

LEGISLATIVE SUMMARY SHEET

Tracking No. 0075-18

DATE: February 22, 2018

SUBJECT AN ACTION RELATING TO RESOURCES AND DEVELOPMENT;
PURSUANT TO 25 CFR § 161.204(c) IMPLEMENTING THE BUREAU OF INDIAN
AFFIARS RECOMMENDATION OF EQUAL DISTRIBUTION OF TEN (10) SHEEP
UNITS YEAR LONG (SUYL) FOR THE NAVAJO PARTITIONED LANDS (NPL) AND
DIRECTING THE NAVAJO DEPARTMENT OF AGRICULTURE TO IMPLEMENT THE
RECOMMENDATIONS OF THE BUREAU OF INDIAN AFFAIRS IN THIS MATTER

PURPOSE: The purpose of this legislation is to approve and implement the recommendations
of the Bureau of Indian Affairs with respect to grazing on the Navajo Partitioned
Lands.

**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
review the proposed resolution in detail.**

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 3:17pm 2/27/18
Posting End Date: 3/4/2018
Eligible for Action: 3/5/2018

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 23rd NAVAJO NATION COUNCIL – Fourth Year, 2018

3 INTRODUCED BY

4
5 

6 (Prime Sponsor)

7
8 TRACKING NO. 0075-18

9
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT; PURSUANT TO 25 CFR §
12 161.204(c) IMPLEMENTING THE BUREAU OF INDIAN AFFIARS
13 RECOMMENDATION OF EQUAL DISTRIBUTION OF TEN (10) SHEEP UNITS
14 YEAR LONG (SUYL) FOR THE NAVAJO PARTITIONED LANDS (NPL) AND
15 DIRECTING THE NAVAJO DEPARTMENT OF AGRICULTURE TO IMPLEMENT
16 THE RECOMMENDATIONS OF THE BUREAU OF INDIAN AFFAIRS IN THIS
17 MATTER

18 **BE IT ENACTED:**

19 **SECTION ONE. AUTHORITY**

20 A. Pursuant to 2 N.N.C. Section §501 (C)(1), The Resources and Development Committee
21 of the Navajo Nation Council has the authority to establish Navajo Nation policy with
22 respect to the optimum utilization of all Navajo Nation resources and to protect the
23 rights, interests, sacred sites and freedoms of the Navajo Nation and People to such
24 resources, now and for future generations.

25 B. The Resources and Development Committee serves as oversight of the Division of
26 Natural Resources, including District Grazing Officers, Eastern Navajo Land Board,
27 Farm Boards, Soil and Water Conservation Districts, including grazing issues to
28 accomplish the duties set forth in 3 N.N.C. § 832 and 852. 2 N.N.C. § 501 (C)(1)

29
30 **SECTION TWO. FINDINGS**

- 1 A. The United States Department of the Interior, Bureau of Indian Affairs, Navajo
2 Regional Office (BIA) sent correspondence to President Russell Begaye regarding the
3 Navajo Partitioned Lands and recommended equal distribution of ten (1) Sheep Units
4 Year Long due to diminished grazing capacity of the land. See Exhibit A.
- 5 B. On November 15, 2017 the Resources and Development Committee of the Navajo
6 Nation requested legal review of the acceptance of the BIA recommendations prior to
7 its implementation as policy. See Exhibit B.
- 8 C. The Navajo Nation Department of Justice, Natural Resources Unit has communicated
9 its approval of the acceptance by resolution of the Resources and Development
10 Committee, of the BIA recommendations to the Office of Legislative Counsel by email
11 and in direct conversation.
- 12 D. It is in the best interest of the Navajo Nation and consistent with the provisions of 25
13 CFR § 161.204 (c), which states that the “BIA will review the carrying capacity of the
14 grazing units on a continuing basis and in consultation with the Grazing Committee
15 and affected permittees, adjust the stocking rate for each range or management unit as
16 conditions warrant.” for the Resources and Development Committee to accept the
17 recommendations of the BIA in this matter.
- 18 E. It is in the best interest of the Navajo Nation that the Resources and Development
19 Committee direct the Navajo Department of Agriculture to implement the BIA
20 recommendation and to do so on a “Chapter ready” basis.

