LEGISLATIVE SUMMARY SHEET
Tracking No. 0033-23

DATE: February 27, 2023

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACT RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015, NO. 1:18-md-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS

PURPOSE: The purpose of this legislation is to approve the establishment of the Navajo Nation San Juan River Mitigation Fund and to approve its enabling legislation.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: A Johnson
Website Posting Time/Date: 5:08pm; 03-06-23
Posting End Date: 03-11-23
Eligible for Action: 03-12-23

Resources & Development Committee
Thence
Health Education & Human Services Committee
Thence
Law & Order Committee
Thence
Budget & Finance Committee
Thence
Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

25th NAVAJO NATION COUNCIL – First Year, 2023

INTRODUCED BY

(Prime Sponsor) Rick Nez

TRACKING NO. 0033-23

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM *IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015*, NO. 1:18-md-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS

BE IT ENACTED:

SECTION ONE. AUTHORITY.

A. The Navajo Nation Council is the governing body of the Navajo Nation and empowered to enact positive law of the Navajo Nation. 2 N.N.C. §§ 102(A) and 164(A). The Council also has the statutory authority to designate deposit of additional revenues. 12 N.N.C. § 820(K) ("Funds received in excess of the initial or current revenue projection shall be deposited into the General Fund Unreserved, Undesignated Fund Balance unless otherwise designated by the Navajo Nation Council.").

B. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council and is empowered to review and recommend resolutions relating to social services, health, environmental health, education, veterans and veterans' services, employment and labor. 2 N.N.C. §§ 400(A) and 401(b)(6)(a).

C. The Resources and Development Committee is a standing committee of the Navajo Nation Council and is empowered to exercise oversight over water, land, environment, environmental protection, and agriculture, among other matters, and to make recommendations to the Navajo Nation Council for final approval of resolutions requiring Navajo Nation Council approval to accomplish or impact the Committee purposes. 2 N.N.C. §§ 500(A) and (C) and 501(B)(4)(f).

D. The Budget and Finance Committee of the Navajo Nation Council is empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds and to approve Fund Management Plans pursuant to the recommendations of the appropriate oversight committee and affected Division or Branch. 2 N.N.C. §§ 301(B)(2) and (14).

E. The Law and Order Committee is a standing committee of the Navajo Nation Council and is empowered with the authority to review and make recommendations to the Navajo Nation Council on amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§ 600(A), and 601(B)(14).

F. The Naabik'íyáti' Committee of the Navajo Nation Council is empowered to review all proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).

G. The Navajo Nation Environmental Protection Agency, a regulatory agency within the Executive Branch of the Navajo Nation Government, is responsible for the protection of public health and the Navajo Nation environment. RDCMY-44-17. This includes the prevention, reduction, and elimination of pollution of the waters of the Navajo Nation, and the restoration, preservation, and enhancement of land and water resources within the Navajo Nation. 4 N.N.C. § 1303.

SECTION TWO. FINDINGS.

A. On August 5, 2015, the United States Environmental Protection Agency ("U.S. EPA") and its contractors triggered a blowout of the Gold King Mine near Silverton, CO, while excavating the mine in preparation for a possible cleanup.

B. The blowout released at least three million gallons of toxic acid mine wastewater into Cement Creek, a tributary of the Animas River which flows into the San Juan River and through the Navajo Nation. At least 880,000 pounds of heavy metals poured out and coursed through downstream waterways, including approximately two hundred miles of the San Juan River.

C. Prior to the spill, the San Juan River provided water to many Navajo farmers and ranchers for irrigation of crops, livestock drinking water, and personal drinking water. The San Juan River is and remains not only an important water resource for agricultural use, but also of great cultural significance for the Diné people.

D. As a result of the spill, water utilities were forced to shut down intake valves, and farmers stopped drawing from the rivers as the plume moved downstream. One of the Navajo people's most important sources of water for life and livelihood was poisoned with some of the worst contaminants known to man, including lead and arsenic. The impact of this environmental disaster cannot be overstated. On August 8, 2015, the Navajo Nation declared a State of Emergency for the San Juan River valley.

