

RESOLUTION OF THE
NAABIK'IYATI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23RD Navajo Nation Council -- Second Year, 2016

AN ACTION

RELATING TO NAABIK'IYATI' COMMITTEE; APPROVING AND ADOPTING THE
POSITION OF THE NAVAJO NATION RELATING TO THE STATE OF UTAH FISCAL
YEAR 2017 PRIORITIES

WHEREAS:

- A. Statements of policy, enactment of positive law, intergovernmental agreements, budget resolutions, and reallocations, must be reviewed and approved by resolution by the appropriate standing committee(s) and the Navajo Nation Council except as otherwise provided herein. 2 N.N.C. § 164 (A).
- B. Statements of policy are written statements submitted to federal, state or local governments by a Navajo Nation official stating the official position of the Navajo Nation on proposed legislation or other action by that government. See 2 N.N.C. § 100 (W).
- C. The Navajo Nation established the Naabik'iyati' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'iyati' Committee to assist and coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation. See 2 N.N.C. §§ 164 (A) (9), 701 (A) (4), 701 (A) (6) (2015); CO-45-12.
- D. The Navajo Nation's Utah Commission Issues and Concerns for the 2017 Utah Legislature lists eight (8) priorities, attached hereto as **Exhibit A**.

- 1. Utah Water Rights Settlement
- 2. Transportation
- 3. Education
- 4. Gold King Mine Spill
- 5. Bears Ears National Monument Designation
- 6. San Juan County Redistricting
- 7. Telecommunications
- 8. Public Safety

E. The Navajo Nation finds it in the best interest of the Navajo People to support the approval and adoption of the position of the Navajo Nation's legislative priorities regarding the State of Utah for Fiscal Year 2017.

NOW THEREFORE, BE IT RESOLVED:

A. The Navajo Nation hereby authorizes the Navajo Nation President, the Navajo Nation Speaker, the Navajo Nation Chief Justice and their designees, and the Naabik'iyáti' Committee's State Affairs Task Force, to support the approval and adoption of the position of the Navajo Nation's legislative priorities regarding the State of Utah for Fiscal Year 2017.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23rd 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 14 in favor and 00 oppose, this 22nd Day of December, 2016.

A handwritten signature in black ink, appearing to read 'L. Bates', with a large, stylized flourish at the end.

Honorable LoRenzo Bates, Chairperson
Naabik'iyáti' Committee

Motion: Honorable Alton Joe Shepherd
Second: Honorable Leonard Tsosie



Navajo Utah Commission Issues & Concerns For the 2017 Utah Legislature

1. Utah Water Rights Settlement

The Navajo Nation and the State of Utah entered into a Memorandum of Understanding in 2003 to seek quantification and settlement of the San Juan River in southeastern Utah. Following years of negotiations, on-site investigations, and assessment of proposed settlement terms by the federal negotiating team, the three parties reached an agreement in principal in 2015. The Navajo Utah Commission enacted Resolution no. NUCNOV-659-15 endorsing the proposed Navajo Nation/State of Utah Water Settlement Agreement. The seven Utah Navajo chapters enacted similar supporting resolutions. The Navajo Nation Council enacted Legislation 04-12-15 endorsing the proposed Utah Water Settlement Agreement. The Utah Legislature enacted Concurrent Resolution S.C.R. 2 during the 2015 legislative session reaffirming support and commitment for a settlement. Navajo Nation President Russell Begaye and Navajo Nation Council Speaker LoRenzo Bates sent respective letters of support (attached hereto) to Honorable Senator Orrin Hatch, and Honorable Congressman Rob Bishop expressing unequivocal support and requesting the Utah Congressional Delegation to begin the task of introducing settlement legislation during the 114th Congress. The Navajo Utah Commission and the Navajo people of Utah are seeking the support and leadership of Governor Gary R. Herbert in urging the Utah Congressional Delegation to craft and introduce legislation (consistent with proposed settlement terms) for Congressional enactment.

