



23rd NAVAJO NATION COUNCIL LEGISLATION SPONSORSHIP WITHDRAWAL

I, DAVIS FILFRED, Primary
Sponsor of proposed legislation hereby withdraw my
sponsorship of the proposed legislation. The legislation
tracking number is 0200-15.

If there are any co-sponsors, they may re-sponsor the same
bill by beginning a new legislation.

SPONSOR SIGNATURE:

DATE:

[Signature]
7/7/15

LEGISLATIVE SUMMARY SHEET

Tracking No. 0220-15

DATE: June 9, 2015

TITLE OF RESOLUTION: RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND NAA'BIK'ÍYÁTI COMMITTEE; CONFIRMING MARVIN PAUL MURPHY TO SERVE AS THE EASTERN AGENCY REPRESENTATIVE ON THE BOARD OF DIRECTORS OF NAVAJO NATION OIL AND GAS COMPANY FOR A TERM OF THREE (3) YEARS COMMENCING IMMEDIATELY

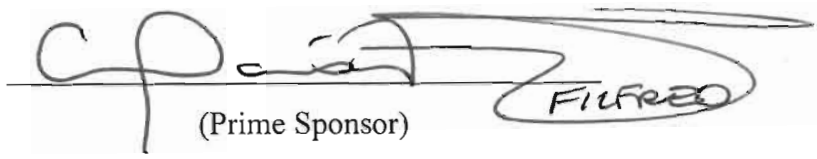
PURPOSE: This resolution if approved, will appoint Marvin Paul Murphy to the Navajo Oil and Gas Board of Directors to represent the Eastern Navajo Agency for a three year term.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed legislation in detail.

5-DAY BILL HOLD PERIOD: NAUG
Website Posting Time/Date: 4:23pm 4/11/15
Posting End Date: 4/16/2015
Eligible for Action: 4/17/2015

Resources & Development Committee
THENCE
Naa'bik'íyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL -- First Year, 2015
INTRODUCED BY


(Prime Sponsor)

TRACKING NO. 0200-15

AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND
NAA'BIK'ÍYÁTI COMMITTEE; CONFIRMING MARVIN PAUL MURPHY TO
SERVE AS THE EASTERN AGENCY REPRESENTATIVE ON THE BOARD OF
DIRECTORS OF NAVAJO NATION OIL AND GAS COMPANY FOR A TERM OF
THREE (3) YEARS COMMENCING IMMEDIATELY

BE IT ENACTED:

SECTION 1. FINDINGS

- A. The Resources and Development Committee exercises oversight authority over the natural resources of the Navajo Nation for the regulation of the disposition or acquisition of resources including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward. 2 N.N.C. § 500(C)(2).
- B. The Naabik'íyáti' Committee has the power to give final confirmation of appointments to boards, commissions, and colleges. 2 N.N.C. § 701(A)(1).

1 C. The Federal Charter of Incorporation for the Navajo Nation Oil and Gas Company
2 (Charter) provides that members of the Board of Directors (Board) shall be elected as
3 follows:
4

5 A Board of Directors to succeed the initial Board shall be elected
6 within twelve (12) months following the effective date of this
7 Charter. The Agency Councils shall nominate five (5) Directors
8 and the President of the Navajo Nation shall nominate four (4)
9 Directors. The list of the nine nominees shall be presented to the
10 Economic Development Committee of the Navajo Nation Council
11 or any successor committee [*now Resources and Development*] for
12 its recommendations to the Government Services Committee of the
13 Navajo Nation Council [*now Naabik'íyáti' Committee*] for its final
14 confirmation at a duly scheduled meeting of the Committee at
15 which a quorum is present. The Committee shall consider and vote
16 on each nominee individually, and a majority vote in favor of a
17 nominee shall constitute confirmation of the nominee as a Director.
18 The Committee may for any reason table any nomination for
19 consideration at the next duly scheduled meeting of the
20 Committee. If any nominee is rejected by vote of the Committee,
21 the Committee shall so notify the Agency Council(s) or the
22 President of the Navajo Nation as appropriate, who shall make a
23 new nomination for consideration by the Committee in conformity
24 with the procedures established by this paragraph. Whenever any
25 vacancy shall occur in the Board of Directors by death, resignation,
26 removal or otherwise, the same shall be filled without undue delay.
27 Depending upon the Board position vacated, a new Director shall
28 be nominated by the President of the Navajo Nation or the
29 appropriate Agency Council to maintain the representation
30

1 established by this paragraph. The nominee shall be confirmed in
2 conformity with the procedures established by this paragraph.

3
4 Charter, Article XI(C) (italicized additions ours).

5
6 D. The Charter provides for the Qualifications of Directors:

7
8 F. Qualifications of Directors

9 1. At all times the majority of the Directors shall be enrolled
10 members of the Navajo Nation, and all non-member Directors shall
11 be respected individuals with substantial experience in positions of
12 responsibility in business or government. All directors nominated
13 by the President of the Navajo Nation under Paragraph of this
14 Article XI shall have substantial experience in positions of
15 responsibility in the oil and gas industry.

16 2. No employee of the Bureau of Indian Affairs shall be eligible to
17 serve as a Director during the time of such employment.

18 3. No more than one-third (1/3) of the Directors may serve
19 concurrently on the Board of Directors of the Corporation and on
20 any other board of a corporation owned by the Navajo Nation.

21
22 Charter, Article XI(F).

23
24 E. The Eastern Navajo Agency Council has nominated Marvin Paul Murphy as the
25 Eastern Agency representative on the Board by a unanimous vote in Resolution ENAC-03-
26 2014-04. Attached as Exhibit "A".

27 F. Marvin Paul Murphy's resume is attached as Exhibit "B".

28 G. The term of office for membership on the Board is specified in the Charter, which
29 provides:

1 D. Term of Office. Three of the Directors initially elected by the
2 Government Services Committee of the Navajo Nation Council
3 [*now Naabik'íyáti' Committee*] shall be confirmed for terms of one
4 (1) year each; three shall be confirmed for terms of two (2) years
5 each; and three shall be confirmed for terms of three (3) years
6 each. After the expiration of the initial term as Director, each
7 successor Director shall be confirmed for a term of three (3) years.
8

9 Charter, Article XI(D) (italicized additions ours).
10

11 G. The Navajo Nation hereby finds that confirming the nomination of Marvin Paul
12 Murphy to serve as the Eastern Agency representative on the Board is in the best interest of
13 the Navajo People.
14

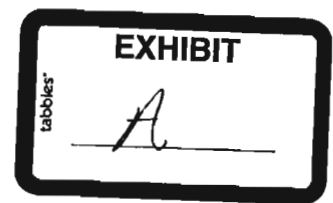
15 **SECTION 2. CONFIRMING MARVIN PAUL MURPHY TO SERVE AS THE**
16 **EASTERN AGENCY REPRESENTATIVE ON THE BOARD OF**
17 **DIRECTORS FOR NAVAJO NATION OIL AND GAS**
18 **COMPANY FOR A TERM OF THREE (3) YEARS**
19 **COMMENCING IMMEDIATELY**
20

21 The Navajo Nation hereby confirms the Eastern Agency nomination of Marvin
22 Paul Murphy to serve as the Eastern Agency representative on the Navajo Nation Oil and
23 Gas Company Board of Directors for a term of three (3) years commencing immediately.
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**EASTERN NAVAJO AGENCY COUNCIL
THE NAVAJO NATION**

P.O. Box 668
Crownpoint, New Mexico 87313
Phone: (505) 786-2090
Fax: (505) 786-2097



Ben Shelly, President

Ervin Chavez
President

Johnny Johnson
Vice-President

Rex Lee Jim, Vice-President

FernieYazzie
Secretary/Treasurer

ENAC-03-2014-04

RESOLUTION OF THE EASTERN NAVAJO AGENCY COUNCIL

RECOMMENDING AND NOMINATING MR. MARVIN PAUL MURPHY FOR MEMBERSHIP ON THE BOARD OF DIRECTORS OF THE NAVAJO NATION OIL AND GAS COMPANY AND REQUESTING THE EASTERN NAVAJO AGENCY TO RECOMMEND HIS NOMINATION TO SERVE ON THIS BOARD.

WHEREAS:

1. The Eastern Navajo Agency Council is a consortium of duly elected Chapter Officials of thirty-one (31) certified chapters of the Navajo Nation with vested interest to advocate, promote and support common goals and interest of the respective chapters/organizations; and
2. Per the 2 N.N.C. SECTION ; 4028; the Eastern Navajo Agency Council is vested with the government authority to review all matters affecting the community and to make most appropriate recommendations when necessary to the Navajo Nation, County, State, Federal and other local agencies for beneficial to the organizations; and
3. Mr. Marvin Paul Murphy meets the qualifications required of the Board of Directors as set forth in Article XI (F) of the Federal Charter of Incorporation of the Navajo Nation Oil and Gas Company. The Federal Charter of Incorporation is attached hereto to as Exhibit No. #1; and
4. Mr. Murphy is a Surveying Engineer graduate from New Mexico State University, and at present is President of a Priority One Business with Business Regulatory Department, 1st Order Land Services, Inc., conducting professional land surveying services. One of Mr. Murphy's interests is to apply his knowledge of engineering, which will be a benefit to Navajo Nation Oil & Gas Company as well as the Navajo People. Mr. Murphy's Letter of Interest and Resume are attached hereto as Exhibit #2; and
5. Pursuant to Article XI (D) of the Federal Charter of Incorporation of the Navajo Nation Oil & Gas Company, the term of service shall be for three (3) years to commence immediately.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Eastern Navajo Agency Council hereby Nominates Mr. Marvin Paul Murphy to the Board of Directors of Navajo Nation Oil & Gas Company; and

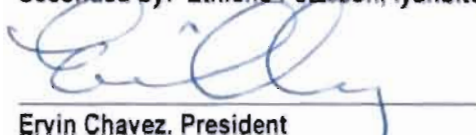
2. Mr. Marvin Paul Murphy meets the qualifications required of the Board of Directors as set forth in Article XI(F) of the Federal Charter of Incorporation of the Navajo Nation Oil and Gas Company The Federal Charter of Incorporation.

