



## 23RD NAVAJO NATION COUNCIL OFFICE OF THE SPEAKER

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### FOR IMMEDIATE RELEASE

June 20, 2017

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### Navajo Nation Council tables NGS replacement lease legislation

**WINDOW ROCK** – The Navajo Nation Council held a special session on Monday and voted to table Legislation No. 0194-17, which seeks the approval of a replacement lease for Navajo Generating Station, until a special session is held on June 26. The bill was not listed on the proposed agenda for Monday’s special session, however, Council Delegate Otto Tso (Tó Nanees Dizi) motioned to add the legislation to agenda at the start of the session, which was then voted on and approved by the Council.

Legislation sponsor Speaker LoRenzo Bates (Nenahnezad, Newcomb, San Juan, Tiis Tsoh Sikaad, Tse’Daa’Kaan, Upper Fruitland) requested the Council to address any amendments to the bill during Monday’s session and to table the legislation. This would allow several days for the Navajo Nation’s negotiating team to share the amendments with the owners of NGS to determine if they would be agreeable to the amendments, prior to the special session on June 26.

The current NGS lease is set to expire in December 2019, however the owners determined that the process of decommissioning the power plant will take approximately two years, which would require the power plant to begin shutting down in July 2017. The proposed legislation would allow the power plant to continue operating until the end of 2019 and continue providing significant revenues and hundreds of jobs for the Navajo Nation.

The majority of Monday’s session focused on several amendments that were proposed, five of which were approved by the Council. Please see the attached Council action report for a summary of the amendments that were approved on Monday. Each of the amendments will become part of the proposed legislation that Council will consider on June 26.

Council members voted 17-6 to table Legislation No. 0194-17 until June 26. The special session is scheduled to begin at 1:00 p.m. on June 26 at the Department of Diné Education auditorium in Window Rock, Arizona. The Office of the Speaker is working with the Office of Broadcast Services to provide live streaming of the special session.

Public comments for Legislation No. 0194-17 may be submitted until the legislation goes before the Navajo Nation Council for final consideration. Comments may be submitted by e-mail to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov) and written comments may be mailed to: Executive Director, Office of Legislative Services, P.O. Box 3390, Window Rock, AZ 86515.

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**23<sup>rd</sup> NAVAJO NATION COUNCIL  
COUNCIL ACTION REPORT  
Third Year 2017**

The **NAVAJO NATION COUNCIL** to whom has been assigned:

**NAVAJO LEGISLATIVE BILL #0194-17**

An Action Relating to Health, Education and Human Services, Resources and Development, Budget and Finance, Naabik'íyáti' Committees and the Navajo Nation Council; Approving the Replacement Lease Between the Navajo Nation and Salt River Project Agricultural Improvement and Power District, Arizona Public Service Company, Tucson Electric Power Company, Nevada Power Company D/B/A NV Energy and Department of Water and Power of City of Los Angeles; Lease Amendment No. 1 to Existing Lease; Approval of Restrictive Covenants Related to Ash Disposal Area and Solid Waste Landfill and Pond Solids; Waiver of Sovereign Immunity

*Sponsored by: Honorable LoRenzo C. Bates*

*Co-Sponsored by: Honorable Nathaniel Brown*

*Co-Sponsored by: Honorable Herman M. Daniels*

*Co-Sponsored by: Honorable Davis Filfred*

Has had it under consideration and reports the same **WAS TABLED AND REMAINS WITH THE NAVAJO NATION COUNCIL**

Respectfully Submitted,

*Honorable Alton Joe Shepherd, Pro Tem Speaker  
NAVAJO NATION COUNCIL*

**19 JUNE 2017**

**AMENDMENT #1 [AMENDMENTS TO NAABIK'ÍYÁTI' COMMITTEE AMENDMENTS]:**

**14. WATER USE:**

- (A) The Nation agrees that during the Lease Term, water out of the 50,000 acre-feet annually allocated to the State of Arizona pursuant to Article III(a)(1) of the Upper Colorado River Basin Compact (63 Stat. 31), in an amount not greater than 1,500 acre-feet of water per year, shall be available for consumptive uses by Lessees for the tasks under this Lease during the NGS Retirement Period. The Nation agrees the use of water on Reservation Lands within the Upper Colorado River Basin of Arizona (as said Upper Colorado River Basin is defined in the Upper Colorado River Basin Compact) shall not reduce or diminish the availability of water required by

