

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22ND NAVAJO NATION COUNCIL - SECOND YEAR 2012

AN ACT

RELATING TO THE LAW AND ORDER; RESOURCE AND DEVELOPMENT; AND NÁABIK'ÍYÁTI' COMMITTEE; THE RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION ACT OF 2012: AMENDING THE NAVAJO NATION CODE TITLE 18, CHAPTER 12, TO PROVIDE FOR THE PROTECTION, HEALTH AND SAFETY OF THE NAVAJO NATION PEOPLE WITH REGARD TO THE TRANSPORTATION OF RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS OVER AND ACROSS NAVAJO NATION LAND

BE IT ENACTED:

1. Findings and Purpose.

A. The Navajo Nation finds it to be in the Best interest of the Navajo Nation, its citizens, guests and visitors to adopt "The Radioactive and Related Substances, Equipment, vehicles, Persons and Materials Transportation Act of 2012" and hereby adopts said Act amending Title 18, Chapter 12 as follows:

Chapter 12-A.

The Radioactive and Related Substances Equipment,
Vehicles, Persons and Materials Transportation Act of
2012

§ 1304. Background, Findings, and Rationale

A. The Navajo Nation opposes generally the transportation of radioactive and related substances, equipment, vehicles, persons and materials over and across Navajo Nation lands, except for purposes of transporting uranium ore or product currently left within the Navajo Nation from past uranium

mining or milling operations for disposal at an appropriate long-term facility outside of Navajo Indian country or at an appropriate temporary facility within Navajo Indian country and approved by the Navajo Nation Environmental Protection Agency.

- B. The Navajo Nation has the right to exclude nonmembers and to condition their entry onto Navajo Nation lands, and has the independent sovereign right and duty to protect the health, welfare and safety of the Navajo Nation and its citizens.
- C. As a matter of federal law, Congress has plenary authority to regulate commerce with the Navajo Nation. Article III of the treaty between the United States of America and the Navajo Nation ratified on September 9, 1850 provides that the United States shall have the sole and exclusive right of regulating trade and intercourse with the Navajo Nation, and, in exchange, Article XI of the Treaty provides that the United States "shall so legislate and act as to secure the permanent prosperity and happiness of" the Navajo People. Under that treaty and the second such treaty made and ratified in 1868, see 15 Stat. 667, "Congress has...left the [Navajos] largely free to run the reservation and its affairs without state control," *Warren Trading Post Co. v. Arizona State Tax Comm'n*, 380 U.S. 685, 690 (1965), and the Navajo Nation has accepted the responsibility of governing its territory, see *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 200-201 (1985); *Williams v. Lee*, 358 U.S. 217, 223 (1959).
- D. Under its constitutional authority, Congress defined "Indian Country" broadly in 1948, and applied that term to demarcate generally civil and criminal authority of states on the one hand and of the United States and Indian governments on the other, and rejected jurisdictional determinations based on refinements of easement law by including all rights-of-way running through Indian reservations as "Indian country." See Richard B. Collins, *Implied Limitations on the Territorial Jurisdiction of Indian Tribes*, 54 Wash. L. Rev. 479, 527 & n.286 (1979)

- E. The road system within Navajo Indian country includes Bureau of Indian Affairs roads, Navajo tribal roads, and State and county roads, all such roads and related rights - of-way being Navajo "Indian country as defined by Congress for purposes of Navajo Nation civil and criminal jurisdiction.
- F. The Navajo People and the Navajo Nation government have been substantially harmed by the exploration for and mining, production, processing, milling and transportation of uranium ore, yellowcake and other radioactive products other than those used for medical purposes and shall hereinafter singly or in any combination be referred to as the "Products" on, near and through Navajo Indian country; such exploration, mining, production, processing milling and transportation of the Products to be referred hereinafter as the "Activities". Over 500 uranium mines were left abandoned in Navajo Indian country, four very large piles of uranium mill tailings are located on or adjacent to Navajo Nation lands in unlined areas leaching contaminants into surface and ground water supplies. Navajo people bore the brunt of the largest accidental release of radioactivity in the United States; see *UNC Resources, Inc. v. Benally*, 514F. Supp. 358 (D.C. N.M. 1981); Navajo uranium miners in the Cold War era continue to suffer debilitating and lethal impacts from their service; planned uranium mining threatens scarce Navajo drinking water resources; and hazardous and other wastes contaminate the Navajo environment with no responsible person, corporation, or other governmental entity willing to clean up these wastes.
- G. Many Navajo Nation Chapters have expressed serious concerns about the Activities occurring within Navajo Indian country.
- H. The Navajo Nation finds it necessary and desirable to require that appropriate agencies of the Navajo Nation receive no less than four days advance notice by any carrier of any Products (as defined herein) who is intending to transport such Products on Navajo Nation lands or otherwise within Navajo Indian country, and that such notice be given in accordance with federal rules applicable

