



MEMORANDUM

To : Manuel Rico, Senior Programs and Projects Specialist
OFFICE OF LEGISLATIVE SERVICES

From : Tom Platero
Tom Platero, Executive Director
OFFICE OF LEGISLATIVE SERVICES

Date : January 24, 2019

Subject : ***23rd Navajo Nation Council Expired Legislation (3rd Notice)***

Pursuant to 2 N.N.C. § 164 (A) (1), "The last day for consideration of resolutions shall be December 31st of the year immediately preceding the swearing in of the new Council", the following legislation need to be closed out and labeled as "expired":


BUDGET AND FINANCE COMMITTEE:

0208-18

0448-18

These two legislation were inadvertently left off the first listing. Also reference email from Ms. Ramona Nelson, BFC Legislative Reporter. Legislation need to be closed out as soon as possible. If you have any questions, please let me know.

CONCURRENCE:


Honorable Seth Damon, Speaker Pro Tem
24th Navajo Nation Council

COPIES: LaShawna Tso, Acting Chief of Staff, Office of the Speaker
Ed McCool, Delegated Chief Legislative Counsel, Office of Legislative Counsel
Files

Tom Platero

From: Ramona J. Nelson
Sent: Thursday, January 24, 2019 11:53 AM
To: legislation; Tom Platero
Cc: Manuel Rico; shammielbegay; Peggy Nakai; Teresa F. Woody
Subject: RE: Pending Resolutions

Legislation No. 0208-18 was never entertained per the July 3rd and July 10th Budget and Finance Meetings. That particular legislation was deleted off the agenda both times.

Legislation No. 0448-18 was entertained on December 27, 2018, during the Budget and Finance Committee Meeting and the motioning party withdrew his (Tom T. Chee) motion and deferred the legislation back to the Investment Committee. The Budget and Finance Committee's final meeting for legislation(s) was on this day.

In conclusion, both legislations do not have a final resolution for the reasons above. Thank you.

From: Teresa F. Woody
Sent: Thursday, January 24, 2019 11:04 AM
To: legislation; Tom Platero
Cc: Manuel Rico; shammielbegay; Peggy Nakai; Ramona J. Nelson
Subject: RE: Pending Resolutions

Good Morning,

This Legislation 0441-18, the final resolution (RDCD-105-18) was already submitted on January 14, 2019 for close-out. Thank you.

| | | | |
|----------|---------|--|--------------------|
| 10/20/18 | 0441-18 | An Action Relating to Resources and Development; Approving the grant of Right-of-Way to Navajo Tribal Utility Authority, located on Navajo Nation Trust Lands on the Navajo Nation (Utah, Arizona, and New Mexico) | Alton Joe Shepherd |
|----------|---------|--|--------------------|

From: legislation
Sent: Thursday, January 24, 2019 10:28 AM
To: Tom Platero <tomplatero@navajo-nsn.gov>
Cc: Manuel Rico <mrico@navajo-nsn.gov>; shammielbegay <shammielbegay@navajo-nsn.gov>; Teresa F. Woody <teresafwoody@navajo-nsn.gov>; Peggy Nakai <peggynakai@navajo-nsn.gov>; Ramona J. Nelson <ramonajnelson@navajo-nsn.gov>
Subject: Pending Resolutions

Good morning,

The following legislation are still waiting for a final resolution to properly close out for the 23rd Navajo Nation Council roll out. Thank you.

| | | | |
|---------|---------|---|---------------------------------|
| 6/21/18 | 0208-18 | An Action Relating to Budget and Finance committee; Approving the selection of Wellington International Horizons as the International | Seth Damon Tuchoney Slim Jr. |
|---------|---------|---|---------------------------------|

LEGISLATIVE SUMMARY SHEET
Tracking No. 0448-18

DATE: December 21, 2018

TITLE OF RESOLUTION: AN ACTION RELATING TO BUDGET AND FINANCE;
APPROVING A CUMULATIVE REDEEMABLE PREFERRED STOCK INVESTMENT
IN THE NAVAJO NATION OIL AND GAS COMPANY IN THE AMOUNT OF FIFTEEN
MILLION DOLLARS (\$15,000,000)

PURPOSE: This legislation approves an investment in the Navajo Nation Oil & Gas Company
of \$15,000,000

