

4. Upon the imposition of a bond or security pledges, the District Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000.

CAP-19-86, April 24, 1986.

### **Title 18**

#### **Mines and Minerals**

##### **Chapter 1. General Provisions**

###### **§ 1. Authority to adopt, amend or repeal regulations**

The Resources Committee is authorized to adopt regulations governing all mining operations on Navajo Nation lands, and from time to time amend, alter, modify or repeal such regulations, or any portions thereof, as in its discretion would be in the best interests of the Navajo Nation and the individual members thereof.

#### **History**

CM-3-51, March 22, 1951.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B).

###### **§ 2. Closing of mines not operated in accordance with regulations**

All mines on the Navajo Nation shall be closed unless operated in accordance with mining laws and regulations.

#### **History**

Executive Committee, Res. 1922-1951, Res. p. 297, July 22, 1937.

#### **Cross References**

Navajo Abandoned Mine Lands Reclamation Code, see 18 N.N.C. § 1601.

Mine Safety, see, 18 N.N.C. § 401 *et seq.*

###### **§ 3. Review of mining material by Navajo Nation Office of the Attorney General**

The Minerals Department may request the Navajo Nation Office of the Attorney General to review any mining material which, in its opinion, is necessary. In submitting mining material for review, the Minerals Department shall specify on what points it desires recommendations. The Office of the Attorney General shall submit its findings to the Minerals Department for appropriate disposition.

### **History**

ACO-75-57, October 8, 1957.

**Note.** The Office of Energy Resources was renamed to Minerals Department pursuant to ACAP-75-88.

## **Chapter 2. Navajo Negotiating Team**

### **§ 101. Establishment; purpose**

A. The Navajo Negotiating Team ("Team") is established as an entity of the Navajo Nation.

B. It is the purpose of the Navajo Negotiating Team to:

1. Make recommendations with respect to mineral leases or other energy agreements which will maximize economic returns to the Navajo Nation, consistent with other relevant Navajo law or policy.

2. Make recommendations for the prudent development of Navajo resources which are consistent with the legal, economic, environmental, cultural, social, labor and resource policies of the Navajo Nation.

3. Represent the Navajo Nation in negotiations with respect to mineral leases, other energy development agreements and energy right-of-ways.

4. Ensure that all proposed mineral leases and energy, related agreements and amendments or modifications thereto, are reviewed by the affected Navajo Nation Divisions and Departments and are carefully considered and analyzed in a deliberate unbiased manner by the Negotiating Team relying on all of the expertise available to the Navajo Nation, and that no lease or agreement is submitted to the Navajo Nation President, Resources Committee or the Navajo Nation Council without complete analysis and a recommendation by the Negotiating Team.

### **History**

ACJN-98-83, June 23, 1983.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

## **§ 102. Powers**

A. General. The Team shall have all powers necessary and proper to carry out the purposes set forth in 18 N.N.C. § 101(B).

B. Enumerated powers. The Team is authorized and directed:

1. To propose, negotiate and renegotiate mineral leases or other energy agreements on behalf of the Navajo Nation subject to final approval of the President of the Navajo Nation, and the Navajo Nation Council; such agreements shall include, but not be limited to coal, oil, gas and uranium and shall also include negotiations involving energy-related right-of-ways such as electric power lines other than consumer service lines, gas and oil pipelines, and railways.

2. To review all proposed mineral leases and other energy related agreements prior to their consideration by other Navajo Nation entities and to utilize the assistance and resources of other Navajo Nation entities and to utilize the assistance and resources of other Navajo Nation entities and coordinate the Navajo Nation review process, including review of Chapter and local citizen concerns regarding any proposed lease or energy-related agreement, for such proposals prior to their submission to the President of the Navajo Nation, the Resources Committee or the Navajo Nation Council.

3. To make reports and recommendations regarding all mineral leases and other energy-related agreements to the President of the Navajo Nation. Such recommendations and reports shall be reviewed by the President of the Navajo Nation and the President shall then refer the matter to the Navajo Nation Council, the Resources Committee of the Navajo Nation Council or the Negotiating Team as the President of the Navajo Nation may deem appropriate under the circumstances.

4. To accept and expend such funds as may be appropriated by the Navajo Nation Council and its standing committees which are necessary to carry out the purposes and functions of the Negotiating Team.

### **History**

ACJN-98-83, June 23, 1983.

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

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

## **§ 103. Meetings; procedures**

A. Meetings shall be held on the call of the Chairperson of the Team or, in his or her absence, on the call of the Vice-Chairperson. A quorum shall consist of six members.

B. Until such time as the Resources Committee or the Navajo Nation

Council shall prescribe otherwise, the Team is empowered to develop its own procedures for the conduct of its meetings and other actions necessary to accomplish its purposes.

#### **History**

ACJN-98-83, June 23, 1983.

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

#### **§ 104. Conflict of interest**

All present and future laws of the Navajo Nation with respect to conflicts of interest shall apply to the Navajo Negotiating Team.

#### **History**

ACJN-98-83, June 23, 1983.

#### **§ 105. Membership; qualifications; selection; Chairperson; term of office**

A. The Team shall consist of ten members including a Team Chairperson and Vice-Chairperson, to be appointed by the President of the Navajo Nation with the approval of the Government Services Committee of the Navajo Nation Council, as follows:

1. Five members of the Team shall be selected from each of the five agencies comprising the Navajo Nation. Team members so selected shall be familiar with natural resources development matters within their respective agencies.

2. Two members of the Team shall be selected from among the membership of the Resources and Economic Development Committees of the Navajo Nation Council.

3. Three members of the Team shall be selected from among Navajo Nation employees who are experienced in natural resources development, economics or the law.

B. All Team members shall serve at the pleasure of the Government Services Committee and the President of the Navajo Nation.

#### **History**

ACJN-98-83, June 23, 1983.

#### **Cross References**

Government Services Committee power, see 2 N.N.C. § 342(B) (3) and (4).

#### **§ 106. Negotiating meetings**

A. In order to promote the efficient discharge of the duties imposed on the Team, the Chairperson of the Team may, from time to time, assign or

designate not less than three Team members to investigate, negotiate, review and make recommendations to the full Team with regard to any matter pending before the Team.

B. All such assignments or designations by the Chairperson of the Team shall include at least one attorney and the Team member from the Agency most affected by the matter under negotiation from among the Team members so assigned or designated with regard to any matter pending before the Team.

#### **History**

ACJN-98-83, June 23, 1983.

### **Chapter 3. Plan of Operation for Minerals Department [Repealed]**

**§§ 201 to 205. [Repealed]**

#### **History**

Plan of Operation for Minerals Department previously codified at 18 N.N.C. §§ 201-205 was repealed and deleted from the Code pursuant to CAP-14-94, April 20, 1994.

### **Chapter 4. Navajo Energy Development Authority**

#### **§ 301. Establishment**

The Navajo Nation Council charters and establishes the Navajo Energy Development Authority (NEDA), for such purposes and with such powers as are set forth in § 303 of this Chapter or as may hereinafter be established for NEDA by the Navajo Nation Council.

#### **History**

CMY-39-80, May 1, 1980.

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

#### **Cross References**

Powers, see 2 N.N.C. § 102(B) and (G).

#### **§ 302. Purposes**

The purposes for which NEDA is established are as follows:

A. To provide an organization owned by the Navajo Nation which can develop and manage energy resources and operate as a profit-making organization of the Navajo Nation pursuant to future agreements between NEDA and the Navajo Nation.

B. To see to it that energy development within the Navajo Nation is consistent with existing and future Navajo Nation environmental, labor, and

resources utilization policies.

C. To optimize financial returns to the Navajo Nation from the development of depletable resources, so that the financial returns may be used by the Navajo Nation (through the Navajo Nation Council) for the development of Navajo renewable resources, productive enterprises, and other long-term needs and goals of the Navajo People and the Navajo Nation.

#### **History**

CMY-39-80, May 1, 1980.

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

#### **§ 303. Powers**

The general powers which NEDA shall have are:

A. To enter into agreements with the Navajo Nation for the development of resources of the Navajo Nation.

B. To borrow money and pledge or otherwise encumber its assets to secure the fulfillment of its obligations.

C. To employ such staff as may be necessary to carry out its operations.

D. To enter into contracts and agreements.

E. To make application to federal, state and local governments for participation in such government programs as may benefit implementation of NEDA activities.

F. To establish offices for the transaction of business.

G. To sue and be sued in the Courts of the Navajo Nation in the name of the Authority.

H. To be governed by a Board of Directors.

I. To have such powers as may be necessary and proper to further the purposes for which NEDA is established, as such purposes may be modified from time to time by the Resources Committee of the Navajo Nation Council.

#### **History**

CMY-39-80, May 1, 1980.

**Note.** Pursuant to CD-68-98, December 15, 1989, and CN-72-92, November 4, 1992, the Resources Committee has oversight authority under this Section instead of the Government Services Committee of the Navajo Nation Council. See 2 N.N.C. § 695(B) (13).

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

**§ 304. Exemption of assets and property of Navajo Nation; sovereign immunity**

Notwithstanding other provisions of this chapter, NEDA shall have no authority to encumber trust or fee land owned or held by the Navajo Nation to satisfy its liabilities out of the assets or property of the Navajo Nation, nor to waive the sovereign immunity of the Navajo Nation.

**History**

CMY-39-80, May 1, 1980.

**Chapter 5. Mine Safety**

**§ 401. Inspection of mines and mining operations**

A. The Navajo Nation Mining Engineer or such other person as the engineer shall designate, shall be the agent of the Navajo Nation for the purpose of inspecting all surface and underground mines and mining operations within the jurisdiction of the Navajo Nation. The Mining Engineer shall have the right at any time to enter and to inspect any such mine or mining operations.

B. The term "mining operation" shall include, but is not limited to, processing plants, sand and gravel operations, and operations of companies transporting minerals mined within the jurisdiction of the Navajo Nation or minerals owned in whole or in part by the Navajo Nation, but shall exclude oil and gas operations.

C. For purposes of this Code, the Navajo Nation Mining Engineer shall mean the Navajo Nation Mining Engineer employed with the Minerals Department of the Navajo Nation, or his or her designate.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 5, 1955.

**§ 402. Warning of unsafe conditions or practice**

A. The Mining Engineer shall call the attention of the persons in charge of the mining activity, or the safety officials, or if they are not available, the attention of the workers affected, to any unsafe condition or practice, or to any inadequate mine safety and health training of the worker(s), which he or she observes.

B. The Mining Engineer shall warn that the unsafe condition or practice or the inadequate training of the worker(s) must be remedied without delay, and he or she shall issue citations to the mine or mining operations for noncompliance with applicable Navajo Nation mine safety and health laws, rules and regulations. Citations shall be posted on bulletin boards of the mine/mining operations.

### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

### **§ 403. Summary closing-order and notices**

A. In the event the Mining Engineer believes the unsafe condition or practice creates an extreme and/or immediate menace to life, limb or health, he or she may order the immediate partial or complete closure of the mine or mining operation. His or her order shall be delivered orally to the person in charge of the mining activity, and a notice of the closure order shall be issued at the same time. In such case, all operations in the area covered by the closing order shall be suspended immediately, and all personnel except those necessary or actually working to remedy the unsafe condition shall be excluded from the area.

B. The mining Engineer shall, within one working day thereafter, send a notice of the closing order by registered or certified mail to the owner of the lease, permit or assignment embracing such mine or mining operation.

C. The area subject to the closing shall remain closed until the Mining Engineer or the Director of the Navajo Nation Minerals Department or the Resources Committee of the Navajo Nation Council lifts the closing order. Such order shall be lifted when the operator of the mine or mining operation proves to the satisfaction of the Engineer or the Committee that the unsafe condition or practice has been corrected.