to such notice to a state governor and/or to local law enforcement official in order that proper emergency measures may be taken by the Navajo Nation.

- I. The Navajo Nation finds it necessary and desirable to ensure that any future Activities occurring within, on or over Navajo Indian country are performed in a manner that protects the Navajo Nation environment and water resources, the health and safety of Navajo citizens and guests and visitors alike, and the welfare of the Navajo Nation, and responsible regulation by Navajo agencies under Navajo law is the most appropriate manner to ensure such protection.
- J. The Navajo Nation finds that the Navajo Nation Environmental Protection Agency should be authorized, after meaningful consultation with the Navajo Nation Division of Public Safety and subject to the approval of the Resources and Development Committee, to promulgate regulations to implement this Act, for developing and modifying reasonable license fees, bonding requirements, route restrictions, curfews and other terms and conditions for conducting any Activities on or across Navajo Nation lands or otherwise within Navajo Indian country.
- K. Nothing in this Act is intended, nor shall it be construed, to repeal, in whole or in part, the Dine' Natural Resources Protection Act (DNRPA). In the event of any inconsistency between this Act and The DNRPA, the provisions of the DNRPA shall control.

§ 1305. Definitions

1. "Activities" means exploration, mining, production, processing, milling and/or transportation of the Products as defined below.
2. "Indian Country" shall have the same meaning as that term is defined in 18 U.S.C. §1151.
3. "Navajo Indian Country" shall mean the territory over which the Navajo Nation has criminal, civil and regulatory authority, as defined in 7 N.N.C. §254(A) (2005) and as otherwise not limited by applicable federal law.

4. "Navajo Nation Lands" means land held in trust for the Navajo Nation or any Band of the Navajo Nation by the United States, land owned in fee by the Navajo Nation, and Navajo trust allotments in which the Navajo Nation owns any undivided fractional beneficial interest.
5. "Products" means singly or in combination uranium ore, yellowcake, radioactive waste and other radioactive products other than those used for medical purposes.

§ 1306. Statement of Policy

- A. The Navajo Nation opposes generally the transportation of Products over, on, under and across Navajo Nation lands or otherwise over, under or across Navajo Indian Country, except for purposes of transporting Products currently left within the Navajo Nation from past Activities, for disposal at an appropriate long-term facility outside of Navajo Indian Country or at an appropriate temporary facility within Navajo Indian country and approved by the Navajo nation Environmental Protection Agency. The Navajo Nation generally opposes the transportation over, on, under or across Navajo Nation lands or otherwise within Navajo Indian country of any equipment, vehicles, person and materials to be used in conjunction with such current or future Activities where such Activities are conducted or to be conducted on or under the surface of or adjacent to Navajo Nation lands or where such Activities may affect surface or ground waters of the Navajo Nation.
- B. The Navajo Nation may permit and regulate transportation of Products pursuant to its right to protect the health, safety, welfare and environment of the Navajo Nation, its citizens, visitors and guests and pursuant to its right to exclude and to condition entry of non-members onto Navajo Nation lands and other lands within Navajo Indian country.

§ 1307. Transportation Notice and Other Requirements

- A. No person or entity may transport any Products on or across Navajo Nation lands or otherwise within Navajo Indian country unless such person or entity complies with the requirements of this section and applicable federal law.

