

Memorandum of Agreement

This Memorandum of Agreement (MOA) is entered into between President Joe Shirley Jr. (President), in his capacity as the representative of the Executive Branch of the Navajo Nation government, and Speaker Lawrence Morgan (Speaker), in his capacity as the representative of the Legislative Branch of the Navajo Nation government, (hereinafter "The Parties"). The purpose of this MOA is to agree upon a procedure for the Parties to make changes to the structure of Navajo Nation government, which is acceptable to the Parties.

I. Recitals

1. In 1989, the Navajo Nation Council changed the structure of Navajo Nation government, seeking to create a system of checks and balances that would prevent the concentration of governmental powers in the hands of any single person or entity by separating the legislative, executive and judicial powers of the government into three branches.
2. The Council resolution that made these changes, *CD-68-89*, included provisions stating that the form of government initially adopted through the resolution was temporary and that a complete re-examination and restructuring of the government would occur prior to 1991.
3. Despite having as its goal the creation of a more balanced system of checks and balances, the governmental structure established through *CD-68-89* had the actual effect of tilting the balance of authority toward the Council, through the continuation of Council powers that it "shall be the governing body of the Navajo Nation" and that "all powers not delegated are reserved to the Navajo Nation Council" and that the Council shall supervise those delegated powers.
4. The government structure created through *CD-68-89* continued a government in which all powers emanate from the Council and the Executive and Judicial branches of the government exercise only those powers delegated to them by the Council, which remain subject to the supervision of the Council.
5. Because this temporary government structure was never re-examined as stated in and intended by *CD-68-89*, the government structure created by that resolution had the unintended effect of concentrating power in the hands of a single entity, the Legislative Branch, in a manner that the Navajo Nation Council had actually sought to avoid in 1989.

6. Dissatisfaction with the structure of the government has often been expressed through proposals to reduce the size of the Council.
7. The amendment adopted through *CD-68-89* set the number of Council delegates at 88. In 2000, a proposal to reduce the size of the Council to 24 delegates and other numbers was voted upon by the Navajo people. The proposal to reduce the size of the Council to 24 delegates received the majority vote. However, the Council did not implement the reduction.
8. In 2002, the Navajo Nation Government Development Commission convened a government reform convention at Red Rock, New Mexico. The Convention proposed to the Navajo Nation Council a number of reforms or amendments of Navajo Nation law to change the government to a government where power rests with and emanates from the Navajo People, change the number of Navajo Nation Council delegates, empower the Navajo Nation President with budget line veto and others. The Navajo Nation Council did not accept the recommendations and amend applicable Navajo Nation laws in accordance with the recommendation of the vote of the People.
9. Since 1990, the Navajo Nation Council had a number of opportunities to reform the structure of the Navajo Nation government including reforms sought by and through the President's initiatives. In light of the Navajo Nation Council not taking action to make changes to the structure of the Navajo Nation government, another alternative is for the Navajo People to make changes through election initiatives.
10. More recently, a task force appointed by the President has considered the issues of government restructuring and concluded that another effort was needed to reduce the size of the Council. In addition, the task force felt that the powers of the President should be enlarged to include line-item veto authority.
11. The President's task force has sought to make these changes by placing two initiatives before the Navajo voters pursuant to the Navajo Nation Election Code. The first initiative is designed to reduce the size of the Council to 24 delegates. A second initiative is designed to extend line-item veto authority to the President, but would also eliminate the Council's power to override such line-item vetoes. The President's initiatives are consistent with the Red Rock Convention recommendations.
12. Despite prior efforts to reform the government structure through the Navajo Nation Council, the Council now asserts that it did not participate in the development of the proposed initiatives and has serious concerns regarding their content, as well as the ability of the initiatives to actually address the serious problems with the structure and operation of Navajo Nation government. Consequently, the

Speaker has filed a challenge/protest to the initiatives pursuant to the Election Code, with the goal of blocking the initiative process until the President complies with the requirements of the Election Code for such initiatives.

13. The President responded to the Speaker's challenge/protest with the position that the initiatives conform to applicable Navajo election law and that the challenge/protest is in a forum that lacks jurisdiction at this stage of the initiative process.

14. The Parties recognize that traditional Navajo culture places a high value on compromise and "talking things out" when resolving a dispute and regards the "winner take all" approach of non-Navajo society as lacking the wisdom that comes with maturity. The Parties also recognize that the dispute created by the initiatives and the challenge to the initiatives arises from this "winner take all" approach and may be inimical to traditional Navajo values.

15. The Parties have met to discuss whether there is a better approach to the restructuring of Navajo Nation government that has the mutual support and participation of both the Executive and Legislative branches. The Parties feel that such an approach is possible and desirable.

