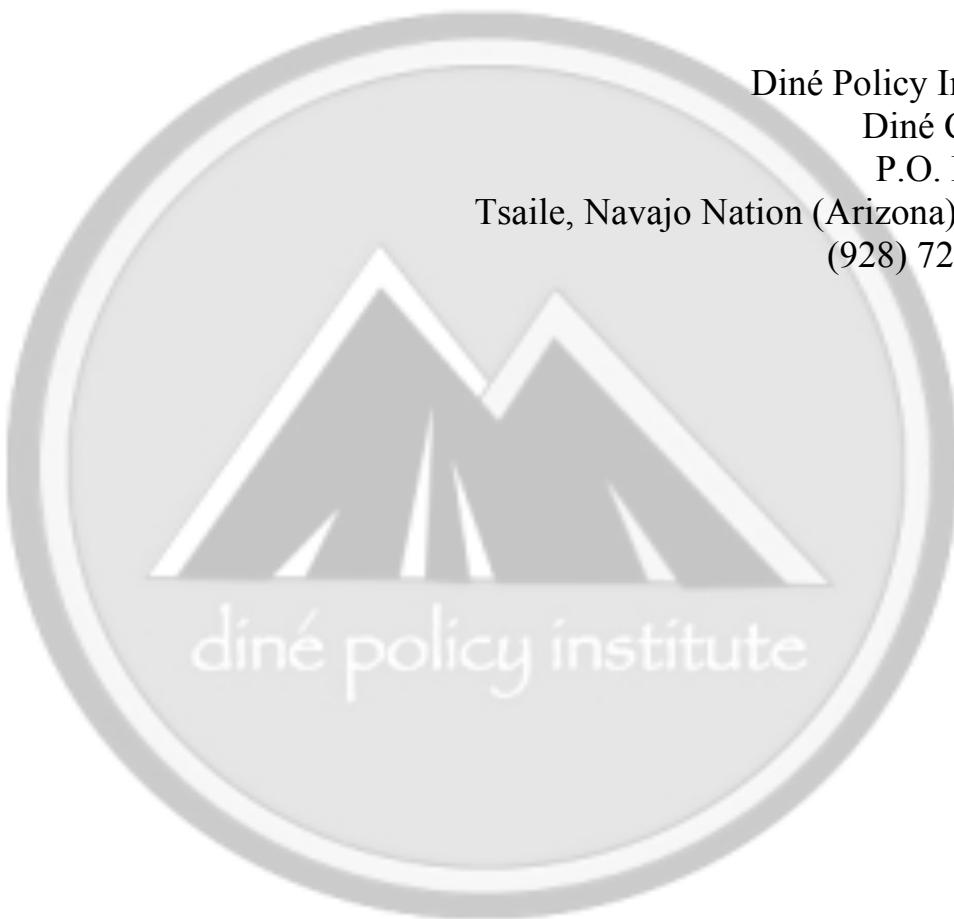

Dóó nal yea dah: considering the logic of the Diné Natural Resource Protection Act of 2005 and the Desert Rock power plant project

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Table of Contents

INTRODUCTION.....	3
METHODOLOGY.....	4
THE DINÉ NATURAL RESOURCES PROTECTION ACT OF 2005.....	4
ECONOMIC IMPACT.....	10
DESERT ROCK, MORE OF THE SAME	12
FURTHER CONSIDERING DINÉ NATURAL LAW.....	16
DESERT ROCK AN OUTCOME OF LONG TERM ENERGY DEVELOPMENT STRATEGY? ..	19
CONCLUSION.....	22

Introduction

In April of 2005 the Navajo Nation Council passed a prohibition on all future uranium mining and processing within the Navajo Nation. This resolution was passed after years of suffering from former Navajo uranium miners and community members near mine sites. The mining companies who extracted minerals from Navajo land did not protect their Navajo workers with proper safeguards. They did not cleanup mine sites and left numerous cancer-inducing radioactive pits unmarked.¹ But I will not consider the negative legacy of uranium mining on the Navajo Nation in this report. Rather, I will consider the Navajo Nation's response to renew uranium mining on tribal land and how tribal decision-makers² were for the first time able to use uniquely Diné logic and principles in arguing against future mining.

Aside from being a great-leap-forward in environmental/health protection on the Navajo Nation, this is one of the first Navajo legislative acts to use and reference traditional knowledge and principles as a rational for enactment. The passage of the uranium ban is also significant in that it is one of the first major acts to use the Fundamental Laws of the Diné (FLD) as a form of logical justification. Meaning, lawmakers cited provisions within this declaration to rationalize a prohibition on all future uranium mining and processing on the Navajo Nation. In fact this act, titled, “the Diné Natural Resources Protection Act of 2005” (DNRPA), cites the FLD directly and thus establishes precedent for its use within Navajo resource development. Ultimately, the DNRPA advances the principle of “*doo nal yee dah*,” loosely translated to meaning “things from within the Earth that are known to be harmful to people should not be disturbed.”³ This builds a basic grammar of Diné environmental principles and concepts to be used in future resource development decisions.

Nonetheless, these decision-makers have not applied the same logic when considering the Desert Rock project. For example, the logic used in the DNRPA: 1) violation of traditional principles is categorically unacceptable and 2) negative health ramifications will result from violations of these principles, has not carried into consideration for the Desert Rock power plant, which has the potential for significant environmental and health impacts.⁴ Whereas the former relied on the Fundamental Laws and a consideration

¹ For more on the history of uranium mining on the Navajo Nation, see Peter H. Eichstaedt, If You Poison Us: Uranium and Native Americans. Red Crane Books, 1994.

² I use the term “decision-makers” to refer to the Navajo Nation Council and president. I don’t consider chapter house or agency officials in this paper.

³ Navajo Nation Code, Title 18 §1301.

⁴ According to the May 2007 Draft EIS for the Desert Rock Energy Project, the power plant would emit sulfur dioxide and nitrogen oxides within 100 km (62 miles) of the project, which includes many Navajo communities, and could spread further pending “global wind patterns.” This would also increase overall greenhouse gases from the area that are a direct cause of global climate change. See Desert Rock Energy Project Draft EIS, Chapter 4.0 Environmental Consequences, pg., 19, May 2007. Also, despite the fact that the Draft EIS claims “communities of the proposed plant do not appear to have greater susceptibility to asthma than the general population, David Van Sickle and Anne L. Wright document that Navajos, due to aversion for seeking medical attention, are at higher risk to develop asthma. See Sickle, Dan Van and Anne L. Wright, “Navajo Perceptions of Asthma and Asthma Medications: Clinical Implications.” Pediatrics 2001.

of community health⁵ for justification, thus far the only consideration for the proposed Desert Rock power plant has been economic *only*, with health concerns, traditional concepts or affronts on the environment notably absent. Here I will compare the justifications used in passing this historic prohibition on uranium mining and demonstrate how this logic has not carried into deliberation for the Desert Rock power plant. I will consider the consequences of this inadequate analysis and argue that it is important to consider traditional Diné environmental principles and overall community health for future projects related to resource development. Additionally, I will argue that concern for overall global health must also be weighed in conjunction with Diné principles and logic when assessing future resource development on the Navajo Nation.

Methodology

In this report I will: 1) examine the logic used for the uranium ban 2) compare this with the logic used to justify the Desert Rock power plant 3) demonstrate how Desert Rock is in violation of traditional principles vis-à-vis those found in the uranium ban 4) consider how Desert Rock might be a symptom of greater problems within the Navajo Nation government and 5) recommend actions the Navajo Nation can take to correct cultural conflicts resulting from the Desert Rock project.

In examining the logic of the DNRPA, I provide a content analysis of this act, consider the intentions of its key drafters and provide some analysis on the dialog preceding its passage within the Navajo Nation Council. In determining the logic for favoring the Desert Rock project I examine justifications for the project offered by its key proponents in related news articles and press releases. I also consider claims about the project found within internal tribal documents. I ultimately contemplate both the logic and consequences of these assertions and compare this to the rhetorical justification and uses of traditional principles within the Diné Natural Resource Protection Act of 2005.

