to authority granted herein the Commission shall make available 12 per centum of the relocation benefits provided in sections 14 and 15 of this Act to members of either tribe living on land to be exchanged to other than his or her own tribe, except that such benefits shall be available only if, within one hundred and eighty days of the agreement, a majority of the adult members of the tribe who would be eligible to relocate from exchanged lands sign a contract with the Commission to relocate within twelve months of the agreement or such later time as determined by the Commission and such additional benefits shall only be paid to those who actually relocate within such period."

SEC. 10. (a) Section 25(a)(5) of the Act of December 22, 1974, as amended

by the Act of July 30, 1979 (Public Law 96-40), is further amended by striking the figure "\$1,000,000" and inserting, in lieu thereof, the figure "\$4,000,000": Provided, that no new budget authority for fiscal year 1980 is authorized to be appropriated.

(b) Section 25(a) of the Act of December 22, 1974, is further amended by adding at the end thereof the following new paragraph:

"(7) For the purpose of carrying out the provisions of subsection (i) of section 30 of this Act, as amended, there is authorized to be appropriated, effective in fiscal year 1981, not to exceed \$1,000,000 annually."

"SEC. 11. The Act of December 22, 1974, is amended by adding at the end thereof the following new sections:

"SEC. 27. (a) To facilitate and expedite the relocation efforts of the Commission, there is hereby authorized to be appropriated annually, effective in fiscal year 1981, not to exceed \$6,000,000 as a discretionary fund.

"(b) Such funds may only be used by the Commission to-

"(1) match or pay not to exceed 30 per centum of any grant, contract, or other expenditure of the Federal Government, State or local government, tribal government or chapter, or private organization for the benefit of the Navajo or Hopi Tribe, if such grant, contract, or expenditure would significantly assist the Commission in carrying out its responsibilities or assist either tribe in meeting the burdens imposed by this Act;

"(2) engage or participate, either directly or by contract, in demonstration efforts to employ innovative energy or other technologies in providing housing and related facilities and services in the relocation and resettlement of individuals under this Act. Not to exceed 5 per centum of such funds may be used for the administrative expenses of the Commission in carrying out this section.

"(c) The Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, shall assign the highest priority, in the next fiscal year after the date of enactment of this subsection to the funding and construction of the Hopi high school and Hopi medical center consistent with any plans already completed and approved by appropriate agencies of the respective departments.

"SEC. 28. (a) No action taken pursuant to, in furtherance of, or as authorized by this Act, as amended, shall be deemed a major federal action for purposes of the National Environmental Policy Act of 1969, as amended.

"(b) Any transfer of public lands pursuant to this Act shall be made notwithstanding the provisions of sections 603 and 402(g) of the Federal Land Policy and Management Act (Public Law 94-579; 40 U.S.C. 1701 *et seq.*).

"SEC. 29. (a) In any litigation or court action between or among the Hopi Tribe, the Navajo Tribe and the United States or any of its officials,

departments, agencies, or instrumentalities, arising, out of the interpretation or implementation of this Act, as amended, the Secretary shall pay, subject to the availability of appropriations, attorney's fees, costs and expenses as determined by the Secretary to be reasonable. For each tribe, there is hereby authorized to be appropriated not to exceed \$120,000 in fiscal year 1981, \$130,000 in fiscal year 1982, \$140,000 in fiscal year 1983, \$150,000 in fiscal year 1984, and \$160,000 in fiscal year 1985, and each succeeding year thereafter until such litigation or court action is finally completed.

"(b) Upon the entry of a final judgment in any such litigation or court action, the court shall award reasonable attorney's fees, costs and expenses to the party, other than the United States or its officials, departments, agencies, or instrumentalities, which prevails or substantially prevails, where it finds that any opposing party has unreasonably initiated or contested such litigation. Any party to whom such an award has been made shall reimburse the United States out of such award to the extent that it has received payments pursuant to subsection (a) of this section.

"(c) To the extent that any award made to a party against the United States pursuant to subsection (b) of this section exceeds the amount paid to such party by the United States pursuant to subsection (a) of this section, such difference shall be treated as if it were a final judgment of the Court of Claims under § 2517 of Title 28, United States Code.

"(d) This section shall apply to any litigation or court action pending upon the date of enactment of this section in which a final order, decree, judgment has not been entered, but shall not apply to any action authorized by §§ 8 or 18(a) of this Act.

"SEC. 30. (a) Paragraph (4) of section 5(a) of the Act of December 22, 1974, is repealed.

"(b) Any Navajo head of household who desires to do so may submit an application for a life estate lease to the Commission. Such application shall contain such information as the Commission may prescribe by regulation, such regulation to be promulgated by the Commission within ninety days of enactment of this subsection. To be considered, such application must be filed with the Commission on or before April 1, 1981: Provided, That the Commission may, for good cause, grant an extension of one hundred and eighty days.

"(c) Upon receipt of applications filed pursuant to this section, the Commission shall group them in the following order:

"(A) Applicants who are determined to be at least 50 per centum disabled as certified by a physician approved by the Commission. Such applicants shall be ranked in the order of the severity of their disability.

"(B) Applicants who are not at least 50 per centum disabled shall be ranked in order of their age with oldest listed first and the youngest listed last: *Provided, That, if any applicant physically resides in quarter quad Nos. 78 NW, 77 NE, 77 NW, 55SW, or 54 SE as designated on the Mediator's partition map, such applicant shall be given priority over another applicant of equal age.*

"(C) Applicants who did not, as of December 22, 1974, and continuously thereafter, maintain a separate place of abode and actually remain domiciled on Hopi partitioned lands, and who, but for this subsection would be required to relocate, shall be rejected by the Commission.

"(D) Applicants who were not at least forty-nine years of age on December 22, 1974, or are not at least 50 per centum disabled, shall also be rejected by the Commission.

"(d) The Commission shall have authority to award life estate leases to not more than one hundred and twenty applicants with first priority being given to applicants listed pursuant to subsection (c)(A) and the next priority being given to the applicants listed pursuant to subsection (c)(B), in order of such listing.

"(e) Each life estate lease shall consist of a fenced area not exceeding ninety acres of land which shall include the life tenant's present residence and may be used by the life tenant to feed not to exceed twenty-five sheep units per year or equivalent livestock. The Secretary, under existing authority, shall make available to life estate tenants such assistance during that tenure, as may be necessary to enable such tenant to feed such livestock at an adequate nutritional level.

"(f) No person may reside on a life estate other than the life tenant, his or her spouse, and minor dependents, and/or such persons who are necessarily present to provide for the care of the life tenant. The Commission shall promulgate regulations to carry out the intent of this subsection.

"(g) The life estate tenure shall end by voluntary relinquishment, or at the death of the life tenant or the death of his or her spouse, whichever occurs last: Provided, That each survivorship right shall apply only to those persons who were lawfully married to each other on or before the date of enactment of this subsection.

"(h) Nothing in this section shall be construed as prohibiting any such applicant who receives a life estate lease under this section from relinquishing, prior to its termination, such estate at any time and voluntarily relocating. Upon voluntary relinquishment of such estate, by such means or instrument as the Secretary shall prescribe, such applicant shall be entitled to relocation benefits from the Secretary comparable to those provided by section 15 of this Act. For life estates terminated by the death of the life tenant or his or her surviving spouse, compensation shall be paid to the estate of the deceased life tenant or surviving spouse based on the fair market value of the habitation and improvements at the time of the expiration of such tenure and not before. Such payment shall be in lieu of any other payment pursuant to subsection (a) of section 15 of this Act. Assistance provided pursuant to section 15(b) of this Act, as amended, shall be paid to any head of household lawfully residing on such life estate pursuant to subsection (f) of this subsection who is required to move by the termination of such life estate by the death of the life tenant and his or her surviving spouse and who

does not maintain a residence elsewhere. Compensation under section 15(a) shall be paid and distributed in accordance with the last will and testament of the life tenant or surviving spouse or, in the event no valid last will and testament is left, compensation shall be paid and distributed to his or her heirs in accordance with existing federal law. Upon termination of a life estate by whatever means, the dependents residing with the individuals having such life estate so terminated shall have ninety days following such termination within which to relocate.

