

NAVAJO NATION ENERGY POLICY – DRAFT JUNE 20, 2011  
UPDATE TO DRAFT DATED MAY 18, 2011

Resolution Rescinding the Navajo Nation 1980 Energy Policy  
Adopted on April 29, 1980 and  
Approving the Navajo Nation Energy Policy of 2011

PREAMBLE:

The Navajo Nation (hereinafter the "Nation"); to protect the energy natural resources and assets of the Nation; to ensure such resources and assets are used for the benefit of the Dine'; to create a self-sustaining economic future for the Dine' on their lands; to ensure sovereign control by the Nation over the extraction and flow of resources from the Nation's lands; to supply Navajo communities with the benefits afforded by energy development through total resource sovereignty, hereby establishes the Navajo Nation Energy Policy of 2011 (hereinafter the "2011 Energy Policy").

This 2011 Energy Policy provides guidance for elected officials, community leaders, managers in the Nation's government, board members and managers of the Nation's enterprises, [federal and state] regulatory authorities and Navajo and non-Navajo business interests dealing with energy issues on the Nation. The 2011 Energy Policy serves to guide our leaders as they consider specific legislation, rules and regulations, energy strategies, board resolutions, management policies, programs and decisions related to energy in and around the Nation.

WHEREAS:

1. The Navajo Nation Council adopted the Navajo Nation Energy Policy (CAP-34-80) on April 29, 1980 ("1980 Energy Policy"); and,
2. The Nation acknowledges the enduring principals and motivations set forth in the 1980 Energy Policy; and,
3. The Nation desires to update and amend the energy policies of the Nation by rescinding the 1980 Energy Policy and, hereby adopting this 2011 Energy Policy; and,
4. The energy resources of the Nation are owned by the Nation and are to be administered and managed by the Nation for the benefit of all Navajo people; and,
5. The Nation will seek to maximize its level of autonomy in managing its energy resources and energy use on the Nation; and,
6. The Nation will take a leadership role in developing its energy industries to exercise its political sovereignty, to build true economic sovereignty, and to increase self-determination to provide for future generations.

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NOW, THEREFORE, BE IT RESOLVED THAT THE NAVAJO NATION COUNCIL  
HEREBY RESCINDS THE 1980 ENERGY POLICY AND ADOPTS THE NAVAJO  
NATION ENERGY POLICY OF 2011, ATTACHED HERETO AS EXHIBIT A:

EXHIBIT A

NAVAJO NATION ENERGY POLICY OF 2011

Section 1: Short Title

Short title - The Navajo Nation Energy Policy of 2011 may be referred to as the “2011 Energy Policy”.

Section 2: Scope

This 2011 Energy Policy sets forth principles relating to the development and use of energy on the Nation. The energy resources and assets of the Nation addressed by the 2011 Energy Policy include fuel minerals, electricity generating facilities, electricity transmission infrastructure and pipelines. The energy uses addressed by the 2011 Energy Policy include, but are not limited to, residential, commercial, industrial and governmental uses, including heating, cooling, mechanical, industrial process and transportation uses.

The 2011 Energy Policy addresses the Nation’s natural resource endowment in the areas of resource assessment, exploration, severance, development, production and distribution in order to maximize revenue and job creation for the benefit of the citizens of the Nation.

Section 3: Definitions

Electricity generating facilities. Includes facilities that burn fossil and biomass fuels to generate electricity; facilities that convert renewable resources to electricity (such as wind, solar, geothermal and hydroelectric); and, facilities generating electricity through nuclear fusion or fission for use on the Nation and for export for use off the Nation.

Electricity transmission infrastructure. Includes transmission lines, substations and related infrastructure.

Fuel minerals. Includes petroleum (e.g. oil, natural gas and associated liquids and gasses), coal, coal bed methane, uranium and any derivatives or associated minerals.

Large-scale energy developments. Includes (a) electricity generating facilities with capacity of one (1.0) megawatt or greater, (b) energy-related facilities utilizing five

(5) acres of land or more, and (c) transmission lines or pipelines extending more than five hundred (500) feet.

Pipelines. Includes oil and gas pipelines, coal slurry lines and related compression and pumping infrastructure.

#### Section 4: General Provisions

Section 401: Applicability of the Nation's Laws and Regulations. The Nation's laws and regulations will apply to energy projects located within the Nation's jurisdiction.

Section 402: Long-Term Sustainability of Energy Developments. Energy developments on the Nation will be designed to be sustainable over the long-term based on economic considerations and environmental and community impacts.

