

LEGISLATIVE SUMMARY SHEET

Tracking No. 0260-20

DATE: October 16, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION PRESIDENT'S VETO OF NAVAJO NATION COUNCIL RESOLUTION CS-75-20

PURPOSE: To Override the Navajo Nation President's Veto of Navajo Nation Council Emergency Resolution CS-75-20.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – SECOND YEAR, 2020

INTRODUCED BY

Alvin E. Iro

(Sponsor)

TRACKING NO. 0260-20

AN ACTION

RELATING TO AN EMERGENCY FOR THE NAVAJO NATION; OVERRIDING THE NAVAJO
NATION PRESIDENT’S VETO OF NAVAJO NATION COUNCIL RESOLUTION CS-75-20

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council enacts laws of the Navajo Nation. 2 N.N.C. § 102.
- B. All resolutions enacting new law or amending existing laws are subject to veto by the President of the Navajo Nation pursuant to 2 N.N.C. § 1005(C)(10) and (11) and override by the Navajo Nation Council. 2 N.N.C. § 164(A)(17).
- C. Pursuant to 2 N.N.C. §164 (A)(16) “[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council.”
- D. The Bureau of Land Management (B.L.M.) and Bureau of Indian Affairs (B.I.A.) have never adequately and thoroughly consulted with the Eastern Navajo area residents regarding land, water, and air quality issues which has a significant impact on their health and safety. The Navajo Nation has its own perspective,

1 understanding, and knowledge about the San Juan Basin and the historic properties
2 located therein and that the Navajo Nation has special expertise to identify historic
3 properties that have traditional cultural significance to the Navajo Nation and Navajo
4 people. The lack of consultation with Eastern Navajo area residents is an
5 infringement of the Nation's sovereign rights and responsibilities to protect the
6 health and safety of the Navajo people in the Eastern Navajo area, as well as its
7 sovereign responsibilities to protect Navajo historic properties.

- 8 E. Resolutions vetoed by the President of the Navajo Nation is subject to override "by
9 two-thirds (2/3) vote of the membership of the Navajo Nation Council." 2 N.N.C. §
10 1005 (C) (11).

11 **SECTION TWO. FINDINGS**

12 A. Council Resolution CS-75-20 was passed by the Navajo Nation Council on September
13 30, 2020. The resolution is entitled, "An Action Relating to an Emergency; Requesting the
14 Bureau of Land Management and Bureau of Indian Affairs to Immediately and Indefinitely
15 Suspend the Federal Planning Process for the Farmington Mancos – Gallup Resource
16 Management Plan Amendment, Associated Environmental Impact Statement and the
17 Underlying Programmatic Agreement." **Exhibit 1.**

18 B. The Navajo Nation President vetoed Resolution CS-75-20 on October 9, 2020 and
19 provided a memorandum explaining his veto decision. **Exhibit 2.**

20 C. The Navajo Nation Council does not agree with the President's veto of Resolution CS-
21 75-20 and continues to believe in the need for Resolution CS-75-20.

22 23 **SECTION THREE. OVERRIDING VETO**

24 The Navajo Nation Council hereby overrides the Navajo Nation President's veto of
25 Resolution CS-75-20 effective on certification of the Speaker of the Navajo Nation Council.
26
27
28
29
30

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - SECOND YEAR, 2020

AN ACTION

RELATING TO AN EMERGENCY; REQUESTING THE BUREAU OF LAND MANAGEMENT AND BUREAU OF INDIAN AFFAIRS TO IMMEDIATELY AND INDEFINITELY SUSPEND THE FEDERAL PLANNING PROCESS FOR THE FARMINGTON MANCOS-GALLUP RESOURCE MANAGEMENT PLAN AMENDMENT, ASSOCIATED ENVIRONMENTAL IMPACT STATEMENT AND THE UNDERLYING PROGRAMMATIC AGREEMENT

WHEREAS:

