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From: David Taylor [davetaylor@navajodoj@yahoo.com]
Sent: Friday, November 07, 2008 4:28 PM
To: NRCREP Resource
Subject: Uranium Recovery GEIS, Comments of the Navajo Nation
Attachments: 08-11-07 Comments of the Navajo Nation to Proposed GEIS.pdf; Navajo Nation Fundamental law in Navajo Nation Code.pdf

Attached, in PDF format, you will find the comments of the Navajo Nation to the Draft Generic Environmental Impact Statement for In-Situ Leach Uranium Mining Facilities. You will also find an Exhibit that is to be incorporated by reference into the comments of the Navajo Nation.

Please let me know as soon as possible if there any issues with opening the attachments.

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Comment Number: 1318

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NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

LOUIS DENETSOSIE
ATTORNEY GENERAL

HARRISON TSOSIE
DEPUTY ATTORNEY GENERAL

November 7, 2008

Chief, Rulemaking Directives, and Editing Branch
Mailstop: T6-D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Draft Generic Environmental Impact Statement for
In-Situ Leach Uranium Milling Facilities

**COMMENTS SUBMITTED ON BEHALF OF THE NAVAJO NATION BY THE
NAVAJO NATION DEPARTMENT OF JUSTICE**

On August 30, 2007 the Navajo Nation filed its initial comments to the Draft Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities. On July 1, 2008 the Nuclear Regulatory Commission published a revised document entitled "Generic Environmental Impact Statement for In-Situ Uranium Milling Facilities Draft Report for Comment." On September 8, 2008 representatives of the Nuclear Regulatory Commission (NRC) met with representatives of the Navajo Nation in Window Rock, Arizona for purposes of discussing the July 1, 2008 draft document.

While the Navajo Nation recognizes and appreciates the effort that went into preparing the July 1, 2008 document, and also recognizes and appreciates the opportunity to meet with NRC representatives on September 8, 2008, unfortunately, it is the considered opinion of the Navajo Nation that the NRC still fails to consider the essence of the Navajo Nation's concerns regarding the still proposed Generic Environmental Impact Statement. The following paragraphs represent our effort to condense these concerns into a few short, hopefully cogent sentences.

The United States Nuclear Regulatory Commission has in the past, and, continues to this day in its failure to recognize the devastating impact of past uranium mining and milling operations on Navajo people and Navajo lands. This is not only an environmental issue, but also an issue implicating both the NRC's trust duty to the Navajo Nation and, more generally, environmental justice. As we have emphasized in prior testimony and discussions with the NRC, the conditions, demographics, hydrologic and legacy related issues in the Navajo Nation simply do not lend themselves to "generic" treatment as described in the draft GEIS.

The July 1, 2008 Draft GEIS devotes fewer than three pages to environmental justice issues in Navajo Indian Country (Vol. II, the bottom of page 6-17 through the top half of page 6-19). There is no mention of the continuing environmental contamination and suffering endured by the Navajo people as a result of past uranium related activities. There is no reference to the actions of United States House of Representatives Committee on Oversight and Government Reform in shedding public light on this national tragedy. There is no reference to the Navajo witnesses who appeared before this Committee setting forth their individual stories and the collective impact on the Navajo culture and environment. There is no reference to the testimony of Navajo Nation Resources Committee Chairman George Arthur proposing an initial federal outlay of 500 million dollars to begin to address these concerns or any reference to the response of a concerned Congressman who questioned aloud whether or not that sum would even be a good start. There is no reference to the five-year plans prepared by federal agencies (including the NRC) which highlight many aspects of this continuing tragedy.