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

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL – Fourth Year, 2018

INTRODUCED BY

(Prime Sponsor) 

TRACKING NO. 0448-18

AN ACTION

RELATING TO BUDGET AND FINANCE; APPROVING A CUMULATIVE
REDEEMABLE PREFERRED STOCK INVESTMENT IN THE NAVAJO NATION
OIL AND GAS COMPANY IN THE AMOUNT OF FIFTEEN MILLION DOLLARS
(\$15,000,000)

Section One. Authority

- A. The Navajo Nation established the Budget and Finance Committee as a standing committee of the Navajo Nation Council and empowered the Committee to coordinate, oversee, and regulate the fiscal, financial, investment, contracting and audit policies of the Navajo Nation. 2 N.N.C. §§ 300(A), 301(B)(5).
- B. By Resolution No. BFJN-17-15 (June 23, 2015), the Budget and Finance Committee approved the Amended and Restated Master Investment Policy for the Navajo Nation ("Investment Policy") that specifically authorizes the Budget and Finance Committee to approve direct investments in non-public companies, either equity or debt based, provided such investments have a projected annual rate of return equivalent to the ten year average rate of return for the Master Trust. See Investment Policy § 8.1(i).

1 **Section Two. Findings**

- 2 A. The Navajo Nation Oil and Gas Company ("NNOGC" or "Company") is a federal
3 corporation wholly owned by the Navajo Nation ("Nation"), a federally
4 recognized Indian tribe. NNOGC was formed as a federal corporation under Section
5 17 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 5124 (formerly 25 U.S.C.
6 § 477), as amended, pursuant to a Restated Federal Charter of Incorporation
7 ("Charter") approved by the Navajo Nation Council and the U.S. Department of the
8 Interior.
- 9 B. As authorized and directed by the Navajo Nation Council through the approval and
10 ratification of the Company's Charter, NNOGC has acquired substantial assets of the
11 Navajo Nation that it holds in the Navajo public trust, primarily in the Greater Aneth
12 Field, which it grew from an original investment in the Company by the Navajo
13 Nation in the amount of \$15 million from the NNOGC Oil and Gas Revenue Fund
14 derived from fuel excise taxes. The Company is charged pursuant to its Charter with
15 continuing to grow the Nation's assets and returning the Nation's investment through
16 dividends and distributions of profit to be devoted to essential governmental
17 functions.
- 18 C. On June 14, 2018, NNOGC and Guggenheim Partners, LLC ("Guggenheim"), signed
19 a new \$80 million loan agreement, with which the Company paid off a prior loan
20 facility held by a Wells Fargo-led group of nine banks. As required by the loan
21 agreement, NNOGC was able to hedge 85% of its projected crude oil production at
22 the following prices for the periods and production percentages indicated:
- | | |
|---------------------------------------|---------------------------------------|
| 23 a. June 2018 through May 2019 | \$68.25 WTI |
| 24 b. June 2019 through May 2020 | \$62.70 |
| 25 c. June 2020 through May 2021 | \$58.65 |
| 26 d. June 2021 through December 2021 | \$65.00 (60% of projected production) |
- 27 D. Pursuant to Section 4.3 of the Investment Policy, the Investment Committee serves as
28 an advisory group to the Budget and Finance Committee, which has final approval of
29 investments made from the Navajo Nation Master Trust pursuant to the Investment
30 Policy. On February 23, 2018, the Navajo Nation Investment Committee

1 recommended, under Section 8.l(i) and (ii) of the Investment Policy, a
2 redeemable preferred stock investment in NNOGC up to \$40 million.

3 E. On March 6, 2018, by Resolution No. BFMA-13-18, the Budget and Finance
4 Committee approved an investment in NNOGC of up to \$40 million, to be structured
5 as a redeemable preferred stock investment in the Company, which was
6 supported by resolutions of NNOGC's Board of Directors and the Company's
7 shareholder representatives.

8 F. By resolution of its Board of Directors, attached hereto as **Exhibit A**, NNOGC has
9 requested that the \$40 million investment approved by Resolution No. BFMA-13-18
10 be reduced to an investment of \$15 million, to be structured as a cumulative
11 redeemable preferred stock investment in accordance with the draft Term Sheet
12 attached hereto as **Exhibit B** (the "Investment").

