

# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

May 30, 2020

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

RE: CMY-33-20, *An Action Relating to Resources and Development, Budget and Finance, and Naabik 'iyáti' Committees and Navajo Nation Council; Approving Supplemental Funding from the Unreserved, Undesignated Fund Balance in the amount of two million dollars (\$2,000,000.00) for the Navajo Nation's Department of Justice Water Rights Litigation Unit to continue Litigating on behalf of the Navajo Nation and to protect the Navajo Nation's Water Rights; Waiving 12 N.N.C. §§ 820 (E) and (F)*

Dear Speaker Damon,

Pursuant to the authority vested in the Navajo Nation President, I am signing CMY-33-20 into law.

I appreciate the Navajo Nation Council's supplemental appropriation from the Unreserved, Undesignated Fund Balance to support the on-going litigation efforts relating to the Nation's rightful claim to water rights from the Little Colorado River, which are essential to the survival of the Navajo people and future generations. The COVID-19 pandemic has brought the lack of water infrastructure to the forefront of our Nation's ability to adequately respond to this virus and other kinds of public health emergencies; approximately 30-40% of Navajo homes do not have running water. Securing our Nation's water rights is critical to ensure the health and welfare of the Navajo people.

Therefore, I am signing this resolution, CMY-33-20, into law. Thank you 24<sup>th</sup> Navajo Nation Council for supporting this very important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Nez".

Jonathan Nez, President  
THE NAVAJO NATION

A handwritten signature in black ink, appearing to read "Myron Lizer".

Myron Lizer, Vice President  
THE NAVAJO NATION

RESOLUTION OF THE  
NAVAJO NATION COUNCIL  
24<sup>th</sup> NAVAJO NATION COUNCIL - SECOND YEAR, 2020

AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; APPROVING SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF TWO MILLION DOLLARS (\$2,000,000.00) FOR THE NAVAJO NATION'S DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO CONTINUE LITIGATING ON BEHALF OF THE NAVAJO NATION AND TO PROTECT THE NAVAJO NATION'S WATER RIGHTS; WAIVING 12 N.N.C. §§ 820 (E) AND (F)

BE IT ENACTED:

SECTION ONE. AUTHORITIES

- A. The Resources and Development Committee was established as a standing committee of the Navajo Nation Council with the authority to exercise oversight over water, as well as, the enumerated power to review and make recommendations to the Navajo Nation Council for approval of any resolution(s) requiring Navajo Nation Council final approval to accomplish or impact Resources and Development Committee purposes. 2 N.N.C. § 500 (C)(1) and 501(B)(4)(f).
- B. The Budget and Finance Committee was established as a standing committee of the Navajo Nation Council with the enumerated power to review and recommend the budgeting, appropriation, investment and management of all funds to the Navajo Nation Council. 2 N.N.C. §§ 300(A) and 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) and 700(A).
- D. The Navajo Nation Council is the governing body of the Navajo Nation and has the authority to approve Supplemental Appropriations. 2 N.N.C. § 102(A) and 12 N.N.C. § 820 (L).
- E. Title 12 N.N.C. §§ 800 et seq., outlines the requirements for Supplemental Appropriations to the Annual Comprehensive Budget as follows:



1. All requests for annual operating funds and supplemental funds shall be submitted to the Office of Management and Budget for budget impact analysis. 12 N.N.C. § 820(M).
2. When the Controller identifies additional sources of revenues above and beyond the initial or current revenue projections, supplemental appropriations may be allocated by the Navajo Nation Council. 12 N.N.C. § 820(L).
3. Supplemental appropriations made from non-recurring revenues shall only be made for non-recurring operations or purposes, as set forth at § 820(F). The Controller of the Navajo Nation shall be responsible for designating recurring and non-recurring revenues and purposes. 12 N.N.C. § 820(L).
4. The Nation shall budget all recurring operating expenses, including capital maintenance, from recurring revenues. Long term debt shall not be used to finance recurring expenses. 12 N.N.C. § 820 (E).
5. The Navajo Nation Code provides, "[t]he Nation shall restrict non-recurring revenues to budget non-recurring expenditures. In addition, non-recurring revenues will be budgeted only after an examination by the Controller to determine whether or not the revenues are subsidizing an imbalance between recurring revenues and expenditures, and expenditures may be authorized only if a long-term (three-five year) forecast shows that the operating deficit will not continue. Otherwise, non-recurring revenues will be added to the Unreserved, Undesignated Fund balance. This provision may be amended or waived by a two-thirds vote of the full Navajo Nation Council." 12 N.N.C. § 820 (F).

## SECTION TWO. FINDINGS

- A. This request for supplemental funding request seeks a Supplemental Appropriation from the Unreserved, Undesignated Fund Balance in the amount of two million dollars (\$2,000,000.00) to assist the Navajo Nation Department of Justice Water Rights Unit in its water rights litigation efforts. The supplemental funding proposal and budget documents are attached as **Exhibit A** [Classified as Confidential by the Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].
- B. The Water Rights Unit ("WRU") of the Navajo Nation Department of Justice oversees the water rights litigation efforts on behalf of the Navajo Nation.

- C. In recognition of Tó'éí'íiná (water is life), the Navajo Nation Council has determined that water is essential "to provide for a permanent homeland for the Navajo People." 22 N.N.C. § 1101.
- D. The waters of the Navajo Nation are defined as: "(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." 22 N.N.C. § 1104.
- E. Navajo communities have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people.
- F. Pursuant to Resolution 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..." and 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."
- G. To comply and sustain CMY-47-02's mandate, the Navajo Nation Council enacted the Navajo Nation Water Rights Claims Fund and appropriated a minimum of \$2,000,000.00 (two million dollars) into the Fund for the purpose of providing annual funding for the protection of the Nation's water rights in the States of Arizona, Utah, and New Mexico and delegated authority to the Navajo Nation Water Rights Commission to approve the Fund's budget.