The Diné Natural Resources Protection Act of 2005

The Diné Natural Resource Protection Act of 2005 reflects a recent trend for Navajo lawmakers to invoke the Fundamental Laws of the Diné and general traditional principles in justifying legislation, rather than relying on U.S. style rhetoric for reasoning.⁶ Such use of traditional law is a part of the greater de-colonizing effort for Navajo people. Previously the Navajo Nation has relied solely on U.S.-style governance and rational in its decision-making process—now we are engaged in an effort to restore what is uniquely Diné to the political discourse. The Navajo Nation Council codified into law the Fundamental Laws of the Diné in 2002, after three years of deliberation and twenty years

⁵ Although this consideration was deliberately minimized in the case of uranium to skirt federal oversight over the mineral

⁶ According to Eric Jantz from the New Mexico Environmental Law Center and Chris Shuey from the Southwest Research and Information Center, both involved in the drafting of this legislation, aside from being more culturally appropriate, use of traditional Navajo principles was done as a legal strategy to “preempt” existing federal oversight over uranium. Existing federal legislation stems from the US Atomic Energy Act of 1954 that established the Nuclear Regulatory Commission and federal oversight over uranium.

of common law use in Navajo courts.⁷ The DNRPA builds on these earlier efforts to reuse and again make relevant traditional Navajo principles and concepts within policy making.

The Diné Natural Resource Protection Act of 2005, popularly referred to as “the ban on uranium mining,” is broken-up into three sections: 1) Findings, 2) Definitions and a 3) Prohibition of Uranium Mining. The most significant part of this act for establishing precedent in future decisions on resource-use is the “Findings” section. It is within this section that the Fundamental Laws are referenced, in which the historic legacy of uranium is considered and in which the principle of *doo nal yee dah* is put forth.

Within this section are eight clauses, the first four deal with traditional principles and concepts and the last four deal with health and economic impacts of previous uranium mining. It is important to note that the first and last clauses of this ban directly discuss government and government’s role in regulating extractive industries on the Navajo Nation. The first clause establishes the Navajo Nation’s sovereign interest over extractives in its territory.

Navajo sovereignty over mineral extraction is an important consideration in any discourse on resource use. In the original legislation, uranium mining and processing was considered separately. During the passage of the DNRPA in April 2005, Eric Jantz from the New Mexico Environmental Law Center claimed uranium “processing” and “mining” are under “two distinct regulatory regimes” within federal law⁸ and therefore required different approaches within the law. Nevertheless, tribal decision makers combined both mining and processing into one clause at the time and effectively banned both activities on the Navajo Nation.⁹ The first clause of the act reveals the intentions of its authors in respects to sovereignty. It was important to establish Navajo domain, historically and traditionally, over uranium so as to preempt existing federal regulation. Clause A of the act reads:

The Navajo Nation Council finds that the wise and sustainable use of natural resources in Navajo Indian Country traditionally has been, and remains, a matter of paramount governmental interest of the Navajo Nation and a fundamental exercise of Navajo tribal sovereignty.

The act reinforces the Navajo Nation’s right to use its natural resources as it sees fit. The authors of this legislation felt that traditional Navajo environmental law, which predates U.S law, overrides current federal oversight over uranium which was established by the Atomic Energy Act of 1954. Use of traditional principles in this sense is an act of sovereignty and one of increasing self-determination. There are evidently many pragmatic reasons for redefining how Indian peoples interpret environment in their laws.

⁷ Bobroff, Kenneth, “Diné Bi Beenaha’áanii: Codifying Indigenous Consuetudinary Law in the 21st Century.” Tribal Law Journal (5) 2004-05.

⁸ Author has transcripts from Navajo Nation Council, April 19 2005.

⁹ Id.

Within the DNRPA's "Definitions," "natural resources" are defined as having the same meaning as that found in 2 N.N.C. § 692 (A)¹⁰ which claims that resources are "any and all Navajo owned, controlled or claimed, natural, renewable, nonrenewable, solar and wind power energies, cultural, leisure, and recreational resources which includes, but is not necessarily limited to, land, air, airways, water, minerals, wildlife, fish, forests, woodlands, vegetation, livestock and parks." It is argued in the above clause that it is the right of the Navajo Nation to use in a wise and sustainable manner its natural resources, including solar and wind power energies. Here, the most important consideration are the somewhat ambiguous terms "wise" and "sustainable" when describing how Navajos should use these natural resources. That is to say despite the fact that "use" is "an exercise of Navajo tribal sovereignty," there still remains an expectation that such *use* will be done in a manner that is both *wise* and *sustainable*.

Of course these are both loaded expressions and we should really consider what is insinuated with this terminology. "Sustainable" in modern usage evokes imagery of environmental protection and environmentally conscious forms of economic development, such as wind or solar energy.¹¹ The word "sustainable" in ecological terms means to keep natural elements in a state of balance. And in this sense it is a very Navajo concept and this act is accurate in claiming that sustainability is rooted in tradition. When taken in consideration with *hozhó*, this idea of "balance," or "a condition where everything is in its proper place and functioning in a harmonious relationship to [and with] everything else,"¹² it is compatible with historic Navajo understanding of environment. And when one considers the principle of *K'é*,¹³ in which Navajo responsibilities to self, relations and environment are established, this balance works in a synergetic manner with living elements interdependent on one another and maintaining a natural hierarchy.

After linking this act with an already codified definition of natural resources, the next clause in the Findings section adds traditional elements to it. "The four sacred elements" from the Fundamental Laws of the Diné are added to this definition. As is evidenced here, the act builds on prior definitions of environment and does not work to negate non-Navajo with Navajo. The authors of this act build off existing law and definitions and redirect future resource policy toward a more historically Navajo approach. The act takes

¹⁰ This definition is used in describing the scope of the "Resource Committee" within the Navajo Nation Council. These definitions predate the passage of the Fundamental Laws of the Diné and were last amended in 1992.

¹¹ For example, the first 25 news articles listed from a Lexis Nexus search using the term "sustainable" all related to forms of sustainable economic development and environmentally friendly consumerism.

¹² See G. Witherspoon's Navajo Kinship and Marriage, pg. 8, quoted from Ray Austin's written outline for the Navajo Law Seminar, held in Window Rock, AZ on November 9, 2007. Austin further claims that *hozhó* is "general as opposed to specific, abstract as opposed to concrete...." etc. As far as I can determine, *hozhó* and its many forms have different meanings in differing contexts. But each meaning assumes a general quality of "good." Usually it comes in the form of state-of-being, and is sometimes used as an idealization—or the underpinning for general Navajo philosophy and ideology.

¹³ See Moroni Benally's forthcoming "K'é: Foundations for Navajo Spirituality" for more on this interpretation of the concept. I use Benally's definition of K'é, which is more expansive in scope than other interpretations I've encountered. Also, see Benally and Adrea Speen's "Uranium and Diné Binitsekees: An Analysis of the direct and indirect consequences of uranium mining using Navajo principles" for further analysis as to how K'é relates to the legacy of uranium mining on the Navajo Nation.

concepts that have previously been considered purely cultural and utilizes them within law. Again, this is a process of not only referencing Navajo culture in a broad sense and saying were or were it might not be useful, but actually defining these concepts and how they apply to natural resource use. Clause B reads:

The Navajo Nation Council finds that the Fundamental Laws of the Diné (*Diné Bi Beenahaz'annii*), as set forth in the 2002 amendments to Title 1 of the Navajo Nation Code, Resolution No. CN-69-02, support preserving and protecting the Navajo Nation's natural resources, especially the four sacred elements of life—air, light/fire, water and earth/pollen—for these resources are the foundation of the peoples' spiritual ceremonies and the Diné life way, and that it is the duty and responsibility of the Diné to protect and preserve the natural world for future generations.

