

**PROPOSED
AGENDA OF THE
NAVAJO NATION COUNCIL**

December 22, 2009

SPECIAL SESSION

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

P L A C E : Navajo Nation Council Chambers
Window Rock, Navajo Nation (AZ)

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1. Calling the Special Session to Order; the Roll Call; the Announcements; the Invocation.
 2. Recognizing Guests and Visiting Officials to the Navajo Nation Special Session.
 3. Review and Adopt the Agenda for the Special Session of the Navajo Nation Council.
 4. **RECEIVING REPORT(S):**
 5. **OLD 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/Hon. Phillip Harrison, Jr.)

11/12/09 – Willie Begay/Lena Manheimer (Holding Main Motion)
TABLED: David Shondee/Lorenzo Curley Vote: 40-27
Instructed to have a work session within 30 days.
 - (b) **Legislation No. 0675-09**
Relating to an Emergency; Expressing Strong Opposition to Proposed Expansion of the Arizona Snow Bowl; Urging Applicable Federal and State Agencies to Deny Any and All Permits Relative to Arizona Snow Bowl Expansion Proposals and Activities; Requesting Arizona's

Congressional Leadership to Respect Navajo Nation Opposition to Snow Bowl Expansion
(Sponsor: Hon. Thomas Walker, Jr.)

11/12/09 - Davis Filfred/Tom LaPabe (Holding Main Motion)

TABLED: Amos Johnson/Curran Hannon Vote: 37-22

Bring back to the Council in a Special Session when all documentation are attached properly

6. **NEW BUSINESS:**

(a) **Legislation No. 0729-09**

An Action Relating to Resources and Economic Development; Approving the Phase 1A and Phase 1B Leases and the Financing Fee Agreements for Phase 1A and Phase 1B for Navajo Tribal Utility Authority Wind Project to be Located on the Big Boquillas Ranch, Authorizing the Use of the Laws of the State of Arizona and Authorizing a Waiver of Sovereign Immunity

(Sponsors: Hon. George Arthur/Hon. Jonathan Nez/Hon. Lorenzo Bates)

(b) **Legislation No. 0683-09**

An Act Relating to Finance and Judiciary; Enacting the Bond Financing Act Amendments of 2009; Amending Title 12 of the Navajo Nation Code, 12 N.N.C. §130 Et Seq.

(Sponsors: Hon Lorenzo Bates/Hon. Leonard Chee)

7. Closing of the Special Session; Other Announcements; **THE ADJOURNMENT.**

(Legislation #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)

SPEAKER: Thank you Ms. Harrison. I have Amos Johnson, do you wish to make a motion?

AMOS JOHNSON: Mr. Speaker, I'd like to reserve time for an amendment.

SPEAKER: Dave Shondee, do you want to motion? Reserving time for comments. I need a motion before we even reserve our time.

WILLIE BEGAY: I make a motion.

SPEAKER: Willie Begay motions; Ms. Manheimer seconds. Let's go to the sponsor.

GEORGE ARTHUR: Good morning Mr. Speaker, Guests, Members of the Council. I'd like to also acknowledge the assistance of the Legislative staff in moving this legislation forward, as well as my agents, Mr. Perry Shirley from Minerals, and also Mr. Bill Johnson from Department of Justice. Mr. Johnson was a main player in the renegotiation, or the negotiation process, in reference to the legislation that is before you. I would look to him for any assistance.

The legislation that is before you is a similar legislation that appeared before the previous Council. In the provisions that have been agreed to by Peabody and the Navajo Nation in 1987 there was an understanding developed that there would be what is referred to as a reopener. In that discussion, or in that acknowledgment, the Nation and Peabody would sit down and review and re-evaluate, if necessary renegotiate the rates, as they determine is what is in the best interest of the business arrangement. This is a legislation that is before you. This legislation has been formatted in the attachments as an exhibit, is the negotiated terms. I would ask that you understand that the legislation speaks only to specific components in the business arrangements. This does not take us to discussion of the lease agreement. The lease agreement is solely separate from this discussion. Our revision is only limited to the structure of the rate in the business arrangements that would reflect such arrangements. In the past, it has been realized that the initial agreement was very detrimental for the benefit of the Nation. In doing so, past leadership took on the task of renegotiating certain aspects of the royalty rates. It was determined that it would be at twelve and a half percent. In one of the caucus this morning it was also mentioned that there is another rate, which is I believe is six and a half. The six plus percent is referred to an arrangement where the Navajo Nation shares equal benefits with the Hopi Tribe. So, that portion of the business activities is shared between Navajo and Hopi. But the lease that is referred to as 8580 is 100% Navajo and that is the reason why the 12.5% is applied to that particular lease -- which is also referred to as the north mine. That particular mining activity, the coal is railroaded to the Navajo Generating Station.

The other lease, 9910, portions of that is shared with the Hopi Tribe. As a result, that is why the Navajo Nation gets 6.25%. That part, the majority of it was being sent down to the Mohave Generating Station. But even with that the Navajo Nation encouraged Peabody to continue producing portions of that area and they tried to utilize some of those resources and to supply that to the Navajo Generating Station. As most of you know, a few years what we call the Kayenta Mine was closed down and that was basically due to the fact that parties and partnerships that owned the Mohave Generating Station decided not to move the various environmental requirements forward. I want you to be aware of the fact that this Navajo Generating Station is generating a lot of interest as to how it's being operated and managed. The Navajo Nation is at the table representing the interest of the liability of the Navajo Generating Plant as we speak. It also has drawn the interest of the Governor of Arizona as to the status that is now being scrutinized. It's primarily going toward the same category as the Mohave Generating Station went through. They haven't fully been put in that same status as of yet. At the same time --- from the federal environmental standpoint there is some issues and discussions that are taking place as we speak regarding the Navajo Generating Station and it will eventually impact our Navajo Nation economic --- This is just side information as to how some of our business arrangements, Navajo Nation businesses, is being reviewed by outside entities. --- As the sponsor and as the Resources Committee recommended we would ask for an amendment which would basically speak to the dates. The dates as agreed upon reflects October 30, 2009.

This legislation had spoken in the agreement that there would be a bonus payment in the event that the Nation would approve this particular agreement prior to October 30. But as October 30 came and went, as the sponsor of this legislation I asked the lead attorneys whether or not Peabody would be willing to reconsider in the event the legislation could be addressed by the Council in a relative short period. It was agreed upon that if the Council could do it by the 16th the various bonuses and benefits will stay in affect. As you read the legislation you would realize that the main components also include scholarship benefits from both mines. It's clarified within the legislation itself. This will be my summary of the legislation. I just respectfully ask for your support. I understand that you we need to do this, we should have done this, we do that but it was not that simple. The people have also approached me and asked how you can speak on this matter that is now presented to the Council. I just want you to be aware that this is a legislation that is now a Navajo Nation Council document and I just want you to know that I'm not ignoring your interest or desire, it's just the way the protocols are and the way legislations are moved in Council. I just want to clarify that for you. Thank you Mr. Speaker.

SPEAKER: Thank you very much Mr. George Arthur. We go to the floor now for any comments, questions, recommendations, amendments. Starting off with Amos Johnson.

AMOS JOHNSON: Mr. Speaker, Members of the Council. I'd like to ask the staff to hand out my proposed amendment. I move for amendment to the resolution on page 2, line 10, to add language after the end of the sentence as follows: "Provided that \$500,000 of

the annual payments of \$3.5 million to the Navajo Nation for each calendar year from 2009 through 2017 shall be for infrastructure development within the Black Mesa, Chilchinbeto, Forest Lake, Kayenta and Shonto Chapters under a plan to be developed in conjunction with the Black Mesa Review Board." Mr. Speaker, this is my motion.

Just to make a comment on this. The people up there 40 years ago were promised a lot of things from the company as well as the Nation to help with infrastructure, water lines, power lines, and so forth, and to this day some of that has never been done. Peabody has assisted the community with little things like providing diesel fuel and so forth, but not in an amount to where the community will actual really move forward. The \$500,000 is really just a modest amount, Mr. Speaker and members of the Council. So, I'd like to ask the Council to support this amendment. As we all know, there's other communities within the Navajo Nation that receive some sort of benefits, like out in Utah and the Four Corners area, and we ask for the same consideration from the Council. As I indicated, this is just a modest amount that I'm asking for. I ran this through this sponsor and the attorneys that were involved in the negotiations and they feel that this can be done.

Last, Mr. Speaker and members of the Council, this agreement that's before us is a government to government agreement between the Navajo Nation and the United States Government; therefore, we do have the authority and we are in our means and we feel that you should support this. I do ask for your support, members of the Council. For my remaining time, I'd like to yield that to Jonathan Nez. Thank you.

SPEAKER: Is there a second to this? Lorenzo Curley seconds. Now 1.25 to Jonathan Nez on the amendment motion.