13 G. NNOGC would use the Investment to make additional investments in oil, gas and
14 helium properties, including seismic exploration, for increased staffing to drive and
15 manage growth (administrative, financial, engineering, and geological), and for other
16 appropriate purposes. The Investment would allow NNOGC to return sizeable
17 dividends to the Nation through the date of the Investment's redemption.

18 H. Pursuant to 12 N.N.C. § 203(1) and Section 4.4 of the Investment Policy,
19 approved by the Budget and Finance Committee, the Navajo Nation Controller carries
20 out investments authorized and approved by the Budget and Finance Committee.

21 I. NNOGC has a very solid asset base with tremendous long-term value. Because of
22 NNOGC having placed substantial hedges and having thereby controlled the crude oil
23 commodity price risk, there is minimum risk to the Nation that the proposed
24 cumulative preferred stock investment in NNOGC would not be redeemed or that the
25 dividends for the stock investment will not be paid to the Nation by NNOGC.

26
27 Section Three. Approvals, Authorizations and Directives

28 A. The Budget and Finance Committee of the Navajo Nation Council hereby
29 approves an investment in the Navajo Nation Oil and Gas Company in the amount of
30 fifteen million dollars (\$15,000,000), to be structured as a cumulative

1 redeemable preferred stock investment under substantially the same terms and
2 conditions as set forth in the Term Sheet attached hereto as Exhibit "B." Resolution
3 No. BFMA-13-18 is hereby wholly superseded.

4 B. The Controller shall select the trust funds under the Master Trust to be used to fund
5 the preferred stock investment in the Company. Each trust fund under the Master
6 Trust that is providing funding for the preferred stock investment shall receive as a
7 return on its investment a *pro rata* share of the dividends paid on the Preferred
8 Stock Investment.

9 C. The Navajo Nation Controller shall conduct whatever additional due diligence is
10 required, shall finalize the documents for the preferred stock investment, and shall
11 deliver the final documents for execution by the Navajo Nation Oil and Gas Company
12 and the Navajo Nation.

13 D. Upon execution of the preferred stock investment documents, the Office of the
14 Controller and the Office of Management and Budget and all other appropriate
15 programs and officials shall immediately take all actions necessary to effectuate the
16 intent of this Resolution including without limitation the requisite transfer of funds
17 for the preferred stock investment.

18
19 **Section Four. Saving Clause**

20 Should any provision herein be determined invalid by the Navajo courts or other court
21 of competent jurisdiction, all other provisions of this legislation not determined to
22 be invalid shall remain in full force and effect.
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**RESOLUTION OF THE
BOARD OF DIRECTORS OF THE
NAVAJO NATION OIL AND GAS COMPANY**

No. 365 Requesting a Cumulative Redeemable Preferred Stock Investment of \$15 Million by the Navajo Nation in the Navajo Nation Oil and Gas Company

WHEREAS:

1. The Navajo Nation Oil and Gas Company (“NNOGC” or “Company”) is a wholly owned corporation of the Navajo Nation organized under section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124 (formerly 25 U.S.C. § 477), as amended, and charged with operating and managing an integrated oil, gas and helium company for the benefit of the Navajo Nation; and

2. The NNOGC Board of Directors (the “Board”) exclusively manages the business affairs of the Company pursuant to Article XI(A) of the NNOGC Restated Federal Charter of Incorporation (“Charter”); and

3. As authorized and directed by the Navajo Nation Council through the approval and ratification of the Company’s Charter, NNOGC has acquired substantial assets of the Navajo Nation that it holds in the Navajo public trust, primarily in the Greater Aneth Field, which it grew from an original investment in the Company by the Navajo Nation in the amount of \$15 million from the NNOGC Oil and Gas Revenue Fund derived from fuel excise taxes. The Company is charged pursuant to its Charter with continuing to grow the Nation’s assets and returning the Nation’s investment through dividends and distributions of profit to be devoted to essential governmental functions; and

4. On March 6, 2018, by Resolution No. BFMA-13-18, the Budget and Finance Committee of the Navajo Nation Council approved an investment in NNOGC of up to \$40 million, to be structured as a redeemable preferred stock investment in the Company, which was supported by resolutions of NNOGC’s Board of Directors, the Company’s shareholder representatives, and the Nation’s Investment Committee. The \$40 million investment requested by NNOGC was needed by NNOGC in part to address its prior credit facility; and

5. On June 14, 2018, NNOGC and Guggenheim Partners, LLC (“Guggenheim”), signed a new \$80 million loan agreement, with which the Company paid off a prior loan facility held by a Wells Fargo-led group of nine banks. As required by the loan agreement, NNOGC was able to hedge 85% of its projected crude oil production at the following prices for the periods and production percentages indicated:

- | | |
|------------------------------------|--|
| a. June 2018 through May 2019 | \$68.25 WTI |
| b. June 2019 through May 2020 | \$62.70 |
| c. June 2020 through May 2021 | \$58.65 |
| d. June 2021 through December 2021 | \$65.00 (60% of projected production); and |

6. NNOGC has a very solid asset base with tremendous long-term value. It is the

long term goal of NNOGC to grow the Company for the benefit of the Nation and NNOGC's and the Nation's long term strategic interests are aligned. These interests include to maximize the long-term value of NNOGC assets for the benefit of the Navajo Nation, to maintain ownership of oil and gas assets within the Nation, to position NNOGC to be opportunistic in development of oil, gas and helium properties, and ultimately to increase royalties and dividends to the Navajo Nation for the benefit of the *Diné*; and

7. A cumulative preferred stock investment in NNOGC in the lesser amount of \$15 million, as set forth in the draft term sheet attached hereto as Exhibit "A," would be used by NNOGC to make additional investments in oil, gas and helium properties, including seismic exploration, for increased staffing to drive and manage growth (administrative, financial, engineering, and geological), and for other appropriate purposes in the best interest of the Navajo Nation and NNOGC. The proposed \$15 million investment would also allow NNOGC to return sizeable dividends to the Nation through the date of the preferred stock's redemption.

8. Because of NNOGC's having placed substantial hedges and having thereby controlled the crude oil commodity price risk, there is minimum risk to the Nation that the proposed cumulative preferred stock investment in NNOGC would not be redeemed or that the dividends for the stock investment will not be paid to the Nation by NNOGC.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board of Directors of Navajo Nation Oil and Gas Company hereby requests that the Budget and Finance Committee of the Navajo Nation Council approve a cumulative preferred stock investment in NNOGC in the amount of \$15 million, to be structured in accordance with the draft term sheet attached hereto as Exhibit "A."

2. Management is hereby authorized to take all reasonable and necessary steps to effectuate the intent of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was considered on a conference call of the Board of Directors of the Navajo Nation Oil and Gas Company pursuant to Article XI(K) of the Company Restated Charter, and that the same was passed by a vote of 7 in favor, 0 opposed, and 0 abstained, this 19th day of December, 2018.


Lennard Eltsosie, Chairman
Board of Directors

Attest:


Jaina Blanter, Secretary



CONFIDENTIAL

PROPOSED SUMMARY OF TERMS

NAVAJO NATION OIL AND GAS COMPANY

CUMULATIVE REDEEMABLE PREFERRED STOCK

November 15, 2018

This summary of proposed investment terms (this "Term Sheet") summarizes certain major terms of the proposed offer and sale of Cumulative Redeemable Preferred Stock of Navajo Nation Oil and Gas Company (the "Company"), to the Navajo Nation or its designees ("the "Investors").

No party will have any obligations or enforceable rights unless and until mutually acceptable definitive agreements are negotiated and executed.

Offering Summary

- Transaction Structure:** Newly created, Cumulative Redeemable Preferred Stock (the "Preferred Investment"), for an aggregate purchase price of \$15,000,000 (the "Purchase Price") .
- Investors:** The Navajo Nation or its designee(s)
- Cost of Funds:** 6% annual dividend on the Purchase Price, but subject to increase if the Preferred Investment is not redeemed according to its terms. The dividend shall be cumulative, whether or not declared.
- Closing:** As soon as reasonably possible but no later than February 28, 2019
- Use of Proceeds:** The proceeds from the Offering will be used for capital investment in the Company's oil and gas properties and for general working capital purposes.

Terms of the Preferred Investment

- Ranking** The Preferred Investment will rank senior to the Company's existing and future issuances of Common Stock ("Common Stock").
- Dividends:** The holder of the Preferred Investment shall be entitled to receive quarterly dividends based upon the annual 6% Cost of Funds ("Dividend Rate") and the Purchase Price commencing at the end of the first quarter after Closing.
- Liquidation Preference:** In the event of liquidation, dissolution, or winding up of the Company and after payment in full of all creditors, the holders of the Preferred Investment shall be entitled to receive the Purchase

Price, less any prior redemption amounts, and any unpaid dividends prior to the holders of the Common Stock.