CERTIFICATION

We hereby certify this resolution was duly considered at a duly called Eastern Agency Council Meeting, with a quorum present, this resolution was passed by a vote of 52 in favor, 0 opposed, 25 abstained, this **1st day of March 2014 at Crownpoint Middle School Cafeteria, Crownpoint, New Mexico.**

Motion made by: Tyson Ramon, Smith Lake Chapter

Seconded by: Ethlene Peterson, Iyanbito Chapter


Ervin Chavez, President
EASTERN NAVAJO AGENCY COUNCIL

ATTEST:


Fernie Yazzie, Secretary/Treasurer
EASTERN NAVAJO AGENCY COUNCIL

Commissioner Marvin Paul Murphy

P.O. Box Ft. Wingate, New Mexico 87316

Cell: (505)

email:

@yahoo.com

OBJECTIVE

To serve a full-term as Board of Director for Navajo Nation Oil and Gas Company representing the Eastern Navajo Agency while using my 22 years of surveying engineering and 11 years Corporate business experiences by upholding the utmost respects and interests for its position in its multi-million dollar making business industry

EDUCATION PROFILE

- 2000-2003 **Major: Bachelor of Science in Surveying Engineering – ABET Accredited - Spring 2003 Graduate** - 153 Cumulative Credits; *New Mexico State University (NMSU)*, Las Cruces, NM
- 1999-2000 **Major: Associate of Applied Science in Engineering Technology emphasis on Land Surveying** - 29 Credits transferred; *Southwestern Indian Polytechnic Institute*, Albuquerque, NM
- 1995-1996 **Major: Associate of Science in General Studies**
15 Credits transferred; *University of New Mexico – Gallup*, NM
- 1994-1995 **Major: Bachelor of Science in Civil Engineering**
19 Credits transferred; *Northern Arizona University*, Flagstaff, AZ
- June 1987 **American Indian Science Engineering Society (AISES)** 4-week Summer I Camp Participant - *NMSU – Las Cruces*, NM

JOB HISTORY AND EXPERIENCE

December 2014-Present Board of Commissioner-***Navajo Housing Authority***, Window Rock, AZ

With a full team of 8-Commissioners, we have worked hard together by bringing unity to all new 23rd Council Delegates, House of Representatives and Senators in bringing harmony to Navajo Housings future by securing funds for sustainable communities; Learning about the (HUD) housing policy and federal regulations has been an insurmountable experience and a great advantage for the Navajo Nation. NHA owns an e-block company that makes FRAC aerated block to build environmentally safe homes, which afforded me to show my passion for Navajo housing by being nominated as directorship for:

- *Navajo FlexCrete Building Systems*- Secretary/Treasure
- Joint Venture (JV) with *AAC Structures, LLC* – Board of Director

2009-Present Owner, President & CEO-***1st Order Land Services, Inc.***, Window Rock, AZ

Using my education and experience, *1st Order* was founded to help further surveying engineering on the Navajo Nation with emphasis on growth and focus on development of growing chapters for the Dine' People. *1st Order* creates associations with other companies as subcontractor for special instruction land surveys.

- *1st Project*: Towill, Inc. & Navajo Housing Authority (NHA)– Quality Control Survey - Navajo Nation – AZ/CO/NM/UT – 2013 Complete

- 1) Finished project before scheduled time by General Contractor
- 2) The demand of pacing 3.2808333' paces...therefore defying physics; saving the general contractor time and money
- 3) 22-Navajo Chapters needing NHA Subdivisions Surveys:

New Mexico Chapters

Rock Springs	Twin Lakes
Becenti	Littlewater
Crownpoint	Sheepsprings
Huerfano	Standing Rock
Ojo Encino	Iyanbito
Shiprock	Tohatchi

Arizona Chapters

Dilkon	Leupp
Kayenta	Chinle
Nazlini	Whippoorwill
Pinion	Round Rock
Teec Nos Pos	Cornfields
Kinlichee	White Cone

- 2nd Department of Behavior Health - 4.747 Acre Result Survey – Window Rock, Navajo Nation – 2013 *Complete* – St. Michaels Chapter
- 3rd Project (Teaming Project): Children's Community Center - Construction Surveying, stakeout, grade and draining – Arviso Construction Company – Fort Defiance, AZ – 2013 *Complete* – Ft. Defiance Chapter
- 4th Project (Teaming Project): Children's Community Center – Construction Surveying, stakeout, grade and draining – Arviso Construction Company – Shiprock, NM – 2013 *Complete* – Shiprock Chapter
- 5th Project: Baahaali (Breadsprings) Chapter request for 6 Home Site Lease (HSL) land surveys resurvey and restake – 2014 *Complete*
- 6th Project (Teaming Project): LAM Corporation & H.E.I. Surveying – NHA Subdivision Layout and Topography Surveys – AZ/NM - Current

1st Order has learned strategies of business and making money for profit is where success is made when projects are finished and completed.

2007-2010 **Universal-Pegasus International (UPI) – Houston, TX**

- Performed duties from Instrument Man up to Party Chief Supervisory position:
 1. Arizona; 155 mile 36" Transwestern Pipeline Project – *Complete*
 2. Eastern Texas: 189 mile 32" OneOK Pipeline Project - *Complete*
 3. Louisiana: 265 mile Proposed 36" Louisiana Pipeline Project - *Proposed*
 4. Montana: 485 mile 36" Keystone Pipeline Project - *Complete*
 5. Florida: 220 mile 36" Florida Pipeline Project - *Complete*
- Followed; special surveying instructions differing from state to state; all local, state, federal safety regulations; quota specifications per day

2003-2007 **DePauli Engineering & Surveying (DES) – Gallup, NM**

- Performed duties as Party Chief, City/County Construction Inspector, and Project Manager on many public works projects completed with City of Gallup and McKinley County and currently in operation (i.e. Gamarco Pump Station, 13" Waterline, Street and Sewer improvements, Gallup land annexation, ability to establish horizontal/vertical control network for future projects)
- Strategic planning on numerous projects with keeping project up to date and completing on or before schedule

2000-2003 Surveying Engineer Major - NMSU, Las Cruces, NM

- Lab assistant to Surveying Professor during lab and class times on surveying topics; horizontal/vertical angle measurements, area determination, differential and trigonometric leveling to topographical mapping, traverse closures, and minimizing on field errors
- *College of Geography Department* - Geographic Information System (GIS) operator; Worked with a team of 7 students corroborating with 4-Corners Coal Mine, Northern Navajo Agency, Nenahnezad Chapter in assisting them in providing layers of metadata for coal exploration, maps and coal quantification

1999-2000 United States Bureau of Reclamation (USBOR) – Albuquerque, NM

- Working a CO-OP with SIPI and USBOR as a Civil Engineer Technician/Student Trainee – Student Career Experience Program
- Designed irrigation canals for Velarde Irrigation Project, Espanola, NM
- Captured flow design samples along the Rio Grande River for the preservation of the endangered Silvery Minnow.

1996-1999 Navajo Division of Transportation (NDOT) – Window Rock, AZ

- Performed duties as Rodman, Instrument Man and Party Chief on all centerline road surveys, elevation control, and Navajo Nation Airport Boundaries
- Construction surveying staking for Navajo bus route upgrades; Thoreau, Nenahnezad, Twin Lakes, Mexican Springs and Crystal, NM Chapters; Ft. Defiance, Pine Springs, Sawmill, Nazlini, and Chinle, AZ Chapters
- Completed projects by performing field mathematical computations, Leroy drafting, Creating plats from clear and accurate field/survey notes on AutoCAD

1993-1996 Bureau of Indian Affairs (BIA) – Roads Department, Gallup, NM

- Introduced to Right-of-Way and its importance to infrastructure; Engineer-in-Training and bridge inspector at Window Rock Airport Bridge, Cove and Red Mesa, NM access bridges; as abutment piles being driven into place
- Kept As-Built drawings up to date with AutoCAD and quantity totals using Microsoft Excel
- Designed pipe arch culverts projects for Blue Canyon, Kinlichee, and Nazlini, AZ for construction phase from drainage reports I created

PROFILE OF ACHIEVEMENTS:

September 2014	Western Refinery Safety Exam Certification
May 2014	Volunteer, Trash Pick-Up & Clean-Up Day, Iyanbito Chapter 1000lbs.
September 2013	Volunteer, Trash Pick-Up & Clean-Up Day, Iyanbito Chapter 750lbs.
July 2013	Volunteer, Horse/Feral Management Round-Up, Pinedale/Iyanbito Chapter
10/2012-6/2013	Iyanbito Chapter, Community Land Use Planning Committee President/VP
January 2013	<u>Point of Beginning</u> Magazine, NHA Setting Control on Navajo Nation; 2013
4/2012 – Present	Elk's Lodge Professional Member #1440

May 18, 2015

Honorable President Russell Begay & Honorable Vice-President Jonathon Nez
The Office of the Navajo Nation President and Vice President
P.O. Box 7440
Window Rock, Arizona 86515

Letter of Interest

RE: Board of Director – Eastern Navajo Agency, Navajo Nation Oil & Gas Company

Ya'at'eeh. My name is Marvin P. Murphy, BSSE, and thank you for allowing me to provide you my keen interest in becoming a Corporate Director for the Eastern Navajo Agency. I reside in Iyanbito, New Mexico and a Surveying Engineer Alumnus from New Mexico State University. I have a knowledgeable background in the surveying world and manage a 100% Navajo preference #1 company, *1st Order Land Services, Inc.*, with Regulatory Business Development Office.

I have been providing my engineering services to the Navajo People for 22-years. Being a Corporate Director I can also provide my knowledge and professionalism in working with other Corporate Directors.

Within my experience I had the chance to survey gas & oil pipelines through multiple states across this country, also through this great Navajo Nation. In addition, I currently sit as a Board of Commissioner for a Navajo Nation major entity, Navajo Housing Authority, representing New Mexico Tenants & Home Buyers.

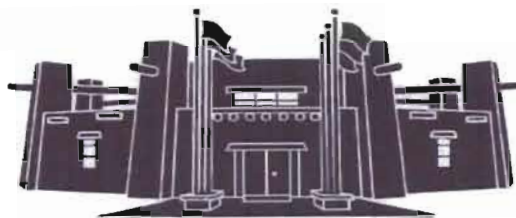
I am looking forward in meeting with you all. I can be reached at (505) for further questions.

Respectfully,



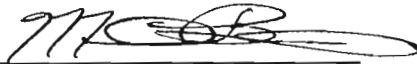
Marvin P. Murphy
P.O. Box
Ft. Wingate, New Mexico 87316
Cell 505-

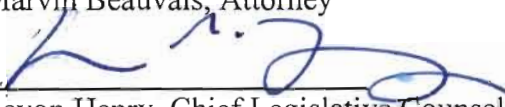
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MEMORANDUM

TO: Honorable Davis Filfred, Delegate
Navajo Nation Council

FROM: 
Marvin Beauvais, Attorney

THRU: 
Levon Henry, Chief Legislative Counsel
Office of Legislative Counsel

DATE: June 9, 2015

SUBJECT: RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE
AND NAA'BIK'ÍYÁTI COMMITTEE; CONFIRMING MARVIN PAUL
MURPHY TO SERVE AS THE EASTERN AGENCY
REPRESENTATIVE ON THE BOARD OF DIRECTORS OF NAVAJO
NATION OIL AND GAS COMPANY FOR A TERM OF THREE (3)
YEARS COMMENCING IMMEDIATELY

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law and review of the documents submitted, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Sponsor", and submit it to the office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of the changes you would like to make to the proposed resolution. You may contact me at (928) 871-7166. Thank you.
Commission:

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0200-15_____ SPONSOR: Davis Filfred

TITLE: An Action Relating To Resources And Development Committee And Naabik'iyati' Committee; Confirming Marvin Paul Murphy To Serve As The Eastern Agency Representative On The Board Of Directors Of Navajo Nation Oil And Gas Company For A Term Of Three (3) Years Commencing Immediately

Date posted: June 11, 2015 at 4:23pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0200-15

SPONSOR: Honorable Davis Filfred

TITLE: Relating To Resources And Development Committee And Naabik'iyati' Committee; Confirming Marvin Paul Murphy To Serve As The Eastern Agency Representative On The Board Of Directors Of Navajo Nation Oil And Gas Company For A Term Of Three (3) Years Commencing Immediately.

