

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.**

5-DAY BILL HOLD PERIOD: SNOTAH
Website Posting Time/Date: 5:29pm 12/21/2018
Posting End Date: 12/26/2018
Eligible for Action: 12/27/2018

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

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

E. On March 6, 2018, by Resolution No. BFMA-13-18, the Budget and Finance Committee 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 and the Company's shareholder representatives.

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

G. NNOGC would use the Investment 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. The Investment would allow NNOGC to return sizeable dividends to the Nation through the date of the Investment's redemption.

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

I. NNOGC has a very solid asset base with tremendous long-term value. Because of NNOGC 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.

Section Three. Approvals, Authorizations and Directives

A. The Budget and Finance Committee of the Navajo Nation Council hereby approves an investment in the Navajo Nation Oil and Gas Company in the amount of 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.

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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 " <u>Preferred Investment</u> "), 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 (" <u>Common Stock</u> ").
Dividends:	The holder of the Preferred Investment shall be entitled to receive quarterly dividends based upon the annual 6% Cost of Funds (" <u>Dividend Rate</u> ") 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:

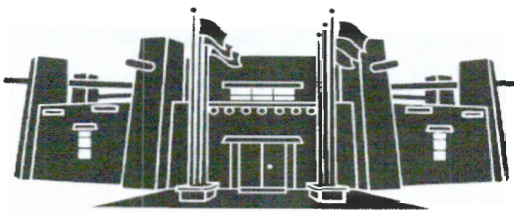
None.

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.

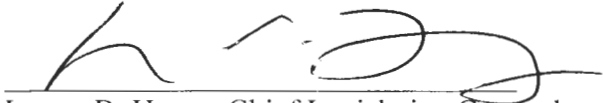
Transaction Expenses:

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.*