D. The Mining Engineer, if necessary shall be assisted by the Division of Public Safety and/or the Resource Enforcement Agency of the Navajo Nation to enforce 18 N.N.C. §§ 401-422 of the Navajo Nation Code. Such assistance shall be provided immediately upon request by the Mining Engineer.

### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 403 was formerly codified at § 404.

### **§ 404. Failure to suspend mining operations**

Any owner or operator of a mine or mining operation operating a mine or mining operation in violation of a closing order shall have the status of a trespasser on the mine or mining operation.

### **History**



CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 404 was formerly codified at § 405.

#### **§ 405. Hearing**

A. Any operator of a mine or mining operation whose mine or mining operation has been closed in part or in whole by the order of the Mining Engineer may within 30 days of the date of mailing of the closing order, in the event such closing order has not been withdrawn, request a hearing before the Director of the Minerals Department at which time he or she shall be given the opportunity to show that the unsafe condition, upon which the closing order was based, has been remedied or never existed. The Director may continue the closing order if he or she determines that the unsafe condition still exists. If the Director of the Minerals Department does not lift the closing order, the operator shall be given further opportunity to present his or her case before the Resources Committee of the Navajo Nation Council within a reasonable time of the decision of the Director of the Minerals Department.

B. As a result of such hearing the Resources Committee may lift the closing order, may continue it for not more than 90 days pending correction of the unsafe condition or may take such other action as may appear just.

#### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 405 was formerly codified at § 406.

#### **§ 406. Penalty for members of the Navajo Nation working in a closed mine or mining operation**

Any member of the Navajo Nation who shall work in an area of a mine or mining operation, while there is an outstanding order of the Mining Engineer requiring that area of the mine or mining operation to be closed, except for the purpose of correcting the unsafe condition which occasioned the closing order, may be charged with a separate criminal offenses for each day of such violation of the closing order, and upon conviction thereof shall be sentenced to a fine not to exceed two hundred fifty dollars (\$250.00) for each such offense.

#### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 406 was formerly codified at § 407.

**§ 407. Standards for determining what constitutes an unsafe condition and the training standards for workers**

The Navajo Nation adopts as its interim standards for mine safety and health, including the standards for the training of workers, those substantive standards contained in the regulations promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.*, as they may be amended, and other applicable federal laws, rules and regulations. More stringent and more specific health and safety standards may be adopted in the future with the approval of the Navajo Nation Council.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 407 was formerly codified at § 408.

**§ 408. Report of accident, injury, illness and investigation of serious and fatal accidents**

Any accident, injury or illness occurring in the mine or mining operation shall be reported to the Mining Engineer on Mine Safety and Health Administration (MSHA) forms 7000-1 and 7000-2 on a quarterly basis within 15 days following the quarter for which the report(s) is (are) due. If the 7000-1 and 7000-2 forms are revised by MSHA the report(s) shall be submitted on the revised forms. When a fatal accident occurs in or about a mine or mining operation, the operator of the mine or mining operation shall immediately notify the Mining Engineer, who shall inspect the premises to determine whether the accident was caused wholly or in part by unsafe conditions or practices in or about the mine or mining operation. The operator shall not disturb the site of the accident until the inspection is completed by the Mining Engineer. The Mining Engineer shall make a report of any fatal accident and submit it directly to the President of the Navajo Nation and the Resources Committee of the Navajo Nation Council.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

CS-76-57, September 10, 1957.

**Note.** Section 408 was formerly codified at § 409.

#### **§ 409. Assessment of penalty for noncompliance**

The Mining Engineer is authorized to assess civil penalties and administrative costs against the owner or operator of any mine or mining operation for non-compliance with Navajo Nation laws, rules and regulations. The regulations for the assessments of penalties provided in Schedule "A".

##### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

**Note.** Section 409 was formerly codified at § 410.

**Revision note.** The "Regulations for Assessment of Civil Penalties" is attached to CF-20-91 as Schedule "A".

#### **§ 410. Appeals**

A. The owner or operator of any mine or mining operation shall have the opportunity to request a hearing before the Director of the Mineral Department on citation(s) issued by the Mining Engineer. Such requests shall be made in writing to the Director within 30 days of the date of issuance of the citation(s). As a result of the hearing, the Director may let the citation(s) stand, may modify it, or may void it. The assessment of a penalty will be made after the decision of the Director. Any contested assessment must be deposited in an escrow account established by the Nation. This Section shall not relieve the owner or operator of a mine or mining operation of his or her obligation to abate the violation within the time specified by the Mining Engineer. The decision of the Director could be appealed to the Resources Committee within 30 days.

B. Any operator or owner of a mine or mining operation shall further have an opportunity to appeal any such assessment by the Mining Engineer or action taken by the Director or the Resources Committee of the Navajo Nation Council, pursuant to the Navajo Nation Mine Safety Code, to the Navajo District Court, Window Rock District, within 30 days of such assessment or action. Any such action shall be brought against the Mining Engineer in his or her official capacity, and shall be solely for the purpose of determining the validity of the assessment or action. Such proceedings, and appellate review, if any, shall be conducted pursuant to the rules of civil procedure of the appropriate courts of the Navajo Nation. The decision of the Navajo Nation Courts shall be the final decision and the escrowed amount shall be released at that time.

##### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

**Note.** Section 410 was formerly codified at § 411.

**§ 411. Union representative(s) of workers may accompany the Mining Engineer**

The Mining Engineer shall inform the employee union representative(s) when he or she arrives at a mine operation for inspection. A union representative shall have the right to join the Mining Engineer during the inspection of the mine or mining operation. If the Union representative is employed by the owner or operator, he or she shall receive his or her normal compensation for the time spent on the inspection.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

**Note.** Section 411 was formerly codified at § 412.

**Chapter 7. Permits and Leases**

**History**

**Change of name.** The Minerals Department referred to in this Chapter, is the predecessor to the Office of Minerals Development and the Mining Department.

**Subchapter 1. Generally**

**§ 601. Authority to execute**

The President of the Navajo Nation, pursuant to the provisions of 2 N.N.C. § 222, is authorized and empowered to execute on behalf of the Navajo Nation any and all mining leases or permits granted by the Navajo Nation.

**History**

CO-61-58, October 9, 1958.

**Revision note.** See CD-68-89 amending 2 N.N.C. §§ 222 and 223.

**§ 602. Acreage limitation**

The acreage limitation for mining permits and leases for any one person, firm, or corporation shall be limited to 960 acres, except that such limitation shall not apply to ore processors who have a plant in actual operation upon the Navajo Nation or who have such a plant in actual construction.

**History**

ACJ-55-53, July 31, 1953.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

**§ 603. [Rescinded]**

**History**

Section 603 rescinded by CD-40-83, § 1, December 16, 1983.

**§ 604. [Rescinded]**

**History**

Section 604 rescinded by CD-40-83, § 3, December 16, 1983.

**§ 605. Standards and procedures for transfer of mining interests in Navajo lands**

A. Any transfer of a Navajo Nation mining interest or all rights arising under leases, permits, other agreements including farm-out and operating agreements heretofore approved by the Navajo Nation, or any interest in the aforementioned, including but not limited to any joint venture, operating, production-sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement providing for the exploration for or extraction, processing or other development of oil and gas, uranium, coal, geothermal, or other energy or non-energy mineral resources in which the Navajo Nation owns a beneficial or restricted interests which (a) contains a Navajo Nation consent requirement; (b) was created pursuant to Bureau of Indian Affairs Sale Numbers, 104, 105, and 107; (c) was created after the date hereof; or (d) was created at any time regardless of whether it meets the requirements of clauses (a) and (b) above or either of them, may be done either by assignment, reassignment or by entering into a working agreement or in any other manner, only if the following requirements are fully complied with:

1. The assignor and assignee shall complete and file a Navajo Nation Assignment of Mining Interest form with the Minerals Department. Forms and updated instructions shall be available from the Minerals Department of the Navajo Nation.

2. The full and complete terms of the transfer, including a complete disclosure of the consideration therefore, shall be put in writing and filed with the Minerals Department, the Navajo Nation, accompanied by an affidavit duly subscribed and sworn or affirmed before an officer authorized to administer oaths by the parties in interest or their authorized representatives who have full knowledge of the facts involved, declaring that the information filed is full and complete and that the parties have no other or additional agreement and have not and will not pay, give, or promise any consideration in addition to that disclosed.

3. After full disclosure of the terms as required in Subsection (A)(1), if it is determined by the Minerals Department of the Navajo Nation that the assignment resulted from a merger of the assignor company or the changing of its name or from the merger of a wholly-owned subsidiary into its parent company (or vice versa), then the economic evaluation and review of the assignment(s) may at the discretion of the

Minerals Department, be dispensed with as a prerequisite to Navajo Nation approval of the assignments.

4. The assignor and assignee will be responsible for fulfilling all Department of the Interior's requirements for the assignment of a mining interest.

5. A non-refundable filing fee of two hundred dollars (\$200.00) per assignment shall be deposited with the Navajo Nation. The filing fee may be periodically adjusted by the Minerals Department.

6. No overriding royalty may be created by any transfer authorized hereby without the written consent of the Minerals Department of the Navajo Nation nor shall such overriding royalty be approved if it is determined by the Minerals Department that it will have such an adverse economic impact that it may prevent full recovery of the mineral reserves.

B. The assignment of mineral interests authorized hereby shall not be approved if the Minerals Department determines that it is not in the best economic interest of the Navajo Nation.

C. The Navajo Nation shall have the option of acquiring the mineral interests authorized for transfer hereby within 120 days after the submission of completed assignment application for the same consideration and on the same terms and conditions as are offered to any other proposed assignee.

D. The Designation of an Operator under the Code of Federal Regulations or otherwise shall not constitute an assignment of the lessees' operating rights. Nor shall any such Designation of Operator be valid unless the lessee gives notice in writing to the Navajo Nation 10 days in advance of such designation.

#### **History**

CMY-38-85, May 7, 1985.

CD-40-83, December 16, 1983.

#### **Cross References**

Taxation generally, see 24 N.N.C. § 101, *et seq.*

### **Subchapter 3. Prospecting Permits**

#### **§ 651. Procedure for processing—Generally**

A. Prospecting permits shall originate with the Minerals Department under the Division of Natural Resources. Upon obtaining approval from the office, the permits shall be forwarded to the office of the President of the Navajo Nation.

B. Upon obtaining approval from the Office of the President, the permits

shall be forwarded to the Navajo Land Department with the Division of Natural Resources.

C. Upon obtaining clearance from the Navajo Land Department, the permits shall be forwarded to the Regional Director, Bureau of Indian Affairs.

D. Upon approval by the Bureau of Indian Affairs, Regional Director, the permits shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, § 1, October 8, 1957.

ACJ-6-55, January 7, 1955.

**Note.** Section 651 under this Subchapter is slightly reworded for statutory consistency.

**Note.** The Office of Land Administration has been replaced by the Navajo Land Department.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 652. Renewal**

A. Notices to mining companies that their prospecting permits should be renewed shall be made by the Navajo Land Department.

B. The Navajo Land Department shall proceed to have any prospecting permits not renewed appropriately cancelled.

C. The Navajo Land Department shall originate all prospecting permits requested to be renewed.

D. Upon obtaining clearance from the Navajo Land Department, renewal of a prospecting permit shall be forwarded to the Bureau of Indian Affairs Regional Director for approval.

E. Upon approval by the Bureau of Indian Affairs Regional Director, renewal of the prospecting permit shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957.