This clause specifically references the Fundamental Laws of the Diné and declares their relevance to environmental issues. It does not apply only in the case of uranium, but to all “natural resources” and especially to: “air, light/fire, water and earth/pollen.” These four elements are thought to be important for spiritual ceremonies and this specific consideration was not lost on tribal decision-makers. In signing the actual act, for example, President Joe Shirley noted that, “the nation has lost many precious Navajo medicine people, who are few in numbers, from health problems related to uranium exposure.”¹⁴ The interrelation with community health and ability to maintain ceremony is clearly established and further buttresses the argument, as is codified in the Fundamental Laws of the Diné, that *un-wise* and *un-sustainable* resource use will lead to negative consequences for the Navajo Nation. What’s more, it is advanced within the Fundamental Laws of the Diné and most interpretations of the traditional Navajo principle of K’é, that the Navajo people have *responsibilities* more than *rights*. And although the Fundamental Laws of the Diné are somewhat contradictory in their approach to rights and responsibilities, in the most relevant section of the FLD, under what is called “Diné Natural Law,” there are specific responsibilities endowed within the Navajo toward their use of natural resources and its intersection with nature.

In this section of the FLD, we constantly are reminded that the Earth must be “respected, honored and protected.” Interestingly, Diné Natural Law even goes as far as to claim that “all creation...have rights and freedoms to exist,” using terminology directly derived from the U.S. political lexicon and applying it to the FLD. Natural Law in this sense is conceptualized as something that is not a creation of human beings, but rather, the natural state of the universe. That is to say it is an observation of the workings of nature and how certain “laws” or, in scientific jargon, “rules” seemingly exist in a natural state. Diné Natural Law is not only the most primal of the FLD, it is also that which best parallels Western-style science.

More to point, Clause D in this section of the FLD mandates that the Diné have “the sacred obligation and duty to respect, preserve and protect all that was provided” as “we

¹⁴ Marley Shebala, “Anti-uranium forces cheer signing of law,” Navajo Times, May 05, 2005.

were designated as the steward for these relatives through our use of the sacred gifts of language and thinking.” More than any other clause within Section 205 this speaks to the level of commitment the Navajo people must make in “preserv[ing]” and “protect[ing]” all natural resources. It is, as this clause suggests, “the sacred obligation” of the Diné. What’s more, in the event that destruction or harm must be done to the environment, the Navajo must “make atonement”¹⁵ “through the proper protocol of respect and offering.” All of this is done in order to “preserve the beauty of the natural world for future generations.” These are the provisions with the FLD that the Diné Natural Resource Protection Act specifically cites. It quotes at length these portions of the Fundamental Laws of the Diné to support a prohibition of all uranium mining and processing on the Navajo Nation. Additionally, the uranium ban uses the FLD to protect the health of the Navajo people. For example, Clause C of the Protection Act reads:

The Navajo Nation Council finds that the Traditional (Diyin Diné’é Bi Beehaz’aani Bitse silei), which are codified in Title 1 as §§ 3 and 4 of the Fundamental Laws of the Diné, provide that it is the right and freedom of the people to be respected, honored and protected with a healthy physical and mental environment.

The uranium ban adds to the Fundamental Laws of the Diné, claiming that the Diné have the “right and freedom...to be respected, honored and protected with a healthy physical and mental environment.” Whereas previously “all creation” had the right and freedom to exist, and thus have their own natural laws—Diné Natural Law—here the Diné have similar types of freedoms and protections in so far as environment affects their health. This particular clause adds not to Diné Natural Law, but to Diné Customary Law in which “the people’s” “rights and freedoms” are articulated. Adding the right and freedom to a healthy physical and mental environment bridges Diné Customary Law and Diné Natural Law within the FLD. This portion of the DNRPA is more progressive than the U.S. equivalent, the U.S. Environmental Protection Act (EPA) of 1970 in which the idea of “rights” in terms of ensuring healthy physical environments, was particularly avoided.¹⁶ The next most significant advancement within this uranium ban is Clause D, which reads:

The Navajo Nation Council finds that the Diné medicine peoples’ interpretation of the Diné Natural Law (*Nahaszaan doo Yadilhi Bitsaadee Beehazaanii*), which is codified in Title 1 as five of the Fundamental Laws of the Diné mandates respect for all natural resources within the four sacred mountains and is symbolized by the Sacred Mountain Soil Prayer Bundle (*Dahndiilyee*), to maintain harmony and balance in life and a healthy environment, and their

¹⁵ This interpretation is derived from Harry Walter’s presentation at the 2007 Navajo Studies Conference in Tsaile, Arizona. Walters, from the Center of Diné Studies at Diné College, gave the aforementioned interpretation of “natural law” and spoke of a need for atonement from transgressions made against the environment.

¹⁶ James “Skip” Spensley offered this interpretation on the passage of the 1970 Environmental Protection Act during a workshop on “The National Environmental Policy Act (NEPA) in Indian Country” in Denver, CO. September 2007. hosted by the International Institute for Indigenous Resource Management. See http://www.iiirm.org/Events/Workshops/Workshop%20Dreamweaver%20Files/workshops_new.htm for more information. Last accessed January 28, 2008.

recitation of the ceremonies and stories that have been passed down from generation to generation warn that certain substances in the Earth (*doo nal yee dah*) that are harmful to the people should not be disturbed, and that the people now know that uranium is one such substance, and therefore, that its extraction should be avoided as traditional practice and prohibited by Navajo Law.

What is important here is the notion of “*doo nal yee dah*,” not found in the original FLD, but is suddenly advanced in the DNRPA in hindsight to the historic suffering of the Navajo people from uranium mining. This principle essentially makes the argument that elements within the Earth that are known to be dangerous for human beings should not be disturbed, lest we jeopardize our health and survival as a nation. This clause, in the way it references uranium as something that the people “now know” is a “harmful” substance, insinuates that the Navajo people did not have prior knowledge to its danger, or they might have been more cautious in how they approached the mineral. This notion is consistent with the historic record in which Navajo mineworkers had little to no knowledge about the danger of uranium. But, when such danger is known beforehand, this clause assumes the people and their leaders will make every effort to avoid the substance—applying this principle of *doo nal yee dah*. The choice is stark and absolute, either a complete avoidance of such substances or risk negativity on the people as a result. Therefore this clause adds more clarity to the Fundamental Laws of the Diné, where measures of mitigation are conversely put forth.

Specifically, Clause F of the Diné Natural Law within the FLD states, “the use of the sacred elements of life...and...the use of land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering...” These two clauses might at first appear to be in discordance, with one suggesting an absolute prohibition against resource use while the other suggests mitigation. But there is a distinct difference in the types of “natural resources” or natural elements to which each clause refers. In the Diné Natural Law, this clause refers to “land, natural resources, sacred sites and other living beings” whereas Clause D within the Diné Natural Resources Protection Act addresses “certain substances in the Earth...that are harmful to the people.” Therefore, the use of natural resources, such as land for construction or water for industry can be done through the “proper protocols.” And substances known to be deadly, such as uranium, should not be disturbed—*doo nal yee dah*. This sets forth a clear environmental policy for the Navajo Nation, creating absolute categories of development that *should not* be pursued. We will further consider coal-fired power plants with this principle when assessing the proposed Desert Rock project. Additionally, and found throughout the Fundamental Laws of the Diné and the Diné Natural Resource Protection Act is the idea of “maintain[ing] harmony and balance in life and a healthy environment.” This notion of seeking *hozho* seems to be the historic purpose of Diné society, and therefore should be the purpose of the present government.¹⁷ The Diné’s relation with the natural world is a very important consideration when “walking in beauty.” Clause D of this act establishes the connection between maintaining harmony and balance and the prohibition against uranium mining.