"(i) The Secretary shall pay, on an annual basis, the fair market rental value of such life estate leases to the tribe to whom the lands leased were partitioned.

"(j) Nothing in this Act or any other law shall be construed to prevent a life tenant from making reasonable improvements on the life estate which are related to the residence and agricultural purposes of the life tenancy.

"(k) The Commission is authorized to grant not to exceed ten additional life estate leases to Hopi heads of household residing on Navajo-partitioned lands under such terms of this section as may be appropriate."

Approved July 8, 1980.

**1980. Land Held by United States in Trust for Ramah Band of Navajo Tribe**

**August 29, 1980, Pub. L. 96-333, 94 Stat. 1060**

**AN ACT**

An Act to declare that title to certain lands in the State of New Mexico are held in trust by the United States for the Ramah Band of the Navajo Tribe.

*Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled,* That on and after the date of the enactment of this Act, title to the following described lands shall be held by the United States in trust for the Ramah Band of the Navajo Tribe:

Township 7 north, range 15 west, New Mexico principal meridian: sections 7, 19, and 31.

Township 7 north, range 16 west, New Mexico principal meridian: sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, Approved August 29, 1980.

**1980. Navajo Community College**

**October 3, 1980, Pub. L. 96-374, 94 Stat. 1501**

**Amendment of 1971 Act.** Part F of Public Law 96-374, set out below, amended, in sec. 1351, the 1971 Navajo Community College Act by substituting "three" for "two" in 5(a)(1); by deleting §§ 5(b)(1), 5(b)(2) and redesignating former § 5(b)(3) as present § 5(b)(2) and inserting a new § 5(b)

(1); and by adding a new § 6.

**PART F-THE NAVAJO COMMUNITY COLLEGE ASSISTANCE PROGRAM**

**AMENDMENTS TO THE NAVAJO COMMUNITY COLLEGE ACT**

SEC. 1351. (a) Section 5(a)(1) of the Navajo Community College Act is amended by striking out "two" and inserting in lieu thereof "three".

(b) Section 5(b) of such Act is amended by striking out paragraphs (1) and (2), by redesignating paragraph (3) as paragraph (2), and inserting immediately before such paragraph the following:

"(b) (1) There is further authorized to be appropriated for grants to the Navajo Community College, for any fiscal year beginning on or after October 1, 1979, an amount equal to the amount necessary for operation and maintenance of the college, including, but not limited to, administrative, academic, and operations and maintenance costs."

(c) Such Act is further amended by adding at the end thereof the following new section:

**EFFECT ON OTHER LAWS**

"SEC. 6. Except as specifically provided by law, eligibility for assistance under this Act shall not, by itself, preclude the eligibility of the Navajo Community College to receive federal financial assistance under any program authorized under the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or post secondary educational institutions."

Approved October 3, 1980.

**1982. Navajo Tribal-Exchange of Lands**

**October 6, 1982, Pub. L. 97-287, 96 Stat. 1225**

**AN ACT**

An Act to authorize the exchange of certain land held by the Navajo Tribe and the Bureau of Land Management, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subject to the approval of the Secretary of the Interior and to the provisions of this Act, the Navajo Tribe is authorized to exchange any surface interests of such Tribe in the lands described in subsection (b) for surface interests of the United States in lands described in subsection (c) which are approximately equal in value to such tribal interests.

B. Lands located within the following New Mexico principal meridian townships are described in this subsection:

Township 8 north, range 12 west;

Township 8 north, range 11 west;  
Township 7 north, range 12 west;  
Township 7 north, range 11 west;  
Township 6 north, range 12 west;  
Township 7 north, range 5 west;  
Township 6 north, range 5 west;  
Township 6 north, range 4 west;  
Township 6 north, range 3 west; and  
Township 7 north, range 3 west.

C. The lands described in this subsection are the lands withdrawn for exchange by Public Land Order 5721 (Federal Register, May 2, 1980, pages 29295-29297) other than the following lands:

Township 23 north, range 13 west, New Mexico principal meridian: section 2, southeast quarter; section 13, southeast quarter; and section 28, southwest quarter;

Township 16 north, range 10 west, New Mexico principal meridian: section 6, southeast quarter; and section 18, northeast quarter; and

Township 22 north, range 10 west, New Mexico principal meridian: section 16, north half and southwest quarter;

SEC. 2. Any interests in lands acquired by the Navajo Tribe under section 1 (a) shall be held by the Secretary of the Interior in trust for the benefit and use of the Navajo Tribe.

SEC. 3. (a) Lands received by the Navajo Tribe in an exchange under section 1(a) shall be subject to such easements or rights-of-way as the Secretary of the Interior may create in order to provide necessary access to lands adjacent to such lands. The Secretary of the Interior may create such an easement or right-of-way only after he has consulted the governing body of the Navajo Tribe with regard to the location, scope, and use of such easement or right-of-way.

B. Nothing in this Act shall affect:

1. the mineral interests of any person, or

2. any easement or other rights of any person (other than the United States or the Navajo Tribe), in lands exchanged under section 1(a) which existed prior to the enactment of this Act. The development of such interests and the exercise of such rights may only be controlled by the Navajo Tribe or the Secretary of the Interior to the same extent that



such development or exercise could have been controlled by the Secretary of the Interior prior to the enactment of this Act.

SEC. 4. (a) No exchange shall be made under section 1(a) if, at the time such exchange is proposed, the value of the interests in lands described in section 1(b) which are proposed to be exchanged exceeds an amount equal to 125 percent of the value of interests in lands described in section 1(c) which are proposed to be exchanged.

(b) (1) If, at the time of an exchange under section 1(a), the value of the interests in lands described in section 1(b) which are exchanged under section 1(a) exceeds the value of the interests in lands described in section 1(c) which are exchanged under section 1(a), the Secretary of the Interior shall pay to the Navajo Tribe an amount equal to such excess value.

2. If, at the time of any exchange under section 1(a), the value of the interests in lands described in section 1(c) which are exchanged under section 1(a) exceeds the value of the interests in lands described in section 1(b) which are exchanged under section 1(a), the Navajo Tribe shall pay to the United States an amount equal to such excess value.

SEC. 5. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of section 4 (b) (1).

Approved October 6, 1982.

### **History**

**Exchange of Tribal lands.** Tribal Council Res. CD-37-83, passed December 15, 1983, provided: "The Navajo Tribal Council does hereby authorize the Justice Department, in conjunction with the Office of Navajo Land Development, to prepare the necessary warranty deeds from the Navajo Tribe to the United States for the 80,000 acres of El Malpais lands for the purpose of accomplishing the land exchange authorized by the Act of October 6, 1982 (96 Stat. 1225), and does further authorize the Chairman of the Navajo Tribal Council to execute said deeds on behalf of the Navajo Tribe."

### **1983. Navajo Indian Lands**

**January 8, 1983, Pub. L. 97-428, 96 Stat. 2268**

#### **AN ACT**

An Act to authorize the exchange of certain land held in trust by the United States for the Navajo Tribe, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That subject to the approval of the Secretary of the Interior, the Navajo Tribe may exchange all of its interests in any land held in trust by the United States for the tribe in sections 4, 5, 8, and 9 of township 12 north, range 18 west, New Mexico principal meridian for the land located in section 14, township 13 north, range 18 west, New Mexico

principal meridian which is owned by Bernard J. Vanderwagen or Linda Vanderwagen Ortega or both of them. The land so acquired by the Navajo Tribe shall be held in trust by the United States for the tribe and shall have the same status as the land exchanged.

\* \* \*

Approved January 8, 1983.

