

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- First Year, 2019

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING 5 N.N.C. §§ 1972
AND 1973, THE NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY PLAN
OF OPERATION

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee is established as a standing committee of the Navajo Nation Council. 2 N.N.C. § 500 (A).
- B. The Resources and Development Committee is empowered to grant final approval of amendments to the Navajo Engineering and Construction Authority's Plan of Operation recommended by the Navajo Engineering and Construction Authority Board of Director. 5 N.N.C. § 1981.
- C. 5 N.N.C. § 1981 states: *Amendments. This Plan of Operation may be amended from time to time by the Board of Directors of NECA with the approval by the appropriate oversight committee of the Navajo Nation Council. Provided however, that §§ 1972(B)(17), 1973(F) and 1980 shall not be amended except by the Navajo Nation Council, and to that extent the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend this plan of operation is limited.*

SECTION TWO. FINDINGS

- A. The Navajo Engineering and Construction Authority (NECA) is a business enterprise owned and operated by the Navajo Nation.
- B. NECA's Plan of Operation is codified in the Navajo Nation Code at 5 N.N.C. § 1971 *et seq.*
- C. Pursuant to its stated purposes, 5 N.N.C. § 1972 (A), NECA since its creation in 1970, has engaged exclusively in horizontal construction, i.e., highway and road construction, dam construction and water line construction.

- D. NECA has the ability and capacity to engage in vertical construction, i.e., commercial and housing construction. The proposed amendments to 5 N.N.C. §§ 1972 (A) (1) and (4) would allow NECA to expand beyond its stated purposes and continue to assist the Navajo Nation in its nation-building efforts.
- E. The proposed amendments of the NECA Plan of Operation sections concerning the NECA Board of Director's appointment, confirmation and officers at 5 N.N.C. §§ 1972 (C), (D), and (G) would provide clarification.
- F. NECA as a business enterprise needs to respond timely and quickly to business opportunities.
- G. Deletion of the Navajo Nation President's or his designee's ex officio membership on the Board of Directors, 5 N.N.C. § 1973 (A), and the deletion of oversight committee's approval of NECA's business association, 5 N.N.C. §1972 (B) (15), would remove or minimize political influence on the business operations and affairs of NECA and would further, allow NECA to respond quickly to business opportunities.
- H. Since its creation in 1971, NECA has developed into one of the most successful Navajo Nation owned business enterprises.
- I. NECA has declared dividends of \$18,250,000 and has returned that amount to the Navajo Nation as return on the Navajo Nation's initial investment of heavy equipment.
- J. Pursuant to 12 N.N.C. § 1181, *et seq.*, NECA Trust Fund for Scholarship and Financial Assistance, the NECA dividends are dedicated to scholarships for Navajo college students.
- K. NECA has an annual average employment of 307 and its employment number will increase as will its revenue with new business ventures.
- L. NECA is subject all Navajo Nation laws including taxation, employment preference, business preference.
- M. NECA pays Navajo Nation taxes and has paid over \$334,340 of taxes each year.
- N. NECA subcontracts Navajo-owned small businesses and helps the development of small Navajo-owned businesses on the Navajo Nation.

- O. NECA has constructed over 750 miles of highway and constructed thousands of miles of waterlines on the Navajo Nation.
- P. NECA is an example of how to keep Navajo dollars on the Navajo Nation.
- Q. The resolution of the Navajo Engineering and Construction Authority Board of Directors, dated June 26, 2019, supporting the amendments is attached as **Exhibit A**.

SECTION THREE. AMENDING 5 N.N.C. §§1972 (A) (1), (A) (4), (B) (15), §§1973 (A), (C), (E), AND (G)

The Navajo Nation hereby amends Title 5, Navajo Nation Code as follows:

NAVAJO NATION CODE ANNOTATED
TITLE 5. COMMERCE AND TRADE
CHAPTER 9. NAVAJO NATION ENTERPRISES
SUBCHAPTER 13. NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY

§ 1972. Purposes and powers

- A. The purposes for which the Authority is organized are as follows:
 - 1. To engage in the general engineering and heavy construction industry;
 - 2. To train Navajo people in the engineering and construction industry, including training in the management of the Authority;
 - 3. To provide employment to the Navajo Nation, its enterprises and individual members, in engineering and construction and related businesses;
 - 4. To be the premier heavy construction contractor emphasizing the values of excellence, service and employee development; and
 - 5. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes set forth herein consistent with all applicable laws or regulations, and this plan of operation.

- B. Subject to applicable federal and Navajo laws and regulation, the Board of Directors of the Authority shall exercise the following powers and duties:

* * * *

15. ~~With the approval of the appropriate oversight committee of the Navajo Nation Council, to~~ The Board may enter into management agreements, joint ventures, limited partnerships and/or general partnership agreements with any corporation, association, syndicate, partnership, entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any business which the Authority is authorized to carry on, or any business or transaction deemed necessary, convenient, or incidental to carrying out the purposes of the Authority.

* * * *

§ 1973. Board of directors and officers; number, appointment, composition term and removal, employment of general manager

- A. The business and affairs of the Authority shall be conducted by a Board of Directors of seven directors. ~~The President of the Navajo Nation or his designee shall serve as a non-voting ex officio member.~~
- B. The presence of four directors of the Board shall constitute a quorum for the transaction of any business. The act of the majority of the directors present and voting at a meeting at which a quorum is present, shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding officer.
- C. ~~The Board of Directors~~ directors shall be appointed by the President of the Navajo Nation with subject to confirmation by the appropriate oversight committee of the Navajo Nation Council. ~~Any new~~ Except for appointment to fill a vacancy on the Board, a director shall be appointed to the Board for a four (4) year term, and the ~~terms~~ term of his reappointment thereafter, if any, shall be limited to one four (4) year term. ~~Present Board directors shall serve out their present terms before this provision applies to them.~~ Board directors shall serve until their reappointment or their successors are duly qualified and confirmed.
- D. At least six directors of the Board shall be enrolled members of the Navajo Nation. Individuals with experience and/or education in the engineering, construction, architectural,

legal, accounting, management, or other construction related field shall be given preference for appointment to the Board.

- E. Vacancies on the Board of Directors may be filled by the President of the Navajo Nation for the remainder of the term of the vacating director.
1. The remainder of the term shall commence on the date the appointment is confirmed and shall terminate at the end of the vacating director's term.
 2. For purposes of § 1973 (C) term limit, the remainder of the term served shall be treated as a full term.
- F. Any director may be removed at a duly called meeting of the Board of Directors, by a two-thirds vote of the full membership thereof, for just cause only. Just cause shall include, but not be limited to, failure to attend three consecutive meetings of the Board.
- G. A President, Vice-President, ~~Secretary and Treasurer~~ Secretary/Treasurer of the Board shall be elected at the annual meeting of the Board of Directors. All such officers must be directors of the Board of Directors, and shall hold office until their successors are elected and qualified. Any such Officer may be removed from office by the Board of Directors in the manner provided for in the bylaws of the Authority.
- H. A General Manager shall be employed under contract approved by the Board of Directors. The Board of Directors shall have the authority to set salary, benefits, incentives, bonuses, and other provisions of such a contract. The General Manager shall be the Chief Executive Officer of the Authority, and shall direct, supervise and manage all of the operations of the Authority pursuant to the contract. He shall be responsible to the Board of Directors as a Chief Executive Officer of a corporation would be. He shall render reports to the Board and prepare periodical strategic business plans and perform all other functions and duties specified herein and as may be assigned by the Board of Directors.

* * * *

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting at the Navajo Nation Council Chambers, Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 30th day of October 2019.



Thomas Walker, Jr., Vice Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Herman M. Daniels

Second: Honorable Mark A. Freeland

Vice Chairperson Thomas Walker, Jr. not voting.



**RESOLUTION OF THE
NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY
BOARD OF DIRECTORS**

**APPROVING AND ADOPTING THE NAVAJO ENGINEERING AND AUTHORITY
PLAN OF OPERATION AMENDMENTS; RECOMMENDING APPROVAL OF THE
SAME TO THE RESOURCES AND DEVELOPMENT COMMITTEE; AND RELATED
ACTIONS.**

WHEREAS:

1. The Navajo Engineering and Construction Authority (NECA) is created as a wholly owned business enterprise of the Navajo Nation owned and operation for and by the Navajo People, *5 N.N.C. § 1971*, as amended; and
2. NECA is created for the purposes of engaging in the general engineering and heavy construction business for and on behalf of the Navajo Nation, and to provide employment and training opportunities for members of the Navajo Nation, *5 N.N.C. § 1972(a)*, as amended; and
3. The NECA Board of Directors has the authority and responsibility for the management and operation of NECA, *5 N.N.C. § 1972(b) (1)*, as amended; and
4. NECA's Plan of Operation is codified in the Navajo Nation Code at *5 N.N.C. § 1971*, et seq, as amended, and the Plan of Operation was last amended by the Navajo Nation Council in 2008; and
5. The NECA Plan of Operation may be amended by the NECA Board of Directors with the approval of its oversight legislative committee, the Resources and Development Committee of the Navajo Nation Council, *5 N. N. C. § 1981*, as amended; and
6. Pursuant its stated purposes, NECA, since its creation in 1970, has engaged exclusively in horizontal construction, i.e., highway and road construction, dam construction, water line construction; and
7. NECA desires to engage in vertical construction, i.e., housing and commercial construction, and to continue to assist the Navajo Nation in its nation-building efforts and the amendment of *5 N.N.C. § 1972 (A) (1)* and *(4)* would further that effort; and
8. NECA Board of Directors has experienced some uncertainty and confusion concerning the appointment and confirmation of directors to the NECA Board of Directors; and

9. Amendment of the Plan of Operation sections regarding directors' appointment and confirmation and Board officers, 5 N.N.C. §§ 1973 (C), (D), and (G), need amendments for purposes of updating and for clarification; and

10. NECA as a business enterprise needs to operate with minimal political influence and deletion of the Navajo Nation President's ex officio membership on the Board, 5 N. N. C. 1973 (A), and deletion of oversight committee's approval of NECA's business association, 5 N.N.C. § 1972 (B) (15), would remove or minimize political influence into the business operations and affairs of the NECA; and

11. It is in the best interest of NECA that the NECA Board of Directors approves and adopts the proposed NECA's Plan of Operation amendments, attached hereto and incorporated herein as Exhibit A, and to further recommend the approval of the same to the Resources and Development Committee, NECA's legislative oversight committee.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Engineering and Construction Authority Board of Directors hereby approves and adopts the proposed NECA's Plan of Operation amendments, attached hereto and incorporated herein as Exhibit A.

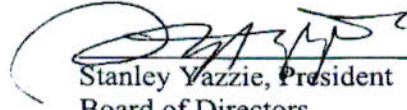
2. The Navajo Engineering and Construction Authority Board of Directors further recommends that the Resources and Development Committee's approves the proposed NECA's Plan of Operation amendments, attached hereto and incorporated herein as Exhibit A.

3. The Navajo Engineering and Construction Authority Board of Directors further authorizes and directs the NECA General Manager, the President of the NECA Board of Directors, and the NECA General Counsel to do any and all things necessary and proper to accomplish the purpose and intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Engineering and Construction Authority Board of Directors at a duly called meeting held at the NECA Headquarter, Shiprock, New Mexico, at which a quorum was present and the same was

passed and adopted by a vote 4 in favor, 0 opposed, 0 abstentions, 0 not voting this 26th day of June 2019.



Stanley Yazzie, President
Board of Directors

Motion by Ernest Hubbell

Seconded by Terrill Harvey

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council
FIRST YEAR

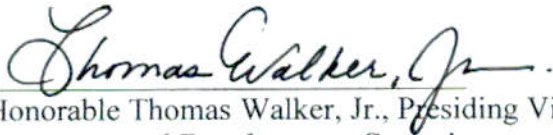
ROLL CALL
VOTE TALLY SHEET:

Legislation # 0314-19: An Action Relating to the Resources and Development; Amending 5 N.N.C. §§1972 and 1973, The Navajo Engineering and Construction Authority Plan of Operation. *Sponsor: Honorable Rickie Nez.*

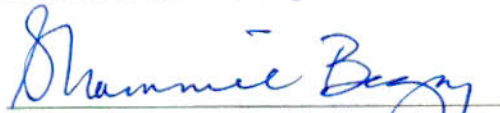
October 30, 2019 – Regular Meeting
Meeting Location: Navajo Nation Council Chambers
Window Rock, Arizona

MAIN MOTION:

M: Herman M. Daniels S: Mark A. Freeland Vote: 4-0-1(VCNV)
YEAS: Rickie Nez, Mark A. Freeland, Wilson C. Stewart, Jr. and Herman M. Daniels
EXCUSED: Kee Allen Begay, Jr.



Honorable Thomas Walker, Jr., Presiding Vice-Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services