And finally, there is only a passing, minimal reference to the uranium mining and processing moratorium passed by the Navajo Nation in April of 2005. This passing reference is found at p. 1-22 and is followed by what the NRC labels as its standard response regarding “these types of jurisdictional issues”, namely that the NRC will take no position, but rather fulfill its statutory mandate to determine if the proposed operation complies with the “Atomic Energy Act and NRC regulations.” There is no small degree of irony in the fact that the NRC references “**these types** of jurisdictional issues” in discussing a **Generic** Environmental Impact Statement. Once again, however, a one size fits all analysis is inappropriate. The jurisdictional issue involving the Navajo Nation cannot be looked at in a vacuum. It involves substantial environmental justice implications for a native Nation **uniquely** impacted by past activities now under the direct control of the NRC.

As indicated in the face-to-face meeting between Navajo Nation and NRC representatives on September 8, 2008 in Window Rock, Arizona, the Navajo Nation Council has codified some of its most fundamental principles and concepts that go to the core of its existence. These fundamental principles and concepts must be taken into consideration by the NRC in making any decision impacting Navajo Indian Country. Those fundamental principles, as codified, are attached to the comments and incorporated by reference.

Additionally, some of those principles and concepts are set forth below as part of the findings made by the Navajo Nation Council in April 2005. The Council found:

“That the wise and sustainable use of natural resources in Navajo Indian Country traditionally has been, and remains, a matter of paramount governmental interest to the Navajo Nation and a fundamental exercise of Navajo Tribal sovereignty;

That the fundamental laws of the Diné [Navajo people] support preserving and protecting the Navajo Nation’s natural resources, especially the four sacred elements of life – air, light/fire, water and earth/pollen – for these resources are the foundation of the peoples’ spiritual ceremonies and the Diné life way, and that it is the duty and responsibility of the Diné to protect and preserve the natural world for future generations;

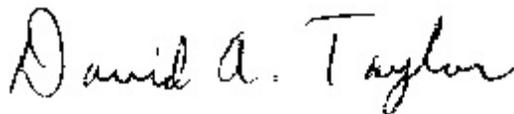
And that the social, cultural, natural resource and economic damage to the Navajo Nation from past uranium mining and processing is ongoing due to (I) the continuing need for full monetary compensation of former Navajo uranium workers and their families for their radiation and mining-induced diseases, (ii) the presence of hundreds of unremediated or partially remediated uranium mines, tailings piles, and waste piles located in Navajo Indian Country and (iii) the absence of medical studies of Diné who live in uranium mining impacted communities.”

The Navajo government respectfully, once again, submits that there is no other political/geographical area in the United States, and perhaps the world, that has suffered and continues to suffer from the environmental impacts of past uranium mining and processing to the same extent as the Navajo Nation. The NRC should expressly exempt Navajo Indian Country, including all lands within any Federally recognized Chapter of the Navajo Nation, from the operation of any GEIS that may be prepared and from any application of the alternative that may be selected by the NRC.

The Navajo Nation is pleased to adopt and support the articulate comments submitted by the New Mexico Environment Department on October 6, 2008 opposing the adoption of a Generic Environmental Impact Statement for In-Situ Leach Uranium Recovery Facilities. These comments are incorporated herein by this reference.

Very truly yours,

NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

A handwritten signature in black ink that reads "David A. Taylor". The signature is written in a cursive, flowing style.

David A. Taylor, Principal Attorney
Natural Resources Unit

DAT/dt

1 N.N.C. § 9

Note 1

jo Nation, 5 Nav. R. 152, 153 (Nav. Sup. Ct. 1987).

"As a general matter, a criminal sentence [including a consecutive sentence] is not cruel and unusual punishment as long as it falls within the boundaries set by the legislature." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

"This Court recognizes that a [a] substantial liberty interest is at stake in sentencing." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

2. Treatment of juveniles

"... [W]e also hold that at the minimum a detained juvenile must be provided with a padded area to lie on, a blanket, and food to eat to comply with the Navajo Bill of Rights Section against cruel and unusual punishment." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

3. Due process

"The Navajo Nation Election Code, as it applies to these schools, does not affect property

GENERAL PROVISIONS

interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [...] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

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Chapter 2. The Foundation of the Diné, Diné Law and Diné Government

Section

- 201. Diné Bi Beehazáanii Bitsé Siléí—Declaration of the Foundation of Diné Law
- 202. Diné Bi Becnahaz'áanii
- 203. Diyin Bits'áádéé' Beehaz'áanii—Diné Traditional Law
- 204. Diyin Diné'é Bits'áádéé' Beehaz'áanii—Diné Customary Law
- 205. Nahasdzáán dóó Yáidihil Bits'áádéé' Beehaz'áanii—Diné Natural Law
- 206. Diyin Nohookáá Diné Bi Beehaz'áanii—Diné Common Law

History

CN-69-02, November 1, 2002.