the Lessees for such purposes. During the Lease Term, the Lessees will not object to Navajo uses of water in the Upper Colorado River Basin in Arizona from the 50,000 acre-feet available to the State of Arizona pursuant to Article III(a)(1) of the Upper Colorado River Basin Compact in excess of (1) Lessees' use of the 1,500 acre-feet during the NGS Retirement Period, and (2) other contractors with existing contractual entitlements to such water. The United States approval of this Lease does not constitute and should not be construed as a position regarding the use of water out of the 50,000 acre-feet annually allocated to the State of Arizona pursuant to Article III(a)(1) of the Upper Colorado River Basin Compact (63 Stat. 31).

- (B) Salt River Project holds certificates of water right from the State of Arizona (Certificate Nos. 4050.0001 and 4050.0003), on behalf of itself and the Navajo Generating Station Participants, for the use of a portion of the 50,000 acre-feet annually allocated to the State of Arizona pursuant to Article III(a)(1) of the Upper Colorado River Basin compact (63 Stat. 31) for power purposes, including NGS Retirement ("NGS Water Allotment"). During each year of the NGS Retirement Period, Salt River Project will notify the ~~USBR U.S. Bureau of Reclamation~~ ("Reclamation") by December 31~~st~~ of the estimated water usage at NGS for the upcoming year shall be 1,500 acre-feet. All water usage will be metered and reported to Reclamation. Once the NGS Water Allotment is no longer necessary for the NGS Retirement or at the termination of the NGS Retirement Period, whichever occurs first, Salt River Project will request on behalf of the Navajo Generating Station Participants that the Arizona Department of Water Resources terminate the certificates of water rights (Certificate Nos. 4050.0001 and 4050.003). Upon the cessation of coal combustion at commercial operations at NGS, Salt River Project will support the Nation's efforts to acquire the use of a portion of the 50,000 acre-feet annually allocated to the State of Arizona pursuant to Article III(a)(1) of the Upper Colorado River Basin Compact (63 Stat. 31).
- (C) Salt River Project will provide technical assistance to the Nation to assist the Nation with the diversion of up to 950 acre-feet per year from Lake Powell for the benefit of LeChee and other Navajo communities in the vicinity of NGS that the Nation has the right to use under an existing contract (Contract No. 09-WC-40-318); ~~that~~ provided, however, ~~that~~ such technical assistance shall be at no cost to Salt River Project or the Lessees and such offer of assistance shall terminate five (5) years after the date the certificates are terminated under Section 14(B).
- (D) Nothing in this Lease shall be interpreted as the Navajo Nation waiving its water rights or claims to water in the Upper Colorado River Basin.

*Motioned by: Honorable Dwight Witherspoon*

*Seconded by: Honorable Tom Chee*

*Vote: 23 in Favor, 00 Opposed (Pro Tem Speaker Shepherd Not Voting)*

**AMENDMENT #2 [AMENDMENTS TO PROPOSED RESOLUTION]:**

Page 7, Line 4; No. 10, add the following language:

The Navajo Nation waives any right to a trial by jury in litigation directly or indirectly arising out of, under or in connection to the Replacement Lease. *See* Section 465. Non-monetary disputes will be

resolved by a three-step process: (1) Informal Consultation; (2) Mediation; and then (3) Litigation. See Section 18. If a monetary dispute arises, the Parties will take several steps to resolve the issue and if it is not resolved, a lawsuit may be filed. See Section 17. Any lawsuit filed under or in connection with the Replacement Lease will be decided by a judge, as opposed to a jury.

Page 7, Line 7; No. 11

~~The Navajo Nation agrees to waive and release each of the NGS Partners of any claim or claims the Navajo Nation has, or may have under the Existing Lease for damage resulting from the NGS Partner's operation or ownership of the Navajo Generating Station; The~~ however, the Navajo Nation maintains reserves and retains the right to sue under bring certain claims under the Comprehensive Environmental Response, Compensation, and Liability Act, also known as "CERCLA" or Superfund, and the Resources Conservation and Recovery Act, in federal court for response cost or equitable relief related to the NGS Partners' operation of NGS under the Existing Lease. The only exception is that but not for natural resource damages, cannot be recovered related to the closures in place (Ash Landfill, Solid Waste Landfill and certain evaporation ponds and stormwater ponds). See Section 36

Page 10, Line 29; NEW SECTION NO. H

H. The Navajo Nation President shall be authorized to sign the transmission agreement with the U.S. Bureau of Reclamation associated with the Navajo Nation's right to use at least 500MW on the Southern and Western Transmission Systems and is also authorized to enter into any and all agreements necessary for the management of this access to transmission.