¹⁷ Although these two paradigms are at conflict

Economic Impact

The next four clauses of the DNRPA address the economic impacts of uranium mining and conclude that its detriments outweigh its benefits. Though this is a standard “cost-benefit analysis” and differs from the logic used in *doo nal yea dah* the way in which economic impact is measured here is useful when considering the economic rational for the proposed Desert Rock power plant and other resource related projects. Ultimately economic impact is judged more cumulatively in the DNRPA, using variables excluded from the general cost-benefit analysis for Desert Rock, such as impacts on health and environment. We will consider the next four clauses together as each of them are interrelated.

The first clause, Clause E, is concerned about the health consequences of previous uranium mining activity and its perceived economic impacts on the Navajo Nation. Though human health is not quantified, these impacts are categorized and their costs are speculated. It is purported that health costs from uranium mining has had a severe drain on the Navajo Nation’s economy. Clause E claims that uranium mining should be prohibited so long as there is a “continuing need for full monetary compensation of the former Navajo uranium workers and their family members.” Additionally, the continued presence of open-pit mines, tailing piles and other uranium-related waste requires a moratorium on future mining, so the DNRPA asserts. Essentially, the DNRPA claims that the Navajo Nation is indebted to suffering community members from previous uranium mining. There is still a need to ameliorate damage wrought from previous mining projects. Until this is complete (with no proposed date set) no future uranium projects should be considered.

This is obviously a different rational from that established with *doo nal yee dah*. Nevertheless, it is important to remember that the cost-benefit analysis here is used to buttress *doo nal yea dah*, not contradict it. This cost-benefit analysis speaks to the implied meaning of *doo nal yea dah*, that certain elements of the earth cause insurmountable harm. *Doo nal yea dah* establishes absolute categories of substances that are not to be handled with the implication that its costs far outweigh its perceived benefits. Therefore there is consistency in logic with the use of both *doo nal yea dah* and a cost-benefit analysis—something I will demonstrate is out of sync in the proposed Desert Rock power plant.

Finally, this clause declares that “the absence of medical studies of the health status of Diné who live in uranium mining-impacted communities” is cause enough to cease all uranium-related activities on the Navajo Nation. This perspective is different from both a cost-benefit analysis and *doo nal yee dah* in that the argument is concerned primarily on data (or lack thereof). Clause E states that health studies or, more broadly, considering consequences of development must come before one takes a position in favor or against a project. As we will demonstrate in the case of Desert Rock, support for the project from the Navajo Nation government came *before* health studies or environmental impacts were properly considered. Using this logic agreed upon within the justification for the Diné Natural Resources Protection Act, an act that proponents of the Desert Rock power plant

signed, the Navajo Nation should intensely investigate what might be the worst-case health scenarios from building the Desert Rock power plant. Yet the project's proponents are seemingly concerned with economic benefit *only*.

Similarly, Clause F finds "that the mining and processing of uranium ore on the Navajo Nation and in Navajo Indian Country since the mid-1940s has created substantial and irreparable economic detriments to the Nation and its people." This clause lists the items it considers the most impacted by uranium mining: land, ground and surface water, livestock—all of which are believed "to have been contaminated by uranium." This clause then goes on to address loss in production from the Navajo workforce in what the authors of this act call "person-years" (something economist similarly try to measure in the case of HIV/AIDS in Sub-Saharan Africa).¹⁸ Meaning, the amount of productivity lost within the workforce has impacted the Navajo Nation's overall economy.

Clause G serves as a conclusion to the economic consideration within the act. It finds that "there is reasonable expectation that future mining and processing of uranium will generate further economic detriments to the Navajo Nation." This clause sums up and remakes the previous arguments about potential economic damage, regardless of the type of uranium mining/processing, (i.e., open-pit mining or in situ leech mining). Recently efforts have been made to distinguish between open-pit mining and in situ leech mining—as if the later is of no ecological consequence. In fact it can be reasonably speculated that this argument from the Houston-based HRI mining firm as justification to restart uranium extraction (via in situ leech mining) led the Navajo Nation to enact this ban in the first place.¹⁹ There remains too much uncertainty about the method, and the Navajo Nation has been hoodwinked by extractive industries in the past.

However, as I will demonstrate in the next section of this report, lawmakers did not use this caution when considering the proposed Desert Rock power plant. In fact quite the opposite rational is used in justify the project—that the Navajo Nation could expect 1) benefit in the form of revenues and 2) benefit in the form of jobs, both purely economic considerations. Part of the reason for this inconsistency is the age of the project, which outdates passing of both the Fundamental Laws and the DNRPA. A power plant in northwestern New Mexico was originally proposed in the early 1980s as a way to compensate relocated Navajos from Hopi lands.²⁰ However, as has been demonstrated in both consideration of the Fundamental Laws of the Diné and the uranium ban, pure economic consideration excluding all other factors is both 1) non-traditional and 2) shortsighted on the cumulative impacts of such undertakings.²¹

¹⁸ As the Tony Blair headed Commission For Africa wrote, "[HIV/AIDS] is reversing development and is ravaging the social fabric. In so doing it spawns impacts now and in the future that are hard to predict or quantify today." Though not as severe, parallels can be established between diseases wrought from mining activities and dirty industrialization with epidemics. See Our Common Interest: Report of the Commission For Africa, pg. 202, 2005.

¹⁹ Kathy Helms, "Uranium mining fight intensifies." Gallup Independent, Monday January 24, 2005; Kathy Helms, "Activists ask NRC to take HRI license: Hydro Resource officials point out conflicting concerns in the petition." Gallup Independent, Friday June 24, 2005.

²⁰ LeNora Begay, "Power plant plans OKd." Navajo Times TODAY, Wednesday, November 6, 1985.

²¹ Benally, Moroni and Andrew Curley, "Comments on the Desert Rock Energy Project Draft Environmental Impact Statement." Dine Policy Institute, 2007.

Desert Rock, more of the same

The same year that the Navajo Nation passed the Diné Natural Resources Protection Act of 2005, the Navajo Nation was already in negotiations for the construction of a 1,500 megawatt power plant 30 miles south of Shiprock. Even before the health ramifications or any environmental impacts of the project were properly assessed, President Joe Shirley and those closely related to the project defended it. In a 2005 interview with Earl Tully of Diné C.A.R.E regarding the DNRPA, Joe Shirley was quick to defend gas and coal interests. In this interview Shirley said:

In the case of the uranium, we don't want any more companies coming in, so that's where this ban has been put on the books, and we're going to stand our grounds, as a sovereign nation to try to preserve our ability to not let it happen. But as far as coal and natural gas, we're continuing to mine those, albeit, you know, there are some things that are not good about it...²²

He then claimed that the Navajo Nation is using all of its negotiating power to persuade coal companies to use cleaner technologies, an approach the Navajo Nation chose not to take in the case of uranium. There is obviously an inconsistency in these approaches—either health and culture are prioritized or perceived economic benefits. Let us now examine the tribal officials myriad defenses for the Desert Rock power plant and compare their logic against the same logic used in justifying the uranium ban.

By far the greatest proponent of the Desert Rock power plant currently is President Joe Shirley, who made it central to his reelection platform in 2006.²³ In 2005 when the Navajo Nation Council first approved of the joint venture agreement between Sithe Global—a Texas based energy firm—and the Diné Power Authority (DPA), Shirley said, “We have been working on it, and lo and behold, it is here...This will benefit the whole Navajo Nation.”²⁴

When Shirley refers to “benefit,” he can only mean economic benefit. There are no direct cultural, health or educational benefits from the project. In fact there is a likelihood of health detriments as a result of the project. And culture will not be enhanced using the same logic Shirley used in justifying the uranium ban (i.e., sick and dying Navajos—especially the elderly and medicine people—are a source of cultural loss.) As Shirley established earlier, there is a correlation between cultural loss and damage to community health. But in the case of Desert Rock Shirley claims that the project will bring increased

²² Democracy Now! interview with host Amy Goodman, May 02, 2005.