Preamble. CN-69-02 contains the following preamble:

"Whereas: 2. The Diné have always been guided and protected by the immutable laws provided by the Diyin, the Diyin Diné'é, Nahasdzáán and Yáidihil; these laws have not only provided sanctuary for the Diné Life Way but has guided, sustained and protected the Diné as they journeyed upon and off the sacred lands upon which they were placed since time immemorial; and

"3. It is the duty of the Nation's leadership to preserve, protect and enhance the Diné Life Way and sovereignty of the people and their government; the Nation's leaders have always lived by these fundamental laws, but the Navajo Nation Council has not acknowledged and recognized such fundamental laws in the Navajo Nation Code; instead the declaration and practice of these fundamental laws have, up to this

point in time, been left to those leaders in the Judicial Branch; and

"4. The Navajo Nation Council is greatly concerned that knowledge of these fundamental laws is fading, especially among the young people; the Council is also concerned that this lack of knowledge may be a primary reason why the Diné are experiencing the many negative forms of behavior and natural events that would not have occurred had we all observed and lived by these laws; and

"5. The Navajo Nation Council finds that the Diné Life Way must be protected and assured by incorporating these fundamental laws into the Navajo Nation Code in a manner that will openly acknowledge and recognize their importance and would generate interest to learn among all Diné; and

"6. The Navajo Nation Council finds that the acknowledgment, recognition and teaching of these laws do not contravene 1 N.N.C. § 4; the

We, the ancestors

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incorporation of these fundamental laws into the Navajo Nation Code is not governmental establishment of religion nor is it prohibiting the free exercise of religion; the Navajo Nation Council and the Diné have always recognized and respected the principle of these fundamental laws and the Diné have the right and freedom to worship as they choose; and the Navajo Nation Council and the Diné recognize that the Diné Life Way is a holistic approach to living one's life whereby one does not separate what is deemed worship and what is deemed secular in order to live the Beauty Way; and

"7. The Navajo Nation Council further finds that it is entirely appropriate for the government itself to openly observe these fundamental laws in its public functions such as the installation or inauguration of its leaders and using and placing the appropriate symbols of the Diné Life Way in its public buildings and during legislative and judicial proceeding; and

"8. The Navajo Nation Council further finds that all elements of the government must learn,

practice and educate the Diné on the values and principles of these laws; when the judges adjudicate a dispute using these fundamental laws, they should thoroughly explain so that we can all learn; when leaders perform a function using these laws and the symbols of the Diné Life Way, they should teach the public why the function is performed in a certain way or why certain words are used; and

"9. The Navajo Nation Council further finds that all the details and analysis of these laws cannot be provided in this acknowledgment and recognition, and such an effort should not be attempted; the Navajo Nation Council finds that more work is required to elucidate the appropriate fundamental principles and values which are to be used to educate and interpret the statutory laws already in place and those that may be enacted; the Council views this effort today as planting the seed for the education of all Diné so that we can continue to Walk in Beauty."

§ 201. Diné Bi Beehaz'áanii Bitsé Siléí—Declaration of the Foundation of Diné Law

We, the Diné, the people of the Great Covenant, are the image of our ancestors and we are created in connection with all creation.

