

LEGISLATIVE SUMMARY SHEET

Tracking No. 0121-14

DATE: April 11, 2016

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, REOURCES AND DEVELOPMENT; NAABIK'ÍYÁTI' COMMITTEES; OPPOSING HYDRAULIC FRACTURING WITHIN THE NAVAJO NATION

PURPOSE: This resolution if approved will establish that the Navajo Nation is opposed to the practice of hydraulic fracturing within the Navajo Nation.

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: None
Website Posting Time/Date: 1:38pm 4/13/16
Posting End Date: 4/18/2016
Eligible for Action: 4/19/2016

Health, Education & Human Services Committee
THENCE
Resources & Development Committee
THENCE
Naa'bik'íyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION
23RD NAVAJO NATION COUNCIL—SECOND YEAR, 2016

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0121-16

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, REOURCES
AND DEVELOPMENT; NAABIK'ÍYÁTI' COMMITTEES; OPPOSING
HYDRAULIC FRACTURING WITHIN THE NAVAJO NATION

WHEREAS:

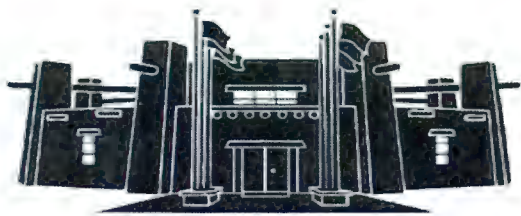
- A. The Navajo Nation established the Health, Education and Human Services Committee (HEHSC) as a standing committee of the Navajo Nation Council to promulgate regulations and provide legislative oversight on matters involving health; and to review and recommend resolutions relating to health and environmental health. *See* 2 N.N.C. §§ 400 (C)(1); 401 (B)(6)(a) (2015).
- B. The Navajo Nation established the Resources and Development Committee (RDC) as a standing committee of the Navajo Nation Council to exercise oversight authority over water, land, environment, and environmental protection; and to promulgate rules and regulations governing environmental protection. *See* 2 N.N.C. §§ 500 (A); 500 (C); 501 (B)(1) (2015).
- C. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to recommend resolutions to the Navajo Nation Council on matters within the Committee's jurisdiction. 2 N.N.C. §§ 164 (A)(9), 700 (A), 701 (A)(1) (2015); *see also* CO-45-12.

- 1 D. Hydraulic fracturing (hereinafter “fracking”) is the injection of fluid into shale
2 beds at high pressure in order to free up petroleum resources (such as oil or
3 natural gas); fracking creates tiny fissures in the rock deep beneath the earth
4 which then allows gas and oil to flow into the well. *See* Merriam-Webster,
5 Definition of Fracking (April 6, 2016, 10:10 AM), [http://www.merriam-](http://www.merriam-webster.com/dictionary/fracking)
6 [webster.com/dictionary/fracking](http://www.merriam-webster.com/dictionary/fracking).
- 7 E. Currently, the United States has more than 500,000 active natural gas wells, each
8 well requires an average of 400 water tanker trucks to supply the site and takes
9 about one to eight million gallons of water to complete each well. *See* Linda
10 Dong, WHAT GOES IN AND OUT OF HYDRAULIC FRACTURING, (Apr.
11 11, 2016, 10:50 AM), <http://dangersoffracking.com>.
- 12 F. The fracturing site has water brought in and the water is mixed with sand and
13 chemicals to create the fracking fluid; the fracking fluid consist of 600 chemicals
14 including toxins such as lead, uranium, mercury, ethylene glycol, radium,
15 methanol, and formaldehyde; the fracturing fluid is then injected (10,000 feet)
16 into the ground through a drilled pipeline; and once the mixture reaches the end of
17 the well the high pressure causes the nearby shale rock to crack, creating fissures
18 where natural gas flows into the well. *See* Linda Dong, WHAT GOES IN AND
19 OUT OF HYDRAULIC FRACTURING, (Apr. 11, 2016, 10:50 AM),
20 <http://dangersoffracking.com>.
- 21 G. There are several potential reasons for considering fracking a few which include
22 economic benefits; reduction in air pollution and water use (as compared to other
23 fossil fuels); and switching from using coal for electricity to natural gas can
24 reduce sulfur, nitrogen, mercury and air pollution matter. *See* Robert B. Jackson,
25 et. al., THE ENVIRONMENTAL COSTS AND BENEFITS OF FRACKING
26 (2014).
- 27 H. There also various concerns such as: the water requirements for fracking; the well
28 integrity and fracturing induced stress to the land; risks to surface-water and
29 groundwater resources; induced earthquakes from fracking and the deep injection
30 of wastewater causing significantly higher-energy earthquakes; wastewater

1 disposal; surface spills; increase in volatile organic compounds; and locally the air
2 toxins are potential health threats. *See* Robert B. Jackson, et. al., THE
3 ENVIRONMENTAL COSTS AND BENEFITS OF FRACKING (2014).