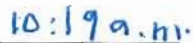
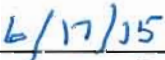
Posted: June 11, 2015 at 4:23pm

5 DAY Comment Period Ended: June 16, 2015

Digital Comments received: *No comments were received.*



Policy Analyst
Office of Legislative Services



Date/Time

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0200-15

SPONSOR: Honorable Davis Filfred

TITLE: Relating To Resources And Development Committee And Naabik'iyati' Committee; Confirming Marvin Paul Murphy To Serve As The Eastern Agency Representative On The Board Of Directors Of Navajo Nation Oil And Gas Company For A Term Of Three (3) Years Commencing Immediately.

Posted: June 11, 2015 at 4:23pm

5 DAY Comment Period Ended: June 16, 2015

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing (1)	1. Young Jeff Tom; Member, Boards of Directors, Navajo Nation Oil and Gas Company.
Inclusive Comments	<i>None</i>



**Executive Director
Office of Legislative Services**

6/22/2015 - 9:20 am

Date/Time

PUBLIC COMMENT on Legislation No. 0200-15, title *"An Action Relating To Recourses And Development Committee And Naabik'iyatt' Committee; Confirming Marvin Paul Murphy To Serve As The Eastern Agency Representative On The Board Of Directors Of Navajo Nation Oil And Gas Company For A Term Of Three (3) Years Commencing Immediately"*

June 16, 2015

To the Members of the Resources and Development and Naa'bik'iyaati' Committees:

Legislation No. 0200-15 violates Navajo Nation law and should be withdrawn or voted down. It approved, Legislation No. 0200-15 will be invalid, in any event. The Navajo Nation Supreme Court has definitively held that the Federal Charter of Incorporation and by any actions taken in violation of the procedures set forth in those internal laws of the Company are per se invalid. *See Navajo Nation Oil and Gas Company v. Window Rock District Court*, No. SC-CV-25-14 slip op. at 9-10 (Nav. Sup. Ct. June 20, 2014), attached hereto as Exhibit "A."

The Company's Charter and Bylaws provide that the Agency Councils shall nominate five (5) directors for the Board of Directors of the Company. However, the Bylaws further provide that for vacancies on the Board of Directors to be filled by the Agency Councils, (1) the positions shall be advertised, (2) any nominees shall be submitted to the Company's Human Resources Director for due diligence and background checks, including, without limitation, background credit and conflict of interest checks, and (3) nominees which pass the background checks shall be submitted to the Joint Nominations Committee (comprised of the three members of the Board of Directors and three Shareholder Representatives) for "screening" and recommendation to the Naa 'bik'iyaati Committee." See Bylaws, Section 3.25, attached hereto as Exhibit "B."

On Saturday June 6, 2015, the Chairman of the Company's Board of Directors told the Eastern Agency Council that the vacancy for the Eastern Agency Council position on the Company's Board of Directors would be advertised, in accordance with the requirements of the Company's Bylaws. However, (1) the nomination of Marvin Paul Murphy occurred without any advertisement for such a position as required by the Company's Bylaws, (2) Mr. Murphy's information was not submitted to the Company's Human Resources Director for due diligence and background checks, as required by the Company's Bylaws, and (3) Mr. Murphy's nomination was not submitted to the Joint Committee for screening and recommendation to the Naa 'bik'iyaati' Committee, as required by the Company's Bylaws.

Moreover, Mr Murphy is a member of the Board of Commissioners of the Navajo Housing Authority ("NHA"). See <http://www.hooghan.org/about-us/board-of-commissioners>. As such, he is ineligible to serve on the Board of Directors of NNOGC. See Bylaws, Section 3.16© ("No Diretor shall be . . . a director or commissioner of any Navajo Nation owed enterprise, industry, authority, corporation or instrumentality.")

Received
JUN 16 2015
OLS Council Delegates
Office

Because the nomination of Marvin Paul Murphy was not conducted in accordance with the Company's Bylaws, and violates three separate requirements under the Bylaws, Legislation No. 0200-15 is invalid and should be withdrawn or voted down. *See Navajo Nation Oil and Gas Company, supra*, slip op. at 9-10.

Nominations for the NNOGC Board from the Agency Councils must follow the lawful process set forth in the Company's Bylaws

Sincerely,

A handwritten signature in black ink, appearing to read 'Young Jeff Tom', with a stylized flourish extending to the right.

Young Jeff Tom
Member, Board of Directors
Navajo Nation Oil and Gas Company

No. SC-CV-25-14

NAVAJO NATION SUPREME COURT

Navajo Nation Oil and Gas Company,
Petitioner,

v.

Window Rock District Court,
Respondent,

and

Robert Joe,
Real Party in Interest.

OPINION

Before YAZZIE, H., Chief Justice, SHIRLEY, E., Associate Justice, and LIVINGSTON, L., Associate Justice by designation.

An action for issuance of a writ of prohibition against Window Rock District Court concerning Cause No. WR-CV-32-14, the Honorable Carol Perry, presiding.

Paul E. Frye, Stella M. Scott, and W. Gregory Kelly, Albuquerque, New Mexico, for Petitioners; Robyn Neswood, Window Rock, Navajo Nation, for Respondent; Johnson Barnhouse & Keegan LLP, Albuquerque, New Mexico, for Robert Joe, Real Party in Interest; Brian L. Lewis, Gallup, New Mexico, for Defendants in the Underlying Action; Paul Spruhan, Navajo Nation Department of Justice, Window Rock, Navajo Nation, for The Navajo Nation; R. Dennis Ickes, Salt Lake City, Utah and Michael P. Upshaw, Scottsdale, Arizona for Russell Begaye, Mel Begay, Charles Damon, and Kenneth Maryboy as Shareholder Representatives of the Navajo Nation Oil and Gas Company.

This matter comes before the Court on Motion for Additional Clarifying Opinion filed on May 9, 2014 in an action for writ of prohibition involving an internal conflict in the Navajo Nation Oil and Gas Company (NNOGC) between two parties both filing through different law firms under the corporate name. This Court issued a Permanent Writ of Prohibition to the

Window Rock District Court on May 1, 2014. Petitioner now seeks a supplemental decision to clarify the basis for our Writ and to provide finality to the internal issues in the NNOGC.

In the writ action, petitioner is represented by the Frye Law Firm (Frye) and is captioned "NNOGC" while the real party in interest (RPI) is represented by the law firm of Johnson Barnhouse & Keegan LLP (Barnhouse) and captioned "Robert Joe," however, in all his responses, Robert Joe refers to himself as "NNOGC." Both sides in a court action cannot be the same entity. The writ is directed to the respondent Window Rock District Court. Four out of five shareholder representatives of NNOGC intervened in support of Robert Joe. Five members of the Board of Directors (directors) intervened in support of the petitioner. Amicus Louis Denetsosie, former NNOGC CEO and Attorney General of the Navajo Nation, was granted leave to file a brief. The Navajo Nation, through the Department of Justice, also intervened.

BACKGROUND

The internal conflict concerns the right of certain individuals in positions of authority within NNOGC to continue making decisions in those positions. Both sides claim that the other side lacks authority to pursue litigation in the corporate name due to suspension, firing or removal. The undisputed facts show that there was a meeting of shareholder representatives on December 21, 2013. After this meeting, Barnhouse informed the five directors that two had been removed and three suspended by vote of majority shareholder representatives. Specifically, four out of five shareholder representatives voted to suspend or remove, with Leonard Tsosie objecting.¹ On January 16, 2014, the Navajo Nation Department of Justice (NNDOJ), providing a legal memorandum on the suspensions and removals, raising concerns with the validity of the shareholder representatives' action due to noncompliance with procedural requirements required

¹ Shareholder representative and Council Delegate Leonard Tsosie consistently objected "to the improper manner of calling and conducting the meeting." Declaration of Leonard Tsosie at ¶5, Pet'r's Br., Ex. R.

to ensure due process and strongly encouraged that the shareholder representatives rescind their action and follow the steps set in the Bylaws of the Corporation.² On January 17, 2014, Robert Joe filed in the corporate name for an injunction in the Window Rock District Court, seeking to prevent the five directors from holding a scheduled January 21, 2014 Board meeting at which the removal of Robert Joe as CEO was on the agenda. Robert Joe's complaint stated that the five directors lacked authority to hold the meeting due to their suspension or removal, and that unless the meeting was prevented, further harm would result to NNOGC, at which the district court immediately issued an *ex parte* temporary injunction against the five directors. Robert Joe did not refer to the NNDOJ's legal memorandum and did not set forth sovereign immunity as a jurisdictional basis in its statement of jurisdiction.

Petitioner, also filing in the corporate name, moved to dismiss the complaint on the basis that Barnhouse lacked due authority to file in the corporate name. The five directors filed third-party counterclaims against Robert Joe seeking declaratory and injunctive relief and damages. Subsequently, the NNDOJ brokered a stipulation that was signed by all and entered by the court as a stipulated order. Various motions, including a dismissal motion by the directors and motion to intervene by the shareholder representatives, were then submitted, whereupon petitioner applied to this Court for a writ of prohibition claiming lack of subject matter jurisdiction under the Navajo Sovereign Immunity Act (NSIA). The shareholder representatives, the five directors, and the Navajo Nation through the NNDOJ filed responses to the petition. While the *ex parte* injunction was being challenged, the Board Meeting scheduled for January 21, 2014 proceeded, resulting in a Board resolution to remove Robert Joe as CEO.

Immediately following oral argument on May 1, 2014, this Court issued a succinct three-page Permanent Writ of Prohibition pursuant to our 7 N.N.C. § 303 authority to issue necessary

² This memorandum was filed under seal.

and proper writs, invalidating all orders issuing from the district court on the basis of non-compliance with jurisdictional condition precedents required for immunities arising under the NSIA and further ordering dismissal of the underlying complaint filed by Robert Joe in the district court. In the Court's decision, the parties were "encouraged to engage in further discussion to reach a resolution that preserves the public trust." *Permanent Writ of Prohibition*, at 3 (Nav. Sup. Ct. May 1, 2014). Having found that the trial court lacked jurisdiction, we remained cognizant that there was a desperate need for a remedy, and that it be provided quickly. In our view, the individuals who make up the various corporate organs in this case are in positions of a *naata'anii* as caretakers of assets of immense value to the Navajo People and, therefore, understand their duty of trust and responsibility to engage in reasonable collaborative settlement in the best interest of the corporation. This responsibility is not fully performed if the *naata'anii* immediately resort to lawyers, who due simply to the nature of that adversarial profession, frequently find barriers to resolutions that require compromise.