16. The Parties recognize that the current dispute provides a certain level of urgency to the task of developing a procedure for the restructuring the Navajo Nation government. It is also necessary to maintain the same level of urgency while holding the challenge to the initiatives in abeyance and the Parties work toward "talking things out."

17. On July 21, 2008, the Navajo Nation Supreme Court answered the Parties' certified question concerning whether the Navajo Nation Council has the sole authority to amend 2 N.N.C. § 102(A), holding that the Council cannot amend 2 N.N.C. § 102(A) and that it can only be amended by vote of the Navajo People through a referendum or initiative election.

II. Agreement

1. The Parties agree that meaningful restructuring of the Navajo Nation government is a matter of the highest priority and that the proposed initiatives resolve only some of the problems in the operation of the government. The Parties wish to negotiate meaningful changes to the government in a way which benefits the Navajo people. The Parties have not reached complete agreement as to how this might be best achieved, although there has been some discussion of drafting a constitution. To reach these goals, the Parties agree to the following initial procedures:

- a. The Parties or their designees shall meet once per week at 10 a.m. on Tuesday for not less than two hours to discuss the restructuring of the government. The Parties will make every effort to personally attend these meetings. The Parties shall designate not more than 10 other persons (that is, five each) to participate in the initial meetings, in order to achieve the highest level of effectiveness for these meetings.
- b. The initial round of meetings shall conclude by not later than September 30, 2008 and shall produce written procedures, to be agreed to and signed by both Parties, stating the rules to be used for a comprehensive restructuring of the government, a timetable for completion of that process and identifying with specificity the persons to be involved and their roles in the process.
- c. The process for comprehensive restructuring of the Navajo Nation government shall begin no later than one month following appropriation of funds for the process and shall continue for not more than six months, at the end of which time the Parties shall produce a document or documents outlining a comprehensive restructuring of Navajo Nation government.
- d. The Parties agree to actively and in good faith pursue the negotiations outlined in this Agreement until such time as the comprehensive restructuring document or documents described herein are produced, or until the negotiations are unable to proceed in any meaningful way due to a disagreement of the Parties or the failure of either Parties to participate in the negotiations for two or more consecutive negotiation meetings.
- e. The Parties shall jointly present the document or documents outlining the comprehensive restructuring of the Navajo Nation government to the Navajo Nation Council. The Council will refer the document or documents to the Navajo people for an election to approve or disapprove the comprehensive government restructuring document or documents. The Council will make no changes whatsoever in the restructuring document or documents.
- f. In addition, legislation shall be submitted to the Council for consideration as follows:
 - i. Legislation shall be drafted and proposed to the Council for a referendum election amending 2 *N.N.C. § 102(A)* to require that amendments to that section may be approved by only a majority of those voters actually voting in an election when at least 35% of the electorate votes to change the size of the Council and reducing the size of the Council from 88 to 40 members.

ii. Legislation shall be drafted and proposed appropriating Two Million dollars (\$2,000,000) for all activities related to the restructuring of the government. This legislation shall be presented at the next special session of the Navajo Nation Council.

g. Upon approval by the Council of legislation sending a referendum amending 2 N.N.C § 102(A) to a vote of the Navajo people, the President will withdraw the initiative petitions, and the Parties will move to dismiss any actions still pending before the Office of Hearings and Appeals, or any other forum, concerning the sufficiency of the initiative petitions.

h. If the Council fails to enact the legislation called for in § 1(f) of this Agreement, this Agreement will be null and void, and the circulation of the initiative petitions and the legal challenges to the petitions will proceed.

2. In the event that negotiations end, nothing in this Agreement shall be deemed to constitute a waiver of the Speaker's right to challenge or protest the sufficiency of the petitions on any ground.

3. The Parties agree to not take any retaliatory actions against any Navajo Nation employee, official or contractor because of any action taken or not taken concerning or relating to the Initiative dispute. Any retaliatory action by the Navajo Nation Council or any of its committees or by an Executive Branch official, entity or employee shall be deemed a retaliatory action in violation of this section, and, as a consequence this Agreement will become null and void.

AGREED TO AND EXECUTED this 13th day of August 2008.

FOR THE NAVAJO NATION:



Honorable Dr. Joe Shirley, Jr., President
The Navajo Nation



Albert Hale, Esq.
Attorney for President Joe Shirley, Jr.

WITNESSES



Honorable Leonard Tsosie



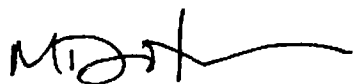
Honorable Raymond Maxx

FOR THE NAVAJO NATION COUNCIL:

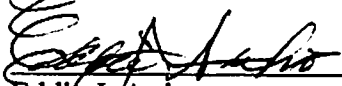


Honorable Speaker Lawrence Morgan

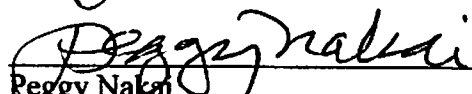
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