²³ I searched through the Navajo Times archives between the years 2002-2007, the years of Joe Shirley’s presidency in order to find all of the justifications used for the Desert Rock power plant project. I was looking for an example in which Shirley (or any other proponent of the project) justified the project with anything other than economic reasoning. Or where they considered environment or the health of community members, similar to concerns raised in the DNRPA. Additionally, I attempted several Lexis Nexus searches and read stories related to Desert Rock to discover any other rational used aside from increased revenues for the tribe in justifying this project.

²⁴ John Christian Hopkins, “Council OKs Desert Rock Power Plant.” Gallup Independent, May 26, 2006.

revenue and good paying jobs for Navajos,²⁵ who suffer from an unemployment rate near 25 percent of the eligible workforce.²⁶ Similarly, Shirley's then Vice President Frank Dayish said that the proposed power plant is "an integral part of the Navajo economic stimulus project."²⁷ And current Council Delegate Tim Goodluck, who has been on the DPA Board of Directors for the past 14 years, said, "Each year the medicine men blessed us and helped us to talk to the Great Spirit"²⁸ —the only instance in which Navajo spirituality was aligned with the proposed power plant, but with no further justification or explanation for why the "Great Spirit" would support it.

Shirley has touted the project as an integral source for economic development on the Navajo Nation. Speaking at another signing ceremony, this one for the selection of the architecture firm to design the power plant, Joe Shirley said, "The Desert Rock project is an important part of rebuilding the Navajo economy by providing needed jobs, paychecks and financial security for our people so that we can get back to standing on our own two feet" and "[a] project of this size will help the Navajo Nation move away from dependence to regain the independence we lost so long ago. We have the resources and the workforce to do for ourselves."²⁹

For Joe Shirley this project "is an important part of rebuilding the Navajo economy." Accordingly, the Navajo economy at some unspecified point went into regression. One has to only take a look through recent Navajo history to identify the closest event in Navajo history that correlates with Shirley's claim—and that is the forced assimilation into the U.S. economy after 1868 when Navajos were released from Bosque Redondo. Prior to that the Navajo people had a robust pastoral economy³⁰—today we are dependent on government employment, extractive industries and the overall service economy. Desert Rock does not correct this economic dependency or power relationship with the outside world. In fact one can reasonably argue that it makes Navajo labor and, thus, the Navajo Nation government more dependent on outside interests. Shirley's claims of economic independence are dubious in relation to the Desert Rock power plant and are not similar to the economic rational used against future uranium mining on the Navajo Nation.

Recently the U.S. Environmental Protection Agency notified the Bureau of Indian Affairs that it has concerns regarding the Draft Environmental Impact Statement conducted for the project. The U.S. EPA claimed that this DEIS was deficient in its analysis on water supplies byproducts, mercury emissions, public health and environmental justice.³¹ Potential contamination of water resources, public health and environmental justice all

²⁵ Id.

²⁶ Tiller, Guide to Indian Country, 2005. A very low estimate.

²⁷ John Christian Hopkins, "Council OKs Desert Rock Power Plant." Gallup Independent, May 26, 2006.

²⁸ Id.

²⁹ Kathy Helms, "Contractor is named for Desert Rock power plant." Gallup Independent, September 10, 2007.

³⁰ Reno, Philip, Mother Earth, Father Sky and Economic Development: Navajo Resources and their use, University of New Mexico Press, pg. 7, 1981.

³¹ Susan Montoya Bryan, "Desert Rock Energy Project: Power plant document concerns EPA." Associated Press, September 17, 2007.

served as underpinning arguments for the Diné Natural Resources Protection Act of 2005. A responsible government might address these concerns directly and reconsider the project given these new concerns. Yet Joe Shirley and the Diné Power Authority immediately defend the project—despite the health warnings raised.³²

In July of 2007, speaking before a conference on the future of Native energy, the Native American Energy Initiative, Shirley said future federal funding should be directed toward “coal and other fossil fuels” which he said was cheaper than renewable energy. He said, “[f]or the foreseeable future, our primary source of energy will come from fossil fuels, and in the case of the United States, that source of fuel will be coal,” and that “it is the cheapest and most plentiful.”³³ His mode of analysis was based on economic cost—not for the Navajo Nation but for the U.S. government. He argued that continued use of dirty technologies is entirely justified based on monetary expense. This is consistent with the energy platform of the Bush administration and the GOP, but is it consistent with the needs of the Navajo Nation and the direction of energy development in Indian Country?

Similarly, the Diné Power Authority (DPA), the enterprise responsible for carrying out the power plant project, has justified both of its major projects: the Navajo Transmission Project (NTP) and the Desert Rock power plant as serving U.S. energy needs. The DPA acts overtly in the interest of the U.S., potentially at environmental and health costs for the Navajo people. For example, in a 2003 letter from DPA Board of Directors Chairman Tim Goodluck to President Shirley, Goodluck claimed, “DPA continues to pursue [the above listed projects] for the benefit of not only the Navajo, but all Americans through enhanced energy security.”³⁴

Let us now consider the most recent trends in Navajo Nation governance—specifically the passage of the Fundamental Laws of the Diné. This document was designed to be an alternative method of analysis to pressing issues facing the Navajo Nation. It was created for the young whose knowledge of these “fundamental laws” is “fading.” These “laws” were thought to reflect some original principles by which traditional/historical Navajo society abided. But what we find in these historic principles are a greater emphasis on sustainability, environmental protection and a minor consideration on economic wellbeing or monetary benefit. It is insinuated within this document that following the “Diné Life Way” will naturally lead to economic sustainability. One-fourth of these laws is dedicated toward “Diné Natural Law” and maintaining a strong relationship with the

³² Consider the comments of Steven C. Begay, General Manager for the Diné Power Authority in the December 22, 2007 Navajo Times, after EPA announced its concerns about the project. Begay justified continuation based on the following considerations: 1) project will bring economic benefit to the Navajo Nation and 2) better emission technology relative to other power plants justifies the project. As Moroni Benally and I demonstrated in our comments to the Draft EIS in 2007, relative consideration is not consistent with traditional/historic Navajo approaches to environment—this is further evidenced by the categorical nature of the DNRPA. See Benally, Moroni and Andrew Curley, “Comments on the Desert Rock Energy Project Draft Environmental Impact Statement,” Diné Policy Institute, 2007.

³³ Johnson, Regina. “Navajo president wants more funding for energy development on reservations.” [Inside Energy with Federal Lands](#), July 23, 2007.

³⁴ Tim Goodluck, “DPA Authorizing Legislation and Senate Bill 14 (S14),” Letter to President Joe Shirley, July 1, 2003.

natural world, whereas only one clause within the entire FLD suggest anything to do with “making a living.” Within Diné Customary Law, Clause A, the FLD reads:

“It is the right and freedom of the people that there always be holistic education of the values and principles underlying the purpose of living in balance with all creation, walking in harmony and making a living...”³⁵

This clause identifies “making a living” as an important consideration. But “making a living” is qualified with “living in balance with all creation” and “walking in harmony.” Within Diné Natural Law, the FLD reads, among other things, “[i]t is the duty and responsibility of the Diné to protect and preserve the beauty of the natural world for future generations.”³⁶ This approach to environmental policy is not only found in the Fundamental Laws of the Diné or the Diné Natural Resource Act of 2005, but also in earlier legislation, such as parts of the mandate for the Navajo Energy Development Administration and the Navajo Nation Environmental Policy Act, which suggests a more sustainable approach to development on the Navajo Nation.