On May 9, 2014, petitioner filed a motion for additional clarification, informing this Court that efforts of the five directors to convene meetings in their official capacity have been thwarted and they have not been allowed to function as directors pending a compromise. Petitioner asserts that the parties are confused as to their status in NNOGC due to unclear language in the writ, and additionally, that nothing is being done on the counterclaims. The parties are also confused on basic questions such as the effect of the writ of prohibition on the validity of the December 21, 2013 shareholder representatives' vote to remove or suspend the five directors; who is NNOGC's counsel; and whether Robert Joe is CEO following the Board's January 21, 2014 meeting. Parties, intervenors, and amicus submitted responses that confirm the total breakdown in internal corporate communications. Untimely responses by parties were not

accepted. A variety of other pleadings were also submitted seeking to strike pleadings of other parties, asking for reconsideration of untimely pleadings, or otherwise requesting relief beyond clarification of the jurisdictional issue. These are summarily denied.

This case is one more example the Court has seen of individuals in official positions enmeshed in conflict over authority and position rather than acknowledge that public officials are all trustees. The authority exercised in a public trust is not the right of any individual in an office of authority, but the right of the people. The parties presented multiple issues to this Court rather than deal with each other *naata'anii* to *naata'anii* as we instructed in our permanent writ. This Court will re-frame the issues presented by the motion and responses inasmuch as we are able to resolve them under our authority over original writ actions, and according to our duty to protect a valuable public asset. There is no doubt that the parties are in a quagmire, and a way must be found out of it, because of the valuable tribal assets that must be protected.

Having reviewed the motion and all timely responses, the Court accepts petitioner's motion under N.R.C.A.P. 6 solely as a motion requesting clarification of the basis and effect of the writ. Additionally, because no two parties may claim the same identity before our courts, we are obliged to sort out the identities of the parties.

BASIS FOR WRIT OF PROHIBITION

The NNOGC is incorporated under Section 17 of the Indian Reorganization Act ("IRA") by which a tribe may petition the Secretary of the Interior to issue a Federal Charter of Incorporation effective upon ratification by the tribe's governing body.³ NNOGC's corporate Charter was ratified on February 5, 1998 by Resolution No. CF-22-98 of the Navajo Nation Council. Pet'r's Br., Ex. B., April 16, 2014 (hereinafter Charter). A plain reading of NNOGC's corporate Charter shows the Council's clear intent that sovereign immunity under the NSIA fully

³ See 25 U.S.C. § 477

protect the corporation and its directors as a Navajo Nation instrumentality, with any waiver of immunity “to sue or be sued,” or even to engage in mediation or settlement, possible only after fulfillment of specific conditions. Charter, Art. VIII(K) and XVI(A)-(D). It is well-established that notice requirements at 1 N.N.C. § 555 are “jurisdictional condition precedents” for any claim for which immunity is waived under the NSIA. *See Chapo v. Navajo Nation*, 8 Nav. R. 447, 456 (Nav. Sup. Ct. 2004), cited and analyzed in *Judy v. White*, 8 Nav. R. 510, 532 (Nav. Sup. Ct. 2004) (pre-action notice requirements are jurisdictional). In *Judy*, we also stated that “[i]t is without question that our government cannot be sued except by its expressed consent. The Navajo Sovereign Immunity Act is the expression of that consent. It provides the means and manner by which suit will be brought against the sovereign . . . limits suits against the sovereign to certain subject matters, [and] sets strict procedural preconditions to suit” *Judy*, 8 Nav. R. at 532-533. While *Chapo* addressed notice as set forth at 1 N.N.C. § 555(A), the notice conditions set forth in NNOGC’s Council-ratified Charter are equally jurisdictional in effect.

The Charter expressly provides that NNOGC “is an instrumentality of the Navajo Nation and is entitled to all of the privileges and immunities of the Navajo Nation . . . including but not limited to the Navajo Sovereign Immunity Act at 1 N.N.C. § 551 *et seq.*” Charter, Art. XVI(A). The corporation has the power to waive immunity in order “[t]o sue or be sued in its corporate name to the extent provided in Article XVI of [the] Charter, and to that extent only.” Charter, Art. VIII(K). Thus, it cannot be more clear that the waiver conditions must be completely fulfilled. Pursuant to Article XVI(A), “[t]he Corporation and its directors, officers, employees and agents while acting in their official capacities are immune from suit.” Their immunities may be waived to sue and be sued and “to consent to alternative dispute resolution mechanisms . . . or to suit” upon fulfillment of two conditions precedent: (a) upon express agreement by the Board

of Directors prior to the time any alleged cause of action accrues; and (b) “[a]ny waiver . . . shall be in the form of a resolution duly adopted by the Board of Directors, upon thirty (30) days written notice to the Navajo Nation Council of the Board’s intent to adopt the resolution.” *See* Charter, Art. XVI(B); Art. XVI(A); Art. XVI(D). The wording that notice must be provided to the Council, rather than to the Navajo Nation owner/shareholder, makes it clear that this is a governmental notice requirement and, therefore, jurisdictional. The waiver conditions apply both to initiation of and submission to suits, as any suit, even initiated by the NNOGC, opens up the instrumentality to counterclaims.⁴

In this case, the district court lacked subject matter jurisdiction over the underlying complaint for the following reasons. Firstly, due to the absence of a 30-day notice to the Council followed by a duly adopted Board resolution, authorizing suit by the Corporation, waiving the immunity of its directors, and consenting to any settlement talks brokered by the NNDOJ. Secondly, due to the lack of compliance with the notice requirements set forth in the NSIA itself at 1 N.N.C. § 555. For the above reasons, the filing of the complaint must be taken as an *ultra vires* act of Robert Joe and not by NNOGC in its corporate name.

Two issues were raised by the district court and Robert Joe: (a) that subject matter jurisdiction defenses were waived upon the signing of the stipulated order; and (b) that the directors having been suspended or removed were not protected by immunity.

Firstly, jurisdictional condition precedents under the NSIA are absolute in order for immunity waivers to be valid. *See Judy*, 8 Nav. R at 532. The parties lacked authority to sign the

⁴ *See Navajo Nation v. RJN Constr. et al*, No. SC-CV-13-11, slip op at 13-14 (Nav. Sup. Ct. Jan. 17, 2012) (permitting counterclaim against the Navajo Nation without advance notice formalities); and *see, e.g., Ruppenthal v. State*, 849 P.2d 1316 (Wy. Su. Ct. 1993) (providing that a claim otherwise barred by sovereign immunity may be asserted as counterclaim in government-initiated lawsuit if it arises out of same transaction or occurrence that is subject matter of the state’s claim).

stipulated order due to Robert Joe's non-compliance with the 30-day Council notice followed by express agreement of the Board through a duly adopted resolution.

As we stated: "When jurisdiction has not yet been determined, a matter is not properly before a court; therefore the court lacks authority to sit in judgment over any incompletely or in portion of the matter . . . " *Begay v. Nav. Eng'g and Constr. Auth.*, No. SC-CV-44-08, slip op. at 5 (Nav. Sup. Ct. July 22, 2011). Therefore, the stipulated order stating it "will retain jurisdiction over this matter," and all prior orders of the district court, were invalid due to jurisdictional deficiencies. Order at ¶ 2(b), Resp't Resp. to Writ of Prohibition, Ex. A, (W.R. Dist. Ct. January 31, 2014).

As to the suspension or removal status of the five directors, we again look to the Charter and Bylaws of the Corporation. From these governing documents it is clear that "[u]nless a Board member is removed or resigns or otherwise vacates his or her position as a board member, such Board member shall serve as such, and be entitled to all of the rights . . . of a Board member." Charter, Art. III (as amended by Res. No. 194 of the Board of Directors on January 27, 2013); Bylaws, § 3.3, Pet'r's Br., Ex. G. Therefore, the three directors who are merely suspended remain protected by their immunity rights. The court lacked subject matter jurisdiction over suits against the suspended directors due to jurisdictional notice deficiencies pursuant to 1 N.N.C. § 555.

The examination does not end there. The removal status of two directors as well as the suspension status of the above three directors are heavily contested in this case by Robert Joe and the shareholder representatives, with the NNDOJ having voiced its concerns over their validity on January 17, 2014 and also in its responses in this action. Whether or not the removal of the directors was valid goes directly to whether they were protected by sovereign immunity, since

the Charter provides that immunity protection ends upon their removal. Bylaws, § 3.3. This Court is cognizant that the answer to this question would also dispose of the ultimate issue and previously striven to have the parties reach their own equitable compromise. However, we must now apply the law as the court of last resort, since the parties are unable to deal with each other equitably as we encouraged.

The five directors were suspended or removed by majority shareholder representatives' vote⁵ at a December 21, 2013 special meeting held in executive session to which the five directors were provided neither prior notice nor opportunity to respond. While Art. XI(M) of the Charter, read alone, appears to allow removal of a director "with cause at any time by a vote of the shareholder representatives," we cautioned against the reading of provisions in isolation. "Our Navajo Nation laws must be read comprehensively and in combination, not piñon picked for provisions that support a given position." *NHA v. Johns*, No. SC-CV-18-10, slip op at 11 (Nav. Sup. Ct. Sept. 10, 2012) (citing *In the Matter of Seanez*, No. SC-CV-58-10, slip op. at 10 (Nav. Sup. Ct. January 25, 2011)). The corporate Bylaws at Section 3.12 authorizes the shareholder representatives' vote provided that the shareholder representatives "shall comply with the "Standards and Procedures for the Removal of Members of the Board of Directors." *Approving Amendments to Article III, Sections 3.12 and 3.16 of the Bylaws of NNOGC*, NNOGC Bd. of Dirs. Res. No. 194, Bylaws, App. A, Pet'r's Br., Ex. G, January 27, 2013. These standards and procedures do not permit the shareholder representatives and the CEO to act on suspension or removal without participation of the Board, and further require legal procedural formalities that were not followed in this case. The absence of due process formalities, including full Board involvement, notice, right of inspection of written reports, investigation of disputed facts by a neutral third party, the right of the accused to attend a meeting at which their removal or

⁵ See fn. 1, *supra*.

suspension is discussed, and right to provide a response prior to Board action is undisputed by either party.

As noted above, the NNDOJ raised concerns about the validity of the December 21, 2013 meeting in a legal memorandum dated January 16, 2014. In the response of the NNDOJ on behalf of the Navajo Nation, Attorney General Harrison Tsosie stated: "Even assuming that the [shareholder representatives] constituted a quorum, which they did not by the plain language of the Charter, they did not provide appropriate cause for the suspension or removal when taking their action, as also required by the Charter . . . Simply put, their actions were not in accordance with the Charter, and are null and void." NNDOJ Response to Motion for Clarification at 8, May 21, 2014, (citing Charter, Pet'r's Br., Ex. A., Art. X(D) (quorum requirement); Art. XI(M) (cause requirement); Ex. S (letters of suspension and removal)). This Court is in agreement with the Attorney General's response.⁶ In order to be valid, a director's suspension or removal for cause must be accorded the due process protections set forth in the corporations own internal laws. In this case, those internal laws are also the law of the Navajo Nation due to Council ratification. For purposes of our jurisdictional analysis, we find that the five directors were not legally suspended or removed, and all directors were therefore protected by sovereign immunity at all times relevant to the injunction action. As such, they were entitled to notice under 1 N.N.C. § 555, the non-provision of which is a fatal jurisdictional defect. The NNDOJ's January 16, 2014 memorandum should have forestalled any injunctive order. Instead, it was ignored.