E. In addition, the Navajo Nation Environmental Protection Agency ("NN EPA") conducted water quality monitoring and ecological restoration activities including, among other things, sediment sampling and a fish tissue contaminant study to understand contaminant levels and potential human health risks associated with the spill.

F. NN EPA also developed a report on livestock and irrigation water quality standards, tracked metal sources through ongoing studies, created a communication strategy, assessed and stored analytical water quality data, and assisted the U.S. EPA and the U.S. Geological Survey with other technical studies.

G. In the months immediately after the spill, the U.S. EPA publicly acknowledged its fault. Additionally, two different Congressional committees found the U.S. EPA to be at fault for the spill.

H. On August 16, 2016, the Navajo Nation filed a lawsuit against the U.S. EPA and its contractors, as well as several mining companies, in the US District Court for the District of New Mexico (*Navajo Nation v. USEPA, et al.*, No. 1:16-cv-00931 (D.N.M.)). The lawsuit seeks recovery for damages caused by the August 2015 spill, as well as reimbursement for costs spent responding to the spill. The Navajo Nation's case was eventually consolidated into *In re Gold King Mine Release in San Juan County, Colorado on August 5*, 2015, 1:18-md-02824 (D.N.M.) (the "Consolidated Case") with similar suits brought by the States of New Mexico and Utah.

I. In September 2016, the U.S. EPA designated the Gold King Mine and 47 other mining sites in the area a Superfund cleanup district. The U.S. EPA worked with Navajo Nation Department of Emergency Management to provide alternative drinking, agricultural, and livestock water and feed.

J. In December 2016, the Nation submitted an administrative claim to the U.S. EPA under the Federal Tort Claims Act, a prerequisite to suing the United States in tort, in the amount of approximately $160 million.

K. In addition, claims on behalf of approximately 300 individual Navajo tribal members remain pending in *Allen et al. v. United States, et al.*, 1:18-CV-00744 (D.N.M.). These claims were filed in a separate 2018 lawsuit by the Egolf Ferlic Martinez & Harwood Law Firm, and are also coordinated into the Consolidated Case, *In re Gold King Mine Release in San Juan County, Colorado on August 5*, 2015, 1:18-md-02824 (D.N.M.).

L. On May 11, 2018, the Nation filed a First Amended Complaint to the Consolidated Case adding the United States as a named defendant.

M. In January 2021, the Nation announced that it had reached a settlement in the Consolidated Case with the defendant mining companies, Kinross Gold Corp., Kinross Gold U.S.A., Inc., and Sunnyside Gold Corp., a subsidiary of Canada's Kinross Gold, in the amount of ten million dollars ($10,000,000) million to resolve claims from the 2015 spill. (Which case was settled or partially settled?

N. The Nation's lawsuit against the remaining Defendants of the Consolidated Case including the U.S. EPA and its contractors who caused the spill remains ongoing.

SECTION THREE. ESTABLISHING THE NAVAJO NATION SAN JUAN RIVER MITIGATION FUND.

The Navajo Nation hereby establishes the Navajo Nation San Juan River Mitigation Fund and approves its enabling legislation as follows:

Title 12. Fiscal Matters

Chapter 29. Navajo Nation San Juan River Mitigation Fund

§ 2901. Establishment

There is established the "Navajo Nation San Juan River Mitigation Fund", hereinafter referred to as "Fund".

A. The Navajo Nation Council hereby designates that any and all net proceeds and earnings awarded to the Navajo Nation by or through the litigation captioned *In re: Gold King Mine Release in San Juan County, Colorado, on August 5, 2015*, No. 1:18-md-02824 (D.N.M.), or any of its underlying or related actions, including but not limited to *Navajo Nation v. USEPA, et al.*, No. 1:16-cv-00931 (D.N.M.) and *New Mexico v. USEPA, et al.*, No. 1:16-cv-00465 (D.N.M.), shall be deposited into the Fund after the Fixed Cost Litigation Account has been reimbursed for the actual costs of said litigation(s), as calculated and attested to by the Attorney General of the Navajo Nation.

B. The Navajo Nation Council may make additional appropriations to the Fund from any other sources of revenue, including directed donations, that become available to the Navajo Nation.

C. Any money deposited in or appropriated to the Fund, regardless of source, including earnings thereon, shall be used only as provided herein.

D. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant to 12 N.N.C. § 820(N).

§ 2902. Purpose

A. The purpose(s) of this Fund are to finance environmental technical studies, water quality monitoring activities, and/or preventative and corrective measures, all of which are necessary to address potential contamination and related issues in the San Juan River, and implement a NNEPA communication strategy.

B. Expenditures from the Fund shall not be subject to or limited by 12 N.N.C. § 810(F) of the Appropriations Act, 12 N.N.C. § 1310(F) of the Bond Financing Act, or the Capital Improvement Project Guidelines, Policies, and Procedures approved through TCDCJY-77-99.

§ 2903. Reimbursement of Litigation Costs

A. The Navajo Nation Department of Justice shall be reimbursed for the actual litigation costs and expenses expended in *In re: Gold King Mine Release in San Juan County, Colorado, on August 5, 2015*, No. 1:18-md-02824 (D.N.M.) and any underlying and related actions, including but not limited to *Navajo Nation v. USEPA, et al.*, No. 1:16-cv-00931 (D.N.M.), *New Mexico v. USEPA, et al.*, No. 1:16-cv-00465 (D.N.M.), and *Allen et al. v. United States, et al.*, 1:18-CV-00744 (D.N.M.), as calculated and attested to by the Attorney General, from any and all settlements and awards stemming from such litigation.

B. All monies awarded to the Department of Justice in Section 5(A) of this Act shall be deposited into the Fixed Cost Litigation Account, prior to any monies being deposited into the Fund.

§ 2904. Investment of the Fund

All monies deposited in the Fund shall be subject to the Master Investment Policies, as amended, and invested as soon as practical in accordance with the degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety necessary to fulfill the purposes and objectives of the Fund.

§ 2905 Definition of Fund Principal and Income

A. "Fund Principal" shall consist of all deposits made to the Fund pursuant to Section 3 of this Act.

B. "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and realized through the investment of the Fund Principal. Realized Fund Income shall be added to the Fund Principal after Fund management and administration expenses, as set forth in this Act, have been deducted.

§ 2906. Expenditure of the Fund

A. The Fund Principal and Income shall only be expended pursuant to an annual or multi-year expenditure plan recommended by the Executive Director of the Navajo Nation Environmental Protection Agency and approved by the Resource and Development and Budget and Finance Committees by resolution.

B. Any changes or modifications to an approved expenditure plan shall be approved by the Resource and Development Committee and Budget and Finance Committee by resolution upon the recommendation of the Executive Director of the Navajo Nation Environmental Protection Agency.

C. Any Fund amounts, whether Fund Principal or Fund Income, not included in an expenditure plan, shall remain invested as set forth herein.

§ 2907. Annual Audit

The Fund shall be audited annually by independent auditors and within 180 days of the end of each fiscal year. An audit report shall be distributed to the members of the Navajo Nation Council and the Navajo Nation President and Vice-President.

§ 2908. Expenses

All expenses directly with the administration and management of the Fund shall be paid from the Fund Income. Such expenses shall include investment advisory and management fees, audit costs, and other related expenses, all pursuant to duly approved contracts for such services.

§ 2909. Amendments

Any section(s) herein may be amended by a two-thirds (2/3) majority vote of the full membership of the Navajo Nation Council and approval of the President of the Navajo Nation.

§ 2910. Termination

The Fund shall expire and terminate when all Fund Principal and Fund Income have been expended.

SECTION FOUR. CODIFICATION.

The provisions of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

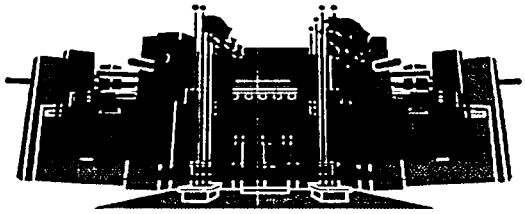
SECTION FIVE. SAVINGS CLAUSE.