Let us consider the Navajo Energy Development Administration and its mandate as is found within the Navajo Nation Code. This administration is suppose to consider “solar, wind, and geothermal” resources. In addition it oversees “coal, oil, gas, uranium and their processed forms...” And, according to its mandate in the Navajo Nation Code, all of these considerations must be done in a manner that is “consistent with Navajo social and environmental concerns” which can be found within the Fundamental Laws of the Diné.³⁷ But according the aforementioned excerpt, Joe Shirley not only neglects sustainable development but advocates against renewable energy sources. This is an irresponsible position for the president of the Navajo Nation to take in relation to established Navajo energy needs and existing environmental and cultural laws. Now take for example the stated policy for the Navajo Nation Environmental Policy Act, reads:

It is the policy of the Navajo Nation to promote harmony and balance between the natural environment and people of the Navajo Nation, and to restore harmony and balance as necessary. To this end, the Navajo Nation Council declares that the protection, restoration and preservation of the environment is a central component of the philosophy of the Navajo Nation; that the quality of life of the Navajo People is intimately related to the quality of the environment within the Navajo Nation; that all persons and entities, including agencies, departments, enterprises and other instrumentalities of the Navajo Nation itself and agencies of other governments can and do affect the environment; and that it is the policy of the Navajo Nation to use all practicable means to create and maintain conditions under which humankind and nature can exists in productive harmony.³⁸

³⁵ Navajo Nation Code, Title 1 § 204.

³⁶ Id.

³⁷ Navajo Nation Code, Title 4 § 701. This includes uranium, despite the fact that extraction and processing of it is prohibited on the Navajo Nation.

³⁸ Navajo Nation Code, Title 4 §901.

There is an insinuated pragmatism in this reading, which argues for development that is sustainable—a balancing act between evoking damage to the natural world and maintaining human productivity. However, as has been stated before, Shirley's position is inconsistent with this reading as he argues in defense of the Desert Rock project only on economic grounds, making no reference to how such a power plant will impact nature.

Within the reading of the relevant passages of the Navajo Nation Code, it is advanced that environmental policy is based on maintaining balance between development and natural laws and walking in beauty, goals that are left unaddressed in Shirley's position on Desert Rock. Though tribal decision-makers will casually reference tradition and the use of Navajo values, such illusionary statements do not mask their true logical justification for the project. They insinuate that forecasted economic benefit from Desert Rock trumps consideration of health, environment and culture. So arguing the reverse, are we suggesting that Diné Natural Law can be brushed aside pending the amount of monetary benefit of a proposed project? Is this approach consistent with Navajo principles?

Recent legislation relevant toward environmental preservation, such as the Diné Natural Resource Act of 2005, strongly suggests that the Navajo Nation should take a more holistic, sustainable approach toward development. We have an established groundwork toward such an approach in Diné Natural Law and the Diné Natural Resource Protection Act of 2005. The Navajo Nation needs further strengthening of Diné Natural Law relative to water and land usage, but for now the DNRPA and FLD serve as a framework for future environmental considerations on the Navajo Nation.

Further Considering Diné Natural Law

In their report “*Uranium and Diné Binitsekees: An Analysis of the direct and in-direct consequences of uranium using Navajo principles*,” Moroni Benally and Andrea Speen provide a useful matrix that demonstrates how uranium extraction in general compares against traditional Navajo principles. Elements of Diné Natural Law found in the FLD and the broader system of “K’é” are used in this chart.

Table 1.0³⁹

	Criterion	Enhances Harmony and Balance		Destabilized Harmony and Balance		Not significant impact or no change.	
		NN	Global	NN	Global	NN	Global
Natural Law	Air	No	No	Yes	Yes	-	-
	Light/ fire	No	No	Yes	Yes	-	-
	Water	No	No	Yes	Yes	-	-
	Earth/ Pollen	No	No	Yes	Yes	-	-
K’é	Human Family	No	No	Yes	Yes	-	-

³⁹ Benally, Moroni and Andrea Speen, “Uranium and Diné Binitsekees: An Analysis of the direct and in-direct consequences of uranium using Navajo principles.” Diné Policy Institute, 2007. Last two rows have been omitted.

The criteria used stems directly from Diné Natural Law. Using this same matrix; I will demonstrate how the Desert Rock power plant is contradictory with the above criteria. First, let us consider how Benally and Speen justify their criteria. They write:

Air or *nilch'i* is often characterized as that substance that imbues all creation with life. Furthermore the Diné Natural Resources Protection Act positions air as a natural resource: "...the Navajo Nation's natural resources...air, light/fire, water, and earth/pollen...are the foundation of...the Diné life way." Thus air is a natural resource with added spiritual connotations. The spiritual (not religious) dimension of air, light/fire, water and earth/pollen are paramount to the concerns in this analysis.⁴⁰

And when analyzing Benally and Speen's use of natural law, they argue that the effects uranium (a radioactive element) has on the air and how it destabilizes the environment violates natural law.⁴¹ This position is very similar to the logic earlier demonstrated with *doo nal yea dah*. Considering now Desert Rock, the area in which the proposed power plant is to be constructed already contains seven additional power plants,⁴² one operating in the area for over 40 years. Residents complain about smog and health consequences from power plant emissions, though some are able to justify their suffering from the perceived economic benefit of the power plants. Focus groups Diné Policy Institute has conducted in both Shiprock and Tuba City revealed that Navajo citizens are concerned about potential health impacts from Desert Rock, but are wary of their need for jobs (and are not too concerned about Desert Rock's impact on the overall tribal budget, which seems to be of primary concern for lawmakers in Window Rock.) The Desert Rock power plant will significantly increase emissions⁴³ in the area and would destabilize the natural environment enough to violate Diné Natural Law as the Benally/Speen matrix would suggest.

When assessing K'é, it is useful to consider the predicted environmental impacts of Desert Rock as is found in *Chapter 5—Cumulative Impacts, Unavoidable Adverse Effects, and Irreversible and Irretrievable Commitment of Resources* in the Draft Environmental Impact Statement for the project.

Development [and continuation] of [area energy] projects⁴⁴ ...have resulted and probably would continue to result in the loss and alteration of wildlife habitat, including fragmentation; intentional and unintentional harassment of wildlife; invasion of non-native vegetation; intentional and

⁴⁰ Id., pg. 6. Footnotes found in the original have been omitted.

⁴¹ Id.

⁴² Desert Rock Energy Project Draft EIS, Chapter 3-Affected Environment, pg. 20, May 2007.

⁴³ In a public statement opposing the proposed Desert Rock power plant, New Mexico's Governor Bill Richardson claimed that the Desert Rock power plant would increase New Mexico greenhouse gas emissions by 15 percent. See "Governor Richardson Issues Statement on Proposed Desert Rock Energy Facility." State of New Mexico Office of Governor, July 27, 2007.

⁴⁴ Including the proposed Desert Rock power plant, alongside the two other power plants in the Farmington, NM area.

unintentional mortalities of wildlife from exposure to contaminants, depletion of water resources, collisions with vehicles, increases in legal or illegal harvests of game and non-game species, electrocution/collisions with overhead electrical transmission lines; increases in air and water pollution that directly or indirectly effect plants and animals...⁴⁵

But within Diné Natural Law the FLD mandates that the Navajo must “respect, honor and protect” the “four sacred elements of life:” air, light/fire water and earth/pollen—part of the criteria found in the Benally/Speen matrix. More to point, Navajos have “sacred obligation and duty to respect, preserve and protect all that was provided for [them, and who] were designated as the steward for these relatives...” and “...the use of land, natural resources, sacred sites and other living beings must be mitigated with proper protocols of respect and offering and these practices must be protected and preserved for they are the foundation of [Navajo] spiritual ceremonies and the Dine life way”⁴⁶. Therefore, we can conclude that the proposed Desert Rock power plant will destabilize harmony and balance in these dimensions and, conversely, will not enhance these qualities, consideration found in the Benally/Speen matrix.