Section 403: Lease Rent and Royalty Rates. Lease rent and royalty rates and charges for easements and rights-of-way will be equal to or greater than fair market value including energy projects where the Nation or an affiliate is an owner, taking into consideration the direct and indirect economic benefits of the energy project to the Nation.

Section 404: Renewal of Leases for Existing Energy Infrastructure. When negotiating renewals of rights-of-ways, leases for existing power generating facilities, transmission infrastructure and pipeline infrastructure and related water allocations, the Nation will maximize the total value of consideration to be received by the Nation.

Section 405: Selecting External Development Partners. External development partners of the Nation and its enterprises must possess relevant experience in the industry and those specific technologies required for the proposed energy development, as well as sufficient financial resources to adequately fund their portion of development expenses and contemplated investment in the project.

Section 406: End of Project Life. Leases and rights-of-way for energy projects will require the lessees to return the land to its original condition, or better, at the end of the projects, except where the Nation desires to retain improvements and related infrastructure after lease or right-of-way termination.

Section 407: Consistency in Energy-Related Decision Making. The development and management framework for the Nation's energy resources will encourage consistency in decisions involving the use of Navajo resources. The process for making energy development decisions shall be clearly communicated to the Nation and its stakeholders.

Section 408: Impact on Other Resources. New energy projects shall minimize negative impacts on other scarce and valuable resources of the Nation and manage

such impacts in accordance with the Nation's laws, policies and plans for its resources, and will mitigate adverse impacts where necessary.

### Section 5: Large-Scale Energy Developments

Section 501: Maximize Ownership, Control and Revenues. The Nation promotes majority ownership by the Nation or its entities of large-scale energy projects that utilize the Nation's resources in order to optimize the Nation's participation in profits, in balance with the risks; maximize control and revenues; and, to ensure the interests of the Navajo people are protected. The Nation will have the option to purchase [strive to acquire] at least a majority of the equity of new large-scale energy projects on [in an around] the Nation, including expansions of existing facilities and developments.

Section 502: Maximizing Navajo Return on Investment. When the Nation invests in energy projects, the primary goal will be to maximize profits and return on investment, in light of the attendant risks, for the benefit of the Nation.

Section 503: Navajo Ownership and Development Representatives. The Nation may designate an entity as its representative in any energy project in which the Nation desires to take ownership of a portion of such project.

Section 504: Operating Capabilities. The Nation will ensure that energy developments, including where the Nation or its enterprises possess a degree of ownership, will be operated and managed by entities that possess appropriate industry experience and capabilities.

### Section 6: Community and Economy

Section 601: Expanding Rural Electrification. The Nation will continue to seek ways to expand electrical services to the residents of the Nation in balance with the cost to serve remote regions.

Section 602: Local Community Input, Support for, and Benefits from Energy Developments. Communities impacted by energy development will have the opportunity to provide input on and to indicate their support for such projects, and where substantially and adversely impacted by the development to share in a portion of the financial benefits of such projects.

Section 603: Managing the Cost of Energy for Residents of the Nation. The Nation will continue to seek ways to manage the cost of electricity and fuel for its residents to minimize the financial burden on Navajo communities.

Section 604: Navajo-Owned Small Businesses. The Nation will encourage the development of Navajo-owned small businesses that will support the Nation's energy industries.

Section 605: Fostering Economic Development, Developing Capabilities and Creating Career Opportunities. Energy projects will be developed to foster industrial and commercial growth, create career opportunities, build the management skills and capabilities of the Navajo workforce, in order to build the Nation's institutional capacity to manage its own energy resources.

Section 606: Distributed Electricity Generation. The Nation supports the development of distributed electricity generation and community scale electricity generation for use on the Nation.

Section 607: Science Education. The Nation shall support the pursuit of educational studies in the sciences by its youth in order to create an interest in careers in the energy industry and to build a workforce that is prepared for technical and managerial careers in the energy industry.

Section 608: Health and Safety. The Nation will strive to protect the safety and health of Navajo communities when considering new energy developments and regulating existing energy developments.

Section 609: Energy Efficiency and Conservation. The Nation will continue to seek ways to enhance and promote energy efficiency and conservation on the Nation in order to manage future power demand, reduce environmental impacts, reduce the financial burden of power for the residents of the Nation, and build energy efficient industries.

## Section 7: Coal

Section 701: A Future with Coal and Coal-Fired Power Plants. Coal and coal-fired plants are a significant component of the Navajo economy and the Nation's revenues. The Nation will plan for a future that includes coal as a key component of the Nation's energy mix. As a coal producer that derives a significant amount of royalties, rent, fees, jobs and tax revenue from coal mining and production of electricity from coal, the Nation will seek to shape federal fossil fuel legislation and adapt to the new federal regulatory environment.