Diné Bi Beehaz'áanii Bitsé Siléí

Diyin Dine'é,

Sin dóo sodizin,

Bee

Nahasdzáán dóo yádilhił nitsáhákees yił hadeidiilaa,

Tó dóo dził diyinii nahat'á yił hadeidiilaa,

Nilch'i dóo nanse' altaas'éi iiná yił hadediilaa,

Kó', adinídíin dóo ntł'iz náádahaniihji' sihasin yił hadediilaa.

Díí ts'ídá aláají' nihi beehaz'áanii bitse siléí nihá' ályaa.

Nitsáhákees éi nahat'á bitsé silá.

Iiná éi sihasin bitsé silá.

Hanihi'diilyaadi díí nihiihdaahya' dóo bee hadínít'é.

Binahji' nihéécho'dilzingíí éíí:

Nihízhí',

Ádóonc'é niidlíini,

Nihinéí',

Nihee ó'ool íł,

Nihi chaha'oh,

Nihi kék'chashchín.

Díí bik'ehgo Diyin Nohookáá Diné nihi'doo'niid.

Kodóó dah'adíníísá dóó dah'adiidéél.

Áko dííshjǫ́gi éí nitsáhákees, nahat'á, iiná, saad, oodla',

Dóó beehaz'áanii ał'ąą ádaat'éego nihitah nihwiileeh,

Ndi nihi beehaz'áanii bitsé siléí nhá ndaahya'áá t'ahdii doo łahgo ánéchda.

Éí biniinaa t'áá nanihi'deelyáhąą doo níłch'i diyin hinááh nihiihdaahya'ąą
ge'át'éigo,

T'áá Diné niidłǫ́go náąsgoo ahool'a.

The Holy People ordained,

Through songs and prayers,

That

Earth and universe embody thinking,

Water and the sacred mountains embody planning,

Air and variegated vegetation embody life,

Fire, light, and offering sites of variegated sacred stones embody wisdom.

These are the fundamental tenets established.

Thinking is the foundation of planning.

Life is the foundation of wisdom.

Upon our creation, these were instituted within us and we embody them.

Accordingly, we are identified by:

Our Diné name,

Our clan,

Our language,

Our life way,

Our shadow,

Our footprints.

Therefore, we were called the Holy Earth-Surface-People.

From here growth began and the journey proceeds.

Different thinking, planning, life ways, languages, beliefs, and laws appear among us.

But the fundamental laws placed by the Holy People remain unchanged.

Hence, as we were created and with living soul, we remain Diné forever.¹

¹ The Navajo Nation is grateful to Mike Mitchell, Wilson Aronilth, Peggy Scott, Laura Wallace, the late Andrew Natonabah, and the late Dr. Dean Jackson who developed the declaration, with guidance from the Navajo Medicine-Men Association and Navajo Community College. The revision of the declaration interpretation was made by: Laura Wallace, Division of Diné Education; Roger

