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Speaker Morgan announces special session to discuss Peabody Coal Company leasing agreements

Tuesday, November 10, 2009 4:50 PM

From: "The Navajo Nation" <joshualavarbutler@yahoo.com>

To: [REDACTED]



21st NAVAJO NATION COUNCIL Office of the Speaker

**FOR IMMEDIATE RELEASE
NOVEMBER 10, 2009**

Speaker Morgan announces special session to discuss Peabody Coal Company leasing agreements

Special Session scheduled on Nov. 12

WINDOW ROCK, Ariz- The Honorable Speaker Lawrence T. Morgan has announced a special session of the 21st Navajo Nation Council to convene at 9 a.m. on Thursday, Nov. 12, to discuss issues related to Peabody Coal Company's leasing agreement amendments of 1987.

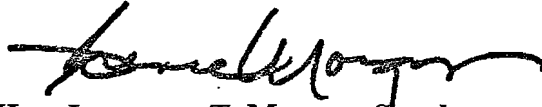
The amendments provide for a reopener to negotiate increases in royalty rates and royalty caps for each successive 10-year period after 1987. Legislation No. 0721-08, sponsored by George Arthur (T'iistoh Sikaad/San Juan/Nenanezad) and Phillip Harrison Jr. (Red Valley/Cove), is related to resources recommending and approving the agreement relating to certain amendments to Coal Mining Lease No. 14-20-0609-8580 and Coal Mining Lease No. 14-20-0603-9910 - both of which are leases between the Navajo Nation and the Peabody Western Coal Company.

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**PROPOSED
AGENDA OF THE
NAVAJO NATION COUNCIL**

November 12, 2009

SPECIAL SESSION



PRESIDING: Hon. Lawrence T. Morgan, Speaker
Navajo Nation Council

PLACE: Navajo Nation Council Chamber
Window Rock, Navajo Nation (AZ)

-
1. **Call the Special Session to Order; Roll Call; and Invocation.**
 2. **Recognize the Guests and Visiting Officials to the Navajo Nation.**
 3. **Review and Adopt the Agenda for the Special Session of the Navajo Nation Council.**
 4. **Reports: none**
 5. **Old Business: none**
 6. **New Business:**
 - (a) **Legislation No. 0592-09 -- Relating to Resources; Recommending and Approving the Agreement Relating to Certain Amendments to Coal Mining Lease No. 14-20-0603-8580 and Coal Mining Lease No. 14-20-0603-9910 Each Between the Navajo Nation and the Peabody Western Coal Company (Sponsors: Hon. George Arthur and Hon. Phillip Harrison Jr.)**
 7. **Close of the Special Session; Announcement; and Adjournment.**

LEGISLATIVE SUMMARY SHEET
Tracking No. 0592-09

Date: October 6, 2009

**TITLE OF RESOLUTION: RELATING TO RESOURCES;
RECOMMENDING AND APPROVING THE AGREEMENT RELATING TO
CERTAIN AMENDMENTS TO COAL MINING LEASE NO. 14-20-0603-8580
AND COAL MINING LEASE NO. 14-20-0603-9910 EACH BETWEEN THE
NAVAJO NATION AND THE PEABODY WESTERN COAL COMPANY**

**PURPOSE: RECOMMENDING AND APPROVING THE
AGREEMENT RELATING TO CERTAIN AMENDMENTS TO COAL
MINING LEASE NO. 14-20-0603-8580 AND COAL MINING LEASE NO.
14-20-0603-9910 EACH BETWEEN THE NAVAJO NATION AND THE
PEABODY WESTERN COAL COMPANY**

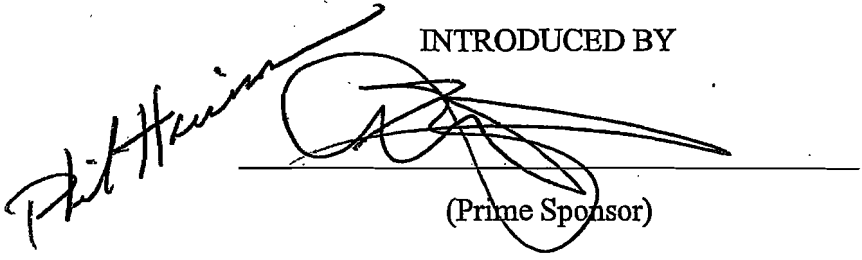
This written summary is provided in accord with Navajo Nation Council Rules of Order, Rule 11(A), or Standing Committee Rules of Order, Rule 12, on the resolution as drafted by the Office of Legislative Counsel. This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in draft.