Both the NSIA and the Charter provide for conditional immunity for corporate individuals who are acting in their "official capacities." Pursuant to *Chapo*, official capacity immunity depends on whether actions were taken "in the scope of their authority." 8 Nav. R. at

⁶ See 2 N.N.C. § 1965 (providing that when the opinion of the Attorney General requested by any entity of the Navajo Nation concerning any question of law relating to their respective entity or offices, "n]o adverse action may be taken . . . against any official or employee of the Navajo Nation government for conduct taken in reasonable reliance upon the advice given in such an opinion."

458. Whether an official acts within the scope of his or her authority or employment depends on factors we set forth in *Chapo* including whether actions were taken beyond “the official’s authority and restrictions on that authority defined by applicable statute or regulation” which, essentially, defines *ultra vires*. *Id.* at 461-462. Immunity may well be stripped from an individual if willful or grossly negligent *ultra vires* acts are found. However, for purposes of the jurisdictional notice conditions precedent, notice must absolutely be given to all board members of Navajo Nation enterprises being sued. Any court determination as to whether actions are *ultra vires* must come after an action is duly commenced and prior to issuance of any court order. The district court had ample warning in the underlying complaint itself that the directors continued to believe they were active status directors and were performing official duties via scheduling a Board meeting on January 21, 2014. However, it is clear that the district court received no warning from the complaint that sovereign immunity was involved in the matter before it.

Sovereign immunity is jurisdictional, and a defense of sovereign immunity automatically raises questions concerning the district court’s jurisdiction over the Navajo Nation and/or covered officials who are sued in their official capacity. *See Johnson v. Navajo Nation*, 5 Nav. R. 192 (Nav. Sup. Ct. 1987). For this reason, our court procedural rules mandate that a complaint set forth the court’s jurisdiction. Nav. R. Civ. P. 8(a)(1). The jurisdictional statement must be complete and accurate so that the court is fully informed as to its ability to act in the matter. It must be noted that in spite of the clarity of the Charter’s immunity waiver article, Robert Joe’s complaint in the district court did not cite sovereign immunity as a possible jurisdictional limitation. Additionally, Robert Joe referred to NNOGC as a “private federally chartered corporation” and “not a government or government subdivision,” while neglecting to mention that the NNOGC is a “Navajo Nation instrumentality” by Charter, *see Verified Complaint* at ¶¶

8-9, Pet'r's Add. to Br. at 1, April 15, 2014, that must "return all dividends and distributions of profit to the Navajo Nation government to be devoted to essential governmental functions[.]" *see* Charter, Art. VII(E). The result is a facially deficient and misleading underlying complaint.

The following foundational principles bear on our jurisdictional analysis above and must be well understood by our courts and all Navajo Nation corporations.

Firstly, express Council enactments such as the NNOGC's corporate Charter are mandatory. The articles in the Charter are neither optional nor facilitative, but are legal formalities that must be followed to the letter in order for actions or decisions to be valid. The same is true for corporation bylaws that are duly adopted according to the letter of the Charter which collectively are designed to protect all stakeholders. We applied this principle in the issuance of our Writ of Prohibition.

Secondly, NNOGC's bylaws state that they are "in conformity with general corporation law, a proper interpretation of the Navajo Corporation Code, and the best interest of the Corporation." Bylaws, § 3.3, n.1. The Navajo Corporation Act is, in turn, "based upon the American Bar Association's Model Business Corporation Act." 5 N.N.C. § 3100(B). The Navajo Nation chose NNOGC to operate within the establishment of American corporations, beholden to the same general corporate principles, and its corporate organs must therefore be obedient to the spirit and letter of those principles. No general principle of corporate law would allow a governing Board to be so diminished below quorum so that an officer/CEO becomes the sole decision-maker without any Board oversight for his or her transactions. Had all parties faithfully observed the Charter and Bylaws, intended as complete documents providing for procedures for internal resolution for every business-related eventuality, this matter should never have needed the equitable remedy of injunctive relief through our courts. The courts are not a forum for

validating noncompliance with legal constraints calculated to protect all stakeholders, nor are they to be resorted to by individuals to forestall internal inquiries into their performance or actions by other corporate organs. Where corporate matters are governed by statutes, corporate charters, and bylaws, our courts shall apply their mandatory language.

In their response, shareholder representatives ask that this Court reconsider and find that neither NNOGC nor its directors are cloaked in immunity. Resp. of S'holder Rep's. to Movant's Req. for Clarification at 10-13, May 21, 2014. As support, they assert that NNOGC is federally-chartered with the Secretary of the Interior empowered to ratify its Charter and control its contents, therefore NNOGC is not a tribal business and neither it nor its directors share in tribal sovereign immunity. Robert Joe, through Barnhouse, also asserted at oral argument that NNGOC is "no different from a McDonald's or Circle K." *Audio recording of Oral Argument*, May 1, 2014. However, since the corporate Charter itself expressly places NNOGC and its directors under the protection of the NSIA, Robert Joe and shareholder representatives' arguments are perplexing in their avoidance of clear laws enacted by the Navajo Nation Council. Additionally, it should have been known to their legal counsel that under federal law, IRA § 17 corporations may invoke sovereign immunity⁷ if that is the tribe's intent and the tribe has sufficient control over the entity.⁸ Control of the tribe is unquestioned, as the Navajo Nation is the sole shareholder of NNOGC, participating through shareholder representatives drawn from standing committees of the Navajo Nation Council, and its Board of Directors nominated by the Agency Councils and President with final selection by a Council standing committee. Charter, Art. V(B), V(D), and XI(C) respectively. The extent of control by the tribe confers jurisdiction on our Courts over all internal conflicts of NNOGC where NSIA conditions or exceptions are met.

⁷ See *Amerind Risk Management Corporation v. Malaterre* (8th Cir. Ct. App. Feb. 15, 2011); *cert. den.*, January 17, 2012.

⁸ *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1180 (10th Cir. 2010)

This brings us to a third foundational principle, which is corporate independence. Businesses—even Navajo enterprises or instrumentalities covered by governmental protections—must be able to conduct their business transactions and internal affairs free of influence or pressure by the government. A corporation, under established fiduciary principles, must be run autonomously as a business. If politicians participate in a business, it cannot be in their governmental capacities. This is true for NNOGC. *See* Charter, Art. § X(C) (providing that “shareholder representatives shall sit in their capacity as representatives of the sole shareholder and not as members of the Navajo Nation Council.”).⁹ The Navajo Nation is sole shareholder of NNOGC “for the benefit of the Nation and its enrolled members.” Charter, Art. V(B), and as stated above, 100% of NNOGC revenues go toward governmental services for the people. Navajos think in communal ownership. Its shareholder representatives are, essentially, trustees of a public trust asset for the Navajo people and must exercise their fiduciary responsibility.

Shareholder representatives inform this Court that the Council recently approved an amended Charter and directed the Navajo Nation Washington Office to take all actions necessary to petition the Secretary of the Interior (Secretary) to issue the restated Charter. *Four of Five S’holder Rep’s. Br.* at 6-7, April 25, 2014; and *see also* Ex. B, April 25, 2014. (Leg. No. 0352, passed April 22, 2014). The amendments create new qualifications for Board members that the present directors may not possess, and would strip the Agency Councils and President from being able to select Board directors, which is authorized under the present Charter. Shareholder representatives ask the Court to consider the suspended and removed directors disqualified

⁹ It was foreseen years ago that the involvement of elected officials in boards or commissions of contracting organizations with the Navajo Nation or on the board of directors of Navajo Nation enterprises may result in impermissible conflicts of interest. *See* Opinion of the Attorney General of the Navajo Nation, No. AG-08-94 (May 20, 1994). The functional distinction between the roles of shareholder representatives, who are *not* managers, and directors who have exclusive high-level managerial authority, is not just for show under our Ethics in Government Laws. Had the roles not been blurred, the problems in this case would have been forestalled.

pursuant to the amended Charter. However, approval of the amendments by the Council is not enough to render the amendments “operative.” Under 25 U.S.C. § 477, the amendments must now be submitted by petition to the Secretary for approval, following which the Charter becomes “operative” upon further ratification by the Navajo Nation Council. Additionally, it is far from clear that the Secretary’s approval will be obtained. We take judicial notice that the President of the Navajo Nation raised deep concerns about the amendments, which would concentrate control and influence of this multi-million dollar asset entirely in the Council, a single branch of government.¹⁰ Currently, shareholder representatives of the Navajo Nation as sole shareholder, on behalf of the true owners the Navajo people, are already drawn solely from the Council. We would note, again, that all dividends and profits of NNOGC go to fund “essential governmental functions,” not just the functions of the Council. Charter, Art. VII(E). As with any governmental venture held in the public trust, a Section 17 corporation Charter is only as good as its checks and balances safeguarding all stakeholders. The proposed amendments affect the independence of the branches as well as the corporate organs.

The foregoing discussion sufficiently clarifies the basis of our Writ of Prohibition.

It is clear from this case that internal conflicts of Navajo Nation instrumentalities and enterprises, especially those whose operations deeply impact the public welfare through governmental services, need expedited remedies. Authority to provide writ relief is provided generally at 7 N.N.C. §§ 255 and 303. The writ of *quo warranto*¹¹ is a type of prospective

¹⁰ We take judicial notice that on May 23, 2014, President Ben Shelly issued a press release stating his intent to lodge an objection with the Secretary against approving the amendments, which he termed a “usurpation of power” by the Council that would result in only one branch of government exclusively involved in the running of a tribal asset worth in the hundreds of millions.

¹¹ While injunctions serve to prevent acts, and declaratory judgments simply clarify the relationship of parties and their rights in a matter while not providing for any enforcement, the *quo warranto* writ is an expedited self-enforcing writ directed to the person whose continued legitimate occupancy of an office or position in a public body or corporation is questioned. Such writs may be filed to the district courts pursuant to 7 N.N.C. § 255, and also to this Court pursuant to 7 N.N.C. §302 and 303.

mandamus used in most, if not all state jurisdictions.¹² On the Navajo Nation, such a writ action may be brought by the government or a private person, either *de jure* or *de facto*, to compel an individual to show “by what warrant”¹³ he or she presumes to hold office where the individual usurps, intrudes into, or unlawfully holds office in a public body or corporate entity.

We note, finally, that exceptions to NSIA conditions exist in regard to the Navajo Nation government. An injunction, declaratory judgment and prospective mandamus are exceptions to the NSIA to compel “[a]ny officer, employee or agent of the Navajo Nation” to perform law-mandated responsibilities. *See* 1 N.N.C. § 554(G). Additionally, a common-law exception to the NSIA jurisdictional advance notice requirement presently exists for internal governmental conflicts within the branches. *See Shirley v. Morgan*, No. SC-SC-02-10, slip op. at 5-8 (Nav. Sup. Ct. June 2, 2010) (stating that “Government entities must have access to our courts without undue restraint and on such terms and conditions as may be available to any individual person seeking relief for private disputes through our courts.”). However, although we would have entertained a request, none of the parties asked this Court to apply the above NSIA exceptions to internal conflicts of Navajo Nation instrumentalities.

EFFECT OF WRIT OF PROHIBITION

To forestall further chaos between the parties, we are compelled to spell out the legal effect of this Writ of Prohibition, including the effect of our jurisdictional findings, as follows:

1. We addressed the status of suspension or removal of the five directors in order to ascertain whether or not the five directors were protected by sovereign immunity. We found the five directors were not validly suspended or removed on December 21, 2013. The five directors continue to actively serve without interruption prior to and following December 21, 2013.

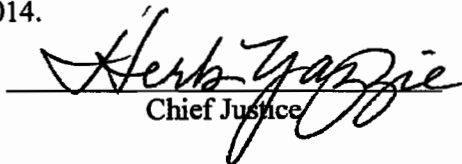
¹² *Quo warranto* exists as both a statutory and common law writ option in all state jurisdictions. *See, e.g.*, California Code of Civil Procedure, Sections 803-811; and *see* Minn. Stat. Ann. § 480.04 (West).

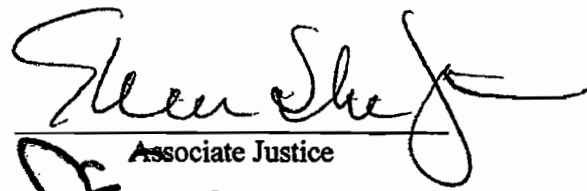
¹³ *See* 51 A.L.R.2d 1306.

2. The Writ of Prohibition renders invalid *ab initio* all orders of the district court, including the January 17, 2014 temporary restraining order (TRO) and the January 31, 2014 Stipulated Order.

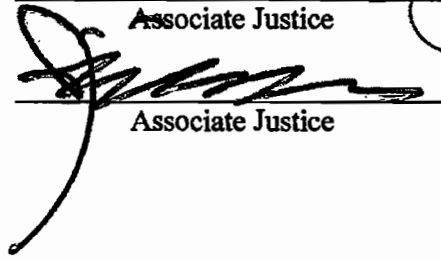
3. The Writ dismisses the underlying complaint, but not the counterclaims. "If the court lacks jurisdiction over the original petition, the counterclaim nonetheless survives if there is a separate jurisdictional basis to hear the counterclaim." *Begay v. Begay*, No. SC-CV-65-05, slip op. at 3 (Nav. Sup. Ct. May 11, 2006). And *see, e.g., Begay v. Nav. Eng'g and Constr. Auth.*, SC-CV-44-08, slip op. at 3, fn 1 (counterclaim may survive involuntary dismissal of claim). We found that Robert Joe acted beyond the scope of his authority in filing the complaint. As a result, the plaintiff was Robert Joe in his individual capacity. Since a counterclaim may only be filed against a claiming party, counterclaims filed by the five directors against Robert Joe in his individual capacity for declaratory judgment, injunction, and damages survive. Regardless, counterclaims are permitted without NSIA advance notice formalities of any kind. *See Navajo Nation v. RJN Constr. et al*, No. SC-CV-13-11, slip op at 13-14 *cited* at fn. 4, *supra*. Additionally, the Charter and Bylaws require specific Council notice for suits and submission to suits, but not for defenses and counterclaims that must be raised in an answer. The district court has an obligation to address the counterclaims as speedily as possible. The district court needs to make sure that the counterclaims are still on its docket, following which the district court should consider and enter judgment on the counterclaims without delay. Amendment of any counterclaims for jurisdictional purposes should be allowed on the basis of our above finding.

Dated this 20th day of June, 2014.


Chief Justice



Associate Justice



Associate Justice

NAVAJO NATION OIL AND GAS COMPANY

A Federally Chartered Corporation

BYLAWS

Amended April 25, 2015

Preamble

These Bylaws, effective on the date stated in the Certification below, shall supersede and replace all other bylaws and resolutions of the Board of Directors that have amended the Bylaws, as of such effective date. These Bylaws are designed to supplement and explain related provisions in the Company's Federal Charter of Incorporation ("Charter"), without extensive duplication or inconsistency. In the event of any inconsistency between these Bylaws and such Charter, the provisions of the Charter shall prevail.

Article I - Corporate Offices

Section 1.1 The principal office of the Navajo Nation Oil and Gas Company (the "Corporation") in the Navajo Nation shall be located in or near Window Rock, Navajo Nation (Arizona).

Section 1.2 The registered office of the Corporation required to be maintained in the Navajo Nation may be, but need not be, identical with the principal office of the Corporation, and the address of such registered office may be changed from time to time by the Board of Directors.

Article II - Shareholder

Section 2.1 Shareholder Representatives. Pursuant to resolution CJA-4-97 (Jan. 21, 1997) of the Navajo Nation Council which approved the Federal Charter of Incorporation, the Federal Charter of Incorporation issued by the Secretary of the United States Department of the Interior on December 23, 1997, and resolution CF-22-98 (Feb. 5, 1998) of the Navajo Nation Council, which ratified the Federal Charter of Incorporation, the Navajo Nation is and shall be the sole owner of shares of stock in the Corporation (the sole "shareholder"). The sole shareholder is represented by eleven (11) representatives appointed from each of the successors of the standing committees of the Navajo Nation Council prior to the reduction of the Navajo Nation Council from eighty-eight to twenty-four members ("shareholder representatives"). Each standing committee has the discretion to appoint its shareholder representative(s).

Section 2.2 Place of Meetings. All meetings of the shareholder representatives shall be held at the principal office of the Corporation, or at such other place within or outside the Navajo Nation, as may be necessary and as shall be specified or fixed in the notices or waivers of notice thereof.

Section 2.3 Annual Meeting. The annual meeting of the shareholder representatives shall be held at the time and place specified by the Chairperson of the Board, after completion and approval of the Corporation's annual audit.

Section 2.4 Special Meetings. Special meetings of the shareholder representatives, for any purpose or purposes may be called by the President of the Corporation after consultation with the Board of Directors or by a majority of the Board of Directors, and shall be called by the President of the Corporation at the written request of the Speaker of the Navajo Nation Council on behalf of a majority of the shareholder representatives. In the absence of or failure or refusal by the President to call any special meeting of the shareholder representatives within five (5) days after the request, the Chairperson or Vice Chairperson may call such meeting.

Section 2.5 Notice of Meetings. Written notice of any annual or special meeting of the shareholder representatives shall state the place, day and hour of the meeting and the purpose or purposes for which the meeting is called, and shall be delivered not less than ten (10) days nor more than thirty (30) days before the date of the meeting, either personally or by mail to each shareholder representative, the Speaker of the Navajo Nation Council, and each Director of the Corporation.

Section 2.6 Quorum. Seven (7) shareholder representatives shall constitute a quorum for any meeting of the shareholder representatives.

Section 2.7 Stock Certificates. The certificates of stock shall be numbered and registered in the order in which they were issued. They shall be bound in a book and shall be issued in consecutive order therefrom, and in the margin thereof shall be entered the name of the sole shareholder owning the shares therein represented, with the number of shares and the dates thereof. They shall be signed by the Secretary/Treasurer of the Corporation and sealed with the seal of the Corporation.

Article III - Directors

Section 3.1 Authority. The Board of Directors shall provide high level governance and oversight of the Corporation, subject to the restrictions of the Charter and applicable law.

Section 3.2 Number. The Board of Directors shall consist of nine (9) directors. Directors shall be nominated, recommended and confirmed in accordance with Sections 3.15 and 3.16 of these Bylaws and Article XI of the Charter.

Section 3.3 Term. The terms of the initial Directors will be staggered from one (1) to three (3) years as appropriate. Thereafter, each successor Director shall serve a term of three (3) years as determined by the Nominations Committee of the Board of Directors, except those replacing a Board member under Section 3.12, whose term shall coincide with that of the Board member being replaced. Unless a Board member is removed or resigns or otherwise vacates his or her position as a Board member, such Board member shall serve as such, and be entitled to all of the rights and subject to all of the duties of a Board member, including the right to vote on

matters properly coming before the Board, until the end of his or her term or until his or her successor is confirmed in accordance with Section 3.15, whichever occurs later.¹

Section 3.4 Annual Meetings. An annual meeting of the Board of Directors shall be held immediately following the annual meeting of the shareholder representatives.

Section 3.5 Regular Meetings. Regular meetings shall include the quarterly meetings, the annual budget meeting, the audit acceptance meeting, and the annual Board meeting following the annual shareholders meeting. Quarterly meetings will be held at least once a calendar quarter at the place, day and time as determined by the Board of Directors. If the Chairperson has not called a quarterly meeting by the 1st day of the third month of the quarter, the Vice Chairperson may call such meeting.

Section 3.6 Special Meetings. Special meetings may be called by the President of the Corporation after consultation with the Chairperson or, in his absence, the Vice Chairperson, and shall be called by the President or the Secretary/Treasurer upon the request of three (3) or more Directors. In the event the President or Secretary/Treasurer fails or refuses to call a special meeting requested by the directors, the Chairperson or Vice Chairperson may call such meeting. In addition, a special meeting may be called by petition of the majority of the seated directors and at such meeting the Board shall elect a Chairperson Pro Tem.

Section 3.7 Notice of Meetings; Waiver.

a. Notice of meetings shall be given by service upon each Director in person, or by mailing to the last known street or post office address of the Director, at least ten (10) days but no more than thirty (30) days, before the date therein designated for such meeting, including the day of mailing, of a written or printed notice thereof specifying the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. No business other than that specified in such notice shall be transacted at any special meeting.

b. Notice of any regular or special meeting of the Board of Directors may also be given by other reliable and verifiable means, such as facsimile, telephone, e-mail or other electronic communication when deemed feasible and appropriate by the Chairperson or Vice Chairperson of the Board.

¹ This bylaw is in conformity with general corporation law, a proper interpretation of the Navajo Corporation Code, and the best interest of the Corporation. See 5 N.N.C. § 3100 (B) (Navajo Nation Corporation Act is "based upon the American Bar Association's Model Business Corporation Act. . ."); Model Business Corporation Act, § 8.05 (e) ("Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies . . ."); 7 N.N.C. § 204 (c) (Navajo choice of law provision authorizing reference to state and federal law); 2 Fletcher, Cyclopedia of the Law of Private Corporations, § 344 ("Directors or other officers of a corporation elected or appointed for a certain time hold over after the expiration of their term until their successors are elected or appointed."); Scarda v. C.I.R., 250 F.2d 429, 434 & n.7 (10th Cir. 1957). See also 53-11-36, N.M.S.A. ("Each director shall hold office for the term for which he is elected and until his successor has been elected and qualified.").

c. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

d. At any meeting at which every member of the Board of Directors shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

e. The Board, upon majority vote of members present at any regular meeting at which a quorum is present, may make such amendments to the agenda of such meeting as it deems proper, prudent, and in the Corporation's best interest.

f. The Board, upon the consent of all members of the Board of Directors at any special meeting, may make such amendments to the agenda of such meeting as it deems proper, prudent, and in the Corporation's best interest.

Section 3.8 Quorum. A majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The Chairperson (or, in his or her absence, any Board member acting in the Chairperson's stead) shall be counted in determining the presence or absence of a quorum of the Board.

Section 3.9 Voting. Each Director has one vote at any meeting of the Board of Directors and a majority of the quorum carries any issue. The Chairperson (or, in his or her absence, any Board member acting in the Chairperson's stead) shall be entitled to vote on any matter decided by the Board.