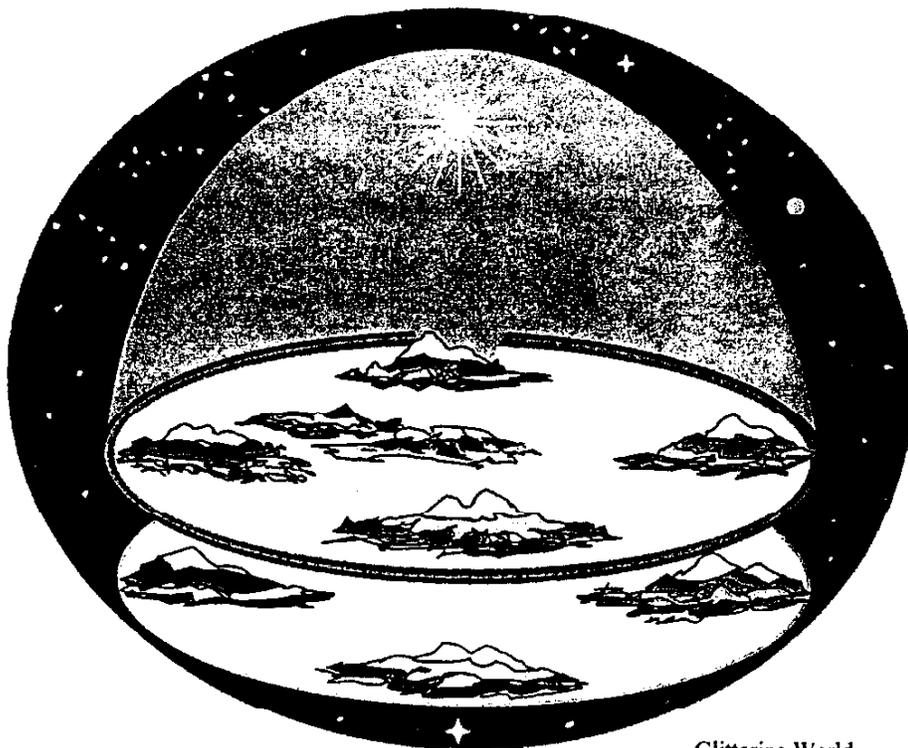
GENERAL PROVISIONS

1 N.N.C. § 201

Note 1

Begay, Diné Language and Cultural Development—Division of Diné Education; and Henry Barber, Office of the Speaker.

Mother Earth and Father Universe



White World

Glittering World

History

CN-69-02, November 1, 2002.

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title I of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied

this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi*

1 N.N.C. § 201

Note 1

beenahaz'áanii in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory

fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

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§ 202. Diné Bi Beenahaz'áanii

The Diné bi beenahaz'áanii embodies Diyin bitsááddéé' beehaz'áanii (Traditional Law), Diyin Dine'é bitsááddéé' beehaz'áanii (Customary Law), Nahasdzáán dóó Yádiłhił bitsááddéé' beehaz'áanii (Natural Law), and Diyin Nohookáá Diné bi beehaz'áanii (Common Law).

These laws provide sanctuary for the Diné life and culture, our relationship with the world beyond the sacred mountains, and the balance we maintain with the natural world.

These laws provide the foundation of Diné bi nahat'á (providing leadership through developing and administering policies and plans utilizing these laws as guiding principles) and Diné sovereignty. In turn, Diné bi nahat'á is the foundation of the Diné bi naat'á (government). Hence, the respect for, honor, belief and trust in the Diné bi beenahaz'áanii preserves, protects and enhances the following inherent rights, beliefs, practices and freedoms:

A. The individual rights and freedoms of each Diné (from the beautiful child who will be born tonight to the dear elder who will pass on tonight from old age) as they are declared in these laws; and

B. The collective rights and freedoms of the Diyin Nihookáá Diné as a distinct people as they are declared in these laws; and

C. The fundamental values and principles of Diné Life Way as declared in these laws; and

D. Self-governance; and

E. A government structure consisting of Hózhóójí Nahat'á (Executive Branch), Naat'ájí Nahat'á (Legislative Branch), Hashkééjí Nahat'á (Judicial Branch), and the Naayee'jí Nahat'á (National Security Branch); and

F. That the practice of Diné bi nahat'á through the values and life way embodied in the Diné bi beenahaz'áanii provides the foundation of all laws proclaimed by the Navajo Nation government and the faithful adherence to Diné bi nahat'á will ensure the survival of the Navajo Nation; and

G. That Diné bi beenahaz'áanii provides for the future development and growth of a thriving Navajo Nation regardless of the many different thinking, planning, life ways, languages, beliefs, and laws that may appear within the Nation; and

H. The right and freedom of the Diné to be educated as to Diné bi beenahaz'áanii; and

I. That Diné bi beenahaz'áanii provides for the establishment of governmental relationships and agreements with other nations; that the Diné shall respect

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GENERAL PROVISIONS

1 N.N.C. § 203

and honor such relationships and agreements and that the Diné can expect reciprocal respect and honor from such other nations.

History

CN-69-02, November 1, 2002.

Library References

Indians §32(4.1).

