

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



May 9, 2022

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CAP-19-22, *An Action Relating to Resources and Development, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Approving \$4,000,000 from the Unreserved, Undesignated Fund Balance ("UUFB") for the Navajo Nation Department of Justice Water Rights Litigation Unit to Continue Litigating and Protecting the Navajo Nation's Water Rights; Waiving 12 N.N.C. § 820 (E), § 820 (F), § 820 (J), and § 820 (L)*

Dear Speaker Damon,

Pursuant to the authority vested in the Navajo Nation President, I am signing Resolution CAP-19-22 into law.

Our Nation's water rights remain the core of our survival as Diné. Our health, welfare, economy and future generations depend on our access to water. This is of paramount importance when we have declining lake levels and depletion of other water sources due to megadrought exacerbated by climate change. I appreciate the Council recognizing this when it established the Water Rights Claim Fund through CMY-47-02. The need for stable water rights has become even more apparent during the Covid-19 pandemic and our efforts to bring basic infrastructure projects to our communities.

We are cognizant of the fact that the Water Rights Unit has continuous, on-going litigation with several cases near trial that requires a great deal of preparation and expense. We are grateful to the Division of Natural Resources and Department of Justice for diligently working to secure our Nation's water rights. Balancing the exigent funding needs for water rights, the moratorium we recommended on UUFB funding, and with the understanding that external sources such as grants are not feasible due to the confidential nature of litigation, we are approving this allocation.

Sincerely,

A handwritten signature in black ink, reading "Jonathan Nez".

Jonathan Nez, President
THE NAVAJO NATION

A handwritten signature in black ink, reading "Myron Lizer".

Myron Lizer, Vice President
THE NAVAJO NATION

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - FOURTH YEAR, 2022

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND TO THE NAVAJO NATION COUNCIL; APPROVING \$4,000,000 FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE ("UUEFB") FOR THE NAVAJO NATION DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO CONTINUE LITIGATING AND PROTECTING THE NAVAJO NATION'S WATER RIGHTS; WAIVING 12 N.N.C. § 820(E), § 820(F), § 820(J), and § 820(L)

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee was established as a standing committee of the Navajo Nation Council with oversight over water matters and the authority to make recommendations to the Navajo Nation Council regarding proposed resolutions that required the Council's final approval to accomplish or impact the Resources and Development Committee's purposes. 2 N.N.C. § 500(C)(1), § 501(B)(4)(f).
- B. The Budget and Finance Committee was established as a standing committee of the Navajo Nation Council with the authority to review and recommend to the Council the budgeting, appropriation, investment and management of all funds. 2 N.N.C. § 300(A), § 301(B)(2).
- C. The Naabik'íyáti' Committee was established as a standing committee of the Navajo Nation Council with authority to hear all proposed resolutions that require final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9), § 700(A).
- D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A). As such, the Council ". . . may adopt and approve supplemental appropriations to the Annual Comprehensive Budget during the fiscal year. Supplemental appropriations of General Funds within the current fiscal year are permitted, if and when additional sources of revenues above and beyond the initial or current revenue projections are projected and which are also in excess of the reserve amount set forth at § 820(J)." 12 N.N.C. § 820(L).

- E. The restrictions on supplemental appropriations, including all amounts from the UUFB, include:
1. Payment of recurring government operating expenses shall be from recurring revenues, and payment of nonrecurring expenses shall be from nonrecurring revenues such as UUFB funds. 12 N.N.C. § 820(E), § 820(F).
 2. Specifically, the UUFB shall not be used for recurring government expenditures or operations. 12 N.N.C. § 820(J), § 820(L).
 3. Nonrecurring revenues such as UUFB funds may be used only after the Controller determines whether or not such revenues are subsidizing an imbalance between the Navajo Nation's recurring revenues and expenditures, and government expenditures shall only be authorized if a long-term (3-year to 5-year) forecast shows that the operating deficit will not continue; otherwise, nonrecurring revenues will be added to the Unreserved, Undesignated Fund Balance. 12 N.N.C. § 820(F).
 4. The above provisions in Title 12 may be amended or waived by a two-thirds (2/3) vote of the full Navajo Nation Council. 12 N.N.C. § 820(F), 12 N.N.C. § 880.
 5. In compliance with 12 N.N.C. § 820(F) all UUFB funding requests must be reviewed by the Controller. Such review is also required because the Controller determines which revenues and expenses are recurring and which are non-recurring. 12 N.N.C. § 820(L).
 6. In compliance with 12 N.N.C. § 820(M) all UUFB funding requests must be submitted to the Office of Management and Budget ("OMB") for a budget impact analysis.
 7. Supplemental funding such as UUFB appropriations shall lapse at the end of the current fiscal year unless the Navajo Nation Council decides otherwise. 12 N.N.C. § 820(N).