When we consider “global impacts” we need to consider the effects a coal-fired power plants will have on the world community. The end of 2007 brought climate change to the forefront of global discourse. In December the United Nations hosted a Climate Change Conference in Bali, Indonesia to discuss future strategies on preventing ongoing climate change. Additionally, former Vice President Al Gore, along with the UN Intergovernmental Panel on Climate Change, won the Noble Peace Prize “for their efforts to build up and disseminate greater knowledge about man-made climate change, and to lay the foundations for the measures that are needed to counteract such changes”⁴⁷—sending a signal to the world community about the need for urgent and drastic action regarding worldwide climate change. Coal-fired power plants are the single largest contributor to the greenhouse gases that cause global warming.⁴⁸ The United States is the second-largest emitter of greenhouse gases (barely behind China with more than double the U.S. population), much of this a result of U.S. reliance on coal.⁴⁹

Additionally, in a 2004 report from the UN’s Secretary-General’s High-Level Panel on Threats Challenges and Change, the report’s authors write: “climate change exacerbates the occurrence of such infectious disease as malaria and dengue fever [throughout the world],” that “[m]ore than two billion people were affected by such [natural] disasters in the last decade...If climate change produces more acute flooding, heat waves, droughts and storms, this pace may accelerate.”⁵⁰ Mainstream political opinion disfavors continued

⁴⁵ Desert Rock Energy Project Draft EIS, Chapter 5-Cummulative Impact, pg. 21, May 2007.

⁴⁶ Navajo Nation Code, Title 1 § 205.

⁴⁷ Ole Danbolt Mjøs, http://nobelprize.org/nobel_prizes/peace/laureates/2007/presentation-speech.html Last accessed January 29, 2008.

⁴⁸ Craig Canine, “How to clean coal.” *On Earth*, 2005. <http://www.nrdc.org/onearth/05fall/coal1.asp> Last accessed January 29, 2008.

⁴⁹ Id.

⁵⁰ Challenges and Change, A more secure world: Our shared responsibility, 2004.

reliance on fossil fuels—especially coal. During his acceptance speech, Al Gore said, “[w]e also need a moratorium on the construction of any new generating facility that burns coal without the capacity to safely trap and store carbon dioxide.”⁵¹ Therefore it is clearly demonstrable that the world would suffer negatively as a consequence of power plant construction on the Navajo Nation.

We should also take into consideration the environmental impact of climate change to the Navajo Nation. According to a report from the Natural Resources Law Center at the University of Colorado Law School, climate change will directly affect: “[t]raditional tribal practices and relationships with the natural world from the spiritual, cultural, and economic foundation for many Native American nations—foundations that will be, and in some cases already are, threatened by climate change. In addition, the effects of climate change will fall disproportionately on tribes.”⁵²

Specifically, the report claims southwestern tribes will experience potential water shortage, jockeying for water rights with large urban areas who have greater political clout such as Phoenix and Albuquerque. The report claims that an increasing of global temperatures by only 2° Celsius could severely affect water levels within the Colorado Basin—on which the Navajo Nation is dependent.⁵³ Shirley’s strategy conversely is to dedicate limited Navajo water resources for power plant use that will contribute to increased greenhouse gases and thus aggregate water depletion on the Navajo Nation—and for the primary benefit of energy users in Phoenix and Las Vegas, not the Navajo Nation. We can conclude that the proposed Desert Rock power plant would have the exact same outcome as Benally and Speen found for uranium.

Desert Rock an outcome of long term energy development strategy?

So how did such an egregious project that counters both prevailing Navajo and global environmental trends garner such backing from tribal officials, the very same tribal officials who concluded future uranium extraction is a threat? As was demonstrated in Shirley’s remarks on Democracy Now!, it is not as though this hypocrisy is unknown to them. Rather, it is the structure of government and use of tribal enterprises as a form of economic development that has saddled for more than 20 years the Navajo Nation with this particular project. Desert Rock has been touted as the largest project the Navajo Nation has ever taken on.⁵⁴ How did this happen? It is useful now to briefly consider the history of the project and attempt to conclude broader implications on Navajo governance. We will now consider the existence of the Diné Power Authority, a tribally funded enterprise that has led the Navajo Nation into development of the Navajo Transmission Project and the proposed Desert Rock Power Plant for over 20 years with millions of dollars spent.

⁵¹ Al Gore 2007 Nobel Peace Prize lecture, http://nobelprize.org/nobel_prizes/peace/laureates/2007/gore-lecture_en.html Last Accessed January 29, 2008.

⁵² Hanna, Jonathon M, “Native Communities and Climate Change: protecting tribal resources as part of national climate policy.” Natural Resource Law Center at the University of Colorado, 2007, pg. 2.

⁵³ Id. pg. 19

⁵⁴ Steven C. Begay, “Desert Rock a needed project for Navajo Nation,” Navajo Times, December 22, 2007.

The power plant in northwestern New Mexico was originally conceived in 1982 as a form of energy/economic development on the Navajo Nation—specifically to benefit those relocated from Hopi lands as a result of the Navajo-Hopi Settlement Act. In this act Congress allowed for the purchase of 400,000 acres to the Navajo Nation for relocatees, with 35,000 acres in New Mexico.⁵⁵ The Diné Power Authority was initially created as the Diné Power and Light Authority during Peterson Zah's chairmanship in 1985. Subsequent years the Navajo Nation government has funded the Diné Power Authority in the form of grants for the purpose of power plant construction. For example, according to the 1990 Navajo Nation Budget, the Dine Power Authority was granted \$121,840 in the form of a grant to “provide overall tribal participation by managing, administering, developing, and coordinating the impacted communities concerns diversified resource projects and Dineh (sic) Power plant.” Here is a timeline of the Diné Power Authority:

Year	Event
1985	The Navajo Nation Council created the Diné Power Authority (DPA) to “develop[] electric transmission and generation projects within the Navajo Nation.” ⁵⁶
1991	Diné Power Authority was given a mandate to develop the Navajo Transmission Project, “to address the opportunity and need for additional transmission in this region.” ⁵⁷
1996	Draft Environmental Impact Statement for the Navajo Transmission Project issued from the Department of Energy. ⁵⁸
2003	DPA signs an agreement with STEAG Power LLC to develop the Desert Rock Power Plant. ⁵⁹
February 2006	Navajo Nation approves of water lease for Desert Rock Power Plant. ⁶⁰
May 2006	Navajo Nation approves of lease for Desert Rock Power Plant. ⁶¹
March 2007	New Mexico Legislature denies 15 percent tax cut (estimated 85 million dollars) for Sithe Global for the construction of Desert Rock Power Plant on the Navajo Nation. ⁶²
May 2007	Department of Interior releases Draft Environmental Impact Statement for proposed Desert Rock Power Plant, hearing are scheduled for the summer.

⁵⁵ LeNora Begay, “Power plant plans OKd,” Navajo Times TODAY, Nov. 6, 1985.

⁵⁶ Ben Hoisington, “Diné Power Authority (DPA) Presentation Prepared for Office of Energy Efficiency and Renewable Energy TRIBAL ENERGY PROGRAM October 20, 2004.”

http://www.eere.energy.gov/tribalenergy/pdfs/37_dine_power_hoisington.pdf Last Accessed January 24, 2008.

⁵⁷ Id. Though another document titled, “Background of Diné Power Authority and the Navajo Transmission Project,” claims that DPA has been working on NTP since 1990.

⁵⁸ “Background of Diné Power Authority and the Navajo Transmission Project.” 2003.

⁵⁹ Id.