**1983. Lands Held in Trust for the Ramah Band of the Navajo Tribe**

**January 8, 1983, Pub. L. 97-434, 96 Stat. 2280**

**AN ACT**

An Act to declare certain federal lands acquired for the benefit of Indians to be held in trust for the Tribes of such Indians.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the first section of the Act of October 17, 1975 (89 Stat. 577; 25 U.S.C. 459), is amended by adding thereto the following new subsection (c):

"(c) The right, title, and interest of the United States of America in all of the lands, including the improvements now thereon (title to which is in the United States), acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriation Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617), together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, and which lands are now administered by the Secretary of the Interior for the use or benefit of (1) Ramah Navajo Indians, are hereby declared to be held in trust for the Ramah Band of the Navajo Tribe, and (2) Choctaw Indians of Mississippi, except lands subject to the Act of June 21, 1939 (53 Stat. 851), are hereby declared to be held in trust for the Mississippi Band of Choctaw Indians; excepting valid rights-of-way of record."

(b) Section 2 (a) of said Act of October 17, 1975, is amended by deleting "section 1 of this Act" and inserting in lieu thereof "section 1 (a) of this Act".

(c) The amendments made by this Act shall be effective upon enactment of this Act.

Approved January 8, 1983.

**1983. Authorizations, Navajo and Hopi Indian Relocation Commission**

**July 13, 1983, Pub. L. 98-48, 97 Stat. 244**

**AN ACT**

An Act to authorize appropriations for the Navajo and Hopi Indian Relocation Commission.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 25 (a) (4) of the Act of December 22, 1974 (88 Stat. 1712), is amended by striking the figure "\$5,500,000" and inserting, in lieu thereof, the figure "\$7,700,000".

SEC. 2. Section 25 (a) of the Act of December 22, 1974 (88 Stat. 1712) p is amended by adding, at the end thereof, the following new paragraph:

"(8) For the purposes of carrying out the provisions of section 15 of this Act, there is authorized to be appropriated not to exceed fifteen million dollars (\$15,000,000) annually for fiscal years 1983 through 1987."

Approved July 13, 1983.

### **1983. Navajo Community College**

**December 1, 1983, Pub. L. 98-192, 97 Stat. 1335**

#### **History**

**Amendment of 1971 Act.** Section 5(a)(1) of Pub. L. 92-189, Navajo Community College Act, was amended by Pub. L. 98-192, § 14, which struck out "October 1, 1979" and inserted in lieu thereof "October 1, 1984".

### **1984. Navajo-Hopi Land Dispute**

**November 8, 1984, Pub. L. 98-620, 98 Stat. 3359**

#### **History**

**Amendment of 1974 Act.** Section 4 of Pub. L. 93-531 was amended by Pub. L. 98-620, Title IV, § 402(27), 98 Stat. 3359, which struck out the designation "(a)" preceding "If the negotiating", and struck out subsection. (b), which had provided that any proceedings as authorized in this section had to be assigned for hearing at the earliest possible date, would take precedence over all other matters pending on the docket of the District Court at that time, and had to be expedited in every way by the Court.

**Effective date of 1984 amendment.** Amendment by Pub. L. 98-620 not to apply to cases pending on November 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

## **Part 3. Executive Orders**

### **Executive Order of October 19, 1878**

It is hereby ordered that the tract of country in the Territory of Arizona lying within the following-described boundaries, viz: Commencing at the northwest corner of the Navajo Indian Reservation, on the boundary line between the Territories of Arizona and Utah; thence west along said boundary

line to the 110th degree of longitude west; thence south along said degree to the 36th parallel of latitude north; thence east along said parallel to the west boundary of the Navajo reservation; thence north along said west boundary to the place of beginning, be, and the same hereby is, withdrawn from sale and settlement and set apart as an addition to the present reservation for the Navajo Indians.

R. B. HAYES

Executive Mansion

October 29, 1878

**Executive Order of January 6, 1880**

It is hereby ordered that the following-described country lying within the boundaries of the Territories of New Mexico and Arizona, viz:

Commencing in the middle of the channel of the San Juan River, where the east line of the Navajo Reservation in the Territory of New Mexico, as established by the treaty of June 1, 1868 (15 Stat. 667), crosses said river; thence up and along the middle channel of said river to a point fifteen miles due east of the eastern boundary line of said reservation; thence due south to a point due east of the present southeast corner of said reservation; thence due south six miles; thence due west to the one hundred and tenth degree of west longitude; thence north along said degree to the southwest corner of said reservation in the Territory of Arizona, as defined by Executive Order, dated October 29th, 1878, be, and the same is hereby, withdrawn from sale and settlement and set apart as an addition to the present Navajo Reservation in said Territories.

R. B. HAYES

Executive Mansion

January 6th, 1880

**History**

**References in text.** Treaty of June 1, 1868, see table of contents for Part 1 of United States Relations.

**Amendments-1884.** See Ex. Ord. of May 17, 1884, listed in table of contents for this part.

**Cross References**

Adjustment of settlers' rights under this Executive Order, see Act July 1, 1902, ch. 1363, 32 Stat. 657, listed in table of contents for part 2 of these "United States Relations".

**Executive Order of December 16, 1882**

It is hereby ordered that the tract of country, in the territory of

Arizona, lying and being within the following described boundaries, viz: beginning on the one hundred and tenth degree of longitude west from Greenwich, at a point 36° 30' north; thence due east to the one hundred and tenth degree of longitude west, thence due north to place of beginning, be and the same is hereby withdrawn from settlement and sale, and set apart for the use and occupancy of the Moqui, and such other Indians as the Secretary of the Interior may see fit to settle thereon.

CHESTER A. ARTHUR

Executive Mansion,

December 16, 1882

#### **Cross References**

Determination of rights under this Ex. Ord., see Act July 22, 1958, Pub. L. 85-547, 72 Stat. 402, listed in Table Of Contents for part 2 of these United States Relations.

Effect of certain Acts of Congress on this Ex. Ord., see Acts June 14, 1934, ch. 521, 48 Stat. 960-962, and July 12, 1960, Pub. L. 86-636, 74 Stat. 470, listed in table of contents for part 2 of these United States Relations.

Grazing regulations effective in area described in this Ex. Ord., see § 704 of Title 3 of this Code.

#### **History**

**Hopi Partition Bill or similar bills.** Tribal Council Res. CJA-12-65, passed January 19, 1965, provided as follows:

"(1) The Navajo Tribe asserts its full and unlimited proprietary interest in and to any portion of the lands lying within the Executive Order area of December 16, 1882, which the three-judge court in its decision of September 28, 1962, found (a) had been settled by the Navajos as of the date of the Secretary's approval of the H. J. Hagerman report on February 7, 1931; (b) settled by the Navajo Tribe when the Secretary approved grazing regulations for the Navajo Reservation, embracing the controverted area on June 2, 1937; and (c) confirmed legal settlement of all Navajos residing in the area on the date of the Act of July 22, 1958. The Navajo Tribe hereby asserts claim of full proprietary right, title and interest not only to the surface rights in said land but to subsurface mineral rights as well.

"(2) The Navajo Tribe denies any and all claims which HR 9529, or any similar bill, may purport to authorize the Hopi Tribe to assert, and hereby respectfully submits to Congress that any such claims which the Hopi attorney contends exist by reason of the judgment of the three-judge court, are the responsibility of the United States Government to adjust and satisfy by other means and not by partition of lands in which the said court confirmed the settlement of Navajos and the Navajo Tribe and the vested interest of the Tribe.

"(3) When hearings are set before any Committee of Congress on any bill which may be submitted bearing upon the Navajo-Hopi controverted area, the Advisory Committee shall elect a delegation of Navajos to testify before any such committee and designate a chairman of the delegation. Members of the delegation shall be selected on the basis of their understanding and knowledge of the problem confronting the Navajo Tribe in the area in question and their capacity to testify in respect thereto. Such delegation is hereby authorized to take any and all steps deemed necessary and advisable or incidental to the defeating the aforesaid bill, or any similar bill which may be proposed, and toward assisting such Congressional committees and officials of the Department of the Interior in finding, through legislation or otherwise, practicable solutions for problems confronted as a consequence of the above-mentioned court decision of September 28, 1962."