SECTION TWO. FINDINGS

- A. The Water Rights Litigation Unit of the Navajo Nation Department of Justice ("DOJ") is requesting \$4,000,000 out of the UUFB to fund its continuing litigation activities to protect the Navajo Nation's water rights.

- B. Based on *Tó'ée'iiná* (water is life), the Navajo Nation Council finds that water is essential "to provide for a permanent homeland for the Navajo People." 22 N.N.C. § 1101.
- C. According to 22 N.N.C. § 1104 the Navajo Nation's water rights pertain to:
1. all waters reserved at any time for any purpose to the Navajo Nation, and to Navajo Indian lands by the Navajo Nation or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters;
 2. all waters held by the Navajo Nation through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition;
 3. all surface and groundwaters which are contained within hydrologic systems located exclusively within the lands of the Navajo Nation; and
 4. all groundwaters located beneath the surface of the lands held in trust by the United States of America for the Navajo Nation.
- D. The Navajo Nation Council has long recognized that many Navajo communities have severe water infrastructure deficiencies that negatively impact the Navajo Nation's economy and the health and well-being of the Navajo people.
- E. In Resolution No. CMY-47-02, the Navajo Nation Council determined that "water rights claims of the Navajo Nation must be placed as a top priority of the Navajo government. Water is one of the fundamental aspects of Navajo customs and must be protected. Without the assurance that Navajo water rights claims is a top priority, the Navajo Nation stands to lose its rightful claim to the allocation of wet water from the Little Colorado River" The Council further found that "it is in the best interest of the Navajo Nation that funding for the pursuit of Navajo Nation Water Rights should be afforded the highest priority in future budget development actions by the Navajo Nation and therefore believes such funding should be made available to pursue Water Rights Claims in a special fund."

- F. To comply with the mandate in CMY-47-02, the Navajo Nation Council enacted the Navajo Nation Water Rights Claims Fund ("Claims Fund") and appropriated a minimum of \$2,000,000.00 (two million dollars) into the Claims Fund to provide annual funding for the litigation and protection of the Navajo Nation's water rights in the States of Arizona, Utah, and New Mexico. The Council also delegated the authority to approve the budget for the Claims Fund to the Navajo Nation Water Rights Commission.
- G. The annual budget for the Claims Fund consists of allocations to the Navajo Nation Department of Water Resources - Water Management Branch, which provides technical work regarding the Nation's water rights; to the Navajo Nation Water Rights Commission, which provides public education regarding the Nation's water rights efforts; and to the DOJ Water Rights Litigation Unit, which provides legal representation for the Navajo Nation's water rights claims.
- H. Due to increased litigation costs, the amount in the Claims Fund specifically reserved for payments to outside counsel and expert witnesses, will soon be fully depleted in Fiscal Year 2022.
- I. If such reserves are exhausted, the Navajo Nation will no longer be able to litigate its water rights on its own, and will be forced to rely on the United States, as trustee, to protect the Nation's interests. Such reliance could harm the Navajo Nation because the United States also serves as trustee for other tribes regarding commonly-held water resources.
- J. The Attorney General and the DOJ Water Rights Litigation Unit have submitted memoranda explaining the **CONFIDENTIAL NATURE OF ALL DOCUMENTS** that DOJ has provided in support of its UUFB request. **EXHIBIT 1.** Pursuant to 2 N.N.C. § 164(A)(6) and § 1964(G), the **Attorney General has designated all such documents as CONFIDENTIAL and such documents shall not be publicly released.**
- K. DOJ has provided a CONFIDENTIAL memorandum to the Navajo Nation President and Chief of Staff, dated December 30, 2021, which is a narrative in support of its UUFB request. **EXHIBIT 2.**
- L. DOJ has provided its "Supplemental Funding Proposal Summary" (Appendix K) and related budget forms, including Attachments A-D to Appendix K, all of which are deemed CONFIDENTIAL documents. **EXHIBIT 3.**

- M. The Executive Branch has completed its Section 164 Review of DOJ's UUFB funding request, and the CONFIDENTIAL review documents are attached as **EXHIBIT 4**.
- N. As required by 12 N.N.C. § 820(F) and § 820(L), the Office of the Controller ("OOC") has prepared a CONFIDENTIAL memorandum, dated December 20, 2021, regarding this UUFB request. **EXHIBIT 5**. OOC has designated DOJ's water rights litigation costs as "recurring" so a waiver of the requirements in 12 N.N.C. § 820(E), § 820(F), § 820(J), and § 820(L) is necessary.
- O. OMB has prepared a budget impact analysis pursuant to 12 N.N.C. § 820(M). **EXHIBIT 6**.
- P. It is in the best interest of the Navajo Nation to approve DOJ's UUFB supplemental funding request, as set forth in the attached **EXHIBITS 2 and 3**.