## Section 8: Renewable Energy

Section 801: Renewable Energy Development. The Nation will continue to develop a renewable portfolio of power generating facilities that balances coal-fired

generation and renewable energy generation from such sources as wind, solar, hydro and biomass.

Section 802: Renewable Energy Portfolio Standard (RPS). The Nation will evaluate the appropriateness of implementing a Renewable Energy Portfolio Standard (RPS) for electricity used on the Nation. If an RPS is established, the Nation will strive to mitigate the impacts of increased costs of electricity for residential customers within the Nation caused by the implementation of an RPS.

#### Section 9: Nuclear Matters

Section 901: Uranium Mining and Nuclear Power Generation. The Nation currently supports a ban on uranium mining in Navajo Indian Country. The Nation nonetheless will continue to monitor uranium mining technologies and techniques, as well as market conditions for uranium mining and nuclear electricity generation to assess the safety, viability and potential of these activities for the future.

#### Section 10 Electrical and Energy Distribution Systems

Section 1001: New Electricity Transmission and Pipeline Infrastructure. The Nation supports the development of new electricity transmission infrastructure that provides the Nation with an opportunity to unlock the value of its vast renewable and traditional energy resources by providing transmission corridors to metropolitan centers.

Section 1002: Energy Corridors. The Nation will establish energy corridors to manage the impact on Navajo communities resulting from future electrical transmission, pipeline and railroad infrastructure.

#### Section 11: Navajo Energy Office

Section 1101: Delegated Authority Pending Establishment of the Navajo Energy Office. Until such time as the Navajo Nation establishes a Navajo Energy Office in the Executive Branch of the Navajo Nation government, and pending staffing and appropriation of a budget for such Office, the President shall select appropriate Executive Branch officials who shall have the authority to carry out the responsibilities under this Section.

Section 1102: Responsibilities. The Navajo Energy Office shall act as a clearinghouse for energy related projects on the Nation to facilitate energy development on the Nation and to increase institutional capacity on energy issues within Navajo Nation governmental agencies and enterprises.

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Section 1103: Strategic, Integrated Approach to Energy Planning. The Navajo Energy Office will assist the Nation to develop a long-term Strategic Energy Plan. The Strategic Energy Plan will be designed to stimulate increased revenues from energy projects, spur energy infrastructure development, and diversify the Navajo energy economy. The Strategic Energy Plan will address opportunities to foster a competitive business environment to attract private investors to energy projects on the Nation, address how the Nation will strategically engage the key governmental and community representatives on Navajo energy projects, and investigate the potential of all the Nation's available energy resources in all regions.

## Section 12: Research and Development

Section 1201: Support for Technologies that Enhance the Use of Navajo Coal. The Nation will support newer and more efficient coal technologies being developed through research and development which lessen the environmental impact of coal based electricity generation and maximize the efficient use of the Nation's coal resources.

Section 1202: Support for Technologies that Enable and Enhance the Use of All of the Nation's Resources. The Nation shall support the research and development of technologies that will allow the Nation to use its resources to maximize their benefit to the Nation and also lessen the environmental impact of their use.

## Section 13: Taxation and Regulation

Section 1301: Navajo Nation Taxation. The Nation shall seek to exert primacy in the taxation of energy development on the Nation to contribute to the funding of essential governmental services on the Nation.

Section 1302: Tax Incentive. The Nation shall seek to develop its tax codes to encourage the development of the Nation's energy resources, while balancing the need to provide supporting infrastructure and services and to manage the Nation's finances.

Section 1303: Navajo Nation Regulation. The Nation shall seek to exert primacy in the regulation of energy developments on the Nation.

## Section 14: Limitations

Section 1401: Limitations. Nothing in the 2011 Energy Policy is intended to, nor shall it be construed to:

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- a) Alter, amend or diminish in any way the sovereign immunity of the Navajo Nation or constitute a waiver of the sovereign immunity of the Navajo Nation, as defined in 1 N.N.C. § 551, et seq.;
- b) Abrogate any authority conferred by the Navajo Nation Council upon any agency, enterprise or other instrumentality of the Navajo Nation;
- c) Repeal in whole or in part any law or regulation duly promulgated by the Navajo Nation or any of its agencies;
- d) Authorize or sanction the breach of any contractual duty or diminish any vested property rights; or
- e) Provide the basis for a private cause of action by or against any person or entity, or confer jurisdiction upon any court for any cause of action predicated on the 2011 Energy Policy.