There is more to the Diné Power Authority than this brief consideration can suffice. But what I will try to consider here is the existence of DPA, its mandate as given by the Navajo Nation Council, and its demonstrated agenda as an outcome of systemic problems within the Navajo Nation government. In 1985 the Navajo Nation Council created the Diné Power and Light Authority to construct a power plant in northwest New Mexico, specifically at Paragon Ranch.⁶³ According to Roman Bitsuie, then Council Delegate from Hardrock:

...the Paragon Ranch [where the now Desert Rock power plant was originally supposed to be built] was selected in 1982 pursuant to Public Law 93-531 that we're all familiar with, the so-called Navajo and Hopi Land Settlement Act. The reason for that selection is in the 1980 amendments to the 1974 Act it required the Navajo Tribe to select 35,000 acres within the state of New Mexico. And after numerous consultations with the Eastern Land Board at that time the selection of Paragon Ranch was recommended. One of the main reasons for that selection was for the abundance of the underlying coal resources and the potential to use our water that flows within the San Juan River, and also the substantial benefits that the Navajo Nation would gain [through economic development].⁶⁴

The original decision to build a coal-fed power plant in northwestern New Mexico is rooted in 1982 conversations between the Eastern Land Board and the Navajo Nation in considering of the 1974 Navajo and Hopi Land Settlement. Today, nearly 26 years later the power plant is not yet built and the Navajo Nation seems unable to fathom the changed global milieu. The first and most obvious problem is that the Diné Power Authority and the Navajo Nation government have shown to be unresponsive to changed circumstances, such as the concern of climate change mentioned earlier. Second, significant details of the project have changed (e.g., location and time) without significant dynamics of the project being adjusted. For example, the proposed project sight has shifted from the uninhabited Paragon Ranch to the inhabited and well-established community of Burnham, New Mexico. Second, it was originally advanced within the above statement that the San Juan River would provide water for the power plant. This has changed to use of a deep aquifer—but there is much speculation that the proposed Navajo-Gallup Water Pipeline or some other mechanism could carry water from the San Juan River to the Desert Rock power plant.⁶⁵

⁶⁰ Steve Hooks, "Navajos OK water agreement for proposed Desert Rock power plant." Platts Coal Outlook February 13, 2006.

⁶¹ "Navajo Tribal Council okays lease, tax deal for Sithe, Dine to develop a 1,500-MW plant." Platts Coal Outlook May 18, 2006.

⁶² Moises Velasquez-Manoff, "Monitor follow-up: New Mexico coal plant set back." Christian Science Monitor May 03, 2007; "\$85 million tax break tabled for 1,500-MW Desert Rock project." Platts Coal Outlook February 5, 2007.

⁶³ LeNora Begay, "Power plant plans OKd." Navajo Times TODAY November 6, 1985.

⁶⁴ Author has transcripts from Navajo Nation Council, November 5, 1985.

⁶⁵ Dailan J. Long, "What about the Burnham Water Haulers?" Letter to the Editor Sante Fe New Mexican September 09, 2007. http://www.alpcentral.com/article.php?article_id=19481, Last Accessed February 8, 2008.

With the change in location, change in environmental circumstances (e.g., waxing importance of water for Navajo communities and related effects from climate change) proponents of the project should seriously reconsider the supposed benefits of the project. In the very least a responsible government would maintain a healthy bit of skepticism about the project. But as evidenced in Shirley's documented support of the power plant, tribal decision makers have not approached the project with thoughtful analysis. Rather the perceived economic benefits of Desert Rock is used to rebut all of these outstanding concerns. What's the reason for this? We can speculate on the following considerations: 1) the tribe has invested millions of dollars into the Diné Power Authority with the specific mandate of developing a power plant in northwestern New Mexico 2) many lawmakers seem directly tied to the project with a number of council delegates on its Board of Directors and, finally⁶⁶ 3) the decision for the Navajo Nation to commit itself to a power plant in northwestern New Mexico was done at a technocratic level in the centralized apparatus of Window Rock, resulting in little public attention to the issue until nearly 20 years into the project. Ultimately, as is demonstrated above the Diné Power Authority and the Desert Rock power plant that it is responsible to bring into fruition does not reflect the sentiment found in Diné Natural Law or other traditional concepts.

Conclusion

The Diné Natural Resource Protection Act of 2005 was instrumental in bringing historic cultural concepts into environmental policy. The DNRPA does something of which few legislative acts are capable, putting a permanent prohibition on a destructive activity—regardless of prevailing economic incentive. The categorical principle of *doo nal yea dah* sets forth a clear precedent in how health and other qualitative factors should be weighed in future economic development on the Navajo Nation. The emphasis of the principle is on health, and although this is not explicit it is insinuated within the syntax of the phrase. Meaning the implication of removing from the earth what is known to be dangerous will result in negative health effects. In such circumstances therefore a categorical imperative is established. Consideration of health outweighs economic benefit in this analysis. Some might argue that these principles are outmoded for today's U.S. and world economies. And there is some truth to this. For capitalism and industrialization are new systems of hierarchy in Navajo society, and branding layers of bureaucracy or hierachal positions (as is the case now) with a Navajo word does not make the system "Navajo."⁶⁷ Much of the inconsistency between Western economic development and traditional Navajo principles stems from the difference in current versus historical systems of economic organization, what Durkheim called *anomie*.⁶⁸ We have been trained to assume that Western economic development is better because of the material benefits it garners. And

⁶⁶ As of 2003 Navajo Nation Council Speaker Lawrence T. Morgan, George Arthur, Chairman for the Resource Committee, Patrick Sandoval, President Joe Shirley's Chief of Staff and Alan Begay, Director of Economic Development, Tim Goodluck, current Council Delegate from Lupton, AZ among others were on DPA's Board of Directors. Oddly. Steven Begay, General Manager of DPA was also on the Board of Directors.

⁶⁷ For more on historic Navajo economy see Reno, Philip, Mother Earth, Father Sky and Economic Development: Navajo Resources and Their Use University of New Mexico Press, 1981.

⁶⁸ Durkheim, Emilé, Suicide, 1897.

there is little argument against the benefits of Western science and technology, but these are neutral elements within development lacking an ideological leaning.⁶⁹ Technology and science can be utilized in myriad organizational structures,⁷⁰ even those resembling traditional Indian societies. What's more, we have generations of knowledge built from living off this land. Environmental principles from Diné Natural Law are rooted in our people's ability to adapt to very particular environmental conditions. To brush these aside as irrelevant in our future and current policymaking is a risk to the future of the Navajo people. And with the increasing effects of climate and environment degradation as a result of Western science and economic organization, Indigenous knowledge of environment is increasing in importance and relevance to development, what Bolivian President Evo Morales calls, "the moral reserve for humanity."

We have seen, unfortunately, that these considerations have not been taken into immediate use within current natural resource use on the Navajo Nation. A large contributing factor for this is the Navajo Nation's reliance on dirty energy as a source of revenue and jobs—no easy condition to change. The continence of the Desert Rock project, however, seems to be more a result of an accrued 25 years impetus. This is the greatest current affront to the logic of *doo nal yea dah*. Yet as is demonstrated in the passing of the Fundamental Laws of the Diné and the Diné Natural Resource Protection Act of 2005 and the spirited resistance against the Desert Rock power plant from Navajo organized civil society,⁷¹ who are at the vanguard of establishing a lexicon of environmental concepts for decision makers on the Navajo Nation, the Navajo Nation and its people have a good chance of realizing health and prosperity, not necessarily mutually exclusive terms as Western economic organization might suggest.

It is recommended therefore that the Navajo Nation: 1) put a moratorium on the Desert Rock project until both health concerns and violations to traditional principles are resolved and 2) the Navajo Nation should seriously consider how it uses enterprises or "authorities" in promoting development or specific agenda within its governance. It is evident with the severe critique against the Desert Rock project that it lacks requisite community support and its dimensions should be reconsidered.

⁶⁹ Noam Chomsky, "For a Free Humanity: For Anarchy." AK Press 1997.

⁷⁰ Marcuse, Herbert, One Dimensional Man. Beacon Press, 1964, pg. 231

⁷¹ Michel Feher describes organized civil-society as those "involved in politics without aspiring to govern." See Nongovernmental Politics, Zone Books, 2007, pg. 12. For our purposes, we consider organized civil society those non-profit and/or volunteer organizations working on issues of environment and/or governance on the Navajo Nation. The relevant organizations being: Dóóda Desert Rock, Diné Citizens Against Ruining our Environment and Eastern Navajo Diné against Uranium Mining,