



NAVAJO NATION DEPARTMENT OF JUSTICE
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**OPINION OF THE ATTORNEY GENERAL
OF THE NAVAJO NATION**

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**Lease No. 14-20-603-2505 Provides Sufficient Authorization For
Electricity Generation And Transmission Projects At Navajo Mine**

The Attorney General is the Chief Legal Officer of the Navajo Nation (the "Nation") and issues this Opinion pursuant to her authority under 2 N.N.C. § 1965 (A). No adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government who follows the advice contained in this Opinion.¹

I. ISSUE PRESENTED

Does Lease No. 14-20-603-2505 (the "Navajo Mine Lease") authorize the Navajo Transitional Energy Company ("NTEC") to use reclaimed and unused land at the Navajo Mine site for electricity generation projects and transmission projects?

II. SHORT ANSWER

Yes. Pursuant to its own terms and under Navajo law, the Navajo Mine Lease authorizes the use of leased land for electric power generation and transmission projects.

III. FACTS

The Navajo Mine is located entirely within the Navajo Nation and is owned and operated by NTEC, a wholly-owned instrumentality and subordinate entity of the Navajo Nation. NTEC was created by the Nation in 2013 "to support, improve, and promote the economic, financial, tax, and revenue interests of the Navajo Nation through

¹ This Opinion relies on the laws of the Navajo Nation on the date this Opinion was issued. If the Navajo Nation Council amends any of the laws relied on or the Navajo Nation Supreme Court issues a relevant opinion, the advice contained in this Opinion will need to be revised accordingly.

the development of the Nation's conventional, alternative, and renewable energy resources."²

NTEC has proposed using reclaimed and unused land at the Navajo Mine to construct, own, and operate new electricity generation and transmission projects. These proposed projects include:

- Up to 800 megawatts ("mw") of solar generation,
- Gas generation units with an initial design capacity of up to 800mw capable of future conversion to hydrogen,
- A renewable steam generation unit capable of supporting NTUA's clean hydrogen-powered silica manufacturing facility, and
- Transmission switchyards and transmission lines capable of supplying this generation load onto the Public Service Company of New Mexico ("PNM") and Arizona Public Service ("APS") electric grids through "wires-to-wires" generation interconnect stations. This interconnect would allow this power to be sold to consumers across the southwest.

NTEC refers to this generation and transmission capacity as the "NavEnergy Park."

NTEC has submitted to Navajo Nation departments a request to process land access documents to begin development of the "NavEnergy Park" and its component facilities on the Navajo Mine. These departments have not processed NTEC's request because these departments have expressed an opinion that NTEC's current lease does not provide authorization for such development of the Navajo Mine lease area.

In order to have clarity with respect to their rights under the Navajo Mine Lease and NTEC's eligibility for wires-to-wires, the Attorney General provides her legal interpretation of the lease by means of Navajo Law.

IV. ANALYSIS

Navajo Mine Lease

Navajo law applies to this Lease because this Lease is between the Navajo Nation and a Navajo-owned entity, and involves land owned by the Nation within the boundaries of the Navajo Reservation. The Supreme Court of the Navajo Nation has adopted the general rule

² Navajo Nation Council Resolution CAP 20-13, as amended by CO-58-13, Be It Enacted Clause, Section A(7).

that "the entire contract, and each and all of its parts and provisions, including the signatures, must be given meaning, and force and effect, if that can consistently and reasonably be done. **An interpretation which gives reasonable meaning to all its provisions will be preferred to one which leaves a portion of the writing useless, meaningless, or inexplicable**" (emphasis added). Office of Navajo Labor Relations, ex rel. Bailon v. Central Consolidated School Dist. 22, 5 Am. Tribal Law 412, 415, 8 Nav. R. 501 (2004), citing 17A Am.Jur.2d Contracts § 386 (1991).

When read to give meaning to all the provisions in the lease, including the parties' intent, we have determined that the proposed energy projects by NTEC at the Navajo Mine are permitted development under the terms of the lease.

Section 1 of the Navajo Mine Lease states in relevant part,

"Lessee has the right and license in connection with the operation of mining on the leased lands to construct thereon buildings, plants, and other structures; make excavations, openings, stockpiles, dumps, ditches, drains, roads, railroads, spur tracks, transmission lines, and other improvements; **produce electrical power, erect and operate power lines, place machinery and other equipment and fixtures upon said lands**; use all water developed by lessee on the leased lands and any other water made available to lessee; prepare for market, remove and sell coal and related or kindred products, by-products, minerals, and other products; do all other things upon said leased premises that may be necessary in the efficient operation of the leased premises; and occupy so much of the surface of the leased lands as may be necessary to carry on the mining operations hereunder, including the right of ingress and egress." (emphasis added)

This language authorizing production of electrical power is not specific as to the method of electricity production, and therefore supports NTEC's proposed development of the Navajo Nation's "conventional, alternative, and renewable energy resources" such as solar, gas, and hydrogen powered generation facilities and transmission on reclaimed and unused land.