Mandatory Redemption

The Company must redeem the Preferred Investment on or before March 31, 2024.

Penalty for late Redemption:

In the event the Company fails to redeem the Preferred Investment in accordance with the Mandatory Redemption schedule, the Dividend Rate shall increase to 8% per annum until such time that the Company has redeemed all past due amounts.

Financial Covenants:

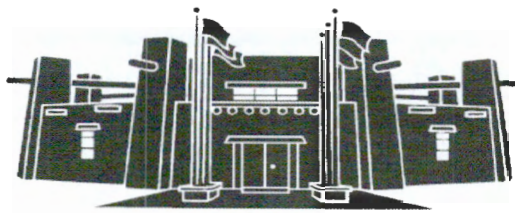
None.

Transaction Structure:

The Company shall fully cooperate with Investor to structure the transaction in a manner which optimizes its objectives so long as there is no material adverse negative impact on the Company.

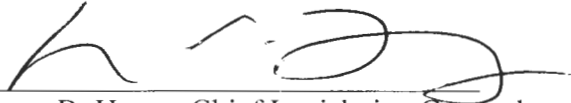
Transaction Expenses:

The Company shall pay all reasonable expenses related to the closing of the transaction.



MEMORANDUM

TO: Hon. Tom Chee
23rd Navajo Nation Council

FROM: 
Levon B. Henry, Chief Legislative Counsel
Office of Legislative Counsel

DATE: December 21, 2018

SUBJECT: AN ACTION RELATING TO BUDGET AND FINANCE; APPROVING A CUMULATIVE REDEEMABLE PREFERRED STOCK INVESTMENT IN THE NAVAJO NATION OIL AND GAS COMPANY IN THE AMOUNT OF FIFTEEN MILLION DOLLARS (\$15,000,000)

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law and review of the documents submitted, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Counsel confirms the appropriate standing committees' reviews are based on the legislative powers outlined in 2 N.N.C. § 300. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0448-18_____ SPONSOR: Tom Chee

TITLE: An Action Relating to Budget and Finance; Approving a Cumulative Redeemable Preferred Stock Investment in the Navajo Nation Oil and Gas Company in the amount of Fifteen Million Dollars (\$15,000,000)

Date posted: December 21 2018 at 5:29pm

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) 871-7590

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.: 0448-18

SPONSOR: Honorable Tom Chee

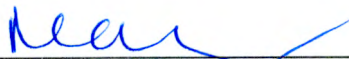
TITLE: An Action Relating to Budget and Finance; Approving a Cumulative Redeemable Preferred Stock Investment in the Navajo Nation Oil and Gas Company in the amount of Fifteen Million Dollars (\$15,000,000)

Posted: December 21 2018 at 5:29pm

5 DAY Comment Period Ended: December 26, 2018

Digital Comments received:

| | |
|----------------------------------|--|
| Comments Supporting | <i>None</i> |
| Comments Opposing (4) | <ol style="list-style-type: none"> 1. Ethel Branch, Attorney General; Office of the Attorney General, Navajo Nation Department of Justice. 2. Pearline Kirk, Controller and Investment Committee Chair; Office of the Controller. 3. Lori Goodman, Dilkon Chapter 4. Lester Begay, Whiterock Chapter |
| Inconclusive Comment | <i>None</i> |



Legislative Secretary II
Office of Legislative Services

12/27/18 8:14am

Date/Time



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
Attorney General

CHERIE ESPINOSA
Acting Deputy Attorney General

MEMORANDUM:

To: Speaker and Members of the 23rd Navajo Nation Council

From:

A handwritten signature in black ink, appearing to read "Ethel Branch", is written over a horizontal line.