Westlaw Topic No. 209.

Annotations

1. Failure to plead

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Divin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

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§ 203. Diyin Bits'áádeé' Beehaz'áanii—Diné Traditional Law

The Diné Traditional Law declares and teaches that:

A. It is the right and freedom of the Diné to choose leaders of their choice; leaders who will communicate with the people for guidance; leaders who will use their experience and wisdom to always act in the best interest of the people; and leaders who will also ensure the rights and freedoms of the generations yet to come; and

B. All leaders chosen by the Diné are to carry out their duties and responsibilities in a moral and legal manner in representing the people and the government; the people's trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of *Dine bi beenahaz'áanii*; and

C. The leader(s) of the Executive Branch (*Alaají' Hózhóójí Naat'ááh*) shall represent the Navajo Nation to other peoples and nations and implement the policies and laws enacted by the legislative branch; and

D. The leader(s) of the Legislative Branch (*Alaají' Naat'ájí Naat'ááh* and *Alaají' Naat'ájí Ndaanit'áii* or *Naat'aanii*) shall enact policies and laws to address the immediate and future needs; and

E. The leader(s) of the Judicial Branch (Alaąjį' Hashkééjí Naat'ááh) shall uphold the values and principles of Diné bi beenahaz'áanii in the practice of peace making, obedience, discipline, punishment, interpreting laws and rendering decisions and judgments; and

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F. The leader(s) of the National Security Branch (Alaąjį' Naayéé'jí Naat'ááh) are entrusted with the safety of the people and the government. To this end, the leader(s) shall maintain and enforce security systems and operations for the Navajo Nation at all times and shall provide services and guidance in the event of severe national crisis or military-type disasters; and

G. Our elders and our medicine people, the teachers of the traditional laws, values and principles must always be respected and honored if the people and the government are to persevere and thrive: the teachings of the elders and medicine people, their participation in the government and their contributions of the traditional values and principles of the Diné life way will ensure the growth of the Navajo Nation; and from time to time, the elders and medicine people must be requested to provide the cleansing, protection prayers, and blessing ceremonies necessary for securing healthy leadership and the operation of the government in harmony with traditional law; and

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H. The various spiritual healings through worship, song and prayer (Nahaghá) must be preserved, taught, maintained and performed in their original forms; and

I. The Diné and the government must always respect the spiritual beliefs and practices of any person and allow for the input and contribution of any religion to the maintenance of a moral society and government; and

J. The Diné and the government can incorporate those practices, principles and values of other societies that are not contrary to the values and principles of Diné Bi Beenahaz'áanii and that they deem is in their best interest and is necessary to provide for the physical and mental well-being for every individual.

History

CN-69-02, November 1, 2002.

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Library References

Indians ¶6.2, 32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

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Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (Novem-

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GENERAL PROVISIONS

1 N.N.C. § 204

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guage directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applica-

ble. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

§ 204. Diyin Dine'é Bitsáádéé' Beehaz'áanii—Diné Customary Law

The Diné Customary Law declares and teaches that:

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

B. It is the right and freedom of the people that the sacred system of k'é, based upon the four clans of Kiyaa'áanii, Todíh'íinii, Honagháahnii and Hashtl'ishnii and all the descendant clans be taught and preserved; and

C. It is the right and freedom of the people that the sacred Diné language (nihiinéí') be taught and preserved; and

D. It is the right and freedom of the people that the sacred bonding in marriage and the unity of each family be protected; and

E. It is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse; and

F. It is the right and freedom of the people that our children are provided with education to absorb wisdom, self-knowledge, and knowledge to empower them to make a living and participate in the growth of the Navajo Nation.

History

CN-69-02, November 1, 2002.

Library References

Indians § 6.2, 32(4.1).
Westlaw Topic No. 209.

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo

Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Hous-*

1 N.N.C. § 204

Note 1

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"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CN-77-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beena-*

haz'áanii in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

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§ 205. Nahasdzaán dóó Yádiłhił Bits'áádeé' Beehaz'áanii—Diné Natural Law

Diné Natural Law declares and teaches that.