JONATHAN NEZ: Thank you Mr. Speaker, Members of the 21st Navajo Nation Council, also the people in the Gallery. I would like to speak to this particular amendment and I request that you vote green because the people up in the Navajo Mountain area has been economically struggling and this would allow us to work with this money to build infrastructures in those areas. We do work quite well with the Navajo Black Mesa Review Board. I respectfully ask that you vote green on it. Let's give some of that revenue back to the people that live in that leasing area. This is just a small request for the delegates and constituents. For that reason I plead for you to go green on this and it's on the face of the legislation, it is not on the exhibit. So, I appreciate your support to vote green on this amendment. Thank you Mr. Speaker.

SPEAKER: I believe we have Willie Begay.

WILLIE BEGAY: (Remarks interpreted by Shammie Begay) Mr. Speaker, Members of the Navajo Nation Council. I would like to speak to this amendment and as indicated by my colleagues, all these years our community chapters have been looking for these type of funds for project development such as water development, there is a huge need for it just like every where else. I think these funds will be utilized to develop these infrastructures for those communities. I really do support the fact that these funds will be used for infrastructures. With my remaining time I'd like to give to Roy Laughter.

SPEAKER: Four minutes, Roy Laughter. Question of privilege, Mr. Ervin Keeswood.

ERVIN M. KEESWOOD, SR.: Thank you Mr. Speaker and Council. I'd like to ask for documents from the motioning party. It seems to, at least myself, that there's been no assistance to these communities from this particular organization, but I believe that there has been assistance to these communities by the same company. As a matter of fact, the Black Mesa Review Board pay for stipends and et cetera for those who attend those meetings. I would like to get all that information for the Council. How much do these communities receive currently? Based on that we can determine whether the level of amount of money can be discussed and whether or not it sufficed or is there additional need.

SPEAKER: Mr. George Arthur, on the question of privilege.

GEORGE ARTHUR: It's not my amendment.

SPEAKER: Amos Johnson, I'm sorry. Mr. Johnson is the motioning party, so he's the sponsor of the amendment.

AMOS JOHNSON: Mr. Speaker, Members of the Council. To respond to Mr. Keeswood's question, we would probably have to look for information which is this amount of \$1 million which was appropriated during Leonard Haskies' term. That's the only time the Council ever appropriated \$1 million. Other than that there's been none. So, this is only one incident one time.

SPEAKER: How long will it take for you to retrieve or get those documents before the Council? The question now before you, Mr. Johnson, is collectively over years how much funds have been contributed by the company to the Black Mesa Review Board or the community. They need those funds identified so I think that would allow the Council to make some decisions. If it's going to take time I'm going to call for a recess.

AMOS JOHNSON: I would have to do some quick research, Mr. Speaker. If you allow one hour I could get that information together, so I would ask that you call a recess, Mr. Speaker.

SPEAKER: I'm getting the indication that we continue on.

AMOS JOHNSON: Mr. Speaker, in terms of the amendment that I'm offering, this is just a small amount, which is only \$500,000, which really comes to \$100,000 per chapter; it's hardly anything.

OMER BEGAY, JR.: Point of order!

SPEAKER: Point of order, Omer Begay.

OMER BEGAY, JR.: Mr. Speaker, Members of the Navajo Nation Council. I raise a point of order due to the fact that this is a renegotiation process between the Navajo Nation and Peabody. After all the requests, all the negotiations have been put together, and when the birth of this negotiation is done then we start to divvy up the monies. He's trying to divvy up the money before it even coffers and that's where the difficulty lies. Mr. Speaker, I do believe that Mr. Johnson's attempted amendment is out of order.

SPEAKER: Nonetheless, it's been recognized as a motion to amend the legislation. Just to clarify his amendment it will be inserted in the legislation on page 2, line 10. Mr. Amos Johnson is requesting that particular language be inserted. Why don't we just put it to vote. If you wish to make that amendment then vote green. Let's put it to vote. If this amendment passes then it will be added on to the legislation. Let's lock in the votes. 29 in favor and 32 opposing, so the amendment did not pass.

During the presentation George Arthur also mentioned that he's got a new date. In Exhibit A there are new dates. Back to the main motion. Dave Shondee.

DAVID SHONDEE: Mr. Speaker, Members of the 21st Navajo Nation Council, Staff. (Remarks interpreted by Shammie Begay) I want to say that there is a lot of issues surrounding the needs of the Navajo Mountain and Black Mesa area and there's also community concerns and issues such as road and employment issues. These are some of the issues that our constituents have asked us to speak on. I would like to make a motion to table this legislation and have work session and also bring it back within 30 days.

SPEAKER: Dave Shondee's move is calling for a tabling motion and within 30 days have a work session and bring it back during the Winter Session; second by Mr. Curley. There's no discussion on the tabling motion. Lock in the votes now. It looks like we have 40 in favor and 27 opposing. This item will be tabled until after the work session.