**Revision note.** Slightly reworded for statutory consistency.

**Note.** The Office of Land Administration has been replaced by the Navajo Land Department.

#### **§ 653. Issuance to applicants; specification of District**

Mineral prospecting permits shall be issued to applicants, Navajo and non-Navajo, by the President of the Navajo Nation and the Regional Director upon written request therefor. Applicants must specify the District or Districts of the Navajo Nation in which prospecting permit shall be issued.

#### **History**

ACD-80-53, December 18, 1953.

ACF-4-52, February 12, 1952.

ACS-80-51, September 19, 1951.

**Revision note.** Slightly reworded for statutory consistency.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 654. Rights of permittees; mining permit or lease**

A. Any Navajo discoverer having a prospecting permit may apply to the Resources Committee for a mining permit or mining lease.

B. Any non-Navajo discoverer having a prospecting permit may negotiate for a mining lease with the Resources Committee.

#### **History**

ACD-80-53, December 18, 1953.

ACF-4-52, February 12, 1952.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

### **Subchapter 5. Drilling and Exploration Permits**

#### **§ 701. Procedure for processing**

A. Drilling and exploration permits shall originate with the Minerals Department within the Division of Natural Resources. Upon obtaining approval from the office, the permits shall be forwarded to the Office of the President of the Navajo Nation.

B. Upon obtaining approval from the Office of the President, the permits shall be forwarded to Navajo Land Department.

C. Upon obtaining clearance from the Navajo Land Department, the permits shall be forwarded to the Area Director.



D. Upon the Approval by the Regional Director, the permits shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957.

ACJ-6-55, January 7, 1955.

**Revision note.** Slightly reworded for statutory consistency.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2) and (6).

#### **§ 702. Application—Persons entitled to apply**

Any person, firm, or corporation holding a valid prospecting permit may apply to the Resources Committee through the Navajo Nation Mining Engineer for a drilling and exploration permit upon any lands for which they hold a prospecting permit.

#### **History**

ACD-80-53, December 18, 1953.

#### **§ 703. Description of land**

The application for a drilling and exploration permit shall describe the land which it is to cover in a manner satisfactory to the Navajo Nation Mining Engineer and the Resources Committee.

#### **History**

ACD-80-53, December 18, 1953.

#### **§ 704. Period of permit; application for mining permit or lease; exclusion of others**

A. A drilling and exploration permit shall be issued for a period not to exceed 120 days, and shall provide that the permittee may apply during such period for a mining permit or lease as provided in the mining regulations.

B. During the period of the drilling and exploration permit no other person, firm, or corporation may prospect or explore in the area covered by the permit, or obtain any rights in said area, or apply for and receive any mining permit or lease on any land in the area.

#### **History**

ACD-80-53, December 18, 1953.

#### **§ 705. Records and information to be furnished on expiration**

The permittee shall furnish to the Navajo Nation complete drill records and all information obtained from exploration upon expiration of the drilling and exploration permit.

#### **History**

ACD-80-53, December 18, 1953.

### **Subchapter 7. Mining Permits and Assignments of Mining Permits**

#### **§ 751. Procedure for processing mining permits—Generally**

A. Mining permits shall originate with the Minerals Department. Upon obtaining approval from this Office, and if there is no dispute over issuance of the permit, the mining permit shall be submitted to the President of the Navajo Nation for consideration and approval.

B. In any case where there is a dispute or question raised as to issuance of the mining permit, such permit shall be submitted to the Resources Committee for consideration and decision before submission to the President of the Navajo Nation for approval.

C. Upon obtaining approval of the President of the Navajo Nation, the mining permit shall be forwarded to the Navajo Land Department.

D. Upon obtaining clearance from the Navajo Land Department, the mining permit shall be forwarded to the Regional Director.

E. Upon approval by the Regional Director, the mining permit shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACMY-80-64, May 7, 1964.

ACO-75-57, October 8, 1957.

ACJ-6-55, January 7, 1955.

**Revision note.** Slightly reworded for statutory consistency.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 752. Members of Navajo Nation**

The President of the Navajo Nation is delegated authority to approve mining permits issued by the Nation to its members in accordance with procedure outlined in 18 N.N.C. § 751.

#### **History**

ACMY-80-64, May 7, 1964.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (2).

#### **§ 753. Renewal**

A. Notices to permittees that their mining permits should be renewed shall be made by the Navajo Land Department.

B. The Navajo Land Department shall proceed to have any mining permit not renewed appropriately cancelled.

C. The Navajo Land Department shall originate all mining permits requested to be renewed.

D. Upon receiving clearance from the Navajo Land Department, a renewal of a mining permit shall be forwarded to the Regional Director.

E. Upon approval by the Regional Director, a renewal of the mining permit shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957.

ACJ-6-55, January 7, 1955.

#### **§§ 754 to 755. [Repealed]**

#### **History**

CD-40-83, December 16, 1983.

**Revision Note.** See 18 N.N.C. § 605 relating to procedure for transfer of mining interests in the Navajo Nation.

#### **§ 756. Authorization; bond for non-Indian contracts**

A. Mining permits, assignments, operating agreements, and subcontracts are authorized, subject to the approval of the Resources Committee and the Secretary of the Interior or his or her authorized representative. All such arrangements shall be reduced to writing and shall not be effective until approved. Navajo Nation mining permits shall be issued only to Navajo members.

B. All non-Indian contract shall require a surety bond to insure performance of all terms of the contract, and the amount of the bond shall conform to Mining Regulations.

#### **History**

ACA-29-53, April 9, 1953.

ACF-4-52, February 12, 1952.

ACS-80-51, September 19, 1951.

Tribal Council Res. 1922-1951, December 8, 1948, granted certain rights and privileges to Navajos who made discoveries of minerals on Tribal lands.

#### **§ 757. Mining development**

Where mining permits are operated exclusively by Navajo there shall be expended by the permittee the equivalent of five dollars (\$5.00) per acre per year in actual mining development. Such development shall consist of road building, prospecting or drilling, and mining operations. Where assignments or other agreements are made to non-Indians the development requirements shall be forty dollars (\$40.00) per acre per year. Certified reports shall be submitted to the Resources Committee regarding development expenditures within 10 days after the yearly anniversary date of the contract. Where permits or leases are assigned or interests are otherwise acquired by non-Indians, an advance annual rental of one dollar (\$1.00) per acre is required and no credit shall be allowed therefor any future production royalties.

#### **History**

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

### **Subchapter 9. Mining Leases**

#### **§ 801. Procedure for processing**

A. Mining leases, including the conversion of an assignment of a mining permit to a lease, shall originate with the Minerals Department within the Division of Natural Resources. Upon obtaining approval from the office, the leases shall be forwarded to the Office of the President of the Navajo Nation.

B. Upon obtaining approval of the Office of the President, the leases shall be forwarded to the Navajo Land Department.

C. Upon obtaining clearance from the Navajo Land Department, the leases shall be forwarded to the Regional Director for approval.

D. Upon approval by the Regional Director, the leases shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957. See, also, note under 18 N.N.C. § 651.

**Revision note.** "Department of Minerals within the Division of Natural Resources" was substituted for the "Office of Energy Resources" pursuant to ACAP-75-88. Slightly reworded for statutory consistency.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 802. Negotiation; acreage limitation**

Mining leases, other than oil and gas for tracts of not less than 40 acres nor more than 160 acres, shall be negotiated through the Resources Committee of the Navajo Nation Council and the Regional Director, subject to the approval of the Secretary of the Interior or his or her authorized representative; provided, however, that the Resources Committee and Regional Director may waive the foregoing acreage limitation for justifiable cause, and may also decide to put any mineral lands up for competitive bid with leases to be granted to the highest bidder.

#### **History**

ACI-69-53, October 8, 1953.

ACM-35-53, May 12, 1953.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1961, contained same provision as ACS-80-51.

**Note.** ACN-40-55, November 29, 1955. ACJ-26-55, July 19, 1955.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 803. Term**

Mining leases may be issued for a specified term not to exceed 10 years from the date of approval by the Secretary of the Interior, or his or her authorized representative, and as much longer as the substances specified in the leases are produced in paying quantities; provided, however, that leases covering uranium and vanadium shall be for a specified term of two years and so long thereafter as such minerals shall be produced in paying quantities; and said leases shall also provide that exploration or development work shall commence and continue in good faith within six months from date of approval.

#### **History**

ACO-69-53, February 19, 1954.

ACM-35-53, May 12, 1953.

### **Subchapter 11. Royalties**

#### **§ 851. Schedule of payments**

A. The royalties payable to the Navajo Nation on all uranium mining

permits, assignments and permits shall be as follows:

PERCENTAGE ROYALTY SCHEDULE MINE VALUE PER DRY TON	ROYALTY PERCENTAGE OF MINE VALUE PER DRY TON
\$ 0.01 to \$7.50	2 1/2
7.50 to 14.00	5
14.00 to 20.01	11
20.01 to 30.01	12
30.01 to 40.01	13
40.01 to 50.01	14
50.01 to 60.01	15
60.01 to 70.01	16
70.01 to 80.01	17
80.01 to 90.01	18
90.01 to 100.0	19
100.01 or more	20

1. "Mine Value Per Dry Ton", wherever used herein is hereby defined as the dollar value per dry ton of crude ores at the mine as paid for by the Atomic Energy Commission or other government authorized agency before allowance for transportation and development; however, if the government at any time hereafter does not establish and pay for said ore on a fixed or scheduled dollar value per dry ton of crude ores at the mine, or said ores contain salable minerals, some, or all, of which are disposed of to a custom treatment plant or smelter for treatment, and sale, then mine value per dry ton shall be the gross value per dry ton of said crude ore as paid for by the Atomic Energy Commission or other government authorized agency mill or other buyer, less any allowances or reimbursements for the following specific items: (1) transportation of ores, (2) allowances for exploration for, or development of ores, which specific amounts shall in such event be deducted from the gross sales price received from the metal content of said ores by the seller before percentage royalty is calculated and paid.

2. If no allowance or reimbursement is received by the seller for transportation of ores then six cents per ton mile up to and including 100 miles shall be deducted from the gross sales price received from the metal content of said ores by the seller as transportation cost from the mine to the mill before royalty percentage is calculated and paid.

3. Such payment shall be made on or before the 15<sup>th</sup> day of the month next following receipt by lessee of payment for said ores, together with a statement of the mine value of said ores and the amount of royalty due each lot shipped and sold.

B. When crude ore from the mine is upgraded in an upgraded plant before shipment to the mill the royalty payable to the Navajo Nation and the permittee shall be as follows:

PERCENTAGE ROYALTY SCHEDULE ON UPGRADED ORE

GRADE OF CRUDE ORE PERCENTAGES	ROYALTY ON UPGRADED PRODUCT	
In % U <sub>3</sub> O <sub>8</sub>	Tribe	Permittee
0.00 to 0.15	2 ½	1
0.15 to 0.20	5	1
0.20 to 0.29	11	2
0.29 to 0.43	12	2
0.43 to 0.57	13	3
0.57 to 0.71	14	3
0.71 to 0.85	15	4
0.85 to 1.00	16	4

1. The above royalty percentages shall apply to the gross sales price received from the metal content of the upgraded product by the seller from the mill after deducting any allowances or reimbursements for transportation or development. If no allowances or reimbursement is received by the seller for transportation of ores then six cents per ton mile up to and including 100 miles shall be deducted from the gross sales price received from the metal content of said ore by the seller as transportation cost from the mine to the mill before royalty percentage is calculated and paid. And a further deduction of one dollar and fifty cents (\$1.50) per ton of crude ore upgraded, as upgrading cost, may be deducted before royalty is calculated and paid.

2. Such payments shall be made on or before the 15<sup>th</sup> day of the month next following receipt by lessee of payment for said ore, together with a statement of the value of the upgraded product and the amount of royalty due on each lot shipped and sold.

C. When minerals or other products are recovered which are not included in determining mine value per dry ton or included in percentage royalty schedule on upgraded ore as defined in this Section, there shall be paid to the Navajo Nation for such minerals or other products, a royalty of ten percent (10%) of the gross value of such products.

#### **History**

ACO-144-61, October 16, 1961.

ACJN-73-60, June 8, 1960.

ACJ-36-57, June 12, 1957.

ACS-37-55, September 27, 1955.

ACM-5-52, March 11, 1952.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

**§ 852. Uranium royalty schedule**

Lessee shall pay or cause to be paid to the Area Director, Navajo Area, Window Rock, Arizona, for the use and benefit of the Lessor, a royalty, calculated on a monthly weighted average on the basis of dry short tons of ore mined and delivered to a treatment plant.

A. For Uranium-Lessee shall pay to the Lessor a percentage royalty of the value per dry ton based on royalty rates of twelve percent (12%) for ore valued at one cent (1 per ton and increasing to twenty-five percent (25%) for ore valued at one hundred dollars (\$100.00) or more per ton. The royalty rate shall be determined to the nearest one-hundredth of a percent (0.00%) in accordance with the following formula:

$$\text{Percentage Royalty Rate} = 12\% + 0.13\% ((\text{Value per dry ton})/\$1.00)$$

B. "Value per ton" wherever used in this paragraph is hereby defined as the dollar value per dry ton (2,000 pounds) of crude ore, as determined by application to the uranium content of such ore of the following "Value Schedule for Uranium Ore", multiplied by a fraction whose numerator is the weighted average price per pound of U<sub>3</sub>O<sub>8</sub> in uranium concentrate received by the Lessee, or the seller of Lessee's concentrate received by the Lessee, or the seller of Lessee's concentrate, at the mill processing ores derived from the leased lands, during the month for which royalty is being computed and whose denominator is seven dollars and twenty-five cents (\$7.25), except that if no sales have been made during the month for which royalty is being computed, then the numerator shall be the weighted average price per pound of U<sub>3</sub>O<sub>8</sub> received by the Lessee or the seller of Lessee's concentrate during the preceding six months.

VALUE SCHEDULE FOR URANIUM ORES

U <sub>3</sub> O <sub>8</sub> Assay of Ore	Value Per Pound of U <sub>3</sub> O <sub>8</sub> Contained in Ore
0.10 percent or less	\$1.50
0.11	1.70
0.12	1.90
0.13	2.10
0.14	2.30
0.15	2.50
0.16	2.70
0.17	2.90



0.18	3.10
0.19	3.30
0.20 and more	3.50

plus a grade premium of seventy-five cents (75 per pound for each pound of  $U_3O_8$  in excess of four pounds per ton of ore and an additional premium of twenty-five cents (25 per pound for each pound in excess of 10 pounds  $U_3O_8$  per ton of ore. Fractional parts of a pound to be valued on a pro-rata basis to the nearest cent.

C. Whenever vanadium and other minerals associated with uranium are recovered and sold by Lessee, Lessee shall pay to Lessor a royalty of ten percent (10%) of the gross proceeds derived from such sale; and where the Lessee retains possession of the associated mineral products a separate royalty value will be negotiated.

D. Lessee agrees to pay to the Lessor a royalty of ten percent (10%) of the value of uranium recovered from mine waters (whether natural or introduced), from leaching ores in place on the leased lands or by leaching such materials after they have been mined or extracted from the leased lands, or by leaching the waste material resulting from the treatment of ores from the leased lands. The value of uranium, as used herein, shall be the weighted average price per pound for  $U_3O_8$  in uranium concentrate received by the Lessee, or the seller of Lessee's concentrate, at the processing plant producing such concentrate, during the month for which royalty is being computed, except that if no sales have been made during the month for which royalty is being computed, then the value of uranium shall be the weighted average price per pound of  $U_3O_8$  received by the Lessee or the seller of Lessee's concentrate during the preceding six months.

#### **History**

ACF-12-70, February 10, 1970.

**Note.** See ACMA-19-68, ACN-222-67, ACS-75-60, ACS-37-55, ACM-5-52, and ACA-26-51 relating to setting of rates.

#### **§ 853. Payments; statement**

A. Payments of royalties shall be made on or before the 15<sup>th</sup> day of the month next following receipt by the lessee of payment for ore, together with a statement of the mine value of ores and the amount of royalty due on each lot shipped and sold.

B. Remittances for royalties shall be made payable to the Treasurer of the United States and mailed to Window Rock, Arizona, for deposit to the Navajo Nation general funds.

#### **History**

ACO-144-61, October 16, 1961.

ACJN-73-60, June 8, 1960.

**§ 854. Overriding royalties**

A. Subject to approval provided for in the mining permit assignments, operating agreements, and subcontracts may, in addition to other considerations, provide for the retention by and payment to the assignor in an assignment or the grantor in a subcontract or operating agreement, a royalty on all ore produced and sold from the premises (commonly known as an overriding royalty) not to exceed the following percentage based on the mine value per dry ton of ore as defined in 18 N.N.C. § 851:

1. On ore having a mine value per dry ton of thirteen dollars and ninety-nine cents (\$13.99) or less, one percent (1%) of the mine value per dry ton.

2. On ore having a mine value per dry ton of more than thirteen dollars and ninety-nine cents (\$13.99), and not more than thirty dollars (\$30.00), two percent (2%) of mine value per dry ton.

3. On ore having a mine value per dry ton of more than thirty dollars (\$30.00), and not more than sixty dollars (\$60.00), three percent (3%) of the mine value per dry ton.

4. On ore having a mine value per dry ton of more than sixty dollars (\$60.00), and not more than eighty dollars (\$80.00), four percent (4%) of the mine value per dry ton.

5. On ore having a mine value per dry ton of more than eighty dollars (\$80.00), five percent (5%) of the mine value per dry ton.

B. If two or more parties are the assignors or grantors, the royalty may be divided on such basis as such assignors, or grantors may agree upon.

C. The Navajo Nation Council may at any time after five years from the date of the first sale of uranium ore produced from property (as evidenced by records of the processing mill or other buyer) reduce the percentage of royalty retained by the assignor or grantor or entirely eliminate the same if the Resources Committee shall determine that such royalty payments so retained are so burdensome as to make the future operation of the mines on said lease impracticable or unprofitable, it being the intent that the Resources Committee shall at such time take such action as will serve the best interest of the Navajo Nation in assuring the continuous operation of the uranium mining industry on the Navajo Nation.

**History**

ACJN-73-60, June 8, 1960.

ACS-37-55, September 27, 1955.

ACS-80-51, September 19, 1951.

### **Cross References**

Building materials, prohibition of overriding royalty on account of production under extraction permit, see 18 N.N.C. § 1008.

Transfer of assignment of mining permit or lease, prohibition of creation of overriding royalty by, see 18 N.N.C. § 605.

Resources Committee, powers, see 2 N.N.C. § 695(B)(3).

## **Chapter 9. Building Materials**

### **§ 1001. Issuance of extraction permits; delegation of authority**

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, and upon the recommendation of a majority of the Council delegates from the Land Management District involved, may issue permits for the extraction of sand, gravel, topsoil, building stone, or any combination of such materials, from Navajo Nation lands; provided, however, that the recommendation of Council delegates shall not be required in cases of permits for the extraction of not more than 500 tons of material, where the total royalty is paid in advance; and provided, further, that the President may delegate this authority to issue extraction permits in accordance with rules adopted pursuant to 18 N.N.C. § 1009.

#### **History**

CAN-89-56, November 20, 1956.

ACM-55-56, March 22, 1956.

ACN-87-57, November 20, 1957.

ACN-82-57, November 7, 1957.

### **Cross References**

Resources Committee, powers, see 2 N.N.C. § 695(B)(2).

### **§ 1002. Extraction without permit; trespass**

It shall be a trespass for any person, except a Navajo for his or her own use and not for resale, to extract any material from Navajo Nation lands without holding a valid permit issued as provided in 18 N.N.C. § 1001.

#### **History**

ACM-55-56, March 22, 1956.

### **§ 1003. Eligibility for permit; Indian traders**

All persons engaged in the business of selling general merchandise,

whether licensed as Indian traders or not, shall be ineligible to hold permits for extraction of any material referred to in 18 N.N.C. § 1001; provided, however, that the Resources Committee may waive this prohibition in any individual case.

#### **History**

ACM-55-56, March 22, 1956.

#### **§ 1004. Term of permit; limitation**

All permits for the extraction of any material referred to in 18 N.N.C. § 1001 shall be issued for such term as the President of the Navajo Nation shall determine, which shall in no event exceed five years.

#### **History**

ACM-55-56, March 22, 1956.

#### **§ 1005. Transfer of permit**

No permit for the extraction of any material referred to in 18 N.N.C. § 1001 shall be transferred either by subleasing, assignment, or the entering into of working agreements, or in any other manner, without the consent of the President of the Navajo Nation and the Secretary of the Interior or his or her authorized representative.

#### **History**

ACM-55-56, March 22, 1956.

#### **§ 1006. Employment preference; prevailing wage rates**

All extraction permits shall require the permittee to employ Navajo Indians in all positions for which they are available in connection with operations under such permits, to pay such persons not less often than weekly, in cash, at not less than prevailing wage rates, and to include similar provisions in all subcontracts.

#### **History**

ACM-55-56, March 22, 1956.

#### **§ 1007. Royalty rate; waiver**

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, shall fix a reasonable royalty rate on all materials extracted pursuant to any permit, except that a royalty may be waived on any materials extracted for use in public projects on Navajo Nation land, or extracted in small quantities by a Navajo permittee.

#### **History**

ACM-55-56, March 22, 1956.

### **§ 1008. Overriding royalty prohibited**

A. No overriding royalty on account of production under an extraction permit shall be created as an incident of a transfer of an extraction permit or otherwise, and the payment of any overriding royalty on account of production under any such permit shall constitute cause for cancellation and forfeiture of such permit.

B. "Overriding royalty" for the purpose of this Section is defined as any payment of any kind whatever, other than payment of a tax or the Navajo Nation royalty, measured by a percentage of the production or of the gross or net value thereof. Payment of a percentage of the net profit of a mining venture shall not be included in the definition of overriding royalty.

#### **History**

ACM-55-56, March 22, 1956.

#### **Cross References**

Overriding royalties generally, see 18 N.N.C. § 854.

Transfer of permit, see 18 N.N.C. § 1005.

### **§ 1009. Rules and regulations; establishment and modification**

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, shall have authority to establish and modify from time to time rules and regulations to implement or supplement this Chapter.

#### **History**

ACM-55-56, March 22, 1956.

#### **Cross References**

Resources Committee, powers, see 2 N.N.C. § 695(A) and (B)(2).

## **Chapter 11. Coal**

### **§ 1201. Coal mining permits; requirement**

All coal mining operations within the Navajo Nation shall be done under properly issued coal mining permits.

#### **History**

ACJ-70-58, July 7, 1958.

### **§ 1202. Form of coal mining permit—Generally**

### **History**

ACD-163-59, December 2, 1959.

**Note.** See also CM-3-51, ACJ-70-58, and ACD-163-59.

**Revision note.** Proposed Coal Mining Permit form has been deleted from the Code. Such forms are available from the Minerals Department, Division of Natural Resources.

### **§ 1203. Authority to change**

The President of the Navajo Nation is delegated authority to make changes as experience proves necessary in the coal mining permit form.

### **History**

ACD-163-59, December 2, 1959.

### **§ 1204. Coal royalties and other provisions; enforcement**

The payment of coal royalties due, as well as all other provisions affecting coal operations within the Navajo Nation, shall be enforced by the proper agency of the Bureau of Indian Affairs.

### **History**

ACJ-70-58, July 7, 1958.

**Prior law.** Executive Committee, Res. 1922-1951, July 22, 1937, provided for the payment by Indians of a royalty on coal mined or produced when sold.

### **§ 1205. Responsibility of Head of Mining Department**

The Director of the Minerals Department within the Division of Natural Resources shall be charged with the responsibility for:

A. The preparation by the permittee of the reports required by the coal mining permit;

B. Securing the payment by the permittee of the royalties required; and

C. Such assistance and advice as is necessary to enable the permittee to operate the mine with approved methods and practices and with safety both to persons and to property.

### **History**

ACD-163-59, December 2, 1959.

**Revision note.** The "Minerals Department under the Division of Natural Resources" was substituted for the "Office of Energy Resources" pursuant to ACAP-75-88.

## Cross References

Functions of Mining Department generally, see 2 N.N.C. § 3001.

### Chapter 12. Diné Natural Resources Protection Act of 2005

#### § 1301. Findings

A. The Navajo Nation Council finds that the wise and sustainable use of the natural resources in Navajo Indian Country traditionally has been, and remains, a matter of paramount governmental interest of the Navajo Nation and a fundamental exercise of Navajo tribal sovereignty.

B. The Navajo Nation Council finds that the Fundamental Laws of the Diné (*Diné Bi Beenahaz'áanii*), as set forth in the 2002 amendments to Title 1 of the Navajo Nation Code, Resolution No. CN-69-02, support preserving and protecting the Navajo Nation's natural resources, especially the four sacred elements of life—air, light/fire, water and earth/pollen—for these resources are the foundation of the peoples' spiritual ceremonies and the Diné life way, and that it is the duty and responsibility of the Diné to protect and preserve the natural world for future generations.

C. The Navajo Nation Council finds that the Traditional (*Diyin Diné'é Bi Beehaz'áanii Bitsé siléí*), which are codified in Title 1 as §§ 3 and 4 of the Fundamental Laws of the Diné, provide that it is the right and freedom of the people to be respected, honored and protected with a healthy physical and mental environment.

D. The Navajo Nation Council finds that the Diné medicine peoples' interpretation of the Diné Natural Law (*Nahasdzáán d00 Yádi[hi] Bits33d66 Beehaz'áanii*), which is codified in Title 1 as five of the Fundamental Laws of the Diné, mandates respect for all natural resources within the four sacred mountains and is symbolized by the Sacred Mountain Soil Prayer Bundle (*Dahndiilyee*), to maintain harmony and balance in life and a healthy environment, and their recitation of the ceremonies and stories that have been passed down from generation to generation warn that certain substances in the Earth (*doo nal yee dah*) that are harmful to the people should not be disturbed, and that the people now know that uranium is one such substance, and therefore, that its extraction should be avoided as traditional practice and prohibited by Navajo law.

E. The Navajo Nation Council finds that the social, cultural, natural resource, and economic damage to the Navajo Nation from past uranium mining and processing is ongoing due to (i) the continuing need for full monetary compensation of former Navajo uranium workers and their family members for their radiation and mining-induced diseases, (ii) the presence of hundreds of unremediated or partially remediated uranium mines, tailings piles, and waste piles located in Navajo Indian Country, and (iii) the absence of medical studies of the health status of Diné who live in uranium mining-impacted communities.

F. The Navajo Nation Council finds that the mining and processing of uranium ore on the Navajo Nation and in Navajo Indian Country since the mid-

1940s has created substantial and irreparable economic detriments to the Nation and its people in the form of lands lost to permanent disposal of mining and processing wastes, lands left unproductive and unusable because they are the sites of hundreds of abandoned uranium mines that have not been successfully reclaimed, surface water and ground water left unpotable by mining and processing operations, livestock that could not be marketed because they were believed to have been contaminated by uranium. Navajo workers who lost thousands of person-years to gainful economic activity as a result of their mining-induced illnesses and deaths, and the families of Navajo uranium workers whose livelihoods, agricultural lands and homesites were diminished in value because of the illnesses and premature deaths of the workers.

G. The Navajo Nation Council finds that there is a reasonable expectation that future mining and processing of uranium will generate further economic detriments to the Navajo Nation. These economic detriments include, but are not limited to, the potential damage projected to the land, water, vegetation, and other natural resources of the Navajo Nation by uranium mining and processing operations, the forbearance or foreclosure of the Navajo Nation from using these natural resources for other economic purposes, the potential remediation costs for damage projected to the natural resources on lands within the Navajo Nation, the potential injury to livestock from uranium mining, including, but not limited to, losses in livestock production, veterinary and other costs, and the potential injury to human beings from uranium mining, including, but not limited to, loss of wages, loss of consortium, medical costs, loss of access to and use of vegetation used in traditional ceremonies, loss of current and future potable water supplies, and other costs.

H. The Navajo Nation Council finds that uranium is and has been expressly left unregulated by the federal government, and is currently unregulated by any tribal entity within Navajo Indian Country.

### **History**

CAP-18-05, April 19, 2005.

### **§ 1302. Definitions**

For the purposes of this Act, the Navajo Nation Council adopts the following definitions:

A. "Navajo Indian Country" shall mean all lands within the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254 and 18 U.S.C. § 1151.

B. "Natural resources" shall have the same meaning as set forth in 2 N.N.C. § 692(A).

C. "Person" shall mean any natural person or any other entity including domestic or foreign corporations, partnership, associations, responsible business or association agents or officers, any of the several states or a political subdivision of the state or agency of the state, department or instrumentality of the United States and any of its officers, agents or employees.



D. "Remediation" shall mean the permanent closure of uranium mining and processing site, waste piles and associated buildings for the purposes of eliminating or substantially reducing releases of radioactive and toxic substances to the air, land and water in such ways as to prevent or substantially minimize human exposure to such substances now and for future generations.

E. "United States" shall mean the federal government of the United States of America and any of its agencies, departments, subdivisions, or instrumentalities or officers, agents, or employees thereof.

F. "Uranium mining" shall mean the extraction of uranium or uranium ores by mechanical means including, but not limited to, surface mining, open pit mining or underground mining. Uranium mining shall not include extraction of uranium or uranium ores by solution mining.

G. "Uranium processing" shall mean the alteration of uranium ores from their natural state by mechanical or chemical including, but not limited to, crushing, grinding, and in situ leach mining or solution mining.

#### **History**

CAP-18-05, April 19, 2005.

#### **§ 1303. Prohibition of Uranium Mining**

No person shall engage in uranium mining and uranium processing on any sites within Navajo Indian Country.

#### **History**

CAP-18-05, April 19, 2005.

#### **§§ 1304 to 1306. [Repealed]**

#### **History**

CAP-18-05, April 19, 2005.

**Note.** Navajo Coal Mining Commission. ACJA-35-87, January 12 1987.

**Note.** Plan of Operation for Navajo Coal Mining Commission previously codified at 18 N.N.C. §§ 1301-1306 was repealed and deleted from the Navajo Nation Code pursuant to CAP-14-94, April 20, 1994.

### **Chapter 13. Oil and Gas**

#### **Cross References**

See Title 16 of this Code generally for previously codified laws concerning trespass and forcible entry and detainer.

#### **Annotations**

## **1. Construction**

Lease by Navajo Nation of "all oil and gas deposits" included helium gas discovered on such leasehold. *Navajo Nation of Indians v. United States* 364 F.2d 320 (1966).

## **2. Damages**

Where United States failed to inform the Navajo Nation, prior to assignment of 1942 oil and gas lease directly to Government, that lessee desired to surrender lease, the Navajo Nation was entitled to recover from the Government damages incurred as a result of such failure. *Navajo Tribe of Indians v. United States* (1966) 364 F.2d 320.

## **3. Presumptions**

Where Navajo Nation could not prove what would have happened if the Nation had been consulted prior to assignment of 1942 oil and gas lease directly to Government is attributable to failure of Government to keep Nation informed, the doubts should be resolved in favor of the Navajo Nation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **4. Forfeiture**

The general rule regarding forfeiture of oil and gas leases is that the sanction of forfeiture will not be imposed unless clearly required by the terms of the lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

Where 1923 oil and gas lease by Navajo Nation did not expressly provide for nullification of lessees' right to produce gas in event of their failure to pay shut-in rental, sanction of forfeiture could not be imposed upon lessees failure to pay. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **5. Interest**

The Navajo Nation was entitled to interest on amount of damages recoverable from the United States as a result of failure to inform Nation, prior to assignment of 1942 lease directly to Government, that its lessee desired to surrender lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **6. Just compensation**

The proposition that just compensation does not include enhancement in value resulting from purpose for which Government is taking property did not apply in suit by the Navajo Nation seeking additional compensation for oil and gas rights acquired by United States in an area within the Navajo Nation, where there was not any real prospect of finding a private party who would wish to incur the expense of producing the helium bearing gas included in the oil and gas lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

The commissioner was justified in refusing to accept the fair market values submitted by Navajo Nation as a means of computing royalty interest of Nation under the 1945 agreement, considering the nature of the gas and the various

factors relevant to the matter of valuation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **7. Transfer agreement**

Where oil and gas leases transferred to the Navajo Nation rights in certain formations because United States had compensated them for their interests and in order to make possible the receipt by the Government of a new lease of such formations. The Navajo Nation was merely a necessary conduit in the transfer from the lessees to United States, and thus ownership of helium underlying 1923 leasehold was not acquired by the Navajo Nation under transfer agreements. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **8. Review**

Navajo Nation seeking additional compensation for oil and gas rights acquired by United States within Indian Reservation failed to establish that the failure of Geological Survey to seek a larger royalty constituted a breach of any obligation to the Navajo Nation, and use of one-eighth royalty was proper. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

Discount factor used by. Bureau of Mines in determining the total potential royalty payable on estimated reserve of helium bearing gas included in oil and gas leases executed by Navajo Nation was appropriate. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

# **Subchapter 1. General Provisions**

## **§ 1401. Regulations; authority**

A. The Navajo Nation Council is authorized and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Navajo Nation so require, to approve and adopt regulations for the production of oil and gas on the Navajo Nation, and amendments thereto, on a Navajo Nation wide basis; or to adopt at their discretion as the regulations of the Navajo Nation Council, the rules and regulations of any state or states having territorial boundaries which lie within the Navajo Nation, together with any amendments or revisions in such regulations as maybe presented from time to time for consideration of the Resources Committee.

B. The Resources Committee may coordinate the activities and regulations of the Navajo Nation with those of the regulatory bodies of the states and federal government to the end that there may be joint and harmonious development of the resources on Navajo Nation lands as well as on state and federal lands.

## **History**

CD-74-58, December 12, 1958.

CJ-44-58, July 16, 1958.

CA-68-57, August 8, 1957.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (3).

#### **§ 1402. Conservation; authority**

A. The President of the Navajo Nation is authorized and directed to do any and all things necessary or desirable to reduce and eliminate the wasting and burning of natural gases or other natural resources on Navajo Nation lands.

B. The President of the Navajo Nation is further authorized to seek and formally request the Department of the Interior to shut-in and halt production of oil, gas, or other natural resources from Navajo Nation lands wherever such production is accompanied by waste and loss of any oil, gas, or other natural resource or by-products thereof, and to collaborate with the Secretary of the Interior in taking any and all actions deemed by the President of the Navajo Nation to be necessary, advisable, or incidental to accomplishing the purposes of this Section.

### **History**

CO-56-58, October 6, 1958.