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5 NOW THEREFORE, BE IT RESOLVED:

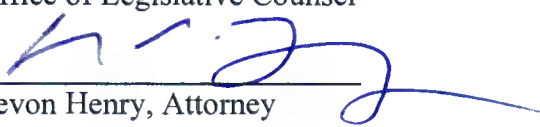
- 6 A. The Naabik'íyáti' Committee of the Navajo Nation Council hereby opposes the
7 practice of fracking within the Navajo Nation due to the potential environmental
8 and health risks associated with fracking.
- 9 B. The Naabik'íyáti' Committee hereby authorizes the Navajo Nation President, the
10 Navajo Nation Speaker, the Navajo Nation Chief Justice and their designees, to
11 oppose the practice of fracking within the Navajo Nation due to the potential
12 environmental and health risks associated with fracking.
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MEMORANDUM

TO: Honorable Jonathan Hale
Navajo Nation Council

FROM: 
Rhonda L. Tuni
Office of Legislative Counsel

THRU: 
Levon Henry, Attorney
Office of Legislative Counsel

DATE: April 11, 2016

SUBJECT: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT; NAABIK'ÍYÁTI' COMMITTEES; OPPOSING HYDRAULIC FRACTURING WITHIN THE NAVAJO NATION

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0121-16__

SPONSOR: Jonathan L. Hale

TITLE: An Action Relating To Health, Education and Human Services, Resources and Development; NAABIK'IYATI' Committees; Opposing Hydraulic Fracturing Within The Navajo Nation

Date posted: April 13, 2016 at 1:38 PM

Digital comments may be e-mailed [to comments@navajo-nsn.gov](mailto: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) 871-7586

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.: 0121-16

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating To Health, Education And Human Services, Resources And Development; Naabik'iyati' Committees; Opposing Hydraulic Fracturing Within The Navajo Nation.

Posted: April 13, 2016 at 1:38 PM

5 DAY Comment Period Ended: April 18, 2016

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing (1)	1. Louise Denetsosie, Chief Executive Officer; Navajo Nation Oil and Gas Company.
Inclusive Comments	<i>None</i>



**Executive Director
Office of Legislative Services**

04/19/2016 - 8:40 am

Date/Time

NNOGC Public Comments on Draft Navajo Nation Legislation No. 0121-16

Louis Denetsosie <ldenetsosie@nnogc.com>

Navajo Nation Oil and Gas Company

comments <comments@navajo-nsn.gov>;

File

2016-04-18 NNOGC comments on draft NN legis 0121-16.pdf;

Dear Sir or Madam,

Attached are the comments of the Navajo Nation Oil and Gas Company on draft Navajo Nation Legislation No. 0121-16 Opposing Hydraulic Fracturing within the Navajo Nation.

Please make available to the members of the Navajo Nation Council.

NAVAJO NATION OIL & GAS COMPANY

A Federal Corporation

Post Office Box 4439 • Window Rock, Arizona • 86515

Telephone (928) 871-4880 • FAX (928) 871-4882



April 18, 2016

Honorable 23rd Navajo Nation Council Delegates

c/o Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Re: Comments of Navajo Nation Oil and Gas Company on Legislation No. 0121-16: An Action Relating To Health, Education and Human Services, Resources and Development; Naa'biki'yati Committees; Opposing Hydraulic Fracturing Within The Navajo Nation

Dear Honorable Delegates:

As a wholly owned entity of the Navajo Nation government that holds significant oil and gas assets of the Navajo Nation in the Navajo public trust, the Navajo Nation Oil and Gas Company ("NNOGC") appreciates this opportunity to provide comments on the above captioned legislation. As expressed in the mission statement of NNOGC, respect for the environment and minimizing and mitigating negative impacts to the environment from the extraction of oil and gas from *Dinétaah*, consistent with Navajo values and teachings, is of paramount importance in NNOGC carrying out its obligations on behalf the Navajo Nation and Navajo people to maximize the value of the Nation's oil and gas resources for current and future generations of Navajo citizens.¹ For that reason, I write to convey the serious concern of NNOGC and its Board of Directors in regard to the above captioned proposed Legislation No. 0121-16 to oppose hydraulic fracturing ("fracking") within the Navajo Nation ("Legislation No. 0121-16").

