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In order to ensure the safe, ethical and equitable development and regulation of energy within the Navajo Nation, consistent with Diné Fundamental Law and Diné teachings, Diné Policy Institute has the following recommendations regarding the current draft of Navajo Nation Energy Policy:

Page#	Sec:	Title/Comment
1	PREAMBLE	<ol style="list-style-type: none"> 1. Energy Policy adopted by the Navajo Nation should set forth principles relating to the development and use of energy on the Nation, consistent with the Fundamental Law of the Diné. 2. The foremost concern of the Nation in adopting an energy policy should be the health and wellness of Diné people, and their relationships to the natural world as established in Diné Natural Law.
3	Section 2	<p>Scope</p> <ol style="list-style-type: none"> 1. Energy policy should address the Nation’s interactions with state/federal/municipal governments or private entities for projects located on non-Navajo lands near Navajo Nation borders.
4	Section 3	<p>Definitions</p> <ol style="list-style-type: none"> 1. Definitions should be provided for “Renewable Energy” and other significant terms that are absent in the current draft energy policy.
	Section 401	<p>Applicability of the Nation’s Laws and Regulations.</p> <ol style="list-style-type: none"> 1. With includes the Fundamental Law of the Diné (<i>Diné bibeelaz’áanii bitsé siléi</i>), under 1 N.N.C. § 205, is the Diné Natural Law, Traditional Law, Customary Law and Common Law, which is “the law of preference” in the Navajo Nation.¹
	Section 405	<p>Selecting External Development Partners.</p> <ol style="list-style-type: none"> 1. External development partners should be selected based on respect for and honoring of the Nation’s energy policy, with

¹ *Navajo Nation v. Platero*, 6 Nav. Rptr. 422, 424 (Nav. Sup. Ct. 1991).

		respect to Diné Natural Law.
	Section 406	<p>End of Project Life.</p> <p>Leases and rights-of-way for energy projects will require the lessees to return the land to its original condition, or better...</p> <ol style="list-style-type: none"> 1. This provision may be unrealistic and misleading given the history with Natural resource extraction and land conditions.
4	Section 407	<p>Consistency in Energy-Related Decision Making.</p> <ol style="list-style-type: none"> 1. Energy related decision-making should involve <i>Nitsáhákees-Nahat'á-Iiná-Siihasin</i> and provide a framework for allocating revenues in a manner that is equitable and consistent with the principles of distributive justice.
4/5	Section 408	<p>Impact on Other Resources.</p> <ol style="list-style-type: none"> 1. New and existing energy projects shall eliminate or minimize negative impacts on the Navajo people and resources. 2. Previous Environmental Impact Studies assessments, utilized by both the Navajo Nation and US government, attempted to accommodate the socio-cultural elements of the Navajo people but did not sufficiently consider Diné Fundamental Laws or Diné Life Way.² The utilization of Diné Fundamental laws in the decision-making and evaluation processes is a more culturally appropriate approach to considering energy project potential impacts on tribal members.
5	Section 502	<p>Maximizing Navajo Return on Investment.</p> <ol style="list-style-type: none"> 1. Diné Natural Law should be adhered to for the protection and maintenance of the sacred natural resources placed in care of the Diné, when considering maximization of return on investment for energy projects.
5	Section 503	<p>Navajo Ownership and Development Representatives.</p> <ol style="list-style-type: none"> 1. Any entity to be designated by the Nation as its representative in an energy project should undergo an extensive screening process to ensure Diné perspectives relating to Diné Natural Law are sufficiently represented in any project.
	Section 602	<p>Local Community Input, Support for, and Benefits from Energy Developments.</p> <ol style="list-style-type: none"> 1. Individuals and communities should be provided ample opportunity to comment and make recommendations (positive

² Benally and Curley, "Comments on the Desert Rock Energy Project Draft Environmental Impact Statement DOI DES 07-23" (2007) pg 2.