- B. Such person or entity shall give at least four days advance notice of its intent to transport any Products on or across Navajo Nation lands or otherwise within Navajo Indian country to the Executive Director of the Navajo Nation Environmental Protection Agency and to the Director of Public Safety.
- C. Such notice shall be given in conformity with the procedures established under federal rules governing such notice to a state governor and to local law enforcement official in order that proper preparatory emergency measures may be taken by the Navajo Nation.
- D. Such notice shall be accompanied by a reasonable license fee; a showing that adequate bonding or other insurance is in place adequate to protect the Navajo Nation in the event of a spill, disposal or accident; an adequate description of the route to be taken and the vehicles to be used in such transportation; adequate training requirements and assurances that any Navajo Nation curfews for such transportation of any Products shall be honored.
- E. No person or entity may transport across Navajo Nation lands any equipment, vehicles, persons or materials for the purpose of exploring for or mining, producing, processing, or milling any Products on or under the surface of or adjacent to the Navajo Nation lands, or where such Activities may affect surface or ground waters of the Navajo Nation without first:
1. Obtaining Navajo Nation consent and a federal grant of easement Pursuant to the laws of the United States;
 2. Consenting in writing to the full subject matter and personal jurisdiction of the Navajo Nation; and
 3. Agreeing to terms and conditions deemed reasonable and appropriate by the Navajo Nation. Such terms and conditions shall, at a minimum, include the clean-up and remediation in accordance with the more stringent of applicable federal or Navajo law, of any uranium contamination on any parcel of Navajo Nation

lands that degrades the Navajo environment and/or poses a risk to the health and safety of Navajo citizens provided such person, entity, affiliate, subsidiary, partner, co-venturer, agent, contractor (including all subcontractors) or other related party, and/or proposed user of the right-of-way is, under any applicable Navajo or federal statute, regulation or order wholly or partially responsible for the clean-up of the contamination.

Notwithstanding the foregoing, this subsection (E) shall not apply to the transport of any such equipment, vehicles, persons or materials over any federal, state, or county highway or road for which a right-of-way has been approved by the Navajo Nation and a grant of easement has been issued by the Secretary of the Interior or his or her authorized delegate.

- F. The Navajo Nation Environmental Protection Agency shall promulgate, after meaningful consultation with the Navajo Nation Division of Public Safety and subject to the approval of the Resources and Development Committee, regulations necessary or desirable to implement this section, including the establishment of notice requirements, designation of reasonable license fees, bonding requirements, route restrictions and curfews for the transportation of any Products on Navajo Nation lands or otherwise within Navajo Indian country; provided, however, that the minimum requirements of subsection (E) of this section shall be self-executing and shall not require regulations in order to be effective as of the effective date of these amendments.

2. Effective Date

The provisions of these amendments shall become effective in accordance with 2 N.N.C. §221 (B).

3. Codification.

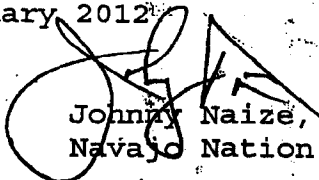
The provisions of this legislation which add or amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

4. Savings Clause.

Nothing in this Act is intended, nor shall it be construed, to repeal, in whole or in part, the Dine' Natural Resources Protection Act (DNRPA). In the event of any inconsistency between this Act and the DNRPA, the provisions of the DNRPA shall control. If any provision of this legislation is held invalid by the Navajo Nation Supreme Court, or unappealable order of any court of competent jurisdiction, those portions of this Act which are not determined invalid shall remain in full force and effect.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 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 18 in favor and 0 opposed, this 16th day of February 2012.

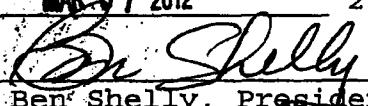

Johnny Naize, Speaker
Navajo Nation Council

Mar 01, 2012
Date

Motion: Honorable Katherine Benally
Second: Honorable Jonathan Nez

ACTION BY THE NAVAJO NATION PRESIDENT:

- I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of MAR 07 2012 2012.


Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2012 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation