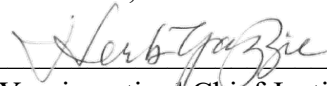
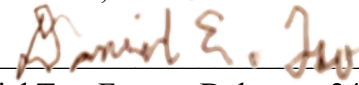


COMMENT TO MEET THE MARCH 31, 2026 ONGD ADMINISTRATIVE DEADLINE

TO: Harrison Tsosie, Executive Director, ONGD; The Navajo Nation Council

FROM:

  
Herb Yazzie, retired Chief Justice of the Navajo Nation

  
Daniel Tso, Former Delegate, 24th Navajo Nation Council

DATE: March 31, 2026

RE: **Formal Objection to ONGD's 113-Page Government Reform Proposal**

Herb Yazzie and Daniel Tso hereby submit our comment to meet the March 31, 2026 administrative deadline for public input set by the Office of Navajo Government Development (ONGD). We do so under protest at the arbitrary deadline, that appears to be tied to a rush to referendum ballot and is unconnected to any legal sufficiency or informed consent undertakings.

On February 5, 2026, we alerted the 110 Chapters that the ONGD intends to bypass the Navajo Nation Council and Chapter procedures to place an over 100-page "Constitution" directly on the November 2026 ballot as a single "Yes/No" referendum question. We urged chapters to provide their proper and timely responses by a March deadline imposed by ONGD for public input.

Since our February 5 open letter to the chapters, 19 chapters have issued resolutions in a very short time, opposing the direct-to-referendum placement of such a complex, unwieldy document that the chapters are unable to properly review without unconflicted counsel. The chapters are Aneth, Black Mesa, Coyote Canyon, Ganado, Hardrock, Many Farms, Mexican Springs, Mexican Water, Naschitti, Ojo Encino, Pinon, Red Mesa, Red Valley, Standing Rock, Teec Nos Pos, Toadlena/Two Grey Hills, Tohatchi, Torreon/Star Lake, and Tse Daa Kaan.

The 19 chapters object to the legality of placing a 113-page, multi-subject government overhaul behind a single "Yes/No" referendum question. Expecting community members to master 113 pages of dense, legal prose—which ONGD attests was written by students, and which hasn't been translated into *Diné bizaad*—is a physical and intellectual impossibility without counsel, and without ability to actually discuss the proposal.

On the Navajo Nation, where the Bill of Rights and Fundamental Law (1 N.N.C. § 201) guarantee the right to an informed and meaningful vote, this approach presents several critical failures that go to the heart of the Navajo Nation as a participatory democracy whose sense of fairness exceeds that of other jurisdictions. It is inherently deceptive to bundle multiple, unrelated changes of such immense length into one vote.

In this public comment, we join the opposition of these chapters and further add our views on what ONGD has been going around claiming as its sources of authority to go directly to

referendum, namely, the Title II Amendments, Government Development's Plan of Operations, and the 2008-2010 *Shirley* trilogy of Navajo Nation Supreme Court opinions.

### **113 Pages of Multiple Deceptions and Displacements**

The Navajo Nation Board of Election Supervisors requires referendum questions to be clear, concise, and capable of being understood by the average voter. When a document this long and complex, that intends to be the Navajo Nation's Supreme Law, a "Yes" vote is not a vote for the *content* of the law; it is a vote based on the *title* of the law. If the title is "*Diné Bi Beehaz'áanii Bitsé Siléí, Sq'ah Naghái Bik'eh Hózhóón—the Collective Will*," the voter may believe he or she is being asked to vote to establish Diné Fundamental Law, but the 113 pages of dense print actually dismantle our ancient protections, appropriating "Diné Bi Beehaz'áanii" to refer to itself. This is the kind of tactic we expect from a fox in the corral. In the realm of Navajo jurisprudence, this is more than a procedural error; it is a structural deception that violates the core tenets of *Diné* participatory democracy. The ONGD is not merely drafting a law; it is attempting to supplant the Immutable with the man-made. By naming their 113-page document after the *Bitsé Siléí*, they seek to trick the voter into consenting to the destruction of the very Law they believe they are affirming.

By naming the document *Diné Bi Beehaz'áanii Bitsé Siléí, Sq'ah Naghái Bik'eh Hózhóón—the Collective Will*, the ONGD is using our sacred law to brand a secular, corporate-friendly legal code that replaces many many laws including the entirety of Titles 1, 2 and 26. A voter saying "Yes" to *Diné Bi Beehaz'áanii* believes they are affirming their identity, not realizing they are legally consenting to the displacement of their Diné identity.

In this document, *K'é* is no longer the relational basis of our fundamental law, but is framed as a mandatory duty for the community to self-manage with no corresponding duties placed on the administration towards community welfare. We have scoured this document in all its iterations and can find no governmental duty to strive toward unpolluted air or clean drinking water. Instead, the document simply allows individuals to "**independently procure**" these necessities for themselves.

A "Constitution" that allows the government to retreat from its duty to protect air and water—leaving individuals to independently procure survival—is not a shield for the People. It is a legal clearance for industrial exploitation and a total abandonment of the government's sacred role as protector of the elements.

ONGD has been making "presentations" since July 2025 with very short Q&As and no discussion, which is procedurally inadequate to the task of gathering public information for a proposal that ONGD itself refers to as a "constitution" and which, if passed, will be the Navajo Nation Supreme Law, by its own provisions. Government overhauls of this magnitude traditionally arise from conventions. The beginnings of conventions were held at Red Rock State Park and Fort Wingate decades ago that were attended by chapter officials. These were intended

to be the start of broader community conventions that should have taken place across these past 30 years. The lack of convening is woefully inadequate to assess the wishes of a Nation of 400,000 People. We understand from ONGD's own October 18, 2024 internal report that no such convention has taken place to serve as any foundation for this proposal. Instead, ONGD's proposal is self-admittedly based on a check-off set of survey questions that, according to a footnote in the above report, ONGD's oversight Commission neither saw nor approved before the survey was handed out, and which was not distributed to chapters. The survey was distributed at ONGD booths at events, and cannot now be found.

The ONGD frequently frames this "constitution" as a shield against federal volatility, yet displays a chilling blindness toward whether our people can actually inhabit this land in fifty years. To label this "The Collective Will" while stripping away the protections essential for generational survival is a deception. By forcing this massive document through a single "Yes/No" referendum filter, the ONGD creates a "false emergency." This is a tactic of duress.

### **Shirley Trilogy of Opinions**

When it cites authority for by-passing the Council and chapters and going directly to referendum, the ONGD frequently refers to *Shirley v. Morgan* as if it were a single decision of the Navajo Nation Supreme Court (NNSC). There are two "Shirley v. Morgan" decisions preceded by a certified question filed by the Office of Hearings and Appeals regarding two initiative petitions filed by then President Joe Shirley (collectively, the *Shirley* trilogy of decisions). The *Shirley* trilogy – *In re Two Initiative Petitions* (July 18, 2008), *Shirley v. Morgan (Shirley First Opinion)* (June 2, 2010), and *Shirley v. Morgan (Shirley Second Opinion)* (July 16, 2010)—serves as the bedrock for Navajo government reform. *In re Two Initiative Petitions* stands for the people having the ultimate power to govern. *Shirley First Opinion* stands for the immutability of *Diné Bi Beehaz'áanii Bitse Siléí*. *Shirley Second Opinion* stands for the ministerial duties and legal mandates of the CNGD/ONGD to promote and comply with *Diné Bi Beehaz'áanii Bitse Siléí* and to facilitate the wishes of the people in every respect related to education, evidentiary gathering, and proposal development functions.

These opinions collectively affirm that the Government Development Project was established as an organ of the People, intended as the governmental organ for the People to have a direct voice in their governmental functions and structural changes.