- A. The Navajo Nation has a government-to-government relationship with the United States. 2 N.N.C. § 102(A).
- B. Pursuant to 2 N.N.C. §164 (A)(16) "[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council."
- C. Ensuring the health and safety of all residents and employees within the Navajo Nation is an inherent attribute of sovereignty.
- D. COVID-19 is a dangerous and extremely contagious respiratory virus. COVID-19 is spreading at an alarming rate within the Navajo Nation. As of September 21, 2020, the Navajo Nation has reported 10,131 cases of COVID-19 and 548 related deaths.
- E. The Bureau of Land Management (BLM) Farmington Field Office (FFO) and Bureau of Indian Affairs (BIA) Navajo Regional Office (NRO) are the lead federal agencies for the Section 106 consultation process of the National Historic Preservation Act (NHPA) related to the BLM and BIA's joint effort in preparation

of an Environmental Impact Statement (EIS) in the San Juan Basin.

- F. The BLM is using the EIS process to manage development in the Mancos Shale-Gallup oil and gas producing geologic formation, as well as making decisions regarding rights-of-way, vegetation, and lands with wilderness characteristics; the BIA is using the EIS process for mineral leasing and associated decisions on Navajo Tribal trust and individual Indian allotment lands.
- G. Attendant to the EIS process, the BLM and BIA NRO serve as co-lead federal agencies for purposes of compliance with the National Environmental Policy Act (NEPA) and Section 106 of the NHPA and related requirements for the Farmington Mancos-Gallup Resource Management Plan Amendment and Associated Environmental Impact Statement (FMG/RMPA/EIS).
- H. The BLM and BIA NRO have acknowledged that the Navajo Nation has its own perspective, understanding, and knowledge about the San Juan Basin and the historic properties located therein and that the Navajo Nation has special expertise to identify historic properties that have traditional cultural significance to the Navajo Nation and Navajo people.
- I. The BLM and BIA NRO have also acknowledged that the identification of historic Navajo properties and assessment of potential adverse effects from oil and gas development activities and associated Right-of-Way development actions within the EIS Decision Area require consultation processes under Section 106 of the NHPA.
- J. The BLM and BIA NRO have proposed to develop stipulations and other conditions to guide their management and development of oil and gas trust resources owned by the Navajo Nation and individual Indian allottees through a Programmatic Agreement. Programmatic Agreement is attached as Exhibit 7.
- K. The Navajo Nation, through the Historic Preservation Office, is a Consulting Party, as well as a Signatory, to the Programmatic Agreement.

- L. The Navajo Nation Council's Naabik'iyáti' Committee passed Resolution NABIMY-23-20 which was certified by the Speaker of the Navajo Nation Council on May 5, 2020. Resolution NABIMY-23-20 *[r]equest[ed] the Bureau of Land Management Farmington Field Office and Bureau of Indian Affairs Navajo Regional Office to extend the deadlines to accept proposed amendments to the draft Programmatic Agreement and proposed language for applications for permits to drill and right-of way stipulations for at least forty-five (45) days.* NABIMY-23-20 is attached as **Exhibit 4**.
- M. The presence of the COVID-19 pandemic on the Navajo Nation has had a direct impact on the ability of the Navajo Nation government to actively engage the Navajo population that would be affected by the Programmatic Agreement and the Farmington Mancos-Gallup Resource Management Plan Amendment. The Navajo Nation's Public Health Emergency Orders prohibit in-person meetings of five or more individuals. Order No. 2020-004. Public Health Emergency Orders have been implemented to prevent the spread of COVID-19. The use of telephonic and video meetings are problematic because of the limited accessibility to these formats; many Navajo families do not have access to computers and the internet. In-person forums are necessary to have meaningful discussions of the Programmatic Agreement and the Farmington Mancos-Gallup Resource Management Plan Amendment. In-person forums of the size that are needed for these meaningful discussions are currently not advisable due to COVID-19.
- N. The letter dated August 13, 2020 from Delegate Daniel E. Tso to Director Tim Spisak, U.S. Bureau of Land Management requesting the immediate and indefinite suspension of the Resource Management Plan Amendment process is attached as **Exhibit 1**. The document BIA/BLM Resource Management Planning Continues Amid Global Pandemic is attached as **Exhibit 2**. The letter dated April 28, 2020 from Delegate Daniel E. Tso to the Bureau of Land Management and the Bureau of Indian Affairs is attached as **Exhibit 3**. The Farmington Mancos-Gallup Draft Resources Management Plan Amendment and Environmental Impact Statement is attached as **Exhibit 5**. Counselor Air Quality & Health Impact Assessment 2019 is attached as **Exhibit 6**.