Legislation No. 0121-16 is not based in sound science, is not in the Navajo Nation's best interest, and is inconsistent with the Navajo Nation's Energy Policy Act of 2013, Navajo Nation Council Resolution No. CO-50-13 (Oct. 24, 2013) ("2013 Energy Policy"). Legislation No. 0121-16 would also purport to have standing committees of the Navajo Nation Council make policy statements on behalf of the Nation, an authority reserved to the Council under Title 2 that has never been delegated to the standing committees. It would also purport to "authorize" the Chief Justice, the leader of the Judicial Branch, to take a political position on legal matters that may come before it. That is wholly inappropriate and a violation of the separation of powers doctrine under Navajo Fundamental Law. For these reasons, and others, the standing committees of the 23rd Navajo Nation Council should *reject* and *not pass* proposed Legislation No. 0121-16.

¹ NNOGC's mission statement is to "Maximize resources for the benefit of the Navajo Nation with respect for Mother Earth."

Legislation No. 0121-16 Violates Separation of Powers

Legislation No. 0121-16 violates the doctrine of separation of powers under Navajo Fundamental Law, and, if passed, would therefore be invalid. "Separation of functions is a concept that is so deeply-rooted in Navajo culture that it is accepted without questions. It is essential to maintaining balance and harmony . . . [i]f one branch oversteps its powers, and infringes on the role of another branch, the integrity of the government is ruined." *Tuba City Judicial Dist. v. Sloan*, 8 Nav. R. 159, 167-68 (Nav. Sup. Ct. 2001). "One of the basic tenets which derives from the doctrine of separation of powers is judicial independence. The judiciary's function is to render judgments and to enforce its judgments and orders. No other branch or office of the government may legally interfere with the judiciary's duty to render judgments and enforce judgments in any way. Likewise, no other branch, office, or entity of the government may influence a court with the intent of altering its decision. Outcomes of cases that are before the courts must be free of any form of political influence." *Id.* at 168. Here, Legislation No. 0121-16 would purportedly "authorize[] . . . the Navajo Nation Chief Justice . . . to oppose the practice of fracking with the Navajo Nation due to the potential environmental and health risks associated with fracking." That is a violation of the doctrine of separation of powers and would subject the legislation to being invalidated by the Navajo Nation courts.

Legislation No. 0121-16 Violates Title 2

Legislation No. 0121-16 also violates Title 2, because it would purport to give policy making authority to standing committees of the Navajo Nation Council without final Council approval. See Legislation No. 0121-16 (titled "Relating To *Health, Education and Human Services, Resources and Development; Naa'biki'yati Committees*;" not the Navajo Nation Council). However, 2 N.N.C. § 164(A) provides that "[s]tatements of policy . . . must be reviewed and approved by resolution by the appropriate standing committee(s) and the Navajo Nation Council" 2 N.N.C. § 164(A) (emphases added). Because Legislation No. 0121-16 is not assigned to the Navajo Nation Council, and only the standing committees, if passed by the committees, it would be either of no legal effect under Title 2, or subject to being invalidated by the Navajo Nation courts.

Legislation No. 0121-16 Conflicts with the Nation's 2013 Energy Policy, Which Is In Harmony with the Federal Approach to Fracking

Legislation No. 0121-16 conflicts with the 2013 Energy Policy. As the Navajo Nation Council explained in the 2013 Energy Policy:

Energy forms a cornerstone of the Navajo economy by providing jobs for our people, electricity for our homes and businesses, and revenues for our local and central government. Developing energy resources will expand government revenues, create new industries and promote sustainable jobs for the *Diné*. This economic base provides opportunities for Navajos to pursue technical and managerial careers in many energy-related product, service and supporting industries. The ability for Navajos to build stable careers while remaining close

to their families will build the strength of our families and communities that have been fragmented by the need of our people to find work in metropolitan centers. A growing Navajo economy draws educated and experienced tribal members back to the nation, and provide[s] the economic growth to support Navajo entrepreneurs and business owners.

2013 Energy Policy Act, Section 1(j). The 2013 Energy Policy is positive Navajo law and represents a consensus reached after many years of discussion among the Nation's leaders. Those leaders concluded that *maximizing* development of traditional fossil fuels, including oil and gas, and coal, and renewable resources, including wind and solar, all of which the Navajo Nation is richly blessed with, in harmony with Navajo environmental values and traditional teachings, is what is best for the Nation's future. Natural gas, including Helium—for which the Navajo Nation may have some of the richest reserves in the United States—is a key component of the Navajo Nation's energy portfolio. The responsible development of natural gas and other fossil fuels will provide environmental benefits and critical economic and energy security for the Navajo Nation and Navajo citizenry. Simply banning fracking does not balance these vital interests, and would minimize development of significant natural gas (and oil) resources. Such a ban would not be in the short or long term best interests of the Nation, and is contrary to the 2013 Energy Policy balancing these important interests.