*Motioned by: Honorable Dwight Witherspoon*

*Seconded by: Honorable Seth Damon*

*Vote: 16 in Favor, 07 Opposed (Pro Tem Speaker Shepherd Not Voting)*

### **AMENDMENT # 3 [AMENDMENT TO EXHIBIT A AND AMENDMENT 1]:**

1. Amend as follows:
  - a. Delete Schedule 7 in Exhibit List;
  - b. Amend Exhibit A, Replacement Lease, Section 7(B), delete (ii) add new language "Whereas the payments described therein, a total of no less than \$167,186,051, shall be due and paid by the Owners, within thirty days upon the full execution of the Replacement Lease by all applicable parties, but by no later than February 1, 2018.";
  - c. Amend Exhibit D to the Replacement Lease, entitled Amendment No. 1, Section 5, deleting (B)(v) and adding new language, "Whereas the payments described therein, a total of no less than \$167,186,051, shall be due and paid by the Owners, within thirty days upon the full execution of the Replacement Lease by all applicable parties, but by no later than February 1, 2018.";
  - d. Add new language to Exhibit A, Replacement Lease, Section 7(B), new (iii) and add new language to Exhibit D, Amendment 1, Section 5(B)(v), "Further, the Owners agree to provide immediately, but no later than August 1, 2017, all amounts due on behalf of the Bureau of Reclamation to complete the compensation of the Navajo Nation for its \$1,000,000 signing

bonus related to the Navajo Nation and the Owners prior lease negotiations, referenced herein as the 2012 Lease Amendment.”

2. Renumber or reletter succeeding paragraphs or sections accordingly, if necessary; and this amendment shall supersede inconsistent language contained in any other committee amendment, which shall be conformed to the intent or language of this amendment. Office fo Legislative Services is hereby authorized to make grammatical changes or correct typographical errors with notice to the sponsor of the Legislation.

*Motioned by: Honorable Leonard Tsosie*

*Seconded by: Honorable Nelson S. BeGaye*

*Vote: 21 in Favor, 02 Opposed (Pro Team Speaker Shepherd Not Voting)*

**AMENDMENT #4 [AMENDMENTS TO PROPOSED RESOLUTION]:**

1. On page 1, line 13-14, strike the words: “THE REPLACEMENT” and insert, in lieu thereof, the words: “AN EXTENSION”;
2. On page 3, line 11, insert the word “proposed” before the word “Replacement”;
3. One page 3, line 11, strike the word “Nation” and insert, in lieu thereof, “Navajo Joint Task Force”;
4. On page 3, line 11, add a paragraph as follows:

“D. The Navajo Nation Council hereby states that the 1969 Lease, with its amendments, should remain; and that only an Extension Lease be approved.”

5. All words referencing “Replacement Lease” should be appropriately replaced with the “Extension Lease” in Legislation and the Exhibits;
6. Renumber or reletter succeeding paragraphs or sections accordingly, if necessary; and this amendment shall supersede inconsistent language contained in any other committee amendment, which shall be conformed to the intent or language of this amendment. Office fo Legislative Services is hereby authorized to make grammatical changes or correct typographical errors with notice to the sponsor of the Legislation.

*Motioned by: Honorable Leonard Tsosie*

*Seconded by: Honorable Nelson S. Begaye*

*Vote: 13 in Favor, 10 Opposed (Pro Tem Speaker Shepherd Not Voting)*

**AMENDMENT #5 [AMENDMENT TO PROPOSED RESOLUTION]:**

Page 10,, Line 23, insert new language after word “programs,” and Lechee Chapter including...

*Motioned by: Honorable Tuchoney Slim, Jr.*  
*Seconded by: Honorable Jonathan L. Hale*

*Vote: 23 in Favor, 00 Opposed (Pro Tem Speaker Shepherd Not Voting)*

**TABLING MOTION:**

Motion to Table to Council Special Session on June 26, 2017

*Motioned by: Honorable Seth Damon*  
*Seconded by: Honorable Edmund Yazzie*

*Vote: 17 in Favor, 06 Opposed (Pro Tem Speaker Shepherd Not Voting)*

**MAIN MOTION:**

*Motioned by: Honorable Davis Filfred*  
*Seconded by: Honorable Otto Tso*

*Vote:*

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**FAILED MOTIONS:**

**SUSPENSION OF RULE #24 (FAILED):**

Using Rule 24 to Suspend Rule 9 to Waive the reading of the legislation to be read electronically at a later time.