#### **§ 1403. Secondary recovery and pressure maintenance operations in oil fields; policy**

A. The Resources Committee of the Navajo Nation Council declares its approval and support of secondary recovery and pressure maintenance operations in the Navajo Nation's oil fields; provided, however, that patterns of unitization for the areas affected, and other necessary safeguards, satisfactory to the Resources Committee, are established and adhered to by the interested operators.

B. As a general policy, and subject to modification as individual circumstances dictate, where water is to be used in such operations, the Resources Committee favors reinjection of water produced with the oil first, then any other available brackish, non-potable water, as determined under standards of the United States Geological Survey. In all cases where water which is usable for human, stock, or irrigation purposes is to be used, negotiations shall be had with the interested parties to develop a reasonable charge for such water use.

### **History**

ACO-160-59, October 23, 1959.

**Note.** See also CF-44-58 and CD-74-58, regarding oil and gas development on Navajo lands.

### **Cross References**

Navajo Nation Water Code, see 22 N.N.C. § 1001 et seq.

**§ 1404. Minutes; confidential**

The minutes of the Resources Committee when considering matters pertaining to the oil and gas business on the Navajo Nation shall be maintained as strictly confidential in the files of the Navajo Nation for reference by the Navajo Nation officers, Oil and Gas Consultant, and the Office of the Attorney General, and such others as may be duly authorized to examine the minutes by permission of the Resources Committee.

**History**

ACM-25-58, March 5, 1958.

**Subchapter 3. Special Agreements**

**§ 1451. Special leases, joint operating, drilling or other agreements**

A. The Navajo Nation Council is authorized, and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Navajo Nation so require, to negotiate and conclude on behalf of the Navajo Nation with any responsible person or persons, special leases, joint operating, drilling, or other agreements on such terms and conditions as the Committee shall deem advisable for the drilling and development of oil and gas lands whenever: (1) drainage of Navajo Nation lands is, in the Resources Committee's opinion, either taking place or will be threatened in respect to any tract or area, to such an extent that the protection of Navajo Nation oil and gas resources can be most effectively accomplished through negotiating such agreement or agreements; (2) in the opinion of the Resources Committee, such leases, agreement or agreements would result in stimulating or facilitating higher bidding on surrounding lands to be offered for public bidding, whether the bidding be on the basis of bonuses or on the basis of the amount of royalties to be paid to the Navajo Nation; (3) wherever there are conflicts of title respecting ownership of Utah school land sections or other areas, and the development of such areas is thereby retarded, or their values are being, or will be, in the Resources Committee's opinion, depressed by reason of drainage or title conflicts.

B. The Navajo Nation Council may enter into any such leases or agreements upon whatever terms and conditions the Resources Committee deems advisable to permit the development of such lands, prevent waste, increase the Nation's participation in production or revenues therefrom, and otherwise protect the best interests of the Navajo Nation.

**History**

CD-74-58, December 12, 1958.

CN-65-56, November 2, 1956.

CO-29-55, October 5, 1955.

Geological studies for oil and gas. CO-29-55, Ex. Vol. 1955, p. 329, October 5, 1955, authorized designated geologists to make further geological studies

for oil and gas with a view to development by the Navajo Tribe.

Joint Committee and code of ethics. CN-65-56, 1956 Res. p. 251, November 2, 1956, authorized participation of Navajo Tribe in a joint committee on oil, gas, and mining matters to include representatives of oil, gas, and mining operators, Bureau of Indian Affairs, and United States Geological Survey, and subscription Chairperson of Navajo Nation Council to a joint code of ethics.

#### **Cross References**

Oil and gas leases generally, see 18 N.N.C. § 1501 *et seq.*

#### **Annotations**

##### **1. Supervision of United States**

The United States was responsible for supervision of the affairs of the Navajo Nation, including, in particular, supervision of oil and gas leases on Tribal property. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl.1966).

##### **2. Duty of Department of the Interior**

Since the Department of the Interior had an obligation to safeguard the property of the Navajos when they were dealing with third parties, an even greater duty existed when the Department itself entered into transactions relating to oil and gas leases with the Navajos. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

##### **3. Construction and operation of leases**

Lease by Navajo Nation of all "oil and gas deposits" under described acreage included helium gas discovered on such leasehold. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where 1923 oil and gas lease by Navajo Nation did not expressly provide for nullification of the lessee's right to produce gas for nonpayment of shut-in rental, no such sanction should be placed on lessees. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where oil and gas lessees transferred to lessor Navajo Nation their rights in designated formations because United States compensated them for their interests and in order to make possible the receipt by government of new lease of such formations, the Navajo Nation was merely a necessary conduit in the transfer from lessees to the United States, and hence ownership of helium underlying leasehold was not acquired by the Navajo Nation under transfer agreements. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

##### **4. Right to recover damages against United States**

The Navajo Nation, as lessor of 1942 oil and gas lease, was entitled to recover damages from United States incurred as result of failure to inform the Navajo Nation, prior to assignment of such lease directly to the United States, that lessee desired to surrender lease. *Navajo Tribe of Indians v. United States*

364 F.2d 320 (Ct.Cl. 1966).

Where inability of Navajo Nation, as lessor of 1942 oil and gas lease, to prove what would have happened if the Navajo Nation had been consulted prior to assignment of lease directly to the government was attributable to failure of government to keep the Navajo Nation informed, doubts would be resolved in favor of Nation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where Navajo Nation was entitled to recover damages against United States, it was also entitled to interest on amount recoverable. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

#### **§ 1452. Agreements for taking delivery of oil and gas in kind**

The Navajo Nation Council is authorized and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Nation so require, to negotiate and conclude an agreement or agreements for taking delivery of oil or gas in kind, as leases from the Navajo Nation permit, and to dispose of the same on terms deemed by the Resources Committee to serve the best interests of the Nation.

##### **History**

CD-74-58, December 12, 1958.

Tribal Council Res. 1922-1951, Res. p. 318, November 24, 1936.

##### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (3).

#### **§ 1453. Communitization and other production agreements**

The President of the Navajo Nation, upon the approval of the Navajo Nation Council, by and with the approval of the Secretary of the Interior, may enter into communitization and other production agreements which are designed to provide for the economical and efficient development of oil and gas resources.

##### **History**

CJ-44-58, July 16, 1958.

##### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (3).

#### **§ 1454. Unitization agreements**

A. All proposed agreements for the unitization of oil and gas leases covering Navajo Nation lands shall be referred to the Navajo Nation Council for its consideration and approval.

B. Any unitization agreement for the development and operation of oil and gas leases on Navajo Nation lands which has been approved by the Resources Committee of the Navajo Nation Council shall be executed by the President or Vice-President of the Navajo Nation for and on behalf of the Navajo Nation and the Navajo Nation Council, and the President and Vice-President are authorized to execute such instruments after the agreements have been approved by the Resources Committee of the Navajo Nation Council.

#### **History**

CJ-8-52, January 21, 1952.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

#### **Subchapter 5. Leases**

#### **Cross References**

Oil and gas prospecting permits, see 16 N.N.C. § 652.

#### **§ 1501. Advertisement of sale; authority of Secretary of Interior**

The Secretary of the Interior, or his or her duly authorized representative, is authorized to advertise the sale of leases for oil and gas mining purposes of Navajo Nation lands pursuant to applicable Department of Interior regulations, upon the request of, or with the consent and approval of, the Navajo Nation Council.

#### **History**

CJ-44-58, July 16, 1958.

#### **§ 1502. Consideration of bids**

The President of the Navajo Nation is authorized, upon receiving recommendation of the U.S. Bureau of Land Management through the Bureau of Indian Affairs, and the Navajo Nation Minerals Department, and within three weeks after the opening of any and all bids for oil and gas leases on Navajo Nation lands, to accept or reject bids on behalf of the Navajo Nation.

#### **History**

CJN-43-71, June 1, 1971.

**Note.** The U.S. Geological Survey is no longer involved in oil and gas operations in Indian lands. The U.S. Bureau of Land Management is the minerals lease management agency on Indian lands.

CJ-44-58, July 16, 1958.

CS-71-57, September 18, 1957.



Tribal Council, Res. 1922-1951, Res. p. 315, July 7, 1923, authorized and requested Secretary of the Interior to advertise certain tracts of land for oil and gas mining leases. This resolution was revoked by Tribal Council, October 31, 1933.

**§ 1503. Recommendations confidential**

Any and all recommendations conveyed to the President of the Navajo Nation by the Oil and Gas Consultant or Office of the Attorney General in respect to the acceptance and rejection of bids for oil and gas leases shall be maintained strictly as confidential documents, and shall be considered by the Navajo Nation Council in executive session only, excluding therefrom members of the public and government employees except as specifically otherwise ordered by the President of the Navajo Nation or the Navajo Nation Council.

**History**

CJN-43-71, June 1, 1971.

ACM-25-58, March 5, 1958.

**§ 1504. Rejection of bids; negotiation of lease**

The President of the Navajo Nation, by declining to accept bids on any tract offered, may withdraw the consent of the Navajo Nation to leasing the particular lands involved, or may, by and with the approval of the Secretary of the Interior negotiate lease on terms and conditions deemed by them to be in the best interests of the Navajo Nation.

**History**

CJN-43-71, June 1, 1971.

CJ-44-58, July 16, 1958.

**§ 1505. Making leases on acceptance of highest bids**

Leases for oil and gas mining purposes may be made pursuant to applicable Department of the Interior regulations on any tracts on which the Navajo Nation Council has accepted the highest bids, on behalf of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative.

**History**

CJ-44-58, July 16, 1958.

CJ-24-54, June 9, 1954.

Tribal Council, Res. 1922-1951, Res. pp. 315 and 317, July 7, 1923.

**§ 1506. Required provisions of lease**

Each lease of Navajo Nation land for oil and gas mining purposes shall contain provisions to the following effect:

A. Navajo grazing rights to the surface of any lands so leased shall be protected, and Navajo rights respecting the use of water shall be unimpaired.

B. Navajos shall be employed in such mining, drilling, exploration, and development operations to the fullest extent that their qualifications and the law permit, and every reasonable effort shall be made to train Navajos in the skills and abilities required in such operations to the end that they may become qualified for such employment.

#### **History**

CJ-44-58, July 16, 1958.

#### **§ 1507. Execution of lease**

Oil and gas mining leases may be executed on behalf of the Navajo Nation by the President or Vice-President.

#### **History**

CJ-44-58, July 16, 1958.

CJ-24-54, June 9, 1954.

Tribal Council, Res. 1922-1951, Res. p. 315, July 7, 1923.

#### **Cross References**

Contracts generally, see 2 N.N.C. § 222.

### **Subchapter 7. Losses and Damages Due to Oil and Gas Activities**

#### **History**

**Change of name.** The Navajo Office of Land Administration, referred to in this Subchapter, is the successor to the Land Investigations Department. Subsequently the Office of Land Administration has been replaced by the Navajo Land Department.

#### **§ 1551. Livestock**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to restore in kind or at its determined value whatever livestock has been lost by Navajos due to operations by companies in oil and gas development activities upon receiving from the Division of Natural Resources a detailed written report of the incident, or upon satisfying himself or herself that such loss or damage in the amount claimed actually occurred.

#### **History**

CF-19-58, February 18, 1958.

**Revision note.** The Division of Natural Resources was substituted for the "Navajo Nation Oil and Gas Supervisor" pursuant to CD-68-89.

**§ 1552. Hogan or other structures**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to restore in kind or at its determined value any hogan or other structure including fences damaged due to operations by companies in oil and gas development activities, upon receiving from the Division of Natural Resources a detailed written report of the incident, and upon satisfying himself or herself that such loss or damage in the amount claimed actually occurred.

**History**

CF-19-58, February 18, 1958.

**Revision note.** The Division of Natural Resources was substituted for the "Navajo Nation Oil and Gas Supervisor" pursuant to CD-68-89.