		or negative) on energy projects that may impact them.
	Section 604	Navajo-Owned Small Businesses. 1. Energy policy should elaborate on the types of support that the policy will provide for Navajo-owned small businesses.
	Section 605	Fostering Economic Development, Developing Capabilities and Creating Career Opportunities. 1. The Nation should support education grounded in Navajo perspectives on energy and natural resources as defined by Diné Natural Law in order to ensure understanding and adherence to this law into the future. Trainings on application of Diné Natural Law should be developed for use with employees of natural resources related offices in NN government and for contractors who work on Navajo.
	Section 607	Science Education. 1. The Navajo Nation needs to aggressively support and implement Science, Technology, Engineering, and Mathematics (STEM) curriculum into K-12 and Tribally control Colleges.
	Section 701	A Future with Coal and Coal-Fired Power Plants. 1. The Nation should diversify its financial portfolio by decreasing its heavy reliance of coal (a finite resource) royalties and increasing other revenues (such as payroll tax and alternative energies).
	Section 802	Renewable Energy Portfolio Standard (RPS). If an RPS is established..., 1. Stronger language is needed if the Navajo Nation is serious about renewable energy and transitioning away from finite fossil fuels.
	Section 901	Uranium Mining and Nuclear Power Generation. 1. The Nation should uphold its ban on the mining and processing of Uranium and continue to monitor and advocate for the clean up and healthcare of affected community. 2. Diné Natural Resources Protection Act of 2005, cites the FLD directly and thus establishes precedent for its use within Navajo resource development.
8	Section 1201	Support for Technologies that Enhance the Use of Navajo Coal. 1. The Nation should support the research and development of technologies that will allow the Nation to use its resources to maximize their benefit to the Nation <i>and</i> lessen the

		environmental impact of their use consistent with Dine bi beehaz' aanii (1 N.N.C. §§ 201-206).
9	Section e:	Provide the basis for a private cause of action by or against any person or entity, or confer jurisdiction upon any court for any cause of action predicated on the 2011 Energy Policy. <ol style="list-style-type: none"> 1. The energy policy should not wave or bar a private citizen's basic rights to file a claim in court arising from a dispute based on the policy.

The following comment paper will review traditional Diné knowledge on the utilization of natural resources. These teachings should be the guiding principles and foundation of the Navajo Nation Energy Policy.

Diné Natural Law as Guiding Law for Natural Resources

The Fundamental Law of the Diné (*Diné bibeelaz' aanii bitsé siléi*), under 1 N.N.C. § 205, is the Diné Natural Law, Traditional Law, Customary Law and Common Law, which is “the law of preference” in the Navajo Nation.³ *Nahasdzáán dóó Yádilhil Bitsqqdęę Beenahaz' aanii*, The Natural Law of the Diné, recognizes the relationships between Navajo people, the sacred elements, Mother Earth and Father Sky, as well as the rights and freedoms of these entities. In Diné teachings, the importance of caring for the natural resources entrusted to us for safe keeping is described by four key concepts apply to all nature: *Baa aháyá, baa háá hasin, dílzín, dóó baa ja' hóná* (to care for, to value and safeguard, to treat with reverence, and to cherish through utmost duty of care). The Natural Law of the Diné provides guidelines for the use of land, natural resources, sacred sites and other living beings through proper protocol of respect and offering for the preservation and protection of these beings.

Ałch'í'silá

Diné Natural Law tells the Diné people how to live in harmony with all living things and avoid the negative impacts drawn from utilization of natural resources. The concept of *ałch'í'silá* (positive and negative characteristics) is useful in understanding how Diné Natural Law guides utilization of natural resources. Natural resources, and energy derived therefrom, can provide for life but they can also be the cause of adverse effects and even death. Although the extraction of natural resources may create short-term benefits the long-term consequences should be recognized and address (*baa'át'e' hóló*). An energy policy for the Navajo Nation should implement this law for the purpose of protecting the Diné people from *Té'é'í* (poverty or other negative impacts suffered as a result of abuse of Mother Earth).

³ *Navajo Nation v. Platero*, 6 Nav. Rptr. 422, 424 (Nav. Sup. Ct. 1991).