2. Transportation

The Navajo Utah Commission and the Utah chapters have continually advocated for appropriations from the Utah Department of Transportation (UDOT) for reconstruction and improvement of certain state roads including SR 162 in Aneth – Montezuma Creek, and SR163 in Monument Valley. The 9 miles segment between Aneth and Montezuma Creek has serious engineering challenges with outdated design and narrow contours. The Utah Department of Transportation recently installed new culverts and re-patched a section of SR 162 immediately east of Montezuma Creek. This section of SR162 was prone to washouts and overflow during rainstorms. The winding and narrow contour of SR162 is still a major concern regarding commuter safety as is SR163 in Monument Valley. The Oljato Chapter is currently requesting UDOT to fence the SR163 right-of-way corridor to prevent livestock collisions and environmental damages by off-road vehicles. The response from UDOT has often been that transportation projects are determined by district priorities with traffic volume, safety factors, and availability of funds determining projects. The Utah Transportation Commission (UTC) has the responsibility of determining the priorities and funding levels of selected projects. The UTC can also provide hearings and opportunities for public input. On the basis of a government to government relationship and in the spirit of the Tribal Consultation Executive Order issued by the Office of the Governor in July 2014, the Navajo Utah Commission and the Utah chapters are respectfully requesting Governor Herbert to work with the Utah Transportation Commission in convening a one day transportation summit on the reservation in San Juan County to discuss transportation issues with the Navajo

Nation, Utah chapters, San Juan County, and UDOT Region 4. Building consensus and developing a transportation plan are necessary first steps in improving SR162 and SR163 in San Juan County.

3. Education

The 2016 Utah Legislature enacted SB 14 (American Indian-Alaskan Native Education Amendments) during the 2016 legislative session. The initial intent was to seek \$2 million in legislative appropriations to address the achievement gap among Native American – concentrated schools. A state-wide Indian Education Commission established by HB 33 (2015 Utah Legislature) to assess existing needs and recommend legislative solutions for the 2016 Utah Legislature. Senator Kevin T. Van Tassell sponsored SB 14 during the 2016 Legislature with the intent of seeking \$2 million in legislative appropriations to address school performance issues. The legislative provisions included recruitment and retention of highly qualified teachers, establishment of regional Administrative Service Centers, and adoption of a state Indian education plan. The 2016 Utah Legislature stripped down the legislation, and eventually enacted appropriations of only \$250,000 for teacher recruitment and retention. The educational achievement gap is a major and chronic challenge for Native American students including those in the San Juan School District (SJSD). The SJSD has 5 poor performing schools serving Navajo students in southern San Juan County. The SJSD submitted a funding proposal for 3 of these schools but was unsuccessful. The Governor has often declared education as one of the state's top priorities and earmarked appropriations accordingly. The Navajo Utah Commission and the Utah chapters are requesting the Governor of Utah, the Utah Legislature, and the Utah Department of Education to seek additional legislative funding and/or utilize the state's annual budget surplus to address this long-standing situation.

4. Gold King Mine Spill

The Office of the Inspector General of the Environmental Protection Agency (EPA) recently launched a criminal investigation into the Gold King Mine toxic waste spill that occurred approximately one year ago today. Congressional leaders recognized the combined voice of the state of New Mexico, Navajo Nation, Southern Ute, and Ute Mountain Ute, and directed the U.S. Department of Justice to investigate the Gold King Mine disaster that happened near Silverton, Colorado on August 5, 2015. The mine inadvertently released 300 million gallons of arsenic, lead, and other heavy metals into the tributary of the Animas River and eventually feeding into the San Juan River. The spill impacted Navajo communities in San Juan County as well as Bluff, Mexican Hat, and Lake Powell. Although EPA admitted fault and some responsibility, the states and tribes hit the hardest by the contamination agree that EPA has simply not done enough. New Mexico has filed litigation against the U.S. Environmental Protection Agency, the State of Colorado, and mine owners seeking damages and demands that the aftermath be addressed. The State of Utah responded immediately after the Gold King Mine spill and declared that the state will be vigilant in protecting the best and long-term interest of Utah citizens and their environment. The Navajo people of San Juan County are concerned about the long-term impact to health, way of life, and prevention of future contamination (considering the thousands of abandoned mines upstream). The Navajo

Utah Commission and the Utah chapters are requesting the Office of the Governor, Department of Environmental Quality (DEQ), and Department of Health to continue monitoring activities regarding health, and environmental impact, and provide active participation in the EPA investigation to prevent future disasters.

