

## **ARTICLE XI – Board of Directors.**

A. Authority. The Board of Directors shall provide governance and oversight of the Corporation, subject to the restrictions of this Charter and applicable law. The Navajo Nation shall have no authority to direct the business affairs of the Corporation, except through its status as the sole shareholder of the Corporation and as provided in this Charter.

B. Number. The Board shall consist of seven (7) Directors. The number of directors may be increased or decreased at any time by a duly adopted resolution of the shareholder representatives at an annual or specially called meeting. The Board shall elect a Chairperson, Vice Chairperson and Secretary from its membership. The Chairperson shall preside at Board meetings. The Vice Chairperson shall assume the duties of the Chairperson in the absence of the Chairperson.

C. How Elected; Vacancies. Candidates for the Board of Directors shall possess the qualifications set forth in Paragraph E of this Article. The Nominations Committee of the Board of Directors (“Committee”), or its successor or designee, shall recruit, interview, and screen all candidates and shall nominate up to three successful candidates per board position for confirmation by the shareholder representatives at a duly called meeting. The shareholder representatives 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. If any nominee is not **accepted**, the shareholder representatives shall notify the Committee, which shall make a new nomination for consideration in conformity with this paragraph. Whenever any vacancy shall occur in the Board of Directors by death, resignation, removal or otherwise, a replacement shall be nominated and confirmed in conformity with the procedures established by this paragraph.

D. Term of Office. The Directors shall serve staggered terms of three (3) years each as provided for in the bylaws.

### E. Qualifications of Directors.

1. Each Director shall have substantial knowledge, understanding, and competency in the oil and gas industry, and the Board of Directors as a whole shall possess substantial

knowledge, understanding and competency in the oil and gas industry; commercial management and operation experience in the oil and gas industry; substantial knowledge, understanding, and competency in corporate finance, accounting, economics, law, business management, engineering, geophysics, geology, or similar disciplines; substantial knowledge, understanding, and competency in oil and gas production, and mechanics of production operations; and substantial knowledge, understanding, and competency of commercial and oil and gas production operations within Navajo Indian Country. 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 investment 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.

2. No Director shall be: (a) a public official of the Navajo Nation as defined in 2 N.N.C. § 3743, as amended (including but not limited to Council delegates, Chapter officials, grazing committee members, commissioners, and members of land, farm, and school boards); (b) an employee of any federal, state, county, municipal, or other government; or (c) a director or commissioner of any other Navajo Nation owned enterprise, industry, authority, corporation, or instrumentality.

3. No Director shall: (a) have been convicted or entered a plea of *nolo contendere* to any felony or gross misdemeanor in any court, including without limitation those involving dishonesty or moral turpitude, extortion, embezzlement, theft, violation of fiduciary duty, bribery, perjury, or fraud; provided, that any misdemeanor shall be limited to the last ten (10) years of such person's history and provided that the Board of Directors shall have discretion to waive any misdemeanor upon presentation of reasonable evidence or justification; or (b) be any person who violates or has violated the requirements of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*, as amended, provided that any such violation shall be limited to the last ten (10) years of such person's history; or (c) be any person who has been dismissed for cause from employment with the Corporation; or (d) be any person who, within the last two years, has worked as a full time employee for the Corporation; or (e) be any person who has declared bankruptcy or been adjudicated bankrupt or insolvent, has sought appointment of a receiver, trustee, or similar official for all of 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 unbonded for a period of sixty (60) days (provided, however, that any of the above in subsection (e) shall be limited to the last seven (7) years of such persons' history, and provided further, that the Board of

Directors shall have discretion to waive these issues upon presentation of reasonable evidence or justification).

4. No one who fails to meet the requirements of this Article XI(E) shall serve as a board member.

5. The Board of Directors shall have the right not to seat any person nominated and confirmed in violation of the above requirements or who refuses to cooperate reasonably in any due diligence. The shareholder representatives shall have the right to remove any director who is found to have violated the above requirements after having been seated. Any person who the Board of Directors determines not to seat or who is removed pursuant to this provision shall be deemed to have been properly removed for cause.

F. Duties of Directors. The Board of Directors shall have overall responsibility for the business affairs of the Corporation. The Directors shall in all cases act as a Board, regularly convened, by a majority vote, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper, not inconsistent with this Charter, the bylaws of the Corporation and applicable tribal or federal law. A director shall perform his or her duties as a director in good faith, in a manner the director believes to be in or not opposed to the best interests of the Corporation, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. Unless the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted, in performing such duties a director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

1. One or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented;

2. Legal counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or

3. A committee of the Board upon which the director does not serve, duly designated in accordance with a provision of the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

G. Directors' Meetings. The annual meeting of the Board of Directors shall be held following the annual meeting of the shareholder and regular meetings shall be held on at least a quarterly basis. Special meetings of the Board of Directors may be called by the CEO of the

Corporation after consultation with the Chairperson of the Board or in his absence the Vice-Chairperson, and shall be called by the CEO upon the request of three (3) or more Directors.

H. Notice of Meetings. Notice of meetings shall be given to each Director in person or by mailing at least seven (7) days before the date therein designated for such meeting, including the day of mailing, of a written or printed notice thereof specifying the time and place of such meeting, and the business to be brought before the meeting. No business other than that specified in such notice shall be transacted at any special meeting. At any meeting at which every elected 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.

I. Quorum. At a meeting of the Board of Directors, a majority of the Board shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a lesser number may adjourn the meeting from time to time without further notice.

J. Voting. At a meeting of the Board of Directors, each Director has one vote. A majority of a quorum of the Board of Directors carries any issue.

K. Meeting Options. Except as otherwise restricted by the Bylaws of the Corporation, 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. Except as otherwise restricted in the Bylaws of the corporation, 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 a 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.

L. Resignation and Removal of Directors. Any Director may resign at any time by giving written notice to the Chairperson of the Board, except that the Chairperson shall provide written notice to the CEO, and such resignation shall be effective on the date specified in the notice. Any one or more of the Directors may be removed with cause at any time by a vote of the shareholder representatives at any special meeting called for that purpose, or at the annual meeting.

M. Presumption of Assent. A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless such dissent shall be entered in the minutes of the meeting or unless the Director

shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the Secretary/Treasurer of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

N. Compensation. The Board of Directors shall receive such reasonable compensation as set forth in the Bylaws and not inconsistent with Navajo law.

O. Liability of Directors. A Director shall not be personally liable to the Corporation or its shareholder for monetary damages for breach of fiduciary duty as a director unless:

1. The Director has breached or failed to perform the duties of the director's office as provided in Paragraph F of this Article XI, and
2. The breach or failure to perform constitutes willful misconduct or recklessness.