Section 3.10 Meeting Options. Members of the Board of Directors or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone call or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Section 3.11 Action Without Meetings. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting by orally polling the Directors or by consent in writing, setting forth the action so taken, signed by all of the Directors, and the polling or consent shall have the same effect as a regular vote.

Section 3.12 Resignation; Removal.

a. Any Director may resign at any time by giving written notice to the Chairperson of the Board, and such resignation shall be effective on the date specified in the notice.

b. A Director may be suspended by the Board of Directors or removed with cause (as defined in Appendix A to these Bylaws) at any time by a majority vote of the shareholder representatives at the annual meeting or any special meeting called for that purpose.

For purposes of removal of any Director, the Board of Directors and shareholder representatives shall comply with the "Standards and Procedures for the Removal of Members of the Board of Directors," attached hereto as Appendix A.

Section 3.13 Vacancy. Whenever any vacancy in any Board of Directors position shall occur by death, resignation, removal or otherwise, a replacement shall be nominated and confirmed for the unexpired portion of the term in accordance with Sections 3.15 and 3.16 of these Bylaws and Article XI(C) of the Charter.

Section 3.14 Compensation. The Directors shall be reimbursed for expenses reasonably incurred and paid such reasonable compensation as set forth in the Travel Policies and Procedures, which may be changed by resolution from time to time. Any Director who performs extraordinary services on behalf of the entire Board may be paid a reasonable sum for services as determined and approved by resolution in advance by the Board.

Section 3.15 Nomination and Confirmation. The Agency Councils shall nominate five (5) directors and the President of the Navajo Nation shall nominate four (4) directors. Nine (9) months before any vacancy on the Board of Directors by expiration, and upon any vacancy on the Board of Directors, whether by expiration, resignation, or removal, the Chairperson of the Board of Directors, or the Vice Chairperson in his or her absence, shall immediately notify the appropriate Agency Council or the Office of the President and Vice President, and shall advertise such position to the Joint Nominations Committee, comprised of three (3) Shareholder Representatives and three (3) members of the Board of Directors. No nominee may be a member of the Joint Nominations Committee. Such nominees shall be submitted to the Corporation's Human Resources Director for appropriate due diligence, including without limitation, background, credit and conflict of interest checks of all nominees. Upon successful completion of due diligence, nominees shall be forwarded to the Joint Nominations Committee for screening and recommendation to the Naa'bik'iyaati' Committee of the Navajo Nation Council or any successor committee ("Committee") for its final confirmation at a duly scheduled meeting of the Committee at which a quorum is present. The Committee shall consider and vote on each nominee individually, and a majority vote in favor of a nominee shall constitute confirmation of the nominee as a director. A tie vote by the Committee or the Joint Nominations Committee shall constitute a nay vote. The Committee may, for any reason, table any nomination for consideration at the next duly scheduled meeting of the Committee. If any nominee is rejected by vote of the Committee, the Committee shall so notify the Agency Council(s) or the President of the Navajo Nation as appropriate, who shall make a new nomination for consideration by the Committee in conformity with the procedures established by this paragraph. Whenever any vacancy shall occur in the Board of Directors by death, resignation, removal or otherwise, the same shall be filled without delay. Depending on the Board position vacated, a new director shall be nominated by the President of the Navajo Nation or the appropriate Agency Council to maintain the representation established by this paragraph. Due to the fiduciary responsibilities of the position of director, the Committee shall arrange for each director to take an oath of office for such position.

Section 3.16 Qualifications.

a. Presidential Nominees. Directors nominated by the President of the Navajo Nation shall have substantial management experience in the oil and gas industry. Each Director nominated by the President shall have substantial experience and/or management responsibility in corporate finance, accounting, economics, law, business management, engineering, geophysics, geology, or similar discipline. It is preferred that at least one Board member have substantial oil field and production experience and knowledge of the general regulatory framework for oil and gas operations within Navajo Indian country, and that each Director have knowledge of corporate financial statements and capital planning. Each Director shall possess at least a Bachelor's degree from a recognized and accredited four-year institution of higher learning, and advanced degrees are preferred. Subject to these qualifications, a majority of the Directors shall be enrolled members of the Navajo Nation.

b. Agency Nominees. Agency nominees will be enrolled members of the Navajo Nation and shall be capable of understanding financial statements and capital expenditure planning.

c. No Director shall be (1) a Council Delegate, President, Vice President; or a Navajo Nation, state or Federal employee in any agency that regulates the Corporation or its operations, including without limitation any office within the Division of Natural Resources, the Office of the Controller, the Office of Navajo Tax Commission, the Navajo Nation Environmental Protection Agency, or an employee, officer or director of any competitor of the Corporation; or (2) a director or commissioner of any Navajo Nation owned enterprise, industry, authority, corporation or instrumentality.

d. The Human Resource Director shall conduct appropriate due diligence, including without limitation, background and credit checks on any person nominated as a member of the Board to ensure compliance with the requirements of this Section 3.16 and Article XI(F) of the Charter.

e. The Joint Nominations Committee shall not nominate:

- i. Any person who has been convicted of or entered a plea of *nolo contendere* in any court of a felony or a misdemeanor involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud;
- ii. Any person who violates the requirements of the Navajo Nation Ethics in Government Law Act, 2 N.N.C. § 3741 *et seq.*;
- iii. Any person who has been previously removed for cause from employment with the Corporation or displayed unsatisfactory performance as an employee of the Corporation;

- iv. Any person who has been removed for cause as a director by the Shareholder Representatives; or
- v. Any person who has been removed for cause from an executive position by a former employer.

f. The Shareholder Representatives shall have the right to remove any director who violates the above requirements after having been confirmed.

Section 3.17 Duties and Responsibilities.

a. Directors shall have the rights and responsibilities of directors of similar for-profit private corporations under general corporation law, unless those rights and responsibilities are inconsistent with Navajo Nation law, or the Corporation's Charter or these Bylaws. Those rights and responsibilities should be pursued and exercised in accordance with the primary purpose of the Corporation, to create and increase corporate profit and shareholder wealth. Directors should provide leadership to accomplish these goals in two basic ways, decision-making and oversight. Such decision-making should focus on policies, strategic goals, and actions taken (often by resolution) on specific matters of singular significance to the Corporation, such as changes in the Charter or Bylaws, authorization of dividends, mergers, major new directions and capital investments.

b. The overall responsibilities of the Directors include:

- i. The duty to exercise the powers of the Corporation set forth in Article VII of the Federal Charter of Incorporation, and to delegate such authority where appropriate;
- ii. Formulating, reviewing, monitoring, and amending, with management, as appropriate, fundamental operating, financial and other corporate plans, strategies and objectives;
- iii. Selecting, evaluating and fixing the compensation of the President and Chief Executive Officer and evaluating and fixing the compensation of other corporate officers that are under contract;
- iv. Approving and implementing succession plans for the President and Chief Executive Officer;
- v. Evaluating the performance of the Corporation and taking action, including changing corporate plans, strategies and objectives and replacing the President and Chief Executive Officer, when appropriate;
- vi. Adopting policies of corporate conduct and monitoring compliance with those policies and with applicable laws and regulations, as

well as the adequacy of accounting, financial and other internal controls;

- vii. Evaluating the performance of the President and Chief Executive Officer and evaluating and determining the incentive pay of the President or other corporate officers who may be entitled such incentive pay under contract or otherwise; provided, however, that only those Board members who were confirmed and seated during a substantial portion of the rating period shall have the right to vote on such performance evaluation or incentive pay.
- viii. Reviewing the process of providing appropriate financial and operational information to decision makers (including Board members) and shareholders; and
- ix. Evaluating the overall effectiveness of the Board and its composition.

c. Other policies and standards of conduct of the Board of Directors are set forth in the attached Appendix B and are incorporated herein by reference.

d. In fulfilling its duties, the Board of Directors or its authorized delegate shall have the right to access corporate key executives and legal counsel. Directors have the right to inspect the Corporation's books and records, other relevant data and the facilities during regular business hours with 24-hour notice to the Chairperson, or in his or her absence the Vice Chairperson, and the President and with due regard for the proper functioning of the Corporation, if reasonably necessary for the performance of their duties, to be given reasonable notice of all meetings in which the Director is entitled to participate, and to be given copies of the minutes of the Board and all Committees thereof. These rights are accompanied by a duty not to disclose or to misuse such information.

Article IV- Committees

Section 4.1 The Board of Directors may establish such committee or committees thereof by majority vote at a duly called meeting if deemed expedient and in the best interest of the Corporation. Each committee shall have two or more members and shall serve at the pleasure of the Board of Directors. Such committee or committees may be given all or any part of the authority of the Board of Directors, except no such committee may exercise the authority of the Board of Directors in reference to the following matters:

- a. Submission to the committee members of any matter that requires an act of the members of the Board of Directors;
- b. Adoption, amendment or repeal of Bylaws; or
- c. Fixing compensation of Directors.

Further, no such committee may exercise authority on any other matter where the exercise of such authority would violate the Corporation's Charter, these Bylaws or any applicable law.

Section 4.2 The Board of Directors, with or without cause, may dissolve any such committee or remove any Director from the committee at any time. The designation of any such committee and the delegation of authority shall not operate to relieve the Board of Directors or any Director of any duty or responsibility to the Corporation imposed by law.

Section 4.3 Each committee shall keep their own minutes and records of meetings. Each committee shall submit periodic reports to the Board of Directors.

Article V - Officers of the Board of Directors

Section 5.1 Officers of the Board of Directors. At its regular meeting immediately following the annual meeting of the shareholder, the Board shall elect a Chairperson, Vice Chairperson, Secretary and/or such other officers of the Board from its membership as the Board deems necessary or desirable in its discretion. Such officers shall serve until the next election of such officers or their replacement, resignation, removal, or event causing a vacancy in any such office.

Section 5.2 Duties and Responsibilities. The duties and responsibilities of the officers shall be as follows:

a. Chairperson. The Chairperson shall preside at all meetings of the Board of Directors and of the shareholder representatives. The Chairperson shall also perform such duties assigned by the Board of Directors.

b. Vice Chairperson. The Vice Chairperson shall perform such duties assigned by the Chairperson or the Board of Directors.

c. Secretary. The Secretary shall ensure that accurate minutes of meetings are taken, recorded and approved and that copies of the final approved minutes and resolutions are maintained in the corporate records.

Section 5.3 Other Duties. All officers of the Corporation shall faithfully perform any other function directed by the Board of Directors.

Section 5.4 Resignation; Removal. Any officer may resign at any time by giving written notice to the Chairperson of the Board and such resignation shall be effective on the date specified in such notice. The Chairperson may resign at any time by giving written notice to the President of the Corporation with a copy to all members of the Board of Directors and such resignation shall be effective on the date specified in such notice. The Board of Directors, by a majority vote, may remove any officer at any time with cause, as defined in Appendix A of these Bylaws, or without cause, at any special meeting duly called for that purpose.

Section 5.5 Vacancy. Any vacancy in any officer position shall be filled for the unexpired portion of the term by the Board of Directors without undue delay at its next regular meeting or at a meeting specially called for that purpose.