Objection to action of Hopi Tribe, Commissioner of Indian Affairs, Secretary of the Interior and other officials; offer to negotiate with Hopi Tribe.

Tribal Council Res. CJY-92-66, passed July 26, 1966, provided as follows:

"(1) The Navajo Tribal Council, acting for and on behalf of the Navajo Tribe, objects to the arbitrary position and action taken in this matter by the Hopi Tribe, the Commissioner of Indian Affairs, the Secretary of the Interior and any other responsible government officials seeking to carry out the Commissioner's instructions of July 8, 1966, to Area Director Holmes.

"(2) The Navajo Tribe hereby appeals to, and requests, the Commissioner of Indian Affairs and the Secretary of the Interior to permit the Navajo Tribe to present its position to said officials, to review and reconsider their action taken in light of that position, and further to suspend immediately the determinations and instructions made by the Commissioner of Indian Affairs in this matter pending such review and reconsideration.

"(3) The General Counsel and legal staff of the Navajo Tribe be and they are hereby requested, authorized, empowered and directed to take, on behalf of the Navajo Tribe, any and all actions deemed appropriate by them to challenge and set aside the aforesaid arbitrary and capricious action of the Commissioner of Indian Affairs, acting under direction of Secretary of the Interior Stewart L. Udall.

"(4) Should negotiation with the Commissioner of Indian Affairs and appropriate officials of his department fail to correct said erroneous and capricious action and effect withdrawal of said order of July 8, 1966, to the Area Director, the General Counsel is authorized and directed to take any appropriate legal action to protect the interests of the Tribe by any remedy or remedies which he finds to be available under the facts and circumstances of this case.

"(5) When the character of the appropriate proceeding has been determined, if litigation proves to be necessary, the General Counsel is authorized to incur any and all expenses of whatsoever kind or character which are necessary, advisable or incidental to carrying out the purposes of this resolution subject to the approval of the Advisory Committee and to submit to the Tribal Council at the next or any subsequent meeting or meetings thereof, a request for a special supplement appropriation for said purposes."

Tribal Council Res. CO-103-66, passed October 3, 1966, provided as follows:

"(1) The Navajo Tribal Council hereby authorizes the Navajo Negotiating Committee to submit an offer to negotiate with the Hopi Indian Tribe for the limited purpose of deciding what rights, if any, Hopi Indians, but not the Hopi Tribe, may have to that part of the western Navajo Reservation on which such Hopi Indians may already have been located on June 14, 1934, provided that the area to be negotiated shall be limited to and not extend beyond the near vicinity of the village of Moencopi which has been long recognized and established by law and fact as being the only area where Hopi Indians may have any interest, and provided further that if the Navajo offer to negotiate under these conditions is not accepted as offered within ten (10) days following the offer, it will be considered to have been rejected by the Hopis and the Hopi Tribe.

"(2) The General Counsel and legal staff of the Navajo Tribe are hereby authorized and directed to take any and all appropriate legal action to protect the interest of the Navajo Tribe when and if the Hopi Negotiating Committee rejects the offer described herein to be presented by the Navajo Negotiating Committee.

"(3) The Navajo Tribal Council hereby authorizes the General Counsel and the legal staff of the Navajo Tribe to incur any and all expenses necessary, advisable or incidental to carrying out said legal action and does further appropriate five thousand dollars (\$5,000) to be used to carry out those purposes."

**Blanket approval to public works in 1882 Executive Order Area.** Tribal Council Res. CJY-47-67, passed July 12, 1967, provided as follows:

"Whereas: 1. The authority of the Navajo Negotiating Committee to meet with the representatives of the Hopi Tribe was originally established by Resolution CAU-50-63 and was reactivated by Resolution CMY-47-65, and

"2. Said Committee has been acting on instructions by the Navajo Tribal Council pursuant to Resolutions CF-13-66, CAP-55-66, CJY-92-66, and CO-103-66, and

"3. It is apparent to said Committee that proper development of the 1882 Executive Order Area outside of District 6 and the area 'frozen' by the Commissioner's letter of July 8, 1966, has been either nonexistent or unduly delayed because of the administrative practice by the Bureau of Indian Affairs in requiring approval by both tribes before any improvements of any kind can be made in such areas, and

"4. It is equally apparent that the failure to allow improvements to be made has economically depressed the already poverty-stricken area and that any further delay in making improvements necessary to maintain even a bare survival standard of living would constitute a gross disregard of human needs, and

"5. It is now and always has been the desire of the Navajo Tribe to expedite improvements in these areas so that the standard of living of all the people may be raised, and

"6. It is and always has been the belief of the Navajo Tribe that public works which are necessary to human needs and which would encourage the economic development of the area and thus allow the people to have a real opportunity to help themselves, should not be delayed by any battle over legal title to a land on which such improvements are being made, but that it is the duty of our trustee to see that such improvements are made in spite of any such battle over legal title since the improvements will benefit all of the people of the area, and

"7. The Navajo Negotiating Committee has recommended to the Navajo Tribal Council that it adopt a resolution giving advance blanket approval to all public works in the 1882 Executive Order outside of District 6 and the area 'frozen' by the Commissioner's letter of July 8, 1966."

### **Annotations**

#### **1. Interest in reservation**

It has been held that subject to trust title of the United States, the Hopi Indian Tribe, for use and benefit of Hopi Indians, have the exclusive interest in and to that part of the 1882 reservation lying within boundaries of land management district 6, as defined on April 24, 1943, and in accordance with and pursuant to Section 2 of the Act of July 22, 1958, such area was adjudicated a reservation for the Hopi Indian Tribe. *Healing v. Jones*, 210 F.Supp. 125, (D.C. Ariz. 1962) *affirmed* 373 U.S. 758, 83 S.Ct. 1559.

It was further held that subject to trust title of United States, that Hopi Indian Tribe, for common use and benefit of Hopi Indians, and the Navajo Indian Tribe, for common use and benefit of Navajo Indians, have joint, undivided and equal interests in and to all of the 1882 reservation lying outside boundaries of land management district 6, as defined on April 24, 1943, and such area was adjudicated a reservation for joint use of Hopi and Navajo Indian Tribes. *Healing v. Jones*, 210 F.Supp. 125, (D.C. Ariz. 1962) *affirmed* 373 U.S. 758, 83 S.Ct. 1559.

*See, also*, annotations under Act of July 22, 1958.

#### **Executive Order of May 17, 1884**

It is hereby ordered that the Executive Order dated January 6, 1880, adding certain lands to the Navajo Reservation, in New Mexico and Arizona Territories, be, and the same is hereby, amended so as to exempt from its operation and exclude from said reservation all those portions of townships 29 north, ranges 14, 15, and 16 west of the New Mexico principal meridian, south of the San Juan River, in the Territory of New Mexico.

CHESTER A. ARTHUR

Executive Mansion, Washington

May 17, 1884

#### **Executive Order of May 17, 1884**



It is hereby ordered that the following-described lands in the Territories of Arizona and Utah be, and the same are, withheld from sale and settlement and set apart as a reservation for Indian purposes, viz:

Beginning on the 110° west longitude at 36° and 30' north latitude (the same being the northeast corner of the Moqui Indian Reservation); thence due west to the 111° 30' west longitude; thence due north to the middle of the channel of the Colorado River; thence up and along the middle of the channel of said river to its intersection with the San Juan River, thence up and along the middle channel of San Juan River to west boundary of Colorado (32° west longitude, Wash. meridian); thence due south to the 37th parallel north latitude; thence west along said parallel to the 110° of west longitude; thence due south to place of beginning: *Provided*, That any tract or tracts within the region of country described as aforesaid which are settled upon or occupied, or to which valid rights have attached under existing laws of the United States prior to the date of this order, are hereby excluded from this reservation.