A. The four sacred elements of life, air, light/fire, water and earth/pollen in all their forms must be respected, honored and protected for they sustain life; and

B. The six sacred mountains, Sinaajini, Tsoodzil, Dook'o'oolíid, Dibé Nitsaa, Dził Na'oodiłii, Dził Ch'ool'íí, and all the attendant mountains must be respected, honored and protected for they, as leaders, are the foundation of the Navajo Nation; and

C. All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist; and

D. The Diné have the sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward for these relatives through our use of the sacred gifts of language and thinking; and

E. Mother Earth and Father Sky is part of us as the Diné and the Diné is part of Mother Earth and Father Sky; The Diné must treat this sacred bond with love and respect without exerting dominance for we do not own our mother or father; and

F. The rights and freedoms of the people to the use of the sacred elements of life as mentioned above and to the use of land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering and these practices must be protected and preserved for they are the foundation of our spiritual ceremonies and the Diné life way; and

G. It is the duty and responsibility of the Diné to protect and preserve the beauty of the natural world for future generations.

History

CN-69-02, November 1, 2002.

Library References

Indians ⇄6.2.

Westlaw Topic No. 209.

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1 N.N.C. § 206

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Diné' é Bi Beehaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

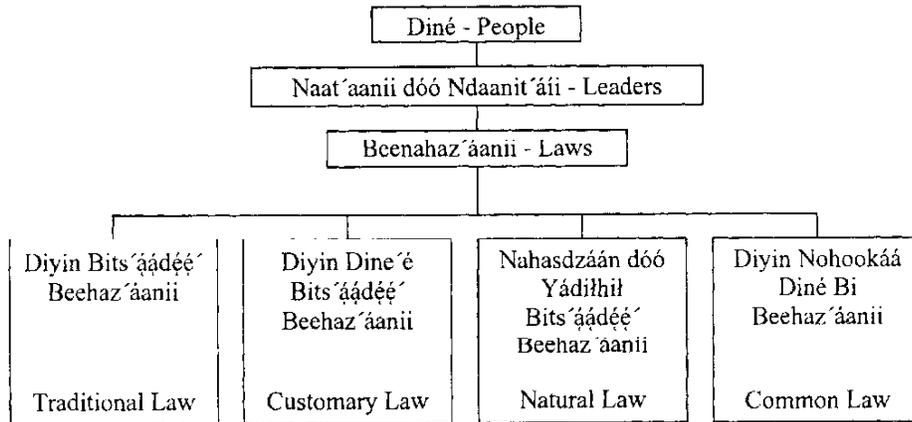
"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

§ 206. *Diyin Nohookáá Diné Bi Beehaz'áanii—Diné Common Law*

The Diné Common Law declares and teaches that:

- A. The knowledge, wisdom, and practices of the people must be developed and exercised in harmony with the values and principles of the Diné Bi Bcenahaz'áanii; and in turn, the written laws of the Navajo Nation must be developed and interpreted in harmony with Diné Common Law; and
- B. The values and principles of Diné Common Law must be recognized, respected, honored and trusted as the motivational guidance for the people and their leaders in order to cope with the complexities of the changing world, the need to compete in business to make a living and the establishment and maintenance of decent standards of living; and
- C. The values and principles of Diné Common Law must be used to harness and utilize the unlimited interwoven Diné knowledge, with our absorbed knowledge from other peoples. This knowledge is our tool in exercising and exhibiting self-assurance and self-reliance and in enjoying the beauty of happiness and harmony.

Diné Original Law Structure



History

CN-69-02, November 1, 2002.

Library References

Common Law § 2.1, 9.
 Indians § 6.1.
 Westlaw Topic Nos. 85, 209.

C.J.S. Common Law §§ 2 to 3, 5, 11 to 12, 22 to 24.

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Diné' é Bi Beehaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title I of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Iso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

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