The Nation's balanced approach to energy development in the 2013 Energy Policy is also consistent with the findings and approach of the federal government. The United States Environmental Protection Agency ("USEPA") has explained that "[n]atural gas plays a key role in our nation's clean energy future. The U.S. has vast reserves of natural gas that are commercially viable as a result of advances in horizontal drilling and hydraulic fracturing technologies enabling greater access to gas in shale formations. Responsible development of America's shale gas resources offers important economic, energy security, and environmental benefits."²

Legislation No. 0121-16 Has Insufficient Findings Not Based In Sound Science

Legislation No. 0121-16 is not based in sound science and makes no legitimate findings to support opposition to hydraulic fracturing. Legislation No. 0121-16 relies principally on statements purportedly made by a "Linda Dong" on an otherwise anonymous website ("What Goes In and Out of Hydraulic Fracturing," *available at* <http://dangersoffracking.com>.) See Legislation No. 0121-16, Recital Clause (E) and (F). From what NNOGC can tell, Linda Dong is not a scientist, and is, in fact, just the website designer, relying on other sources' websites for information. See *id.*; see also <http://www.lindadong.com/>. Brief, bare and unsupported statements are insufficient as legislative findings. See *Nelson v. Initiative Comm. to Reduce the Navajo Nation Council*, No. SC-CV-03-10, slip op. at 7 (Nav. Sup. Ct. Jan. 4, 2011); *Office of*

² USEPA, Natural Gas Extraction - Hydraulic Fracturing, *available at*: <https://www.epa.gov/hydraulicfracturing>.

the President and Vice President v. Navajo Nation Council, No. SC-CV-02-10, slip op. at 14 (Nav. Sup. Ct. May 28, 2010) (“It is the settled expectation of the People that government actions must be explained. Without specific findings, the purpose of any government action will be questioned.”)

Indeed, the most recent scientific studies of hydraulic fracturing are to the contrary. For example, in a draft assessment of impacts of hydraulic fracturing on drinking water, now out for peer review, USEPA concludes that there have not been widespread or systemic impacts on drinking water resources as a result of fracking, and that the number of identified cases is small compared to the number of hydraulically fractured wells.³ That comports with studies done by Yale University⁴ and Colorado State University (CSU)⁵ for two different centers of drilling, the first in northeastern Pennsylvania and the second in northeastern Colorado. The Yale-led study found “no evidence that trace contamination of organic compounds in drinking water wells near the Marcellus Shale” resulted from underground migration of the chemicals. *See* n. 4. When the researchers did find “low levels of organic compounds” near a natural gas well, it was caused by “surface releases,” *e.g.*, by above ground activities that can be mitigated or prevented. *Id.* The CSU study found “no evidence of water-based contaminants seeping into drinking water.” *See* n. 5. Researchers did detect non-toxic methane seepage in 2 percent of the wells, but concluded that it likely stemmed from “compromised well casings,” *i.e.*, from aging of the casings, not from fracturing technologies. *Id.* CSU stated that “[w]ith regard to the really bad stuff – the bariums, chromiums and other soluble contaminants that people have been worried about getting into their water – [the study] team didn’t find any.” *Id.*

Conclusion

Developing the Nation’s natural resources in harmony with Navajo environmental values and traditional teachings is very important. However, Legislation No. 0121-16 is not based in sound science, is not in the Navajo Nation’s best interest, and is inconsistent with the 2013 Energy Policy, as it would not maximize the value of the Nation’s resources consistent with Navajo environmental values. Legislation No. 0121-16 would have standing committees of the Navajo Nation Council make policy statements, an authority reserved to the Council under Title 2 that has never been delegated to the standing committees. It would also purport to authorize

³ USEPA, Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources (External Review Draft), *available at* <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=244651>.

⁴ Elevated Levels of Diesel Range Organic Compounds in Groundwater near Marcellus Gas Operations Are Derived from Surface Activities, Brian D. Drollette, et al., *available at* <http://www.pnas.org/content/112/43/13184.abstract>.

⁵ *See* Colorado State University Press Release, “No water-based contaminants found in Colorado wells,” *available at* <http://source.colostate.edu/study-no-water-based-contaminants-found-in-colorado-wells/> (the studies were published in *Environmental Science and Technology*, and in *Water Research*).

the Chief Justice to take a political position on legal matters that may come before it, which is a violation of the separation of powers doctrine under Navajo Fundamental Law, and the Court's ethical responsibilities. For these reasons, NNOGC strongly urges the standing committees of the 23rd Navajo Nation Council to reject and not pass proposed Legislation No. 0121-16.

Thank you for consideration of NNOGC's comments. If you have any questions, please call me at 928-871-4880.

Sincerely,

NAVAJO NATION OIL AND GAS COMPANY



Louis Denetsosie, Chief Executive Officer

c: The Honorable LoRenzo Bates
Speaker, 23rd Navajo Nation Council