5. Bears Ears National Monument Designation

Protection for the Bears Ears region continues to be an important, sensitive issue to the Navajo Nation and its people as well as a source of increased controversial debate. In past communications and discussions, we stated our position and are now restating our consistent position that supports the designation of a Bears Ears National Monument. The Navajo Nation, six out of the seven Utah chapters, the Utah Tribal Leaders Council, and tribes with ancestral ties to the Bears Ears region, are united in supporting a national monument designation. We are concerned that our efforts and proposal to protect Bears Ears being viewed as a “political Tomahawk” by the Office of the Governor.

This portrayal—which may not have been intentional, but portrayed nonetheless—communicates a message that our proposal is without merit and insincere. Our actions and the messages we send today impact the future ability of our people to unite and create solutions to whatever the future brings. We must focus on healing the community—as the theme of the Summit suggests—rather than fanning the fire of mistrust, fear, and anger. The Navajo Utah Commission understand the Governor’s concerns about public lands in Utah and is respectful of the decision to support the Public Lands Initiative; however, we ask that the Governor also respect our position and join us in preparing a path towards healing and strengthened unity for our people, tribal members and Utah citizens alike. In the end, regardless of what the future brings, we need to work together for the benefit of our people, all of our people.

6. San Juan County Redistricting

The Navajo Nation and individual plaintiffs brought a lawsuit against San Juan County in 2015 alleging that the San Juan County Commission and School Board election districting plans violated the United States Constitution and the Voting Rights Act. After years of discovery and lengthy delays, the Court ruled in favor of the Navajo Nation. On December 9, 2015, the Court agreed that the School Board districting plan, which had been in place for over 25 years, violated the one-person, one vote mandate of the Constitution. On February 11, 2016, the Court held that the County Commission plan was based on intentional racial discrimination and therefore also violated the Constitution. In late 2015 and early 2016, the Court set forth a plan for developing, evaluating and implementing remedial redistricting plans for the San Juan County Commission and School Board election districts. Unfortunately, the Court found that it could not implement such plans until after the 2016 election cycle and so the remedial redistricting process will continue until 2017 unless parties can come to a resolution beforehand. Despite numerous attempts by the Navajo Nation to engage San Juan County in meaningful and legal redistricting of the Commission and School Board election plans, the County has refused and instead implemented a temporary School Board election plan, which maintains Constitutional and Voting Rights Act violations. The lawsuit, *Navajo Nation, et al., v. San Juan County*, has been in active litigation for almost 5 years and has cost the Navajo Nation millions of dollars to date. Although the Navajo Nation has

prevailed on the merits of this case, these wins have not translated to gains on the ground because the temporary School Board plan approved by the County does not comply with the Constitution and violates several federal laws by continuing to dilute the Native American vote. Because the Court was not able to implement a new redistricting plan for the County Commission in time for the 2016 Primary Election, that unconstitutional plan remains in place and Native American voters in San Juan County will have to endure yet another election cycle that does not preserve or respect their fundamental rights. Until San Juan County is willing to work with the Navajo Nation to develop and implement redistricting plans and election procedures that comply with the Constitution, the Voting Rights Act, and other federal and state laws, the substantive victory is essentially meaningless. With the 2016 General Election in the foreground, it has never been more important that these issues be resolved. Accordingly, the Navajo Utah Commission and the Utah chapters respectfully requests that the Governor encourage San Juan County to respect the rights of Native American voters in the County by engaging the Navajo Nation in meaningful redistricting of its Commission and School Board election plans.