- O. To ensure the participation of the Navajo citizenry in meaningful discussion regarding the Farmington Mancos-Gallup Resource Management Plan Amendment and associated Environmental Impact Statement and the underlying Programmatic Agreement it is in the best interest of the Navajo Nation to request the suspension of the federal planning process for these documents and agreements.

THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation Council hereby requests the Bureau of Land Management Farmington Field Office and Bureau of Indian Affairs Navajo Regional Office to immediately and indefinitely suspend the federal planning process for the Farmington Mancos-Gallup Resource Management Plan Amendment and associated Environmental Impact Statement and the underlying Programmatic Agreement.
- B. The Navajo Nation Council hereby authorizes the Speaker of the Navajo Nation Council, President of the Navajo Nation, and their designees, to advocate for the suspension as set forth above.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 21 in Favor, and 00 Opposed, on this 24th day of September 2020.



Honorable Rickie Nez, Speaker Pro Tem
24th Navajo Nation Council

09-30-2020

DATE

Motion: Honorable Edmund Yazzie
Second: Honorable Pernel Halona

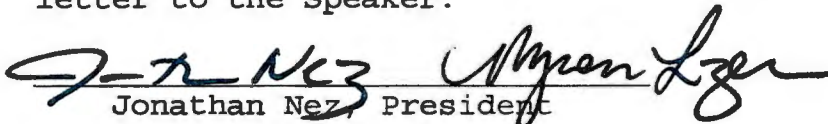
Speaker Pro Tem Rickie Nez not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (10), on this _____ day of _____, 2020.

Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (11), on this 09th day of October, 2020 for the reason(s) expressed in the attached letter to the Speaker.


Jonathan Nez, President
Navajo Nation

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



October 9, 2020

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CS-75-20, An Action Relating to an Emergency; Requesting the Bureau of Land Management Suspend the Federal Planning Process for the Farmington Mancos – Gallup Resource Management Plan Amendment, Associated Environmental Impact Statement and the Underlying Programmatic Agreement

Dear Speaker Damon,

With the emergency nature of the resolution, we continue to stress the requirement of establishing a record for the purpose of the emergency. It is vital our process is legally sound, as our lawyers will tell us at every opportunity. This 422-page legislation took approximately 6 minutes from start to finish; most of that time spent on the roll call vote. There was no explanation of the legislation by the sponsor, there were no questions on the content of the legislation, and there was no opportunity for input from the Navajo People. Presumably, this legislation brought an important issue before the Council and not one member asked what the position is of the Navajo People in Eastern Agency, did they have concerns, or did they support this matter.

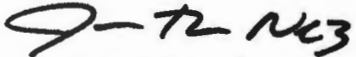
The Nageezi Chapter and the Shii Shi Keyah Navajo Allottee Association have historically opposed certain federal measures that would infringe on the rights of allotment owners. Allotment owners depend on income from oil and gas leases on their Indian Allotments. No attempt was made to inform or take comment from the Chapter and Association members before this position was introduced as an emergency legislation. The concerns of the citizens in Eastern Navajo Agency are on Navajo input to the Resource Management Plan, that the input from other Tribes and Pueblos may override Navajo interests and Navajo land ownership may be affected, and the continued lack of communication with allotment owners.

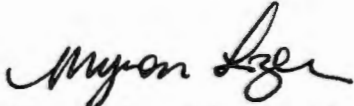
Although environmental concerns may drive these types of legislations or objections, those concerns have to be balanced with the ownership rights of Indian Allotment owners. Through thorough discussions, the balance is achieved. In this case, there was no discussion or consultation with Navajo Allottees. Council Delegates should ask questions otherwise, legislations that harm Navajo citizens are adopted, as shown by this resolution.

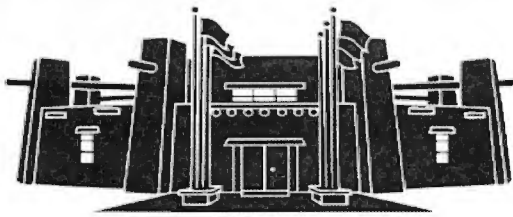
We have grave concerns on the process, or lack of process, on bringing this matter to the Council. And, more importantly, we have strong concerns of disenfranchising a large portion of our Navajo

citizenry on a matter that affects them in their own backyard. The Navajo Nation must be united on such important issues. For these reasons CS-75-20 is not approved.

Sincerely,

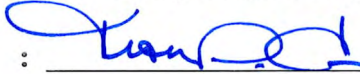

Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION



MEMORANDUM

TO : Daniel Tso, Delegate
24th Navajo Nation Council

FROM : 
Troy D. Cook, *Senior Tribal Court Advocate*
Office of Legislative Council

DATE : October 16, 2020

SUBJECT : AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION PRESIDENT'S VETO OF NAVAJO NATION COUNCIL RESOLUTION CS-75-20

I have prepared the above referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. The resolution drafted is legally sufficient. However, as with any legislation, it can be subject to review by the courts in the event of proper challenge. Also, understand that the Speaker is authorized to refer this proposed resolution to other committees that those stated in the title.

You are advised and encouraged to review the proposed resolution to ensure it is drafted to your satisfaction. If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment.

If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahe'he'.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0260-20__

SPONSOR: Daniel Tso

TITLE: An Action Relating to an Emergency for the Navajo Nation; Overriding the Navajo Nation President's Veto of Navajo Nation Council Resolution CS-75-20

Date posted: October 16, 2020 at 5:20PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0260-20

SPONSOR: Honorable Daniel E. Tso

TITLE: An Action Relating to an Emergency for the Navajo Nation; Overriding the Navajo Nation President's Veto of Navajo Nation Council Resolution CS-75-20

Posted: October 16, 2020 at 5:20 PM

5 DAY Comment Period Ended: Not Subject to 5 Day Hold

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	1) Yolanda Hesuse Hernandez
Inconclusive Comments	<i>None</i>



**Legislative Tracking Secretary
Office of Legislative Services**

10/21/20 11:25 AM

Date/Time

To: The Navajo Nation Legislation
Legislation No: 0260-20

First and most important, as a Navajo Allottee I would like to ask the Council to please consider the Voices of many, many Navajo Allottees

Please Oppose Legislation No: 0260-20 the Emergency Navajo Nation Resolution sponsored by: Daniel Tso

As an Allottee, I take ownership of the lands our families have very serious. My parents, the late Henry P. Hesuse and Betty Commanche Hesuse, taught us to cherish the land that was given to us and to take care of the lands.

I am **offended** that the person; Daniel Tso, has repeatedly stood up in the Council chambers and claims he is working for the Navajo Allottees in the Nageezi, Counselor, Lybrook, and Carson Chapter areas. The Allottees were never Informed on this Legislation. Most of the Allottees do not even know Daniel Tso, or even heard from this person on a one on one basis. As an Allottee, I am my own Voice. We speak for our ourselves for the lands that we live on and have ownership of.

The FMG RMP has been going on for a long time. The Deadline has been reached on this matter. BLM and BIA have been working closely with the Allottees for along time. Oil and Gas has been in our families for a long time. My family works closely with the BLM and BIA offices when it pertains to our lands. We work closely with the Oil Companies that lease on our lands. This, is what we choose to do. We want to stay informed and to stay on top of all issues on our land. We know what is happening with land, water and air quality on our Allotments.

My family and I are Offended that 1 person chooses to act on his own Interests and puts first his own Agenda for lands he has NO voice for. To propose a resolution to the Council on false pretenses is astounding. There is also a huge, Conflict of Interest, with this proposal. He is an Allottee, also a receiving recipient of production funds. False reporting that he is speaking for the Eastern Navajo area residents when Allottees have their own voices.

My family relies on the income from production to survive. This is how they put food on their tables and pay their bills. This is a huge source of their livelihood. This is their right.

Thank you

Yolanda Hesuse Hernandez

kujayhwk@cox.net

Active Navajo Allottee
Nageezi/Lybrook New Mexico Area