**§ 1553. Assignment of claims**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to take an assignment of any and all claims sustained by Navajos as a result of oil and gas development, where the Navajo Nation has restored or paid the individual the determined value of the livestock or improvements of other losses or damages sustained by him or her, to the end that the Navajo Nation may make a demand for reimbursement from the offending company for the actual amount of the claim plus any expense that may be incurred in investigating and collecting the claim. The absence of necessary proof in determining what company is the offender shall not prevent of the Navajo Land Department from giving relief to Navajos sustaining the loss or damage as authorized in 18 N.N.C. §§ 1551 and 1552.

**History**

CF-19-58, February 18, 1958.

**§ 1554. Restoration of land and improvements by company**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to require any company working in the development of oil and gas to fill in any hole or excavation, fence any dangerous area, or do whatever is necessary to restore within reason the land or improvements of the residents of the area and if the required work is not performed by the offending company after being given proper written notice, to perform the work at the expense of the Navajo Nation with notice to the offending company and the Bureau of Indian Affairs that this is being done on behalf and at the expense of such company.

### **History**

CF-19-58, February 18, 1958.

#### **§ 1555. Negotiated settlements with Navajos**

A. The Director of the Natural Resources Division and the Director of the Navajo Land Department of the Navajo Nation are authorized and directed to negotiate settlements with Navajos residing in the Greater Aneth area, who have been damaged by oil producing activities, provided the basis of settlement shall assume reduction of net annual income from land use of not more than six percent (6%) and that such damages will continue and span not more than 25 years.

B. The settlements so negotiated shall be first submitted to and approved by the Resources Committee of the Navajo Nation Council. Upon such approval the amounts agreed upon shall be paid to the person entitled thereto and his or her release of the Nation shall be taken.

### **History**

CS-51-61, September 1, 1961.

## **Chapter 15. Navajo Abandoned Mine Lands Reclamation Act**

### **Subchapter 1. Statement of Findings and Policy**

#### **§ 1601. Establishment**

The Navajo Nation, through the Navajo Nation Council, hereby enacts the Navajo Abandoned Mine Lands Reclamation Act, to provide for the regulation of surface mining operations, for the acquisition and reclamation of abandoned mines, and for other purposes.

### **History**

CAP-42-94, April 21, 1994.

CN-57-87, November 18, 1987.

**Note.** Changed title from "Navajo Abandoned Mine Lands Reclamation Code" to "Navajo Abandoned Mine Lands Reclamation Act."

**Note.** Slightly reworded for statutory form.

Recodified from 4 N.N.C. § 501.

#### **§ 1602. Findings**

The Navajo Nation Council finds and declares that:

A. Surface mining operations have resulted and may result in disturbances of surface areas that burden and adversely affect the Navajo Nation in both its

proprietary and sovereign capacities, and burden and adversely affect the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, cultural, and forestry purposes by causing erosion and landslides, by polluting the water, by destroying vegetation and wildlife habitats, by impairing natural beauty, by damaging the property of citizens and residents of the Navajo Nation, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources.

B. The Federal Office of Surface Mining Reclamation and Enforcement has encouraged, by the terms of its cooperative agreement with the Navajo Nation, the Navajo Nation to develop a Navajo Regulatory Program, including the development and passage of this Navajo Abandoned Mine Lands Reclamation Code. With the support, encouragement, and assistance of the Federal Office of Surface Mining Reclamation and Enforcement, the Navajo Nation has gained significant experience, knowledge, and technical capability for the reclamation of abandoned mine lands within the Navajo Nation.

C. There are a substantial number of acres of land throughout the Navajo Nation disturbed by surface and underground mining operations where little or no reclamation was conducted, and such lack of reclamation has imposed and may impose social (including health) and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality.

D. The health effects of uranium and other mines abandoned are of critical importance to the Navajo Nation, and studies conducted in the Shiprock area demonstrate the lingering effects of these mining activities in birth defects and cancer. Reclamation of these sites is desperately needed.

F. The Navajo Nation is committed to exercising its sovereignty over all lands within the Navajo Nation to the fullest extent. Such sovereign rights include the ability to permit, regulate, and enforce environmental and other standards for surface mining, and the Navajo Nation has developed significant expertise in this regard, as recently recognized by the Federal Office of Surface Mining Reclamation and Enforcement. The Navajo Nation is committed to the exercise of this authority. Therefore, it is in the best interest of the Navajo Nation to enact, at this time, a reclamation code concerning the abandoned mine lands.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Recodified from 18 N.N.C. § 1601.

### **Cross References**

Contracts generally, see 2 N.N.C. § 222.

### **§ 1603. Purposes**

Pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"),<sup>1</sup> it is the purpose of this Act to:

A. Provide for the reclamation of mined areas left without adequate reclamation prior to August 3, 1977 and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public; and

B. Provide for the use of Navajo abandoned mine land ("AML") money to reclaim mined areas in a manner consistent with the labor policies of the Navajo Nation and with the desire to encourage the formation and development of Navajo business enterprises.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Recodified from 18 N.N.C. § 1602.

**Note.** Slightly reworded for statutory form.

## **Subchapter 2. Abandoned Mine Lands Reclamation Department**

### **§ 1611. Establishment of Department; duties**

A. There is established in the Division of Natural Resources an Abandoned Mine Lands Reclamation Department (hereinafter referred to as the "Department").

B. The Department shall have a Director who shall report to the Executive Director of the Division of Natural Resources. The Director of the Department shall have the responsibilities provided under Subsection (C) of this Section. Employees of the Department shall be recruited consistent with Navajo labor laws, on the basis of their professional competence and capacity to administer the provisions of this Act. The Department may enlist the cooperation of the employees of federal agencies, where authorized by applicable federal law, and of other agencies of the Navajo Nation, where authorized by applicable tribal authority, to administer the provisions of this Act.

C. The Division of Natural Resources, acting through the AML Program, shall:

1. Publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act and as are approved by the Resources Committee of the Navajo Nation Council;
2. Develop and implement a program for reclamation of abandoned mine lands as provided in Title IV of this Act;
3. Consult and cooperate with federal agencies and other Navajo

Nation agencies to provide for the efficient and effective administration of this Act and to minimize unnecessary duplication of effort;

4. Collect data, conduct experiments, and do appropriate research regarding surface mining, and reclamation, and other appropriate areas of study;

5. Perform such other duties as may be provided by law and related to the purpose of this Act.

D. The Department shall be and is clothed with sovereign immunity from suit enjoyed by the Navajo Nation. In no event shall the Department be held liable for monetary damages, and no employee of the Department including the Director shall have the authority to waive, either explicitly or by implication, the immunity from unconsented-to suit recognized and established hereby. Nothing in this Act waives the sovereign immunity of the Navajo Nation with respect to actions seeking monetary relief of any kind.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

**Note.** Slightly reworded for statutory form.

### **Subchapter 3. [Reserved]**

### **Subchapter 4. Abandoned Mine Reclamation**

#### **§ 1631. Navajo Abandoned Mine Reclamation Fund and purposes**

A. There is created on the books of the Controller's Office of the Navajo Nation a trust fund to be known as the Navajo Abandoned Mine Reclamation Fund (hereinafter referred to as the "Fund") which shall be administered by the Director in accordance with Navajo law. For purposes of this Subchapter 4, the term "Director" shall mean the Director of the Navajo Abandoned Mine Lands Reclamation Department, a position established in § 1611 of this Act.

B. The fund shall consist of amounts deposited in the fund, from time to time, derived from:

1. Reclamation fees levied under § 402 of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. § 1232, on Navajo Indian lands, and returned or transferred to the Navajo Nation pursuant to SMCRA<sup>1</sup> by the Secretary of the Interior;

2. Any user charge imposed by the Navajo Nation on or for land reclaimed pursuant to this Title, after expenditures for maintenance have been deducted;

3. Donations by persons, corporations, associations, and foundations for the purposes of this Title;

4. Recovered monies as provided for in this Title;
5. Interest credited to the fund under Subsection (e) of § 401 of SMCRA;<sup>2</sup> and
6. All other reclamation fees lawfully imposed by the Navajo Nation.

C. Monies in the fund may be used for the following purposes:

1. Reclamation and restoration of land and water resources adversely affected by past mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned processing areas, and abandoned refuse disposal areas; sealing and filling abandoned deep mine entries and voids, planting of land adversely affected by past surface mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by mine drainage including restoration of stream beds, and construction and operation of water treatment plant; prevent abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of mine subsidence;
2. Acquisition and filling of voids and sealing of tunnels, shafts, and entryway under § 1639;
3. Acquisition of land as provided for in this Title and in the manner prescribed by Navajo law;
4. Monitoring, enforcement, and collection of fees provided for in this Title;
5. Studies by the Department to such extent or in such amounts as are provided in appropriation Acts with public and private organizations conducted in accordance with § 3501 of the Omnibus Budget Reconciliation Act of 1986,<sup>3</sup> conducted for the purposes of this Title;
6. Restoration, reclamation, abatement, control, or prevention of adverse effects of mining which constitutes an emergency as provided for in this Title;
7. Administrative expenses of the Navajo Nation to accomplish the purpose of this Title;
8. For use under § 1641; and
9. All other necessary expenses to accomplish the purpose of this Title.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.



### **§ 1632. Reclamation fees**

The Director shall do all things necessary and proper to facilitate the transfer to the fund of reclamation fees collected pursuant to § 402 of SMCRA <sup>1</sup> from operations on lands within the Navajo Nation by the Secretary of the Interior, and to ensure, after consultation with the Minerals Department of the Navajo Division of Natural Resources and any other appropriate agency or person, that the amounts tendered by the operators to the Secretary and by the Secretary to the Navajo Nation and to ensure, after consultation with the Minerals Department of the Navajo Division of Natural Resources and any other appropriate agency or person, that the amounts tendered by the operators to the Secretary and by the Secretary to the Navajo Nation are correct and proper.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

**Note.** Slightly reworded for clarity.

### **§ 1633. Objectives of Fund**

A. Priorities. Expenditures of monies from the Fund of lands and water eligible pursuant to § 1634 except as provided for under § 1641 for the purposes of this Title shall reflect the following priorities in the order stated:

1. The protection of public, health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
2. The protection of public health, safety, and general welfare from adverse effects of coal mining practices;
3. The restoration of land and water resources and the environment previously degraded by adverse effects of mining practices including measures of the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;
4. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities roads, recreation, and conservation facilities adversely affected by mining practices;
5. The development of land owned in fee by the Navajo Nation or held in trust by the United States for the Navajo Nation adversely affected by mining practices including land acquired as provided in this Title for recreation and historic purposes, conservation, and reclamation purposes and open space benefits; and
6. Any other purpose consistent with SMCRA <sup>1</sup> and applicable Navajo law.

B. Inventory. For purposes of assisting in the planning and evaluation of reclamation projects pursuant to § 1635, and assisting in making the certification referred to in § 1641 (A), the Director shall maintain an inventory of eligible lands and waters pursuant to § 1634 which meet the priorities stated in Paragraphs (1) and (2) of Subsection (A).

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1634. Eligible lands and water**

A. Lands and water eligible for reclamation or drainage abatement expenditures under this Title are those which were mined for coal and other minerals or which were affected by such mining, waste banks, coal processing, or other coal mining processes, except as provided for under § 1641 and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under applicable law. For other provisions relating to lands and waters eligible for such expenditures, see § 1639.