*Motioned by: Honorable Dwight Witherspoon*  
*Seconded by: Honorable Benjamin L. Bennett*

*Vote: 05 In Favor, 10 Opposed (Pro Tem Speaker Shepherd Not Voting) SUSPENSION OF RULES FAILED*

**AMENDMENT #3 (FAILED):**

Amendments to Replacement Lease

Page No. 8

Add the underlined word to §1 (DD) (Definitions): “NGS Site Remediation” means the investigation, remediation, closure,...

Page No. 13

Add the underlined language to §4(A) (Purpose): “Lessees shall use the NGS Site for the primary purpose of NGS Retirement, NGS Site Remediation, and post-closure activities in accordance with this Lease, and these activities shall be performed by Lessees at Lessees’ expense.”

Page No. 31

Revise the language in Section 17(B)(ii) (Default for Nonpayment) as follows: “Collect, by suit in ~~any~~ a federal court of competent jurisdiction or in ~~any~~ an Arizona court if federal laws do not apply or federal courts lack of competent jurisdiction, and in no other courts, all amounts due under Section 17(A).”

Page No. 32

Revise the language in Section 17(F) as follows: “Collect, by suit in ~~any~~ a federal court of competent jurisdiction or in ~~any~~ an Arizona court if federal laws do not apply or federal courts lack of competent jurisdiction, and in no other courts, all amounts due under Section 17(E).”

Page No. 34

Revise the language in Section 18(E)(ii) as follows: “After the 30-day notice period described in Section 18(E)(i) has expired, the Party who provided the notice may bring suit in a federal court of competent jurisdiction or in an Arizona court in federal laws do not apply or federal courts lack jurisdiction, ~~and in no other courts,~~ seeking only declaratory or injunctive relief, recovery of monies due, or enforcement of compliance with the Lease as the exclusive remedies from the court.”

Page No. 37

Section 23(B)(i) should reference Section 36(C) in addition to 36(B). “...reserved by the Nation under Section 36(B) and 36(C).”

Page No. 38

Section 23(B)(ii) should reference Section 36(C) in addition to 36(B). “...costs or liabilities reserved by the Nation under Section 36(B) and 36(C).”

Motioned by: Honorable Dwight Witherspoon

Seconded by: Honorable Seth Damon

Vote: 11 in Favor, 12 Opposed (Pro Tem Speaker Shepherd Not Voting) – AMENDMENT MOTION FAILED

**2<sup>nd</sup> AMENDMENT #3 (FAILED):**

Amendment to Exhibit A (Page 43 of 70)

Strike all of 36. WAIVER AND RELEASE OF CLAIMS: COVENANT NOT TO SUE.

Motioned by: Honorable Leonard Tsosie

Seconded by: Honorable Nelson S. BeGaye

Vote: 11 In Favor, 12 Opposed (Pro Tem Speaker Shepherd Not Voting) – AMENDMENT MOTION FAILED

**AMENDMENT #5 (FAILED):**

1. On page 11, strike lines 13-16, and, in lieu therefore, the following paragraph

“The Navajo Nation does not waive the application of the laws of the Navajo Nation, and agrees to the application of Navajo Nation laws in conjunction with federal or Arizona state law.”

2. All words referencing the waive or waiving the laws of the Navajo Nation should be appropriately replaced or stricken in the Legislation and the Exhibit(s), as shown in Paragraph 1 above.
3. Renumber or reletter succeeding paragraphs or sections accordingly, if necessary; and this amendment shall supersede inconsistent language contained in any other committee amendment, which shall be conformed to the intent or language of this amendment. Office fo Legislative Services is hereby authorized to make grammatical changes or correct typographical errors with notice to the sponsor of the Legislation.

Motioned by: Honorable Leonard Tsosie

Seconded by: Honorable Nelson S. BeGaye

Vote: 11 in Favor, 12 Opposed (Pro Tem Speaker Shepherd Not Voting) – AMENDMENT MOTION  
FAILED