CNGD/ONGD's plan of operations at 1 N.N.C. §§ 201-206 (as amended in Dec 23, 2020) include mandates and duties to accomplish the *People's* project by the people's informed consent. The ONGD is not merely drafting a document; the plan of operations legally binds Government Development to "promote, enhance, honor, and comply" with the *Diné Bi Beehaz'áanii Bitse Siléí* (Diné Fundamental Law). Now ONGD is naming its own document *Diné Bi Beehaz'áanii Bitse Siléí*. By giving its proposal the exact same name as the law it is legally mandated to apply, ONGD is engaging in a form of technical tricksterism. They are using the document's title as a mask to bury immutable Bitsé Siléí—the very foundation of the Diné

Way of Life. This is not an act of governance reform; it is yet another structural deception. It is a profound betrayal of trust.

The ONGD's appropriation of the title *Diné Bi Beehaz 'aanii Bitse Siléi* creates a closed loop. By naming the proposal after the Fundamental Laws, the ONGD attempts to redefine those laws as the document itself. In *Shirley First Opinion*, the Council had attempted to establish the Council's own enactments as Fundamental Law. The NNSC invalidated that effort, stating: "Dine bi beenahaz 'aanii as acknowledged by the Council teaches that our Dine leaders are to adhere to the values and principles of Dine bi beenahaz 'aanii. 1 N.N.C. §203 (2002). **Dine bi beenahaz 'aanii are the very foundational laws of Navajo culture. They are not man-made law, and may not be "enacted" by individuals or entities or the Navajo Nation Council, they may simply be acknowledged by our man-made laws. Diné bi beenahaz 'aanii are immutable.**"

The Court further stated: "We have said before that participatory democracy does not come from the non-Navajo nor does it come from the Council. It comes from a deeper, more profound system of governance: the Navajo People's traditional communal governance, rooted in the Diné Life Way." Yet the ONGD's proposal imposes nothing but western style democracy. In *First Opinion*, the Court had cautioned us to remember "the terrible history of colonialism and its terrible impact on all Indian Nations . . . As a tribal Nation, we have asserted our inherent sovereignty---our historical sovereignty, our language, culture, our value system, and our legal heritage based on unwritten Fundamental Laws that form the very foundation of who we are as Diné."

*Shirley Second Opinion* reestablished the ministerial powers of the Commission on Navajo Government Development (CNGD) as a *facilitator* and *repository* of the People's voice after the Council had sought to remove them. The CNGD/ONGD is "quasi independent" in order to enable it to speak for the people, not behave as an autonomous legislation-making body. The consent of the people as to the alternative forms of government must be informed consent, and a "publicly accepted mechanism" also through informed consent is to be used for recommendations of CNGD/ONGD to be considered by the People. Here, the CNGD/ONGD is simply imposing a mechanism--direct-to-referendum--without any consultation with the people. In fact, there has been swift and broad opposition through 19 chapter resolutions since chapters became aware not many weeks ago of the extent of ONGD's proposal. This plainly shows there is no broad consent for a direct-to-ballot referendum with the proposal's content obscure, voluminous, and unexamined as to its legal sufficiencies.

Of the many elements in the proposal that show that ONGD has not remembered the "terrible history of colonization" expressed in *First Opinion*, one element stands out, namely the creation of a Fourth Branch which is termed the "Stability House." In our view, the establishment of this "House" while retaining the 3-branch structure that was intended to be temporary, not only solidifies colonialism within our internal matters, but also appropriates the assumptions of the

colonizer that the Navajo people and its government need systemic “guardianship” like a warden within its own government.

The proposal concentrates power in the Stability House, a body that lacks direct public accountability. The Stability House is made up of tribal members chosen from individuals elected to serve the local government entities. As with other government positions, the members must have a bachelor’s degree and “sufficient years of prior work experience in a supervisory capacity.” These requirements result in government by a committee of elites; those who have Diné cultural wisdom and leadership skills will be disqualified from leadership.