21 **Section Three. Approval**

- 22 A. The Resources and Development Committee of the Navajo Nation hereby accepts
23 the recommendations of the BIA regarding the grazing capacities of the NPL and
24 the recommended SUYLS, as found at Exhibit A.
- 25 B. The Resources and Development Committee hereby directs the Navajo Department
26 of Agriculture to implement these BIA recommendations and to do so on a “Chapter
27 ready” basis.
- 28
29
30



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Navajo Regional Office
P.O. Box 1060
Gallup, New Mexico 87301



IN REPLY REFER TO
Office of N460

FEB 03 2017

Honorable Russell Begaye
President, The Navajo Nation
P.O. Box 9000
Window Rock, Arizona 86515

Attention: Department of Agriculture

Dear President Begay:

RE: 2017 Navajo Partitioned Lands Carrying Capacity and Stocking Rate
Recommendation

The Navajo Nation Department of Agriculture and the Bureau of Indian Affairs (BIA), Branch of Natural Resources, has been meeting to discuss a "Critical Path" for re-issuing Grazing Permits on Navajo Partitioned Lands (NPL) and we are now at the stage where we are ready to send the Navajo Nation a list of names. However, pursuant to CFR 161.402 we are required to submit a current carrying capacity and stocking rate along with the list of names for the NPL Precincts. To develop this recommendation, the team reviewed 2004 and 2016 vegetative carrying capacities established from vegetation studies completed by BIA and its contractors with a standard stocking rate of (1) 790lb Cow or AUM = to (4) 197.5lb Sheep or SUYL.

The Range inventory reports completed in 2004 are available for Precincts 1, 2 and 3. The Range inventory reports completed in 2016 are available for Precincts 1 and 3. The 2016 range inventory report available for Precinct 2 will be completed in 2017 and provided to the Navajo Nation as soon as finalized.

Upon review and analysis of the above described range inventory information, combined with grazing permit data for all three precincts, the team is recommending that NPL grazing permits be re-issued at the above stocking rate and a carrying capacity of 10 sheep units yearlong (SUYL). CFR 161.302 sets to a minimum allowed to issue a permit at ten (10) SUYL.

This recommendation accounts for range conditions trending negatively since 2004 and as a result the rangelands will not be able to withstand grazing at 1972 carrying capacities. For historical reference, a total of 65,116 SUYL were contained in 1147 grazing permits on the NPL in 1972. These permits were cancelled with an average number of 57 SUYL.

Analysis:

The 2004 Range Inventory data and carrying capacity in SUYL by precinct is summarized in Table 1.0 below. In 2004, the carrying capacity was 5.79 SUYL in Precinct 1, 12.27 SUYL in Precinct 2, and 11 SUYL in Precinct 3.

Table 1.0
NPL Carrying Capacity Summary for Precincts 1, 2 and 3

			No of Permits			SUYL/Permit 1972
SUYL 1972			1147			56.72
65117			No of Permits	SUYL/Permit 2004	SUYL/Permit 2016 Initial	SUYL/Permit 2016 Adjusted
Carrying Cap SUYL 2004	Carrying Cap SUYL 2016 Initial	Carrying Cap SUYL 2016 Adjusted				
Precinct 1			441			
2556	1303	984		5.79	2.95	2.23
Precinct 2			424			
5202	Not available	Not Available		12.27	Not Available	Not Available
Precinct 3			283			
3041	1177	881		10.74	4.16	3.11

In the same table 1.0, the 2016 Range Inventory data shows a 50% decrease (or more) from the 2004 numbers in the carrying capacity for Precinct 1 and 3. An "adjusted" carrying capacity is also incorporated in the data. This adjustment is determined by taking into consideration the distance to water and the percentage of slope of the land. Grazing land with a greater distance to water and higher slopes will not be as readily useable for livestock so the carrying capacity is reduced or "adjusted". Therefore, the 2016 adjusted carrying capacity in Precinct 1 and 3 are further reduced to 2.23 SUYL and 3.11 SUYL respectively. The adjustment factor is about 25 percent.

In absence of 2016 range inventory data for Precinct 2, the team agrees that there is likely a comparable decrease and a similar adjustment from the 2004 data in Precinct 2. Thus, the carrying capacity in Precinct 2 was considered similar to the data from Precinct 1 and 3.

Table 2.0 shows 1997, 2004 and 2016 known carrying capacities for Precincts 1, 2, and 3. These capacities show a decrease in the availability of vegetation on NPL over a period of time.

Table 2.0 - Carrying Capacities for Precincts on the Navajo Partitioned Lands						
Precincts	Chapters	Range Units	1997	2004	2004 Reduction Factor ¹	2015/2016
3	Tonalea	101	238	425	255	102
3	Tonalea	102	202	368	221	112
3	Tonalea	103	186	229	137	72
3	Tonalea	104	68	82	49	27
3	Tonalea	105	206	598	358	230
3	Tonalea	106	180	105	63	13
3	Tonalea	107	265	165	99	93
3	Tonalea	108	184	125	75	13
3	Tonalea	109	135	182	109	23
3	Shonto	110	593	594	356	85
3	Chilchinbeto	301	114	60	36	26
3	Shonto	602	129	108	65	20
Total P3		12	2500	3041	1823	816
2	Forest Lake	302	157	204	122	TBD
2	Forest Lake/Hard Rock	303	278	290	174	TBD
2	Hard Rock	304	633	443	265	TBD
2	Hard Rock /Pinon	305	429	461	276	TBD
2	Pinon	306	443	336	201	TBD
2	Pinon	307	424	307	184	TBD
2	Black Mesa	308	508	382	229	TBD
2	Forest Lake	309	439	505	303	TBD
3	Black Mesa	310	345	173	104	65
2	Black Mesa	311	629	432	259	TBD
2	Pinon	401	234	254	152	TBD
2	Blue Gap	402	448	253	152	TBD
2	Whippoorwill	403	92	126	75	TBD
2	Blue Gap	404	254	165	99	TBD
2	Pinon	405	182	157	94	TBD

2	Pinon	406	381	398	239	TBD
2	Whippoorwill	407	127	125	75	TBD
2	Whippoorwill	408	162	191	114	TBD
Total P2		18	6165	5202	3117	TBD
1	Low Mountain	409	273	231	138	93
1	Tolani Lake	501	267	74	44	99
1	Tolani Lake	502	30	9	5	7
1	Tolani Lake	503	47	111	66	40
1	Teesto	504	102	116	69	49
1	Teesto	505	24	38	23	7
1	Teesto	506	24	102	61	23
1	Whitecone	507	331	374	224	155
1	Whitecone	508	146	162	97	49
1	Whitecone	509	257	127	76	86
1	Whitecone	510	222	173	104	75
1	Whitecone	511	280	155	93	48
1	Whitecone	512	160	197	118	76
1	Whitecone	513	212	61	36	67
1	Jeddito	514	347	248	148	48
1	Jeddito	515	45	107	64	10
1	Jeddito	516	35	24	14	3
1	Jeddito	517	163	143	86	30
1	Whitecone	518	90	104	62	19
Total P1		19	3055	2556	1528	984
GRAND TOTAL		49	11720	10799	6468	TBD

Recommendation:

Based on decreasing vegetation from 1997 to 2016 in Precincts 1 and 3, and presumed the same in Precinct 2, re-issuing grazing permits at 1972 SUYL levels is not prudent. Therefore, the range inventory data on NPL suggest adjustments are needed based on the carrying capacity. If we were to implement the adjustment based on old 1972 carrying capacity numbers some permittees who already had low carrying capacities would be well below (10) SUYL which is not allowable under 25 CFR 161.302 and other permittee's who had very high old 1972 carrying capacities would have numbers that the land cannot sustain.

Therefore in fairness, an equal distribution of (10) SUYL carrying capacity for all permits reissued is the recommended best solution at this time.

The team also recommends the carrying capacities for the reissued permits be revisited and possibly adjusted based on yearly range monitoring, range inventory data completed, and conservation planning. By doing so, the Navajo Nation, BIA and the permit holders can manage the range lands and improve the range conditions to produce more productive livestock.

BIA Navajo Region concurs with the recommendations above and requests the concurrence from the Navajo Nation pursuant to 25 CFR 161.204 and 25 CFR 161.403. If you have any questions and for further discussion, please contact Mr. Calvert L. Curley, Division of Natural Resources, at (505) 863-8204.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Regional Director, Navajo




MEMORANDUM

DATE : November 28, 2017

TO : Mariana Kahn Legislative Counsel
23rd Navajo Nation Council

Latonia Becenti-Johnson, Esq.,
Navajo Nation Department of Justice

FROM : 
Alton Joe Shepherd, Chairperson
Resources and Development Committee

SUBJECT : **Requesting for Review for Legal Sufficiency of Attached Letter Relative to the Re-Issuance of the NPL Grazing Permits**

On November 15, 2017, Resources and Development Committee held their regular meeting at TANCR in Twin Arrows and at that time the Committee had on their agenda the discussion with NPL Grazing Official the re-issuance of NPL grazing permits. At that time the Committee issued a directive to have the attached draft correspondence review for legal sufficiency.