Ethel Branch, Attorney General
Office of the Attorney General
Navajo Nation Department of Justice

Date: December 26, 2018

Subject: **Public Comments re 0448-18 (NNOGC Investment)**

Proposed Legislation No. 0448-18 is legally deficient and should be withdrawn. The legislation suggests that it is modifying and reducing a previously authorized investment in Navajo Nation Oil & Gas Company (NNOGC) for which the Navajo Nation Investment Committee (Investment Committee) conducted due diligence and made a recommendation to the Budget and Finance Committee (BFC) for approval. Section 2, Paragraph F, Legislation No. 0448-18. However, that original financing was authorized to facilitate a one-time urgent bailout, the primary purpose of which was to allow NNOGC to refinance a \$74.1 million bank loan they had defaulted on and reinstate their crude oil hedging program to protect NNOGC from future financial uncertainty. Section 2, Paragraph E, Resolution No. BFMA-13-18 ("the NNOGC Board of Directors and the NNOGC Shareholder Representatives have requested that the Navajo Nation approve an investment in NNOGC that would facilitate the complete replacement of the Bank Loan and permit NNOGC to reestablish its crude hedging program to reduce risk and avoid similar credit crises in the future"). However, NNOGC chose a different path. Rather than avail itself of the up to \$40 million redeemable preferred stock investment from the Nation, NNOGC chose to directly refinance their defaulted loan and invest in hedging through a new loan from Guggenheim Partners, LLC (Guggenheim). Section 2, Paragraph C, Legislation No. 0448-18. So the financial duress that NNOGC was in when it sought its initial loan from the Nation no longer exists, and the purpose of that initial loan was met by the Guggenheim loan.

The investment being presented to BFC for approval in Legislation No. 0448-18 serves an entirely different purpose: "to make additional investments in oil, gas and helium properties, including seismic exploration, for increased staffing to drive and manage growth (administrative, financial, engineering, and geological), and for other appropriate purposes."

Section 2, Paragraph G, Legislation No. 0448-18. Accordingly, the loan that Legislation No. 0448-18 seeks to authorize has been neither reviewed for due diligence by the Investment Committee as required by the Nation's Master Investment Policy, nor has it been recommended to BFC by the Investment Committee. The Nation's Master Investment Policy was last amended and approved by BFC just a week ago, in Legislation No. 387-18, and Section 8.1(i) of that Policy provides that "Direct investment of Nation funds in any entity or enterprise owned in whole or part by the Nation, is permitted subject to investment and operational due diligence by the Investment Committee or its designee." However, that due diligence has not been conducted, and as NNOGC now has a new financial position due to its Guggenheim loan, there is a need to assess this and any covenants that NNOGC has in place with Guggenheim. This is a necessary first step in order to assess any risks that may be associated with the Nation providing NNOGC with a \$15 million loan on top of the \$80 million loan NNOGC has from Guggenheim.

Part of the due diligence on the new proposed NNOGC loan/investment should investigate whether NNOGC has sufficient revenues to both cover their debt service to Guggenheim on a loan that is millions of dollars greater than the loan NNOGC previously could not pay debt service on, and pay back the Nation on the timeline contemplated in the Term Sheet for this new Cumulative Redeemable Preferred Stock Investment.¹ The Nation is already investing over \$200 million in Navajo Nation Gaming Enterprise, and has had to bail them out repeatedly by reducing their interest rate (most recently from 13 percent to roughly 6 percent, which will reduce the Nation's investment returns by over \$100 million; as a then-voting member of the Investment Committee, I voted against this write-off as any prudent investor would). Given this cautionary experience investing in the Nation's enterprises, it is critical that due diligence be conducted, and that the Nation's Investment Policy be followed to ensure proper management and use of the Nation's investment funds.

Indeed, the purpose of the Nation's principal investment fund, our Permanent Fund, is to replace lost income from natural resources development, such as what we face with the potential shutdown of Navajo Generating Station. The function of the Investment Committee is to vet potential investments and recommend those investments to the Budget and Finance Committee for approval. As this specific investment has not been so vetted or recommended, presentation of this investment to the Budget and Finance Committee for approval is premature and violates the procedures for approving the Nation's investments. Due diligence is a critical and necessary first step in proposing any investment in or loan to NNOGC, and assists the Investment Committee and the BFC in fulfilling their fiduciary duty to maximize the Nation's investment returns while protecting the principal as required by Section 3.1 of the Master Investment Policy.

For these many reasons Legislation No. 0448-18 is both premature and defective and should be withdrawn. It can be re-introduced when due diligence has been completed and the Investment Committee has made a formal recommendation for investment to the BFC.

¹ Note that the Term Sheet was not included with the version of Legislation No. 0448-18 made available to the public and it should have been as it is formal Exhibit B to the Legislation, which further calls into question the validity of this Legislation.




THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE-PRESIDENT

MEMORANDUM

To: Lorenzo Bates, Speaker
23rd Navajo Nation Council

Seth Damon, Budget and Finance Chair, Budget and Finance Committee
23rd Navajo Nation Council

From: 
Pearline Kirk, Controller and Investment Committee Chair
Office of the Controller

Date: December 26, 2018

Re: Legislation 0448-18

Legislation 0448-18 is an action relating to the Budget and Finance; Approving a Cumulative Redeemable Preferred Stock Investment in the Navajo Nation Oil and Gas Company ("NNOGC") in the amount of Fifteen Million Dollars (\$15,000,000).

As I understand, Legislation 0448-18 attempts to utilize an outdated Investment Committee ("IC") resolution, NNICF-12-18, that Budget and Finance Committee approved with legislation BFMA-13-18 from nearly a year ago.

At the time, the IC recommended an investment of up to \$40 million in preferred stock in order to address the syndicate banks from pursuing a default action on NNOGC regarding a then defaulted senior financing by NNOGC. The then IC approval was based on facts and circumstances surrounding NNOGC 's financing situation at the time and the then continuing due diligence the IC considered. Today, however NNOGC has a different scenario. Guggenheim partners refinanced NNOGC's approximately \$80 million senior bank loan and this new request by NNOGC of approximately \$15 million currently will be used for exploration and development in oil and helium projects.

NNOGC is looking to vamp up helium production with no real market insight/analysis or at the minimum such has not been shared with the IC. The IC has not initiated any due diligence on these new purposes for NNOGC's latest request i.e. helium and exploration. The \$15 million equity will be mainly used for helium development and exploration, which is high risk and not in the context of a looming default which was anticipated a year ago with the then IC approval.

The Nation's Investment Committee will have to consider this latest request as a Direct Investment in the context of helium exploration and development in accordance with IC's policies and procedures. The

process of IC recommendation after appropriate due diligence has NOT taken place and there is NO recommendation by the IC as to the latest NNOGC request. Lastly and most importantly, the IC, which includes two Budget and Finance Committee ("BFC") members, all have a fiduciary duty to follow IC policies, i.e. due diligence before a direct investment can be made using the Nation's investments. If fiduciary members fail in exercising due care, such IC and BFC member are personally liable for which there is no sovereign immunity defense. I highly recommend this legislation not be considered at this point and if such request still needs to be pursued that NNOGC work with the IC framework. Doing otherwise is failing fiduciary duties by circumventing established processes.

If you have any questions, please contact me at ext. 6308; pkirk@nnooc.org.

CC: Investment Committee
Levon Henry, Chief Legislative Counsel
Jana Werner, Department of Justice
Tom Platero, Office of Legislative Services

LEGISLATION NO: _0448-18

Lori Goodman <lgoodman89@gmail.com>

Wed 12/26/2018 7:44 PM

to comments <comments@navajo-nsn.gov>;

Executive Director Office of Legislative Services

P.O. Box 3390 Window Rock, AZ 86515

(928) 871-7590

December 26, 2018

Dear Legislative Services,

I am submitting my comment on LEGISLATION NO: _0448-18 and SPONSORED by Tom Chee.

TITLE: An Action Relating to Budget and Finance; Approving a Cumulative Redeemable Preferred Stock Investment in the Navajo Nation Oil and Gas Company in the amount of Fifteen Million Dollars (\$15,000,000)

This legislation is requesting Navajo Nation invest \$15 million to the Navajo Nation Oil & Gas Company (NNOGC). NNOGC doesn't have the experience nor qualified staff and board. Example: in 2012, NNOGC invested into Resolute Energy Company (operators of the Aneth Field oil and gas assets). This unintelligent purchase was made when the market was at the height of its peak of \$125 a barrel and that has since gone all the way down to \$28 a barrel in 2016. An experienced and knowledgeable CEO and team would know not to buy at high price and risk being locked in (which is what happened). The same CEO and team from 2012 are still in place and it would be a loss of Navajo funds to give NNOGC \$15 million.

I am trying hard to understand what NNOGC thinks they are doing?

What does Redeemable Preferred Stock Investment in the Navajo Nation Oil and Gas Company mean?