Moreover, a plain reading of the lease language does not require that such generation and transmission infrastructure be used exclusively for mining operations. While a surface mine such as Navajo Mine uses some electricity, it would be unnecessary, and economically unfeasible, for a mine to own and operate generation facilities on such a small scale. Instead, the lease language simply

recognizes that all the lease rights enumerated in the lease (not just generation and transmission) are held "in connection" with this being a mining lease.

NTEC

The formation of NTEC was the culmination of considerable foresight and planning by the Navajo Nation and was part of a broader effort by the Nation to assert and assume greater sovereignty over its resources and energy portfolio. As is made explicit in the NTEC enabling legislation, the purpose behind NTEC's formation went far beyond the immediate need to preserve the operations at Navajo Mine. At its creation, the Nation was already anticipating, and enabling, NTEC's ability to develop and expand a wide range of energy generation projects.

"The Navajo Nation declares that the creation of the Company is necessary and desirable...to promote the development of the Navajo Nation's resources **and new sources of energy, power, transmission and attendant resources** to develop the economic, financial, social and cultural well-being of the Navajo People and the Navajo Nation; to promote the economic vitality of the Navajo Nation through the production of goods and services, **to facilitate management of the Navajo Nation's interests in the development of its energy portfolio and market; and to steer the Navajo Nation into a more efficient, productive, vital, and sustainable energy portfolio and market** in the best interests of the future generations of the Navajo Nation." CAP-20-13 Sec. A Par.5 (emphasis added).

"The Company is created and enabled to support, improve, and promote the economic, financial, tax, and revenue interests of the Navajo People, the Navajo Nation, and affiliates, **through management and development of the Navajo Nation's conventional, alternative, and renewable energy resources**...in accordance with the full exercise of the Navajo Nation's inherent sovereignty, in furtherance of the federal government's policy of Navajo Nation economic development, self-sufficiency, self-determination, and autonomous economic development..." CAP -20-13 Sec. A Par. 7 (emphasis added).

Moreover, NTEC's own Operating Agreement further requires that: "the Company shall invest and re-invest no-less-than ten-percent (10%) of its available Net Income in a given year into the research and development of renewable and alternative sources of

energy, storage, and transmission technologies and facilities.” NTEC Amended and Restated Operating Agreement Section X(C).

The Navajo Council was explicit in its intent to maximize NTEC’s authority and ability to develop generation projects of all kinds. While we find no ambiguity to the lease language at issue, to the extent there were, any ambiguity should be resolved in deference to the Council’s clearly expressed purpose for NTEC and not in such a way that needlessly hinders that purpose.

The Navajo Mine is a source of revenue to the Navajo Nation and provides an average of \$44 Million in taxes and royalties to the Navajo General Fund each year. The mine itself employs over 300 Navajo workers and pays \$56 Million in wages to its workforce each year. NTEC’s total economic contribution to the Navajo Nation economy (including taxes, royalties, wages, Navajo Vendor spend, and charitable giving) exceeds \$114 Million each year.³

The proposed location on reclaimed mine land in the vicinity of the Four Corners Power Plant, as proposed, could provide advantages not only to NTEC and the individual projects, but also to the other Navajo enterprises that could benefit as these projects come online. There could be potential for NTUA to benefit from being able to sell renewable steam for use in generation as well as the potential increased gas sales for gas-fired generation units. NAPI could also benefit from being able to source future power needs at more favorable rates. The development of new and sustainable methods of generating electricity is an important need for the economic health of the Navajo Nation.

V. CONCLUSION

NTEC’s proposed use of land at the Navajo Mine serves the underlying intent of the purpose of NTEC and the Lease by providing revenue to the Nation, generating electricity for the region, and providing employment and business contracting opportunities Navajo people. Pursuant to the terms of the Lease and Navajo law, land at Navajo Mine may be used for other conventional, alternative, and renewable energy projects that are not directly connected to the operation of mining on said lands.

Navajo Nation Department of Justice



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³Vern Lund, Letter to Ethel Branch, October 1, 2024.