10-09-1

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

21st NAVAJO NATION COUNCIL -- Third Year, 2009

INTRODUCED BY

Phil Harrison


(Prime Sponsor)

TRACKING NO. 0592-09

AN ACTION

RELATING TO RESOURCES; RECOMMENDING AND APPROVING THE
AGREEMENT RELATING TO CERTAIN AMENDMENTS TO COAL MINING
LEASE NO. 14-20-0603-8580 AND COAL MINING LEASE NO. 14-20-0603-9910
EACH BETWEEN THE NAVAJO NATION AND THE PEABODY WESTERN COAL
COMPANY

BE IT ENACTED:

1. The Navajo Nation hereby finds the following with respect to the Agreement as found at Exhibit "A":

- a) The Navajo Nation Council, pursuant to 2 N.N.C. §102(A), is the governing body of the Navajo Nation; and
- b) The Navajo Nation ("Nation") and Peabody Western Coal Company ("Peabody") are the Lessor and Lessee, respectfully, under leases for the extraction of coal originally entered into between the Nation and Peabody's predecessor in interest, known as Lease No. 14-20-0603-8580 ("8580 Lease") and Lease No. 14-20-0603-9910 ("9910 Lease"); and
- c) On November 20, 1987, the Nation and Peabody's predecessor in interest entered into amendments to the coal leases ("1987 Amendments"); and

1 d) The 1987 Amendments provide for a reopener to negotiate increased
2 royalty rates and royalty-tax caps for each successive ten-year period after
3 1987; and

4 e) The Nation and Peabody have negotiated an Agreement regarding the
5 coal royalty rate and royalty tax cap for the 8580 Lease and the 9910 Lease, as
6 found at Exhibit "A"; and

7 f) It would be in the best interest of the Navajo Nation to approve the
8 negotiated Agreement as found at Exhibit "A".

9 2. The Navajo Nation hereby approves the Agreement between the Navajo
10 Nation and Peabody Western Coal Company as found at Exhibit "A".

11 3. The Navajo Nation respectfully requests that the Secretary of the Interior
12 maintain the Agreement as found at Exhibit "A" as confidential proprietary
13 information of the Navajo Nation.

14 4. The President of the Navajo Nation is hereby authorized to execute this
15 Agreement and other such documents as may be necessary and appropriate to
16 implement the intent of this resolution.

**BACKGROUND INFORMATION FOR THE RESOURCES COMMITTEE AND THE NAVAJO NATION COUNCIL
RESOLUTIONS**

**AMENDMENT TO COAL MINING LEASES BETWEEN THE NAVAJO NATION AND PEABODY WESTERN
COAL COMPANY**

1. Pursuant to 2 N.N.C. §102(A), the Navajo Nation Council is the governing body of the Navajo Nation;
2. The Navajo Nation ("Nation") and Peabody Western Coal Company ("Peabody") are the Lessor and Lessee, respectfully, under leases for the extraction of coal originally entered into between the Nation and Peabody's predecessor in interest, known as Lease No. 14-20-0603-8580 ("8580 Lease") and Lease No. 14-20-0603-9910 ("9910 Lease");
3. On November 20, 1987, the Nation and Peabody's predecessor in interest entered into amendments to the coal leases ("1987 Amendments");
4. The 1987 Amendments provide for a reopener to negotiate increased royalty rates and royalty-tax caps for each successive ten-year period after 1987;
5. The Nation and Peabody have recently engaged in good faith negotiations pursuant to Articles IV(b) and XXXV(e) of the 8580 Lease and Article III(b) of the 9910 Lease regarding the coal royalty rate and the royalty tax cap;
6. The Nation and Peabody have negotiated an Agreement regarding the coal royalty rate and royalty tax cap for the 8580 Lease and the 9910 Lease, attached hereto as Exhibit "A";
7. The Resources Committee of the Navajo Nation Council, by Resolution ____, recommends that the Navajo Nation Council approve the Agreement between the Nation and Peabody relating to the 8580 Lease and 9910 Lease.
8. The Navajo Nation Council approves the Agreement between the Nation and Peabody relating to the 8580 Lease and 9910 Lease, attached hereto as Exhibit "A".
9. The Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute this Agreement and such other documents as may be necessary and appropriate to implement the intent of this resolution.
10. The Navajo Nation Council hereby respectfully requests the Secretary of the Interior to maintain the Amendment approved herein as confidential proprietary information of the Navajo Nation.



AGREEMENT
relating to
COAL MINING LEASE No. 14-20-0603-8580 and
COAL MINING LEASE No. 14-20-0603-9910
between Peabody Western Coal Company
and The Navajo Nation

THIS AGREEMENT ("Agreement") is entered into this ____ day of September, 2009 by and between THE NAVAJO NATION ("Navajo Nation") and PEABODY WESTERN COAL COMPANY ("Peabody"), collectively referred to as "the Parties."

WHEREAS, the Navajo Nation and Peabody are the Lessor and Lessee, respectively, under certain coal leases, originally entered into between the Navajo Nation and Peabody's predecessor in interest, known as Lease No. 14-20-0603-8580 ("8580 Lease") and Lease No. 14-20-0603-9910 ("9910 Lease"), as amended to date (collectively "Coal Leases"); and

WHEREAS, the Coal Leases were amended effective upon approval by Donald Paul Hodel, United States Secretary of the Interior on December 14, 1987; and

WHEREAS, the Coal Leases were again amended by the Lease Amendment Agreement between the Navajo Nation and Peabody Western Coal Company entered into September 15, 1998 and effective March 29, 1999 upon approval by Bruce Babbitt, United States Secretary of the Interior; and

WHEREAS, the Navajo Nation and Peabody have recently engaged in good faith negotiations pursuant to Articles IV(b) and XXXV(e) of the 8580 Lease and Article III(b) of the 9910 Lease and pursuant to agreements to extend the negotiation period regarding the coal royalty rate and the royalty tax cap;

IN CONSIDERATION of the covenants, promises, terms and conditions contained herein, the Parties agree as follows:

1. The terms of this Agreement (except for paragraph 7 below, which applies to the period specified therein) shall apply for coal delivered from December 15, 2007 through December 14, 2017. The next opportunity for a royalty and royalty/tax cap reopener, pursuant to the terms of the Leases, shall be in 2017.
2. The coal royalty rates are twelve and one-half percent (12.5%) of gross realization under the 8580 Lease, and six and one-quarter percent (6.25%) of gross realization under the 9910 Lease during the term of this Agreement;
3. The percentage rates of the Royalty-Tax Caps are fourteen and one-quarter percent (14.25%) under Article XXXII of the 9910 Lease and twenty and one-half

- percent (20.5%) under Article XXXV of the 8580 Lease during the term of this Agreement;
4. **Lease Computation Methodology:** The current methodology for computing gross realization shall continue during the term of this Agreement irrespective of whether regulations for computing gross realization under federal or Indian leases are changed.
 5. Peabody shall make a one-time bonus payment of \$1,550,000.00 to the Navajo Nation upon the execution of this Agreement by the Navajo Nation if the Navajo Nation executes the Agreement on or before October 31, 2009. If the Navajo Nation executes this Agreement after October 31, 2009, this payment shall be made within 30 days of the approval of this Agreement by the United States Secretary of the Interior (without delegation).
 6. Peabody shall pay to the Navajo Nation \$3.5 million for each calendar year from 2008 through 2017 in which the Navajo Generating Station purchases coal extracted from the premises. Peabody shall make those payments as set forth in the attached Payment Schedule. Peabody has previously made the payment for 2008 in December 2007. The payment for 2009 shall be made within 30 days of the approval of this Agreement by the United States Secretary of the Interior (without delegation). The payment for 2010 shall be made by December 14, 2009, or within 30 days after Secretarial approval, whichever is later. Each such annual payment thereafter shall be made by December 14 of the year preceding the year for which the payment is due. The amount of this annual payment shall not be subject to escalation or adjustment.

For any calendar year in which the Navajo Generating Station does not purchase coal extracted from the premises during that calendar year, but another customer purchases coal extracted from the premises in an amount equal to or greater than the amount purchased by the Navajo Generating Station during the last 12 months of any such purchases, Peabody shall make the \$3.5 million bonus payment for such calendar year. Any payment made pursuant to this paragraph shall be made by January 31 of the year following any such calendar year to which this paragraph applies.

7. The annual amount Peabody contributes for scholarships for the Navajo Nation shall be increased as follows:
 - (1) Article XXXI of the 8580 Lease shall be replaced in its entirety with the following language:

Article XXXI. Scholarships

For each calendar year from 2008 through 2017, Peabody shall make an annual scholarship payment to the Navajo Nation in the amount of \$167,000. For any calendar year beginning with 2018, and thereafter for

the remainder of the term of this Lease as amended in which the Navajo Generating Station purchases coal extracted from the premises during that calendar year, or for which another customer purchases coal extracted from the premises in an amount equal to or greater than the amount purchased by the Navajo Generating Station during the last 12 months of any such purchases, Peabody shall continue to make a scholarship payment of \$167,000. For any calendar year beginning with 2018, and thereafter for the remainder of the lease as amended in which the Navajo Generating Station does not purchase coal extracted from the premises, and in which another customer does not purchase the amount of coal specified in the preceding sentence, Peabody shall make an annual scholarship payment of \$124,000. Each annual scholarship payment shall be made by December 14 of the year preceding the year for which the payment is due. To the extent Peabody has made scholarship payments for 2008 or 2009 in an amount less than \$167,000 for each such year, Peabody shall pay for each such year the difference between that amount and \$167,000 to the Navajo Nation upon the execution of this Agreement by the Navajo Nation if the Navajo Nation executes this Agreement on or before October 31, 2009, or within 30 days of the approval of this Agreement by the United States Secretary of the Interior (without delegation) if the Navajo Nation executes this Agreement after October 31, 2009.

(2) Article XXVIII of the 9910 Lease shall be replaced in its entirety with the following language:

Article XXVIII. Scholarships

For each calendar year from 2008 through 2017, Peabody shall make an annual scholarship payment to the Navajo Nation in the amount of \$83,000. For any calendar year beginning with 2018, and thereafter for the remainder of the term of this Lease as amended in which the Navajo Generating Station purchases coal extracted from the premises during that calendar year, or for which another customer purchases coal extracted from the premises in an amount equal to or greater than the amount purchased by the Navajo Generating Station during the last 12 months of any such purchases, Peabody shall continue to make a scholarship payment of \$83,000. For any calendar year beginning with 2018, and thereafter for the remainder of the lease as amended, in which the Navajo Generating Station does not purchase coal extracted from the premises, and in which another customer does not purchase the amount of coal specified in the preceding sentence, Peabody shall make an annual scholarship payment of \$62,000. Each annual scholarship payment shall be made by December 14 of the year preceding the year for which the payment is due. To the extent Peabody has made scholarship payments pursuant to this section for 2008 or 2009 in an amount less than \$83,000 for each such year, Peabody shall pay for each such year the

difference between that amount and \$83,000 to the Navajo Nation upon the execution of this Agreement by the Navajo Nation if the Navajo Nation executes this Agreement on or before October 31, 2009, or within 30 days of the approval of this Agreement by the United States Secretary of the Interior (without delegation) if the Navajo Nation executes this Agreement after October 31, 2009.

(3) For any calendar year in which the Navajo Generating Station purchases any coal from the premises, the foregoing scholarships shall be entitled "Peabody and Navajo Generating Station Scholarships" and shall be presented each year in a ceremony sponsored by the Navajo Nation, Peabody, and the Navajo Generating Station to students selected by the Navajo Nation.

8. The Payments made pursuant to paragraphs 5 – 7 above, including any contribution or reimbursement from the Navajo Generating Station Owners of payments made by Peabody pursuant to paragraphs 5 – 7 above, shall not be royalty bearing, shall not be deemed to be royalties or effective royalties for any purpose, shall not escalate, shall not be included in the Royalty-Tax Caps and shall not affect any payment made under the Coal Leases.
9. None of the payments made under this Agreement shall be used for any purpose in any coal royalty reopener or royalty-tax cap reopener under either of the Coal Leases.
10. Following the approval and duly authorized execution of this Agreement by Peabody and by the Navajo Nation Council, the Parties shall jointly submit this Agreement to the United States Secretary of the Interior for his approval without delegation, and the Agreement shall become effective upon the date of the final approval of this Agreement by the United States Secretary of the Interior (without delegation).
11. Except as expressly modified by this Agreement, the Coal Leases and all of their provisions, as amended, shall continue in full force and effect.
12. The Parties have entered into negotiations of the water rate pursuant to Article II of the 1987 Amendments to Lease No. 9910. The Parties have agreed to postpone those negotiations until the period beginning 30 days after approval of this Agreement by the Secretary of the Interior (without delegation) and ending 120 days thereafter. The water rate shall be negotiated independently of the other agreements herein, and this Agreement shall become effective upon approval by the Secretary (without delegation) irrespective of the status of the water rate negotiations.
13. By his signature below, each of the undersigned representatives of Peabody and the Navajo Nation agrees, accepts, and acknowledges that he has the authority to enter into this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized officers on the dates written below.

**THE NAVAJO NATION
Lessor**

Date: _____

By: _____
**Joe Shirley
President**

**PEABODY WESTERN COAL COMPANY
Lessee**

Date: _____

By: _____
**G. Bradley Brown
Group Executive, Southwest Operations**

Attest:

Secretary

APPROVED:

THE UNITED STATES DEPARTMENT OF THE INTERIOR

Date: _____

Secretary of the Interior

ACKNOWLEDGMENT OF LESSOR

**State of Arizona)
 : ss.
County of)**

Before me, a Notary Public, on this day of , 2009, personally appeared Joe Shirley, to me known to be the same person who executed the foregoing AGREEMENT relating to COAL MINING LEASE No. 14-20-0603-8580 and COAL MINING LEASE No. 14-20-0603-9910 between Peabody Western Coal Company and The Navajo Nation and, being duly sworn, acknowledged to me that he executed the same pursuant to the express authority and written resolution of the Navajo Nation Council and in his official

capacity as President of the Navajo Nation and on behalf of the Navajo Nation as its free and voluntary act for the uses and purposes therein set forth.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT OF LESSEE

State of Arizona)
 : ss
County of)

On this day of , 2009, personally appeared G. Bradley Brown, to me known to be the same person who executed the foregoing AGREEMENT relating to COAL MINING LEASE No. 14-20-0603-8580 and COAL MINING LEASE No. 14-20-0603-9910 between Peabody Western Coal Company and The Navajo Nation and, being duly sworn, acknowledged to me that he executed the same pursuant to the express written authority and resolution of Peabody Western Coal Company, and did say that he is Group Executive, Southwest Operations, Peabody Western Coal Company, and that the said instrument was signed on behalf of the corporation as its free and voluntary act for the uses and purposes therein set forth.

Notary Public

My Commission Expires:

**Payment Schedule relating to
Agreement between
the Navajo Nation and Peabody Western Coal Company
for coal delivered December 15, 2007 through December 14, 2017.**

Pursuant to Paragraph 6 of the Agreement, Peabody shall pay to the Navajo Nation \$3.5 million for each calendar year through 2017 in accordance with the following schedule:

	Amount of Payment	Date of Payment	Year to Which Payment Applies
1	\$3.5M	December 14, 2007 (previously paid)	2008
2	\$3.5M	Within 30 days of the approval of the Agreement by the United States Secretary of the Interior (without delegation).	2009
3	\$3.5M	December 14, 2009 or within 30 days of the approval of the Agreement by the United States Secretary of the Interior (without delegation), whichever is later.	2010
4	\$3.5M	December 14, 2010	2011
5	\$3.5M	December 14, 2011	2012
6	\$3.5M	December 14, 2012	2013
7	\$3.5M	December 14, 2013	2014
8	\$3.5M	December 14, 2014	2015
9	\$3.5M	December 14, 2015	2016
10	\$3.5M	December 14, 2016	2017

**RESOURCES COMMITTEE
21ST NAVAJO NATION COUNCIL**

FOURTH YEAR 2009

COMMITTEE REPORT

Mr. Speaker,

The **RESOURCES COMMITTEE** to whom has been assigned:

NAVAJO LEGISLATIVE NO. 0592-09

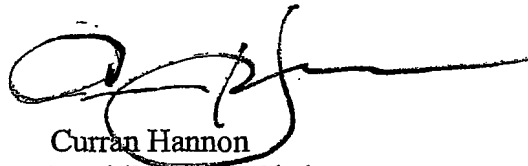
AN ACTION RELATING TO RESOURCES; RECOMMENDING AND APPROVING
THE AGREEMENT RELATING TO CERTAIN AMENDMENTS TO COAL MINING
LEASE NO. 14-20-0603-8580 AND COAL MINING LEASE NO. 14-20-0603-9910
EACH BETWEEN THE NAVAJO NATION AND THE PEABODY WESTER COAL
COMPANY.

Has had it under consideration and reports the same **DO PASS** with the following
amendment,

With respect to "Exhibit A" (Agreement), under the first paragraph change the date:
"September 2009" to "November 2009".

and therefore referred to **ETHICS AND RULES COMMITTEE**.

Respectfully submitted,



Curran Hannon
Presiding Vice-Chairperson

Date: October 8, 2009

The vote was 5 in favor and 2 opposed

Motion: Harriett K. Becenti

Second: Harry H. Clark

21st NAVAJO NATION COUNCIL

Third Year 2009

Mr. Speaker,

The **ETHICS AND RULES COMMITTEE**, to whom has been assigned


LEGISLATION NO. 0592-09: An Action Relating to Resources; Recommending and Approving the Agreement Relating to Certain Amendments to Coal Mining Lease No. 14-20-0603-8580 and Coal Mining Lease No. 14-20-0603-9910 Each Between the Navajo Nation and the Peabody Western Coal Company

Has had it under consideration and reports the same with the recommendation of **DO PASS**, with the no amendments

And therefore referred to the **21st NAVAJO NATION COUNCIL**.

Respectfully submitted,


Francis Redhouse, Chairperson
Ethics and Rules Committee

Adopted: 
(Advisor)

Not Adopted: _____
(Advisor)

Date: November 6, 2009

The vote was 06 in favor and 00 opposed.

Excused:


Absent:



October 8, 2009

MEMORANDUM

TO : Hon. George Arthur, *Chairpersons*
Resources Committee
Hon. Francis Redhouse, *Chairperson*
Ethics & Rules Committee
Hon. *Members*
Navajo Nation Council

FROM : 
Hon. Lawrence T. Morgan, *Speaker*
Navajo Nation Council

SUBJECT : **ASSIGNMENT OF LEGISLATION**

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Resources Committee, Ethics & Rules Committee and the Navajo Nation Council:

Legislation No. 0592-09

An Action

Relating to Resources; Recommending and Approving the Agreement Relating to Certain Amendments to Coal Mining Lease No. 14-20-0603-9910 Each Between the Navajo Nation and the Peabody Western Coal Company.

As the Committee assigned to consider the legislation, Legislation No. 0592-09 must be placed on the Resources Committee and Ethics & Rules Committee's agenda for consideration. Once considered by the Ethics & Rules Committee it will be reviewed by the Navajo Nation Council for final consideration.

ATTACHMENT: Legislation No. 0592-09

xc: Hon. Joe Shirley, Jr., *President*
The Navajo Nation
Louis Denetsosie, *Attorney General*
Mark Grant, *Controller*
Hon. George Arthur, *Council Delegate (Prime- Sponsor)*