What that means is NNOGC, which we, as Navajo People own, is asking us to pay \$15 million investment and we don't have voting rights.

To put it in understandable translation: It would be like someone telling me they want to charge me for a room I am using in the house I am the owner of.

They are telling the Navajo Nation who owns NNOGC. You own your house but we're going to lease a room back to you and charge you and you don't have a say on how you will use the room. Preferred stock means no voting rights.

\$15 million is a lot of money for NNOGC leadership to waste, NNOGC has present outstanding debt of \$5 million to the Navajo Nation Minerals Department, NNOGC has a history of drilling dry wells and Navajo would only be burning 15 million by giving it to NNOGC.

I'm not sure who would be lead down a dead end road to a firing inferno to burn \$15 million and have no say in the process, but the 23rd Navajo Nation Council B&F Committee.

We have to think of the revenues that will be loss with NGS shutting down. We don't need to giving more funds to NNOGC who should be cutting their expenses and hiring more qualified employees who know what is going on in Oil and Gas production.

Sincerely,

Lori Goodman

Dilkon Chapt

NNOG Requesting 15 million dollars

Lester Begay <lesterb43@gmail.com>

Wed 12/26/2018 8:59 PM

To: comments <comments@navajo-nsn.gov>;

NNOG CEO Louis Denetsosie has completely fail to turn this Tribal Enterprise around. Its time Navajo Nation Council to seriously consider to replace NNOG Chief Executive Officer.

Its my understanding NNOG collected the oil royalty and fail to distribute 4 million dollars in royalties to Navajo Nation Treasury. This kind of financial practice is unacceptable and in real business world this is consider embezzlement and defrauding the government.

15 million dollars that NNOG is requesting is Navajo people's money.

Lester Begay
Whiterock Chapter

23rd NAVAJO NATION COUNCIL

Fourth Year 2018

Mr. Speaker:

The **BUDGET & FINANCE COMMITTEE** to whom has been assigned

NAVAJO LEGISLATIVE BILL # 0448-18:

An Action Relating to Budget and Finance; Approving a Cumulative Redeemable Preferred Stock Investment in the Navajo Nation Oil and Gas Company in the amount of Fifteen Million Dollars (\$15,000,000) *Sponsored by Tom T. Chee, Council Delegate*

has had it under consideration and reports the same with the recommendation that It **Do Pass** without amendment.

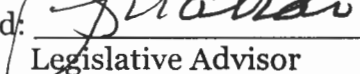
1. On page __, lines __, strike or insert “__” and replace with “__”
M: S: Vote: Yeas: Nays

[Read into the record December 27, 2018; referred to the Investment Committee Motion: Lee Jack, Sr. Second: Jimmy Yellowhair Vote: 3-0; yeas: Jimmy Yellowhair, Lee Jack, Sr., Tom T. Chee]

Respectfully submitted,


Seth Damon, Chairman

Adopted: _____
Legislative Advisor

Not Adopted: 
Legislative Advisor

27 December 2018

The vote was in favor opposed yeas:

nays:

Motion: none

Second:

BUDGET AND FINANCE COMMITTEE

27 December 2018

Special Meeting

VOTE TALLY SHEET:

Legislation No. 0448-18:

An Action Relating to Budget and Finance; Approving a Cumulative Redeemable Preferred Stock Investment in the Navajo Nation Oil and Gas Company in the amount of Fifteen Million Dollars (\$15,000,000) *Sponsored by Tom T. Chee, Council Delegate*

Motion: none

Second:

Vote: 0-0, Chairman not voting

[Read into the record December 27, 2018; referred to the Investment Committee Motion: Lee Jack, Sr. Second: Jimmy Yellowhair Vote: 3-0; yeas: Jimmy Yellowhair, Lee Jack, Sr., Tom T. Chee]

Vote Tally:

| | | |
|--------------------|--|--|
| Seth A. Damon | | |
| Jimmy Yellowhair | | |
| Tom T. Chee | | |
| Lee Jack, Sr. | | |
| Leonard Tsosie | | |
| Tuchoney Slim, Jr. | | |

Absent: Leonard Tsosie, Tuchoney Slim, Jr.


Seth A. Damon, Chairman
Budget & Finance Committee


Peggy Nakai, Legislative Advisor
Budget & Finance Committee