SECTION THREE. APPROVAL OF \$4,000,000 OUT OF THE UUFB FOR THE DOJ WATER RIGHTS LITIGATION UNIT

- A. The Navajo Nation hereby approves a supplemental appropriation of four-million dollars (\$4,000,000) out of the Unreserved, Undesignated Fund Balance to the Navajo Nation Department of Justice Water Rights Litigation Unit, WRU Business Unit No. N01372, as explained in the attached **EXHIBITS 2 and 3**. The purpose of this \$4,000,000 UUFB allocation is to fund litigation and related expenses that are necessary and appropriate for DOJ to continue protecting and securing the Navajo Nation's water rights.
- B. The \$4,000,000 for DOJ approved herein shall be from those funds that exceed the 10% minimum balance of the UUFB which must be maintained according to 12 N.N.C. § 820(J).
- C. The \$4,000,000 UUFB amount for DOJ approved herein shall not lapse at the end of Fiscal Year 2022, as would otherwise occur pursuant to 2 N.N.C. § 820(N).

SECTION FOUR. WAIVING 12 N.N.C. § 820(E), § 820(F), § 820(J), and § 820(L)

The Navajo Nation hereby waives 12 N.N.C. § 820(E), § 820(F), § 820(J), and § 820(L) to allow use of the \$4,000,000 UUFB amount by DOJ for its Water Rights Litigation Unit to continue litigating and protecting the Navajo Nation's water rights. This waiver is necessary because the proposed DOJ expenditures are considered recurring expenses.

SECTION FIVE. EFFECTIVE DATE


This Act shall become effective pursuant to 2 N.N.C. § 221(B) and 2 N.N.C. § 164(A)(17).

SECTION SIX. SAVING CLAUSE

If any portion of this Act is determined invalid by the Navajo Nation Supreme Court, or by a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the remainder of this Act shall be the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 21 in Favor, and 00 Opposed, on this 20th day of April 2022.



Honorable Seth Damon, Speaker
24th Navajo Nation Council

April 29, 2022
DATE

Motion: Honorable Raymond Smith, Jr.
Second: Honorable Kee Allen Begay, Jr.

Speaker Seth Damon not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 9th day of May, 2022.

Jonathan Nez
Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 2022 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

3. I, hereby, exercise line-item veto pursuant to the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009, on this _____ day of _____, 2022.

Jonathan Nez, President
Navajo Nation



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DOREEN N. McPAUL
Attorney General

KIMBERLY A. DUTCHER
Deputy Attorney General

MEMORANDUM

TO: Dana L. Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

FROM:

Doreen N. McPaul

Doreen N. McPaul, Attorney General
Kimberly A. Dutcher, Deputy Attorney General
Navajo Nation Department of Justice

DATE: January 26, 2022

SUBJECT: **Exhibits for Doc. 017837: Proposed Legislation Seeking FY2022
Supplemental Funding for the Water Rights Unit**

Generally, exhibits to legislation are posted online for public view. However, pursuant to 2 N.N.C. §164(A)(6), "[a]ny matters or exhibits determined by the Navajo Nation Department of Justice to be confidential shall be properly marked 'confidential' and shall not be placed on the website or otherwise released." There are two Attachments (A and B) for the above referenced legislation which DOJ deems confidential and should be kept from public view. Under 2 N.N.C. §1964(G), only the Attorney General is authorized to waive the confidential and attorney-client privileged communication. Since these exhibits contain such sensitive information, the Attorney General maintains the confidentiality of these documents.

If you have any questions concerning this memorandum, please contact the Office of the Attorney General office at (928) 871-6345. Thank you.

Exhibit 2

CONFIDENTIAL

Exhibit 3

CONFIDENTIAL

CONFIDENTIAL

Attachment A

CONFIDENTIAL

Attachment B

CONFIDENTIAL

Attachment C

CONFIDENTIAL

Attachment D

Exhibit 4

CONFIDENTIAL

Exhibit 5

CONFIDENTIAL

NAVAJO NATION

1032

4/20/2022

Navajo Nation Council 2022 Spring Session

02:17:54 PM

Amd# to Amd#	Legislation 0045-22: Approving	PASSED
MOT Smith	\$4,000,000 from the Unreserved,	
SEC Begay, K	Undesignated, Fund Balance	
	("UUFB") for the Navajo Nation..	

Yeas : 21

Nays : 0

Excused : 1

Not Voting : 1

Yea : 21

Begay, E	Freeland, M	Slater, C	Tso, E
Begay, K	Halona, P	Smith	Walker, T
Begay, P	Henio, J	Stewart, W	Wauneka, E
Brown	James, V	Tso	Yazzie
Charles-Newton	Nez, R	Tso, C	Yellowhair
Daniels			

Nay : 0

Excused : 1

Crotty

Not Voting : 1

Tso, D

Presiding Speaker: Damon