The Department of Agriculture apparently drafted the attached letter to be sent to the BIA-Regional Director Ms. Sharon Pinto. They were seeking the Committee's approval for the letter to be sent to Bureau of Indian Affairs; however, the letter needs to be reviewed by OLC and NNDOJ for legal sufficiency. In the letter it references the Committee accepting the February 3, 2017 memorandum from BIA recommending equal distribution of ten (10) sheep units yearlong stock rate and carrying capacity for all permits issued in NPL Range Unit 1, 2 and 3. The letter from Ms. Sharon Pinto is also attached to assist with the legal review as well.

The Committee is requesting to ensure the legal review of acceptance of the BIA's recommendation is fair and equitable, particularly for all of the people that were enumerated when the permits were cancelled in 1974. Mean while, Committee will not move forward with the reissuance process until the letter is legally reviewed and will await your response on the review. Thank you in advance for your assistance.

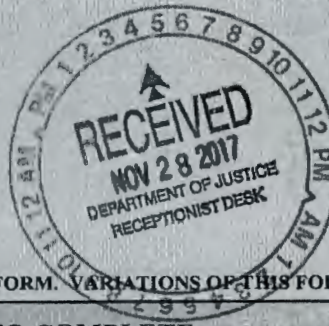
Cc: Levon Henry, Chief Legal Counsel
Ethel Branch, Attorney General

COPY

NAVAJO NATION DEPARTMENT OF JUSTICE



REQUEST FOR SERVICES



DOJ
#1/28/17 3:55pm
DATE / TIME
RFS #: 17-2798
UNIT: DAG
COPY: ECDU

RESUBMITTAL

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST: 11-28-17 ENTITY/DIVISION: Legislative Branch
 CONTACT NAME: Shammie Begay DEPARTMENT: OLS
 PHONE NUMBER: X7254 E-MAIL: _____

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (attach documents) : _____
Re-issuance of NPL Grazing Permits

DEADLINE: asap REASON: RDC to move forward after legal review

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 11/28/17 @ 4:58p REVIEWING ATTORNEY/ADVOCATE: Latonia Johnson
 DATE/TIME OUT OF UNIT: _____ PREPARED BY (initial): _____

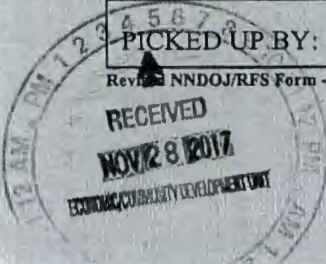
DOJ ATTORNEY / ADVOCATE COMMENTS

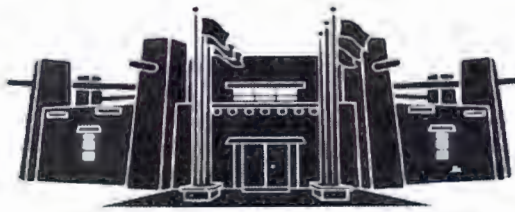
REVIEWED BY: (PRINT) _____ DATE / TIME _____

DOJ Secretary Called: _____ for Document Pick Up on _____ at _____ By: _____

PICKED UP BY: (PRINT) _____ DATE / TIME: _____


Rev. NNDOJ/RFS Form - July 2013





MEMORANDUM

TO: Honorable Walter Phelps
Navajo Nation Council

FROM: 
Edward A. McCool, Principal Attorney
Office of Legislative Counsel

DATE: February 22, 2018

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT;
PURSUANT TO 25 CFR § 161.204(c) IMPLEMENTING THE BUREAU OF INDIAN
AFFIARS RECOMMENDATION OF EQUAL DISTRIBUTION OF TEN (10) SHEEP
UNITS YEAR LONG (SUYL) FOR THE NAVAJO PARTITIONED LANDS (NPL) AND
DIRECTING THE NAVAJO DEPARTMENT OF AGRICULTURE TO IMPLEMENT THE
RECOMMENDATIONS OF THE BUREAU OF INDIAN AFFAIRS IN THIS MATTER
AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION:

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. 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).

If the proposed resolution 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.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0075-18_____ SPONSOR: Walter Phelps

TITLE: An Action Relating to Resources and Development; Pursuant to 25 CFR § 161.204(c) Implementing the Bureau of Indian Affairs Recommendation of Equal Distribution of Ten (10) Sheep Units Year Long (SUYL) for the Navajo Partitioned Lands (NPL) and Directing the Navajo Department of Agriculture to implement the recommendations of the Bureau of Indian Affairs in this matter

Date posted: February 27, 2018 at 3:17pm

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.*