CHESTER A. ARTHUR

Washington

May 17, 1884

#### **History**

Modification, see Ex. Ord. of November 19, 1892 listed in table of contents for this part.

#### **Cross References**

Extinguishment of certain rights outside boundaries described in this Executive Order, see Act September 2, 1958, Pub. L. 85-868, § 1(d), 72 Stat. 1686-1690, listed in table of contents for part 2 of these United States Relations.

#### **Annotations**

##### **1. San Juan River in Utah**

In an action by the United States to quiet title in the United States to land constituting bed of San Juan River in Utah from boundary line between Colorado and Utah downstream to mouth of Chinle Creek, a distance of 55 miles, evidence was sufficient to support finding that such part of San Juan River was not navigable at time of Utah's admission to the Union, and hence title to bed of San Juan River remained in United States. *State of Utah v. United States*, 304 F.2d 23, (C.A. 10th 1962) cert. den. 371 U.S. 826, 83 S.Ct. 47, 9 L.Ed.2d 65.

##### **Executive Order of April 24, 1886**

It is hereby ordered that the following-described tract of country in the Territory of New Mexico, viz, all those portions of townships 29 north, ranges 14, 15, and 16 west of the New Mexico principal meridian, south of the San Juan River, be, and the same is hereby, withdrawn from sale and settlement and set

apart as an addition to the Navajo Indian Reservation.

GROVER CLEVELAND

Executive Mansion

April 24, 1886

**Executive Order of November 19, 1892**

It is hereby ordered that the Executive Order of May 17, 1884, by President Chester A. Arthur, withdrawing from sale and settlement and setting apart as a reservation for Indian purposes certain lands in the Territories of Utah and Arizona, be, and the same hereby is, modified so that all the lands described in said order which lie west of the 110° of west longitude and within the Territory of Utah be, and the same hereby are, restored to the public domain, freed from the reservation made by said order.

BENJAMIN HARRISON

Washington, D.C.

November 19, 1892

**Executive Order of January 8, 1900**

It is hereby ordered that the tract of country lying west of the Navajo and Moqui reservations in the Territory of Arizona, embraced within the following-described boundaries, viz: beginning at the southeast corner of the Moqui reservation and running due west to the Little Colorado River; thence down that stream to the Grand Canyon Forest Reserve; thence north on the line of that reserve to the northeast corner thereof; thence west to the Colorado River; thence up that stream to the Navajo Indian reservation, be, and the same is hereby, withdrawn from sale and settlement until further ordered.

WILLIAM MCKINLEY

Executive Mansion

January 8, 1900

**Cross References**

Adjustment of settlers' rights under this Executive Order, see Act August 11, 1916, ch. 315, 39 Stat. 504, listed in table of contents for part 2 of these United States Relations.

Exchanges of lands in additions made to reservation by this Executive Order, see Act March 3, 1925, ch. 433, 43 Stat. 1115, listed in Table of Contents for part 2 of these United States Relations.

**Executive Order of November 14, 1901**

It is hereby ordered that the following-described tract of country in Arizona, viz: Commencing at a point where the south line of the Navajo Indian reservation (Addition of January 8, 1900) intersects the Little Colorado River; thence due south to the 5th Standard Parallel North; thence east on said standard to the Middle of the South line of township 21 North, range 15 east; thence north on the line bisecting townships 21, 22, 23, 24, said range 15 east, to the south line of the Moqui reservation; thence due west to the place of beginning, be, and the same is hereby, withdrawn from sale and settlement until such time as the Indians residing thereon shall have been settled permanently under the provisions of the homestead laws or the General allotment Act approved February 8, 1887 (24 Stats., 388 [25 U.S.C. § 331 *et seq.*]), and the Act amendatory thereof, approved February 28, 1891 (26 Stats., 794).

THEODORE ROOSEVELT

White House

November 14, 1901

#### **History**

Modification, see Ex. Ord. of December 1, 1922, listed in table of contents for this part.

#### **Cross References**

Exchanges of lands in additions made to Reservation by this Executive Order, see Act March 3, 1925, ch. 433, 43 Stat. 1115, listed in Table of Contents for part 2 of these United States Relations.

Leupp Extension Reservation created by this Executive Order as within exterior boundaries of Navajo Reservation, see Act June 14, 1934, ch. 521, § 1, 48 Stat. 960, listed in Table of Contents for part 2 of these United States Relations.

#### **Executive Order No. 324A of May 15, 1905**

The Executive Order of March 10, 1905, setting apart certain lands in Utah, as an addition to the Navajo Indian Reservation, is hereby cancelled, and in lieu thereof it is hereby ordered that the following-described lands situated in said State be, and the same are hereby, withheld from sale and entry and set apart for Indian purposes, as an addition to the said Indian reservation, viz:

Beginning at the corner to sections 25 and 30, 31 and 36, on the range line between ranges 23 and 24 east, in Township 40 South, running east on the north boundary of sections 31-36, inclusive, in Township 40 South, ranges 24 and 25 east, and sections 31-34 inclusive, Township 40 South, range 26 east to the Colorado State line; thence south along the Colorado State line to the San Juan River; thence down the San Juan River to the meander corner to fractional sections 31 and 36, on the range line between ranges 23 and 24 east; thence north on said range line to the place of beginning: *Provided*, That any tract or tracts within the region of country described as aforesaid, which are settled upon or occupied, or to which valid rights have attached under existing laws of the United States prior to the date of this order, are hereby excluded

from the reservation.

T. ROOSEVELT

White House

May 15, 1905

### **History**

**Repealed Executive Order.** Executive Order No. 302A of March 10, 1905, which was cancelled by this Executive Order of May 15, 1905, provided:

"It is hereby ordered that the following described lands situated in the State of Utah, be, and the same are hereby, withheld from sale and settlement and set apart for Indian purposes, as an addition to the Navajo Indian Reservation, viz: Beginning at the mouth of Montezuma Creek (in Utah); running thence due east to the Colorado State line; thence south along the Colorado State Line to the San Juan River; thence down the San Juan River to the place of beginning: *Provided*, That any tract or tracts within the region of country described as aforesaid, which are settled upon or occupied, or to which valid rights have attached under existing laws of the United States prior to the date of this order, are hereby excluded from the reservation."

### **Cross References**

Extinguishment of certain rights outside boundaries described in this Executive Order, see Act September 2, 1958, Pub. L. 85-868, § 1(d), 72 Stat. 1686-1690, listed in table of contents for part 2 of these United States Relations.

### **Annotations**

#### **1. San Juan River in Utah**

In an action by United States to quiet title in United States to land constituting bed of San Juan River in Utah from boundary line between Colorado and Utah downstream to mouth of Chinle Creek, a distance of 55 miles, evidence was sufficient to support finding that such part of San Juan River was not navigable at time of Utah's admission to the Union, and hence title to bed of San Juan River remained in United States. *State of Utah v. United States* (C.A. 10th 1962) 304 F.2d 23, cert. den. 371 U.S. 826, 83 S.Ct. 47, 9 L.Ed.2d 65.

#### **Executive Order No. 709 of November 9, 1907**

It is hereby ordered that the following-described tract of country in the Territories of Arizona and New Mexico, viz:

Commencing at a point where the east line of the Navajo Indian Reservation, as at present constituted, intersects the north boundary of township twenty-three north, range thirteen west, New Mexico Meridian; thence due east to the northeast corner of township twenty-three north, range five east; thence south to the southeast corner of township seventeen north, range five east, New Mexico Meridian; thence west to the first guide meridian; thence south on the said guide meridian to the southeast corner of township

fifteen north, range nine west; thence west to the southwest corner of township fifteen north, range fourteen west; thence north to the northwest corner of township fifteen north, range fourteen west; thence due west to the boundary line between the Territories of Arizona and New Mexico; thence south on the boundary line between the Territories of Arizona and New Mexico to the northeast corner of township twenty-three north, range thirty-one east; thence west to the northwest corner of township twenty-three north, range twenty-nine east; thence south to the northwest corner of township twenty-one north, range twenty-nine east; thence west to the northwest corner of township twenty-one north, range twenty-two east; thence west to the northwest corner of township twenty-one north, range twenty-six east; thence south to the southeast corner of township twenty-one north, range twenty-five east; thence west to the southwest corner of township twenty-one north, range twenty-two east; thence due north to the southern boundary of the Navajo reservation, as at present constituted, be, and the same is hereby, withdrawn from sale and settlement and set apart for the use of the Indians as an addition to the present Navajo Reservation: *Provided*, That this withdrawal shall not affect any existing valid rights of any person.

THEODORE ROOSEVELT

The White House

November 9, 1907

#### **History**

Amendments and modifications, see Ex. Ords. No. 744 of January 28, 1908; No. 1000 of December 30, 1908; No. 1284 of January 16, 1911; and No. 1995 of July 23, 1914, listed in Table of Contents for this part.

#### **Cross References**

Disposition of surplus lands in reservation created by this Executive Order, see Act May 29, 1908, ch. 216, § 25, 35 Stat. 457, listed in Table of Contents for part 2 of these United States Relations.

#### **Executive Order No. 744 of January 28, 1908**

Whereas it is found that the Executive Order of November 9, 1907, setting apart certain lands in Arizona and New Mexico as an addition to the Navajo Indian Reservation, conflicts in part with Executive Order of November 11, 1907, setting apart certain lands as an addition to the Jicarilla Indian Reservation, New Mexico, said Executive Order is hereby so amended that the description of the tract of land set apart as an addition to the Navajo Reservation shall read as follows:

Beginning at a point on the eastern boundary of the Navajo Reservation where it intersects what would be, if extended, the township line between townships 23 and 24 north; thence east along said township line between townships 23 and 24 north to the northeast corner of township 23 north, range 6 west, New Mexico Meridian; thence south to the northeast corner of township 21 north, range 6 west; thence east to the northeast corner of township 21 north, range 5 west; thence south to the southeast corner of township 17 north, range

5 west; thence west to the first guide meridian west; thence south on said guide meridian to the southeast corner of township 15 north, range 9 west; thence west along the township line between townships 14 and 15 north to the northwest corner of township 15 north, range 14 west; thence west along the township line between townships 15 and 16 north to the boundary line between the Territories of Arizona and New Mexico; thence south on said boundary line to the northeast corner of township 23 north, range 31 east, Gila and Salt River Meridian, Arizona; thence west on the township line between townships 23 and 24 north to the northwest corner of township 23 north, range 29 east; thence south to the northwest corner of township 21 north, range 29 east; thence west on the township line between townships 21 and 22 north to the northwest corner of township 21 north, range 26 east; thence south to the southeast corner of township 21 north, range 25 east; thence west on the Fifth Standard Parallel north to the southwest corner of township 21 north, range 22 east; thence north on the range line between ranges 21 and 22 east to its intersection with the south boundary of the Hopi (Moqui) Indian Reservation, Arizona; thence east to the southeast corner of said Hopi (Moqui) Reservation; thence north on the one hundredth and tenth degree of longitude west to the south boundary of the Navajo Reservation, Arizona; thence east along the said south boundary to the boundary line between Arizona and New Mexico; thence continuing east along the boundary line of the Navajo Reservation, New Mexico, to the southeast corner of said reservation; thence north along the east boundary of said Navajo Reservation to the place of beginning.

THEODORE ROOSEVELT

The White House

January 28, 1908

#### **History**

Modifications, see Ex. Ords. No. 1000 of December 30, 1908; No. 1284 of January 16, 1911; and No. 1995 of July 23, 1914 listed in Table of Contents for this part.

#### **Cross References**

Disposition of surplus lands in reservation created by this Executive Order, see Act May 29, 1908, ch. 216, § 25, 35 Stat. 457, listed in Table of Contents for part 2 of these United States Relations.

#### **Executive Order No. 1000 of December 30, 1908**

It is hereby ordered that the unallotted lands in Townships seventeen, eighteen, nineteen, twenty, and twenty-one North, Ranges five, six, seven and eight West, and Townships twenty-two and twenty-three North, Ranges six, seven and eight West of the New Mexico Principal Meridian, withdrawn from sale and settlement, and set apart for the use of the Indians as an addition to the Navajo Reservation by Executive Orders dated November nine, nineteen hundred and seven, and January twenty-eight, nineteen hundred and eight, be, and the same are hereby, restored to the public domain, except the following-described lands embracing one hundred and ten unapproved allotments, namely:

The Southwest quarter of Section twenty-three, Township seventeen North, Range five West; the South half of Section thirty-five, Township eighteen North, Range five West; Section twenty-three and the North half of Section twenty-five, Township nineteen North, Range five West; the West half of Section five and the East half of Section six, Township twenty North, Range six West, unsurveyed; the Northwest quarter of Section three, the Northeast quarter of Section four, the South half of Section five, the Northwest quarter of Section eight, Section seventeen, the North half of Section nineteen, Section twenty and the Southeast quarter of Section thirty-one Township twenty-one North, Range six West; the West half of Section thirty-three, the South half of Section thirty-four, and the West half of Section thirty-five, Township twenty-two North, Range six West; the North half of Section three, Section four, the West half and the Southeast quarter of Section seven, the Southeast quarter of Section eight, Section nine, the West half of Section sixteen, Sections seventeen and eighteen, the North half and the Southeast quarter of Section nineteen, Section twenty, the West half of Section twenty-one, the East half of Section twenty-two, Section twenty-three, the Northwest quarter of Section twenty-eight, the North half of Section twenty-nine and the Northeast quarter of Section thirty, Township twenty North, Range seven West; the West half of Section six, the Southeast quarter of Section nineteen, the Southwest quarter of Section twenty, the North half and the Southeast quarter of Section twenty-four, the East half of Section twenty-five, the Southwest quarter of Section twenty-six, the South half of Section twenty-seven, the Southeast quarter of Section twenty-eight, the Northwest quarter of Section twenty-nine, the Northeast quarter of Section thirty, the East half of Section thirty-three, Section thirty-four and the West half of Section thirty-five, Township twenty-one North, Range seven West, and Sections one and twelve and the Southeast quarter of Section eleven. Township twenty-one North, Range eight West of the New Mexico Principal Meridian.

THEODORE ROOSEVELT

The White House

December 30, 1908

**Executive Order No. 1284 of January 16, 1911**

It is hereby ordered that all lands not allotted to Indians or otherwise reserved within the townships in New Mexico added to the Navajo Reservation by Executive Orders of November nine, nineteen hundred and seven, and January twenty-eight, nineteen hundred and eight, lying west of the first guide meridian west, be and the same hereby are restored to the public domain.

WM. H. TAFT

The White House

January 16, 1911

**History**

Modifications, see Ex. Ords. No. 1359 of May 24, 1911; and No. 1483 of February 17, 1912, listed in table of contents for this part.

**Executive Order No. 1359 of May 24, 1911**

It is hereby ordered that the following-described lands in New Mexico, being a part of the lands restored to the public domain by Executive Order of January 16, 1911, be, and the same hereby are, reserved from entry, sale, or other disposition, for Indian purposes:

Sec. 6, of T. 22 N., R. 9 W.; NW. 1/4 of sec. 20, T. 14 N., R. 12 W.; SE. 1/4, E. 1/2 W. 1/2, and SW. 1/4, SW. 1/4, sec. 31, T. 23 N., R. 9 W.; W. 1/2, sec. 20, all of sec. 30, and W. 1/2 of sec. 32, T. 17 N., 9 R. 12 W.; N. 1/2 of sec. 20, T. 16 N., R. 15 W. of the New Mexico principal meridian; *Provided*, That nothing herein shall affect any valid existing rights of any person.

WM. H. TAFT

The White House

May 24, 1911

**Executive Order No. 1482 of February 17, 1912**

ZUNI NATIONAL FOREST

Arizona and New Mexico

Under authority of the Act of Congress of June 4, 1897 (30 Stat., 11 at 34 and 36 [16 U.S.C. § 473 *et seq.*]), and upon recommendation of the Secretary of Agriculture, it is hereby ordered that on and after March 1, 1912, the boundaries of the Zuni National Forest, Arizona, and New Mexico, as proclaimed March 2, 1909, and modified by subsequent Proclamation of July 1, 1910, be further modified by excluding therefrom those parts of the Zuni and of the Navajo Indian Reservations included in said Zuni National Forest by the said Proclamation of March 2, 1909, except those parts of the said Navajo Indian Reservation described in Executive Order No. 1284 of January 16, 1911, and included in said Zuni National Forest by said Proclamation of March 2, 1909, which are hereby retained as National Forest land.

The purpose of this exclusion is to restore in all respects the Zuni Indian Reservation and that part of the Navajo Indian Reservation not affected by Executive Order No. 1284 of January 16, 1911, to the status existing prior to the said Proclamation of March 2, 1909, as though the inclusion of the lands within the Zuni National Forest had not been ordered, and said Indian Reservations are hereby fully recreated and restored to that status, with the exception above mentioned.

WM. H. TAFT

The White House

February 17, 1912

**Executive Order No. 1483 of February 17, 1912**



It is hereby ordered that the following-described lands in New Mexico, being a part of the lands heretofore set aside as an executive reservation for the Navajo Indians and eliminated from said reservation by Executive Order of January 16, 1911, be, and the same are hereby, restored to the status existing before said order of January 16, 1911, the purpose being to admit of the consummation of an exchange under the act of April 21, 1904 (33 Stats. at Large, page 211 [43 U.S.C. § 149]), initiated prior to said elimination, viz: all odd-numbered sections in townships 22 north of ranges 11 and 12 west, New Mexico principal meridian; and it is further ordered that upon completion of said exchange and after allotment to the Indians, any remaining lands shall be opened to disposition by the Secretary of the Interior in such manner and after such notice as he may prescribe.

WM. H. TAFT

The White House

February 17, 1912

**Executive Order No. 1699 of February 10, 1913**

It is hereby ordered that the Lots 1 (39.48 acres) and 2 (39.48 acres) and the S. of the NE. of Section 2, Township 21 North, Range 28 East of the Gila and Salt River Meridian in Arizona, be, and they are hereby, withdrawn from settlement, entry, sale, or other disposition and set aside for use of Navajo Indians: *Provided*, that the withdrawal hereby shall be subject to any prior valid existing rights of any persons to the lands described.

WM. H. TAFT

The White House

February 10, 1913

**Executive Order No. 1700 of February 10, 1913**

It is hereby ordered that the SE. 1/4 of Section 18, Township 18 North of Range 10 West, of the New Mexico Principal Meridian be, and the same hereby is, withdrawn from all forms of settlement and entry and set apart as a reservation for use of the Navajo Indians in common: *Provided* that the withdrawal hereby made shall be subject to any valid prior rights of any persons to the land described.

WM. H. TAFT

The White House

February 10, 1913

**Executive Order No. 1774 of May 6, 1913**

It is hereby ordered that Section 10 of Township 17 North, Range 13 West, of the New Mexico Principal Meridian in New Mexico, be, and the same is hereby

reserved from all forms of settlement, entry or other disposal, and set aside for use of Navajo Indians living in the vicinity of Crownpoint, New Mexico, provided that this withdrawal is subject to any prior valid right or claim of any persons to the land withdrawn, and to New Mexico coal land withdrawal No. 6, by Executive Order of May 18, 1911.

WOODROW WILSON

The White House

May 6, 1913

**Executive Order No. 1864 of December 1, 1913**

Fractional section 21, Township 30 North of Range 16 West of the New Mexico Principal Meridian in New Mexico, is hereby reserved from all forms of entry or other disposal, and set aside for administration purposes connected with the San Juan Indian boarding school on the Navajo reservation in New Mexico.

Executive Order dated July 9, 1910, New Mexico coal land withdrawal No. 1, is hereby modified so as to eliminate therefrom the fractional section described herein.

WOODROW WILSON

The White House

December 1, 1913

**Executive Order No. 1995 of July 23, 1914**

Executive Orders of November 9, 1907, and January 28, 1908, setting aside certain townships in the State of Arizona as additions to the Navajo Indian Reservation, are hereby modified so as to release from the said withdrawals all of the unappropriated tracts in Sec. 10, T. 24 N., R. 29 E., of the Gila and Salt River Meridian in Arizona, which tracts are hereby reserved as a rifle range for use of Company G, First Infantry, Organized Militia of the State of Arizona: *Provided*, That the lands shall revert to their former status as Indian reservation when no longer used or needed for the purpose reserved.

WOODROW WILSON

The White House

July 23, 1914

**History**

Modification, see Ex. Ord. No. 2138 of February 19, 1915, listed in Table of Contents for this part.

**Executive Order No. 2138 of February 19, 1915**

It is hereby ordered that sec. 10, T. 24 S., R. 28 E., G. & S. R. M., Arizona, containing according to the official plat on file in the General Land Office, approved October 25, 1902, 640 acres, be, and the same is hereby, reserved for military purposes for use of the National Guard of Arizona as a rifle range.

It is also hereby ordered that sec. 10, T. 24 N., R. 29 E., G. & S. R. M., Arizona, reserved by Executive Order No. 1995, dated July 23, 1914, for use of Company G, First Infantry, Organized Militia of the State of Arizona, be released from such reservation, so that the lands shall revert to their former status as part of the Navajo Indian Reservation in said State.

WOODROW WILSON

The White House

19 February, 1915

**Executive Order No. 2513 of January 15, 1917**

It is hereby ordered that the following described lands situated in the State of New Mexico, which belong to or may hereafter be acquired by the United States, are hereby withdrawn from settlement and sale and are set apart for the use and occupancy of the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon:

Township 15 N., Range 10 W.

S. 1/2, Sec. 1; W. 1/2 and SE. 1/4, Sec. 3; all of Sec. 11; E. 1/2, Sec. 15; N. 1/2 and SW. 1/4, Sec. 21; W. 1/2 and SE. 1/4, Sec. 31.

Township 16 N., Range 10 W.

W. 1/2, Sec. 7; N. 1/2 and SW. 1/4, Sec. 19.

Township 15 N.R. 11 W.

All of Sec. 5; W. 1/2 and SE. 1/4, Sec. 7; SW. 1/4, Sec. 15; all of Sec. 17; SW. 1/4, Sec. 23; all of Sec. 27; all of Sec. 35.

Township 16 N., Range 11 W.

E. 1/2 and SW. 1/4, Sec. 1; all of Sec. 5; all of Sec. 7; all of Sec. 9; all of Sec. 13; all of Sec. 15; all of Sec. 17; SW. 1/4, Sec. 19; N. 1/2, Sec. 21.

Township 17 N., Range 11 W.

All of Sec. 25.

Township 18 N., Range 11 W.

All of Sec. 17.

Township 15 N., Range 12 W.

All of Sec. 5; all of Sec. 7; all of Sec. 9; all of Sec. 19; all of Sec. 21; all of Sec. 25; all of Sec. 27; all of Sec. 29; all of Sec. 31.

Township 16 N., Range 12 W.

S. 1/2, Sec. 1; E. 1/2, Sec. 11; N. 1/2 and SE. 1/4, Sec. 13; W. 1/2 SE. 1/4, and E. 1/2 SW. 1/4, Sec. 15; N. 1/2 NW. 1/4, Sec. 21; all of Sec. 31; NW. 1/4 and SW. 1/4, Sec. 35.

Township 17 N., Range 12 W.

S. 1/2, Sec. 21; all of Sec. 27; E. 1/2, Sec. 29; all of Sec. 33; NW. 1/4, Sec. 35.

Township 19 N., Range 12 W.

All of Sec. 25.

Township 15 N., Range 13 W.

All of Sec. 7; all of Sec. 15; all of Sec. 17; all of Sec. 23.

Township 17 N., Range 13 W.

NE. 1/4, Sec. 1; SE. 1/4, Sec. 7; all of Sec. 9; all of Sec. 11; W. 1/2 and SE. 1/4, Sec. 13; all of Sec. 15; all of Sec. 17; all of Sec. 21; all of Sec. 23; N. 1/2, Sec. 25; N. 1/2, Sec. 27; NE. 1/4, Sec. 29.

Township 19 N., Range 13 W.

All of Sec. 5; all of Sec. 7; N. 1/2 and SW. 1/4, Sec. 9; all of Sec. 17; N. 1/2, Sec. 23; N. 1/2 and SE. 1/4, Sec. 27; all of Sec. 31.

Township 15 N., Range 14 W.

All of Sec. 1; NE. 1/4, Sec. 7; all of Sec. 11; NW. 1/4, Sec. 19; E. 1/2, Sec. 21; all of Sec. 23; N. 1/2, Sec. 31; N. 1/2, Sec. 33.

Township 16 N., Range 14 W.

S. 1/2, Sec. 15; E. 1/2, Sec. 31; SE. 1/4, Sec. 33.

Township 16 N., Range 15 W.

W. 1/2, Sec. 13; SW. 1/4, Sec. 17; NE. 1/4, Sec. 19; all of Sec. 25; E. 1/2 and SW. 1/4, Sec. 27.

Township 16 N., Range 16 W. NE. 1/4 and SW. 1/4, Sec. 15; all of Sec. 23; SE. 1/4, Sec. 35.

Township 17 N., Range 16 W.

S. 1/2, Sec. 31.

Township 16 N., Range 17 W. All of Sec. 5; all of Sec. 17; E. 1/2, SW. 1/4 and E. 1/2 NW. 1/4, Sec. 23; all of Sec. 25; all of Sec. 27; all of Sec. 29; W. 1/2, Sec. 33; all of Sec. 35.

Township 16 N., Range 18 W. N. 1/2, Sec. 3; W. 1/2 and SE. >1/4, Sec. 17; NW. 1/4, Sec. 29.

Township 17 N., Range 18 W.

SE. 1/4, Sec. 33.

Township 16 N., Range 19 W.

W. 1/2 and SE. 1/4, Sec. 3; NE. 1/4, Sec. 25.

WOODROW WILSON

The White House

15 January, 1917

**Executive Order of January 19, 1918**

It is hereby ordered that the following-described lands in the State of Arizona be, and they are hereby, reserved from all forms of disposal and set aside temporarily until allotments in severalty can be made to the Navajo Indians living thereon, or until some other provision can be made for their welfare:

Beginning at a point on the Little Colorado River where it intersects the eastern boundary of the Tusayan National Forest as set aside by the proclamation of June 28, 1910; thence up the Little Colorado River where it crosses the 40-mile limit of the Santa Fe Pacific R. R.; thence south and west along said forty-mile limit to the eastern boundary of the Tusayan National Forest; thence north along the eastern boundary of said Tusayan National Forest to place of beginning; which when surveyed will cover fractional parts of Ts. 31, 32, and 33 N., R. 6 E.; Ts. 29, 30, 31, and 32 N., R. 7 E.; and Ts. 29, 30 and 31 N., R. 8 E., Gila and Salt River meridian, Arizona, containing approximately 94,000 acres.

This withdrawal is subject to all prior valid and existing rights and claims of any persons, and to all prior orders establishing or creating water-power designations and power-site reserves.

This order supersedes and takes the place of order number 2612, dated May 7, 1917, and is made for the sole purpose of correctly describing the lands intended to be withdrawn by that order.

WOODROW WILSON

The White House

19 January, 1918

### **History**

**Prior provisions.** Executive Order No. 2612 of May 7, 1917, which was superseded by this Ex. Ord., read "thence west to the eastern boundary of the Tusayan National Forest" instead of "thence south and west along said forty mile limit to the eastern boundary of the Tusayan National Forest", and referred also to "T. 29 N., R. 9 E."

### **Executive Order of December 1, 1922**

It is hereby ordered that the following described tract of approximately 13.5 acres within the area withdrawn by Executive Order of November 14, 1901, for Navajo Indians be, and the same is hereby, eliminated from the reservation created by said withdrawal:

Beginning at a point in the southern line of the 200 foot right of way of the Atchison, Topeka, and Santa Fe Railway Company, from which point the southeast corner of Section 20 and the northeast corner of Section 29, Township 21 North, Range 11 East, Gila and Salt River Meridian, in the west line of the Navajo Indian Reservation, bears South seventy-eight degrees forty-two minutes West, distant 8700.43 feet; thence South eighty-seven degrees five minutes East, along said southern line of right of way 1000 feet; thence South two degrees fifty-five minutes West, 588 feet; thence North eighty-seven degrees five minutes West, 1000 feet; thence North two degrees fifty-five minutes East, 588 feet, to the point of beginning.

WARREN G. HARDING

The White House

December 1, 1922

### **Executive Order No. 11829 of January 8, 1975**

THE HOPI-NAVAJO LAND SETTLEMENT INTERAGENCY COMMITTEE

[Rescinded. See Ex. Ord. No. 12379 of August 17, 1982.]

### **Executive Order No. 11853 of April 17, 1975**

AMENDING EXECUTIVE ORDER NO. 11829, RELATING TO THE HOPINAVAJO LAND SETTLEMENT INTERAGENCY COMMITTEE

[Rescinded. See Ex. Ord. No. 12379 of August 17, 1982.]

### **Executive Order No. 12379 of August 17, 1982**

Revoking Executive Order No. 11829, relating to the Hopi-Navajo Land Settlement Interagency Committee.

[See, particularly, section 11 of the order.]

## **Part 4. State Constitutional Disclaimer Clauses**

### **Annotations**

See annotations under Taxation in digest.

#### **ARIZONA**

**Art. XX. Art. XX, Pars. 4, 5 (Act June 20, 1910, Ch. 310, § 20, 36 Stat. 569)**

Fourth. Public lands; Indian lands

Fourth. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.

Fifth. Taxation

Fifth. The lands and other property belonging to citizens of the United States residing without this State shall never be taxed at a higher rate than the lands and other property situated in this State belonging to residents thereof, and no taxes shall be imposed by this State on any lands or other property within an Indian Reservation owned or held by any Indian; but nothing herein shall preclude the State from taxing as other lands and other property are taxed, any lands and other property outside of an Indian Reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid, or as may be granted or confirmed to any Indian or Indians under any act of Congress. As amended, election May 31, 1927, eff. June 27, 1927.

#### **NEW MEXICO**

**Art. XXI. Art. XXI, Par. 2 (Act June 20, 1910, Ch. 310, § 2, 36 Stat. 558)**

SEC. 2. [Control of unappropriated or Indian lands - Taxation of federal government, nonresident, and Indian property.]

The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof, and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through the United States, or any prior sovereignty; and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United

States; and that the lands and other property belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by this state upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein shall preclude this state from taxing as other lands and property are taxed, any lands and other property outside of an Indian reservation, owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid, or as may be granted or confirmed to any Indian or Indians under any act of Congress; but all such lands shall be exempt from taxation by this state so long and to such extent as the Congress of the United States has prescribed or may hereafter prescribe.

**UTAH**

**Art. III. Art. III, Par. 2 (Act July 16, 1894, Ch. 138, § 3, 28 Stat. 108)**

[Right to public domain disclaimed—Taxation of lands—Exemption.]

Second: The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. The lands belonging to citizens of the United States, residing without this State shall never be taxed at a higher rate than the lands belonging to residents of this State; but nothing in this ordinance shall preclude this state from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, by patent or other grant, a title thereto, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress, containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such extent, as is or may be provided in the act of Congress granting the same. (As amended November 5, 1946, effective January 1, 1947.)