- H. The Water Rights Claims Fund's annual budget consists of allocations to the Navajo Nation Department of Water Resources-Water Management Branch, which provides technical work regarding the Nation's water rights; the Navajo Nation Water Rights Commission, which provides public education regarding the Nation's water rights efforts; and the Water Rights Unit, which provides legal representation for the Nation's water rights claims. Due to the increased litigation costs, the reserves within the Water Rights Claims Fund, specifically reserved for outside counsel and expert witnesses, will be fully depleted in Fiscal Year 2020.
- I. If Water Rights Unit funds are exhausted, the Navajo Nation will be forced to rely on the United States, as trustee, to protect Navajo Nation interests; this could be severely detrimental to the Navajo Nation's interests as the United States is also currently serving as trustee for other tribes for commonly held water resources.
- J. The Executive Branch has completed its Section 164 Review of the Supplemental Appropriation request; the Review is attached as **Exhibit B** [Classified as Confidential by the Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].
- K. The Office of Budget and Management issued a Memorandum, dated December 02, 2019, RE: FY2020 Supplemental Funding Request for DOJ/Water Rights Litigation for \$2,000,000 from the Undesignated, Unreserved Fund Balance, that satisfies the budget impact analysis required by 12 N.N.C. 820 (M), which is included with **Exhibit B** [Classified as Confidential by the Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].
- L. The Office of the Controller issued a Memorandum, dated December 26, 2019, RE: UUFB - WRU Request for Supplemental Funds, indicates this request for funds is recurring, and also satisfies the requirements provided in 12 N.N.C. § 820 (L), which is included with **Exhibit B** [Classified as Confidential by the Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].

### **SECTION THREE. WAIVING 12 N.N.C. § 820 (E) AND (F)**

For the purposes of this Supplemental Appropriation, the Navajo Nation Council hereby waives 12 N.N.C. § 820 (E) and (F) with regard to the restriction on matching recurring revenues with recurring expenditures.

**SECTION FOUR. APPROVAL OF SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED, FUND BALANCE**

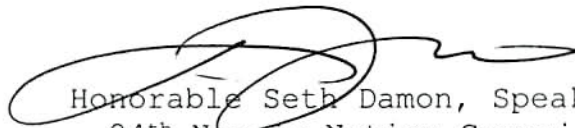
- A. The Navajo Nation hereby approves a Supplemental Appropriation of two million dollars (\$2,000,000.00), as set forth in **Exhibit A**, from the Unreserved, Undesignated Fund Balance to the Navajo Nation's Department of Justice, Water Rights Litigation Unit, WRU Business Unit N01372, to fund the litigation costs necessary to further protect and secure the Navajo Nation's water rights.
- B. This Supplemental Appropriation of \$2,000,000.00 shall be from that amount of funds that exceed the minimum fund balance of the Unreserved, Undesignated Fund Balance.

**SECTION FIVE. EFFECTIVE DATE**

The provisions of this resolution shall become effective in accord with 2 N.N.C. § 221(A).

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the 24<sup>th</sup> 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 15<sup>th</sup> day of May 2020.

  
Honorable Seth Damon, Speaker  
24<sup>th</sup> Navajo Nation Council

May 20, 2020

DATE

Motion: Honorable Edison J. Wauneka  
Second: Honorable Otto Tso

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 30th day of MAY, 2020.

Jonathan Nez Myron Aguiar  
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 \_\_\_\_\_, 2020 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Jonathan Nez, President  
Navajo Nation

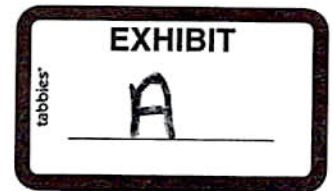
3. I, hereby, exercise line-item veto pursuant to the 2010 Certified Initiative, over the supplemental appropriations approved herein by the Navajo Nation Council; on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
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 1/14/2020  
Doreen N. McPaul, Attorney General  
Navajo Nation Department of Justice

DATE: January 13, 2020

SUBJECT: **Exhibits for Doc. 13720: Proposed Legislation Seeking FY2020 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.





**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 1/14/2020  
Doreen N. McPaul, Attorney General  
Navajo Nation Department of Justice

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**24th Navajo Nation Council  
Special Session  
Teleconference**

ACTION: \_\_\_\_\_ Legislation 0048-20

MOTION: Edison J. Wauneka

SECOND: Otto Tso

	<u>Yea</u>	<u>Nay</u>
1. Elmer P. Begay	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Kee Allen Begay, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Paul Begay	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Nathaniel Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Eugenia Charles-Newton	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Amber Kanazbah Crotty	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Herman M. Daniels	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Seth Damon	<input type="checkbox"/>	<input type="checkbox"/>
9. Mark A. Freeland	<input type="checkbox"/>	<input type="checkbox"/>
10. Pernell Halona	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Jamie Henio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Vince R. James	<input type="checkbox"/>	<input type="checkbox"/>
13. Rickie Nez	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Carl R. Slater	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Raymond Smith, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Wilson C. Stewart, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Daniel E. Tso	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. Charlaine Tso	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Eugene Tso	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Otto Tso	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21. Thomas Walker, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22. Edison J. Wauneka	<input checked="" type="checkbox"/>	<input type="checkbox"/>
23. Edmund Yazzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24. Jimmy Yellowhair	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	<u>21</u>	<u>0</u>

CERTIFICATION:

 5/15/2020  
Honorable Speaker Seth Damon Date