Should any provision(s) of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE.

This Act is effective upon its approval pursuant to 2 N.N.C. § 221(B).

Office of Legislative Counsel
Telephone (928) 871-7166
Fax # (928) 871-7576



Honorable Crystalyne Curley
Speaker
25th Navajo Nation Council

MEMORANDUM

TO: Honorable Rick Nez
T'iistoh Sikaad, Nenahnezad, Upper Fruitland, Tse' Daa' Kaan, Newcomb, San Juan Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: February 27, 2023

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACT RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015, NO. 1:18-md-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Please ensure that this particular resolution request is precisely what you want.

Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees' powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0033-23__ SPONSOR: Rickie Nez

TITLE: An Act Relating to Resources and Development, Health, Education and Human Services, Law and Order, Budget and Finance, and Naabik'íyáti' Committees and the Navajo Nation Council; Establishing the San Juan River Mitigation Fund; Directing that Monies Received from In Re: Gold King Mine Release in San Juan County, Colorado, on August 5, 2015, No. 1:18-md-02824 (D.N.M.) and Underlying and Related Actions be Deposited in the San Juan River Mitigation Fund After Reimbursement of Litigation Costs

Date posted: March 06, 2023 at 5:08PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. *§374 et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0033-23

SPONSOR: Honorable Rickie Nez

TITLE: An Act Relating to Resources and Development, Health, Education and Human Services, Law and Order, Budget and Finance, and Naabik'íyáti' Committees and the Navajo Nation Council; Establishing the San Juan River Mitigation Fund; Directing that Monies Received from *In Re: Gold King Mine Release in San Juan County, Colorado, on August 5, 2015*, No. 1:18-md-02824 (D.N.M.) and Underlying and Related Actions be Deposited in the San Juan River Mitigation Fund After Reimbursement of Litigation Costs

Posted: March 06, 2023 at 5:08 PM

5 DAY Comment Period Ended: March 11, 2023

Digital Comments received:

Comments Supporting	*None*
Comments Opposing	*None*
Comments/Recommendations	*None*

Policy Analyst
Office of Legislative Services

March 13, 2023; 8:30 AM
Date/Time

RESOURCES AND DEVELOPMENT COMMITTEE
25th NAVAJO NATION COUNCIL

FIRST YEAR 2023

COMMITTEE REPORT

Madam Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

> **LEGISLATION #0033-23:** AN ACT RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM *IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015*, NO. 1:18-MD-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS. *Sponsor: Honorable Rickie Nez*

Has had it under consideration and reports a **DO PASS** with no amendments.

And thereafter the legislation was referred to the Health, Education & Human Services Committee.

Respectfully submitted,

Brenda Jesus, *Chairperson*
Resources and Development Committee of
the 25th Navajo Nation Council

Date: March 15, 2023 – Regular Meeting (St. Michaels, Arizona and Teleconference)
Location: Navajo Nation Land Department – 2B Taylor Road, Building #8966 – St. Michaels, Arizona.
Resources and Development Committee called in via teleconference from their location within the boundary of the Navajo Nation.

Main Motion:

M: Otto Tso **S:** Shawna Ann Claw **V:** 4-0-1 (CNV)
In Favor: Shawna Ann Claw; Casey Allen Johnson; Rickie Nez; Otto Tso
Opposition: None
Excused: Danny Simpson

Not Voting: Brenda Jesus, *Chairperson*

(NOTE: VOTE TALLY attached hereto)

RESOURCES AND DEVELOPMENT COMMITTEE
25th NAVAJO NATION COUNCIL

FIRST YEAR 2023

ROLL CALL
VOTE TALLY SHEET

LEGISLATION #0033-23: AN ACT RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM *IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015*, NO. 1:18-MD-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS. *Sponsor: Honorable Rickie Nez*

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Honorable Brenda Jesus, *Chairperson*
Resources and Development Committee

Rodney L. Tahe

Rodney L. Tahe, *Legislative Advisor*
Office of Legislative Services