The individuals in the Stability House would not be directly elected by the people but nonetheless have the power to veto any legislation passed by the people’s elected legislative representatives. The Navajo Nation Council (renamed by ONGD as the “Legislative House”) has no power to override the Stability’s House’s veto. In fact, the Council’s powers have been severely curtailed. The proposed annual legislative session is only 30 days. The proposed “Legislative House” cannot enact laws to address ONGD’s constitution, the annual budget, the use of trust funds, commercial or land codes, property or utilities. Further, it has no role in conforming existing law with ONGD’s proposal. It is the Stability House that can void existing laws that it deems inconsistent with the constitution through its Office of Government Review (formerly ONGD). This “review” office, run by an unelected official, has the power to amend, revise, or void all laws and regulations existing before adoption of the constitution, including the *Shirley* opinions.

The Stability House’s power to remove any elected official effectively erases separation of powers. An “Office of the Inspector General” housed in the Stability House can audit the Legislative and Executive Houses and all their programs. The Stability House’s “Audit Unit” employees present their findings to the Stability House’s “Government Anti-corruption Hearing Board.” ONGD’s constitution does not address whether the person who is the target of the investigation may be represented by an attorney or present a defense with witnesses. The Stability House can remove the president, legislators, and other government officials for cause reviewable by the courts, which have also been severely weakened under this proposal.

The Stability House’s anti-corruption board can remove a Supreme Court Justice if the Justice has lost the “confidence of the Diné.” The Stability House and the Legislative House will have immense power to create, amend, or abolish judicial offices and programs, which means the stifling of the judiciary. The Stability House oversees all key accountability offices—the Inspector General, Anti-Corruption Board, and Public Regulatory Commission. **There is no outside accountability office available to investigate corruption in the Stability House.** The Stability House writes the anti-corruption laws, policies, procedures and regulations through its Anti-Corruption Board. This power could be used by the Stability House to redefine “corruption” then use that definition to remove its political opponents. ONGD’s proposal appears to revive the

immense power of the office of the Chairman, which was done away with in the Title II Amendments in 1989 due to the lack of checks and balances at that time.

The establishment of the “Stability House” does more than let a fox into the corral; it invites the very ghost of federal paternalism. By creating an unelected board of “elite guardians” to veto and even summarily remove the People's representatives, the ONGD is signaling a deep, systemic distrust of the Diné. This is the “Wardship” mentality in a Navajo mask—the insulting assumption that our People are incompetent to govern themselves and require a specialized class of degree-holders to protect us from our true collective will. It is a surrender to the colonial lie that we need a supervisor to ensure our stability, effectively resurrecting the Guardian-Ward system that we have fought for over a century to dismantle.

## **Conclusion**

The ONGD proposal is not the People's voice. It is not an evolution of our sovereignty; it is a surrender to a future with no internal fiduciary protections over our elements, our personal safety, or the fundamental needs of our families. By appropriating the sacred language of *Diné Bi Beehaz'áanii Bitsé Siléi* and *Sq'ah Naghái Bik'eh Hózhóón* to mask a corporate-friendly, Western-style bureaucracy, the ONGD has committed a profound structural deception. To ask the Navajo People to surrender their Fundamental Laws and their collective future through a single, bundled “Yes/No” referendum—without translated text, without assistance of unconflicted counsel, and under the duress of a “false emergency”—is a total violation of the participatory democracy we know as a People.

We object to the processes by which the ONGD's proposal came into being, its presentations that have thus far lacked discussion, and the processes it now intends to take to the November 2026 referendum ballot. ONGD has entirely failed to uphold their fiduciary duty. They must cease game playing. The “publicly accepted mechanism” by which the People will develop and consider any reform needs to be determined upon the People's informed consent, not thrust upon them. The ONGD must conform to its legally mandated obligations to the People.

We have read the ONGD's proposal. It shows us how little they think of our traditions, culture, our Way of Life, and they propose that these must be replaced. The ONGD's proposal fails to comply with the very basis of Navajo law, including promoting and complying with the real *Diné Bi Beehaz'áanii Bitsé Siléi*.

The ONGD has had years to do this. Instead, they come up with this horrible, deceptive product. It needs to be discarded. Something so explicitly abhorrent needs to be discarded and the People themselves must undertake the development of our own government.