Local Diné Use of Resources

Maximizing control over the natural resources and creating innovative pathways for local small-scale power systems will ensure proper adherence to *Nahasdzáán dóó Yádilhil Bitsqadęę Beenahaz'áanii* and produce energy equity. A decentralized, distributed model of developing and owning multiple, smaller renewable energy projects across the Navajo Nation promises far greater and more sustainable benefits to the Navajo people as a whole.⁴

Leejin (Coal):

In Diné teachings, *Leejin*, or coal, is a sacred element of the *body* of Mother Earth. The removal of coal from Mother Earth is equivalent to performing surgery on Mother Earth's body. In accordance with Diné Natural Law, *if* this type of activity is undertaken, it should be done through proper protocol of respect and offering for the preservation and protection of this sacred element, at 1 N.N.C. § 205(F). The Navajo Nation currently depends on coal mining and energy production from coal as major sources of revenue. However, the current extraction of coal from Mother Earth is inconsistent with Diné Natural Law. When coal is harvested from Mother Earth in this way, it constitutes abuse and leads to consequences (*baa'át'e' hóló*).

In addition, pollution from coal burning for energy production affects the critical interaction between Mother Earth and Father Sky, which is essential for balance. The impacts drawn from the imbalance created by this situation can be seen in all living things on earth, including human beings.

While mainstream natural resource development sees coal in purely economic terms, and fails to emphasize a relationship with Mother Earth and Father Sky, in Diné thinking, long-term, mass extraction and burning of coal can upset the balance of Mother Earth and Father Sky.

Leetsoh (Uranium), Oil and Natural Gas:

In Diné teachings, uranium, oil and natural gas are *Nayéé'*, the negative beings that once caused great suffering for the Diné people. As a result, the extraction of these elements poses great danger to the Diné people, the consequences of which are devastating. When the *Nayéé'* were nearly exterminated from the earth, and their remains were set in the ground, it was understood that these substances were never again to be unearthed.

Uranium, in particular, as *Ye'ii Tso Bik'ah*, is a substance with which Diné people were never again to come in contact. The Diné Natural Resources Protection Act of 2005 declares that, "the ceremonies and stories that have been passed down from generation to generation warn that certain substances of 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

⁴ Ecos Consulting, "Energy and Economic Alternatives to the Desert Rock Energy Project, 71.

such substance, and therefore, that its extraction should be avoided as traditional practice and prohibited by Navajo law,” at 2 N.N.C § 691 *et se.,/q.*

Transitioning to Renewable Energy Production/Diversifying Navajo Nation Economy:

Using the Diné paradigm, Nahat’á in particular, a plan to shift from reliance on coal to increased use of renewable energy is needed for the future of the Diné. Historically, the Diné had a functional subsistence-based economy that ensured a harmonious and vigorous society while maintaining the Diné value of stewardship of all creation.⁵ The Nation currently relies on significant royalties, rent, fees, jobs and tax revenue from coal mining and production of electricity from coal. Given Diné teachings and the adverse effects on community health and the environment related to coal use, the Nation needs to transition from heavy reliance on coal to a more sustainable future of energy production, through increased use of renewable energy sources.

Health of People and Customary Law:

Diné Customary Law at 1 N.N.C § 204, E, declares that, “It is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse.” Mainstream scientific evidence of adverse health effects from the use of coal and uranium can be seen as consequences for abuse of Mother Earth and thus, a violation of Diné Customary Law. Adverse effects from the utilization of any natural resources should be prevented where at all possible. As such, the Nation should honor the respect its ban on the use of uranium, and decrease its use of coal by transitioning to renewable energies.

Policy and Diné People:

The process of *Nitsáhákees-Nahat’á-Iiná-Siihasin*, under the newly adopted amendment to Title II, requires ample opportunity for comments and recommendations (positive or negative) by Diné people on proposed energy development projects. Sufficient notice for such opportunities to comment should be provided.

Energy related decision-making should involve development in a manner that is consistent with the principles of distributive justice, or the equitable sharing of the common resources of the Navajo people.

Legal – Limitations:

The Navajo Nation Bill of Rights provides that as a matter of basic human rights, every person has the right to seek redress and remedy in a court of law and equity. To bar a person’s right to file a claim in court, arising from a dispute based on the Nation’s Energy Policy, is a clear violation of basic human rights.

⁵ Navajo Nation Green Economy Commission, Findings (c).