Section 5.6. Replacement. The Board of Directors may replace any officer at any time by majority vote if the directors are not satisfied with the officer's performance.

Article VI - Officers of the Corporation

Section 6.1 Officers of the Corporation. Officers of the Corporation shall include a President, Vice President(s), and Secretary/Treasurer ("corporate officers"). The President of the Corporation shall also be the Chief Executive Officer chosen by the Board. All corporate officers shall be subject to the Standards of Conduct outlined in Appendix B to these Bylaws.

Section 6.2 Qualifications and Background Check

a. The Human Resources Director shall conduct appropriate due diligence, including without limitation background and credit checks on all officers of the corporation, or any person eligible to exercise the responsibility of such office. Officers shall not assume their duties until a background check is complete. Any candidate for office has an affirmative duty to provide information requested by the Human Resources Director in his or her conduct of due diligence.

b. A person shall be ineligible to serve as an officer or executive of the Corporation for any of the grounds stated in Sections 3.16(e), or where such person has been materially delinquent in payment of taxes, has declared bankruptcy or been declared bankrupt or insolvent, has sought appointment of a receiver, trustee or similar official for all or any substantial part of his or her assets; has made a general assignment for the benefit of creditors; or has been the subject of a proceeding commenced by others in the nature of bankruptcy or insolvency that either has resulted in an order of relief against such person or, if pending, has remained undischarged, undismissed, or unbounded for a period of sixty (60) days.

c. The Human Resources Director shall conduct periodic due diligence investigations on all officers and all officers have a continuing affirmative obligation to disclose any material changes in their qualifications.

Section 6.3 Duties and Responsibilities. The duties and responsibilities of the corporate officers shall be as follows:

a. President. Until further action by the Board, the President shall also serve as the Chief Executive Officer ("CEO") of the Corporation, and shall, subject to the oversight of the Board of Directors, have general supervision, direction and control of the business and employees of the Corporation. The President shall:

- i. attend all meetings of the Board of Directors and shareholder representatives;

- ii. present a report of the condition of the business of the Corporation at each annual meeting of the shareholder representatives and Board of Directors and at each quarterly meeting of the Board of Directors;
- iii. cause to be called meetings of the shareholder representatives in accordance with Article II, Sections 2.3 to 2.5 of these Bylaws, and of the Directors in accordance with Article III, Sections 3.4 to 3.7 of these Bylaws;
- iv. have authority to expend, contract and purchase goods and services that are included in the annual budget approved by the Board. The President may delegate in writing such authority to subordinate officers and employees as he deems proper in his sole discretion. The President together with the Vice President of Finance and in consultation with the Chairperson of the Board shall have authority to expend up to Five Hundred Thousand Dollars (\$500,000.00) for expenditures that are not included in the approved annual budget; any expenditures above this amount must be approved by Board resolution. The President, Vice President of Finance and other corporate officers must be bondable and the Corporation shall secure and maintain such surety and/or other bond in such amount or amounts as the Board of Directors deems appropriate;
- v. see that the books, reports, statements and certificates required by the statutes are properly kept, made and filed according to law;
- vi. sign all notes, drafts or bills of exchange, warrants or other orders for the payment of money duly drawn by the Vice President of Finance or Chief Financial Officer; and
- vii. enforce these Bylaws, the Charter and perform all the duties incident to the position and office, and those which are required by law.

b. Vice President(s). During the absence or inability of the President of the Corporation to render and perform such duties as stated hereinabove or as otherwise specified by the Board of Directors, the Vice President of the Corporation, if one has been elected by the Board of Directors, or the most senior of the Vice Presidents, if there are more than one, shall assume such duties of the President, unless prohibited from doing so by the Corporation's Charter, the Corporation's Bylaws, or applicable law. The Board of Directors may, if in its discretion it deems it advisable, elect other Vice Presidents along functional lines, including without limitation any or all of the following: Executive Vice President, Vice President of Finance, Vice President of Exploration and Production, Vice President of Retail/Wholesale Operations, etc.

- c. Secretary/Treasurer. The Secretary/Treasurer shall:
- i. keep or cause to be kept the minutes of meetings of the Board of Directors and of the shareholder representatives in appropriate books;
 - ii. give and serve notice of the Corporation, as required by the Charter or these Bylaws;
 - iii. be custodian of the records and of the seal, and affix the latter when required;
 - iv. keep the stock book in the manner prescribed by law, so as to show at all times the amount of capital stock, the manner and the time the same was paid in, the number of shares outstanding and the amount paid thereon; and keep such stock book open daily during business hours at the office of the Corporation, subject to the inspection of the sole shareholder of the Corporation, the Board of Directors, the Audit Committee, or any member thereof, and permit such shareholder to make extracts from said book to the extent and as prescribed by law;
 - v. sign all certificates of stock;
 - vi. present to the Board of Directors at their meetings all appropriate communications addressed to the Secretary/Treasurer officially by the President or any officer or the sole shareholder of the Corporation;
 - vii. have the care and custody of and be responsible for all the funds and securities of the Corporation, and deposit any such funds in the name of the Corporation in such bank or banks, trust company or trust companies or safe deposit vaults as the Board of Directors may designate. Thus, the Secretary/Treasurer must be bondable, and the Corporation shall secure and maintain such surety or other bond in such amount or amounts as the President of the Corporation or the Board of Directors deems appropriate;
 - viii. exhibit at all reasonable times the books of account to any Director or the sole shareholder of the Corporation upon application at the office of the Corporation during business hours;
 - ix. keep at the office of the Corporation correct books of account of all its business and transactions and such other books of account as the Board of Directors may require; and

- x. attend to all correspondence and perform all duties incident to the office of Secretary/Treasurer.

Section 6.4 Other Duties. All officers of the Corporation shall faithfully perform any other function directed by the Board of Directors.

Section 6.5 Resignation; Removal.

a. Any officer may resign at any time by giving written notice to the President of the Corporation and such resignation shall be effective on the date specified in such notice. Subject to any applicable contract provisions, the President of the Corporation may resign at any time by giving written notice to the Chairperson of the Board, and such resignation shall be effective on the date specified in the notice.

b. The Board of Directors, by a majority vote, may remove any corporate officer at any time with cause at any special meeting duly called for that purpose or at its regular meeting immediately following the annual meeting of the shareholder. For purposes of removal of any officer, "cause" shall include not performing his/her duties in a manner satisfactory to the Board, as determined in its sole discretion, in accordance with the Board's principal fiduciary obligation to the Company, any violation of any fiduciary duty owed by an officer to the Corporation, any actual or apparent conflict of interest, sexual harassment (as defined in the Corporation's personnel policies) of, or misconduct involving any employee or officer or Director of the Corporation, carrying on a close personal or sexual relationship with, any employee or officer or Director of the Corporation not a spouse of such officer, conviction of any crime involving moral turpitude or fraud, breach of confidentiality of Board discussions, including but not limited to those conducted in executive session, disclosure of any privileged communication, abuse or violation of the Corporation's Charter, Bylaws or policies and procedures, violation of any employment or other contract between the Corporation and such officer, or other serious or persistent misconduct.

Section 6.6 Vacancy. Any vacancy in any corporate officer position shall be filled by the Board of Directors without undue delay at its regular meeting or at a meeting specially called for that purpose.

Article VII - Financial Affairs

Section 7.1 Fiscal Year. The Board of Directors may, upon recommendation of the President of the Corporation and in its discretion, change the Corporation's fiscal year in the best interest of the Corporation.

Section 7.2 Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 7.3 Checks, Drafts, Etc. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by persons designated and authorized by resolution of the Board of Directors. The amounts, terms and the identities of the authorized signors shall be updated annually or as necessary by resolution of the Board of Directors.

Section 7.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 7.5 Dividends. The Board of Directors may declare dividends from the net profits of the Corporation for the preceding fiscal year, whenever in its opinion, the condition of the Corporation's affairs will render it expedient for such dividends to be declared and paid to the Navajo Nation; provided that no dividend may be made if:

- a. Payment of such dividend would, in the judgment of the Corporation, cause a risk that the Corporation would become out of compliance with any loan covenant or other contractual obligation, or would risk the loss or diminution of value of a substantial Corporate opportunity; or
- b. The Corporation would not be able to pay its debts as they become due in the usual course of its business, or
- c. The Corporation's total assets would be less than the sum of its total liabilities; or
- d. The Corporation is insolvent or would become insolvent upon payment of such dividend; or
- e. The Corporation's net assets would be reduced below its stated capital.

Article VIII - Seal

Section 8.1 The Board of Directors has adopted the following seal for the Corporation:

Navajo Nation Oil and Gas Company
[Reserved]

Section 8.2 The Board of Directors may change the Corporation's seal consistent with Article XVIII of its Charter, by majority vote at any special meeting duly called for that purpose.

Article IX - Amendments to Bylaws


Section 9.1 The Board of Directors may amend the Corporation's Bylaws in any manner not inconsistent with the Corporation's Charter or applicable law. The Corporation's

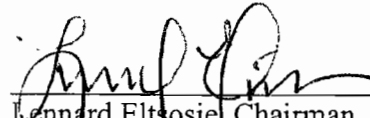
Bylaws may be amended by an affirmative vote of the Board of Directors at any regular meeting or at a special meeting called for that purpose, provided that notice by reliable and verifiable means such as facsimile, telephone, e-mail, or other electronic communication or by written notice to the Board member's last known post office address, shall have been sent to each member of the Board in accordance with Section 3.7 of these Bylaws before the date of such annual or special meeting which notice shall summarize the amendments which are proposed to be made in such Bylaws. Only such changes as have been summarized in the notice shall be made. If, however, all Board members shall be present at any regular or special meeting, these Bylaws may be amended by a unanimous vote, without any previous notice.

CERTIFICATION

The foregoing Amended Bylaws of the Corporation were adopted by the Board of Directors of the Corporation on April 25, 2015, at a duly called meeting in Albuquerque, New Mexico, at which a quorum was present, by a vote of 5 in favor, 0 opposed and 0 abstained.

Attest:


Secretary


Lennard Eltsosie Chairman
Board of Directors

**RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL**

FIRST YEAR 2015

COMMITTEE REPORT

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

Legislation # 0200-15: An Action Relating To Resources And Development; and Naabik'íyáti' Committee; Confirming Marvin Paul Murphy to Serve as the Eastern Agency Representative on the Board of Directors of Navajo Nation Oil and Gas Company for a Term of Three Years (3) Commencing Immediately. *Sponsor: Honorable Davis Filfred*

Has had it under consideration and report with the statement from Mr. Murphy and Mr. Davis Filfred to withdraw the legislation the committee did not vote on the matter.

The Resources and Development Committee received a presentation from the candidate Marvin Paul Murphy and Sponsor Davis Filfred. A motion and second was established for discussion. However, Marvin Paul Murphy graciously decided, to allow RDC to address NNOG's Charter of Incorporation and withdrew his candidacy's application.

Respectfully submitted,



Alton Joe Shepherd, Chairperson
Resources and Development Committee of
the 23rd Navajo Nation Council

Date: July 7th, 2015
Main Motion : Leonard Tsosie
Second : Benjamin Bennett
Vote : no vote taken