B. Lands and waters also eligible for reclamation on the Navajo Nation are those which were damaged and abandoned after August 3, 1977 by coal mining processes if the Director finds in writing that:

1. They were mined for coal or affected by coal mining processes; and

2. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and September 28, 1984 and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

3. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on November 5, 1990, and that the surety of the mining operator became insolvent during such period and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

4. The site qualifies as a priority one or two site pursuant to § 1633(a)(1) and (2) of SMCRA. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

C. For other provisions relating to lands and waters eligible for such expenditures, see § 1639.

#### **History**

CJY-63-95, July, 21, 1995.

CD-113-94, December 14, 1994.

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1635. Navajo Nation Reclamation Program**

A. The Director shall be responsible for the preparation and submission of the Navajo Abandoned Mine Reclamation Program and annual projects to carry out the purposes of this Title pursuant to this Act, SMCRA,<sup>1</sup> and any cooperative agreements which maybe entered into for this purpose by the Navajo Nation and the Federal Office of Surface Mining Reclamation and Enforcement.

B. The Director shall be responsible for ensuring that the Navajo Abandoned Mine Reclamation Program is in compliance with the Navajo Nation laws, this Act, SMCRA,<sup>1</sup> and any cooperative agreements under Subsection (A).

C. The Navajo Abandoned Mine Reclamation Plan shall identify the areas to be reclaimed, the purpose for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this title. For any submissions requiring the approval of the Secretary of the Interior, this Act shall constitute the legal authority for the performing of the tasks contemplated by § 405(e) of SMCRA.<sup>2</sup>

D. On an annual basis, the Director shall notify the Secretary of the United States Department of the Interior of specific reclamation projects to be undertaken and may submit to the Secretary an application for the support of the Navajo Nation Reclamation Program and implementation of specific reclamation projects, should such application be required for the Secretary to transfer reclamation funds collected pursuant to § 402(a) of SMCRA<sup>3</sup> from operators of coal mining operations on lands within the Navajo Nation subject to SMCRA.<sup>1</sup> Such annual notification and/or applications shall include such information as may be requested by the Secretary.

E. The Director shall include as costs for each proposed project under this Section actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

F. The Director shall report from time to time on the status of the Navajo Reclamation Fund; the use of monies in the fund; the projects completed, in progress, or planned; and the need for construction of specific public facilities in communities impacted by coal development.

G. The Director shall also be responsible for submitting such annual and other reports as may be required by the Secretary of the Interior pursuant to § 405(j) of SMCRA.<sup>4</sup>

## History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### § 1636. [Reserved]

### § 1637. Acquisition and reclamation of lands within the Navajo Nation adversely affected by past coal mining practices

A. If the Director makes a finding of fact that:

1. Land or water resources have been adversely affected by past mining practices; and

2. The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices are not known, or readily available; or

4. The owners will not give permission for the Navajo Nation, its political subdivisions, agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices; then, upon giving notice by certified mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the Navajo Nation in which the land lies, the Director shall have the right to enter upon the property adversely affected by past mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The monies expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim, in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry, provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

B. The Director, his or her agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

C. The Director may recommend the acquisition of land to the Navajo Land Department, which, upon the approval of the appropriate Committee(s) of the Navajo Nation Council, shall acquire any land, by purchase, donation, or condemnation, which is adversely affected by past mining practices where the Director determines that acquisition of such land is necessary to successful reclamation and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

2. Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices; or

3. Acquisition of refuse disposal sites and all coal refuse thereon will serve the purpose of this title or that public ownership is desirable to meet emergency situations and prevent recurrence of the adverse effects of past mining practices. For the purpose of this Subsection (C), the phrase "acquisition of land" includes acquisition of grazing rights on lands held in trust by the United States for the Navajo Nation.

D. Title to all acquired lands pursuant to this Section shall be in the name of the United States in trust for Navajo Nation or in the name of the Navajo Nation, should the United States fail or refuse to accept title to such land in trust for the Navajo Nation. The price paid for land acquired under this Section shall reflect the fair market value of the land as adversely affected by past mining practices, as established by a competent appraisal.

E. The director shall from time to time recommend to the Navajo Land Department that specific lands be acquired for public purposes by the Navajo Nation pursuant to this title and/or pursuant to § 407 of SMCRA.<sup>1</sup> The director shall, in making such recommendations, identify valid public purposes to be served by the acquisition of such lands, and do all things necessary and proper to secure grants from the Secretary of the Interior pursuant to § 405(h) of SMCRA.<sup>2</sup>

F. The director shall, from time to time, recommend to the Navajo Land Department that specific lands acquired pursuant to § 407(c) of SMCRA<sup>3</sup> be used for industrial, commercial, residential, or recreational development by the Navajo Nation. The director shall, in making such recommendations, identify the type of development or use of such lands and shall ensure that such development is consistent with the land use plans, if any, of the appropriate chapter and of the Navajo Nation.

G. Should the Director's recommendation under Subsections (C) or (F) be accepted or conditionally accepted by the Navajo Land Department and the appropriate Committee (s) of the Navajo Nation Council, or should other lands be acquired by the director under this Section and/or under § 407 of SMCRA,<sup>1</sup> the Director shall notify the public thereof and, after such appropriate public

notice, in the appropriate chapter in which lands acquired pursuant to this Section are located. The hearings shall be held at a time which shall afford local citizens and chapters the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

H. In addition to the authority to acquire land under Subsection (D) of this Section, the director is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer, with the approval of the appropriate oversight committee of the Navajo Nation Council and in accordance with Navajo law, acquire land to any chapter, or to any person, firm, association, or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as a result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this Section, or persons dislocated as the result of adverse effects of mining practices which constitute an emergency as provided in § 1640 or persons dislocated as the result of natural disasters or catastrophic failure from any cause. Such activities shall be accomplished under such terms and conditions as the director shall require, which may include transfers of land with or without monetary consideration; provided, that to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this title maybe used to pay the actual construction costs of housing. The director may carry out the purposes of this Subsection directly or he or she may make grants and commitments for grants, and may advance money under such terms and conditions as he or she may require to any chapter, or any department, agency, or instrumentality of the Navajo Nation, or any public body or non-profit organization designated by the Navajo Nation Council.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### **§ 1638. Liens**

A. Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past mining practices on privately owned land, the director, pursuant to the Navajo Abandoned Mine Reclamation Program, shall itemize the monies so expended and may file a statement thereof in the office of the Clerk of the District Court of the Navajo Nation within whose jurisdiction the land lies, in a book separately maintained by such Clerk for the recording of judgments against land. The director may also file such statements in the office of the county in which the land lies which office records judgments against land. Such statement shall be accompanied by a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining practices if the monies so expended shall result in a significant increase in property value. Such

statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. No lien shall be filed against the property prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

B. The landowner may proceed as provided by Navajo law to petition on the appropriate District Court of the Navajo Nation within 60 days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by Navajo law.

C. The lien provided in this Section shall be entered in the office of the Clerk of the District Court of the Navajo Nation within whose jurisdiction the land lies, in a book separately maintained by such Clerk for the recording of judgments against land. The lien may also be entered in the office of the county in which the land lies which office records judgments against land. Such statements shall constitute a lien upon the said land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes lawfully imposed upon said land by the Navajo Nation.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### **§ 1639. Filling voids and sealing tunnels**

A. The Navajo Nation Council declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Director, where requested by a duly promulgated resolution of the chapter with jurisdiction over the lands which include such voids and tunnels, is authorized pursuant to this Act and/or pursuant to § 409 of SMCRA <sup>1</sup> to fill such voids; seal such abandoned tunnels, shafts, and entryways or take other appropriate remedial action; and reclaim surface impacts of underground or surface mines which the Director determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.

B. Pursuant to Navajo Nation laws, the Director is authorized to request funds from the Secretary of the Interior pursuant to § 409(c) of SMCRA <sup>2</sup> to carry out non-coal reclamation projects if such projects relate to the protection of the public health or safety.

C. In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the waste from

such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purpose of this Section.

D. The Director and the Resources Committee, and in compliance with Navajo law, may with monies from the fund acquire by purchase or easement, or by donation or by other such interest in land as he or she determines necessary to carry out the provisions of this Section.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### **§ 1640. [Reserved]**

### **§ 1641. Certification**

A. Certification of completion of coal reclamation. Pursuant to Navajo Nation laws, the Director may certify to the Secretary that all of the priorities stated in § 1633(A) for eligible lands and waters pursuant to § 404 of SMCRA<sup>1</sup> have been achieved.

B. Eligible lands, water, and facilities. If the Secretary has concurred in the Navajo Nation certification under Subsection (A), for purposes of determining the eligibility of lands and waters for annual grants under § 402(g)(1) of SMCRA,<sup>2</sup> § 1634 shall not apply, and eligible land, waters, and facilities shall be those:

1. Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

2. For which there is no continuing reclamation responsibility under state, Navajo Nation, or other federal laws.

C. Priorities. expenditures of monies for lands, waters, facilities referred to in Subsection (B) shall reflect the objectives stated in § 1633 wherein the term "coal" shall be replaced with "mineral" pursuant to Subsection (B).

D. Specific sites and areas not eligible. Sites and areas designated for remedial action pursuant to the Uranium Mill Tailing Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this Section.

E. Utilities and other facilities. Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by



coal and other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in Subsection (C).

F. Notwithstanding Subsection (E), where the Secretary has concurred in the certification referenced in Subsection (A) and where the Director determines there is a need for activities or construction of specific public facilities related to the coal or mineral industry where impacted by coal or minerals development and the Secretary concurs in such need, then pursuant to Navajo Nation laws, may use annual grants made available under § 402(g)(1) of SMCRA<sup>2</sup> to carry out such activities or construction.

G. Application of other provisions. The provisions of §§ 407<sup>3</sup> and 408<sup>4</sup> shall apply to Subsections (A)-(E) of this Section, except that for the purposes of this Section the references to coal in §§ 1637 and 1638 shall not apply.

#### **History**

CAP-42-94, April 26, 1994.

#### **§ 1642. Fund report**

Not later than January 1, 1989, and annually thereafter, the Director shall report to the Resources Committee on operations under the fund together with his or her recommendations as to future uses of the fund.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1643. Miscellaneous powers**

A. The Director shall have the power and authority to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this Title, consistent with Navajo law.

B. The Director, with the approval of the Intergovernmental Relations Committee, upon the advice of the Resources Committee, of the Navajo Nation Council shall have the power and authority to engage in cooperative projects under this Title with any agency of the United States of America or any state.

C. The Director may request of the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this Title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this Title.

D. The Director shall have the power and authority, consistent with Navajo law, to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this

control and treatment may be dependent upon the ultimate use of the water, provided that the above provisions of this Subsection shall not be deemed in any way to repeal or supersede any portion of the Navajo Water Code enacted on August 2, 1984, and the Federal Water Pollution Control Act (33 U.S.C. § 1151, *et seq.*, as amended), and no control or treatment under this Subsection shall in any way be less than that required under applicable law. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

E. The Director, upon the approval of the appropriate oversight committee of the Navajo Nation Council, may transfer funds to other appropriate Navajo Nation agencies in order to carry out the reclamation activities authorized by this Title.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1644. Interagency cooperation**

All departments, boards, commissions, and agencies of the Navajo Nation shall cooperate to the fullest extent with the director to implement and administer the provisions of this Title where such cooperation does not conflict with existing Navajo Nation and/or applicable federal laws.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

**Subchapter 5. [Reserved]**

**Subchapter 6. [Reserved]**

**Subchapter 7. [Reserved]**

**Subchapter 8. [Reserved]**

### **Title 19**

#### **Parks and Monuments**

##### **Chapter 1. Generally**

#### **§ 1. Areas of scenic beauty and scientific interest; reservation**

All areas of scenic beauty and scientific interest which require preservation shall be reserved as Navajo parks, monuments, or ruins, to be managed by the Navajo Nation with the cooperation of other agencies.