LEGISLATIVE SUMMARY SHEET
Tracking No. 0087-19

DATE: April 3, 2019

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION, AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING AMENDMENTS TO THE NAVAJO NATION WATER USE FEE STRUCTURE

PURPOSE: If approved, this legislation would amend the Navajo Nation Water Use Fee Structure as proposed by the Navajo Nation Water Resources Department, Navajo Nation Division of Natural Resources.

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: Leave Blank
Website Posting Time/Date: 4-12-19 4:18pm
Posting End Date: 4-17-19
Eligible for Action: 4-18-19

PROPOSED STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY

Wilson Stewart
(Prime Sponsor)

TRACKING NO. 0087-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING AMENDMENTS TO THE NAVAJO NATION WATER USE FEE STRUCTURE

BE IT ENACTED:

Section One. Authority

A. The Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 500(C), exercises oversight authority over water.

B. The Resources and Development Committee of the Navajo Nation Council is oversight authority over the Division of Navajo Nation Natural Resources. 2 N.N.C. § 501 (C) (1).

C. The Resources and Development Committee of the Navajo Nation Council is authorized to impose reasonable fees for the use of the waters of the Navajo Nation. 22 N.N.C. § 1307.

Section Two. Findings

A. The Navajo Nation Water Resources Department, Navajo Nation Division of Natural Resources is proposing amendments to the Navajo Water Use Fee Structure.

B. In 1997, by resolution RCAP-65-97, **Exhibit A**, the Resources Committee established a water use fee structure.

C. In 2010, by resolution RCJA-04-10, **Exhibit B**, the Resources Committee amended the Navajo Water Use Fee Structure by increasing the Construction, Industrial and Mining Water Use Fee from $2.70 per 1,000 gallons to $4.00 per 1,000 gallons as a result of inflation. The other water use fees remained unchanged.

D. Due to continuing inflation, the rising cost of administration, and the increased costs to operate and maintain the Nation's water delivery systems (See, **Exhibit C**), the Navajo Nation Water Resources Department recommends amending the Commercial Water Use Fee from 27¢ per 1,000 gallons to 50¢ per 1,000 gallons; the Government Agency Water Use Fee from 13.5¢ per 1,000 gallons to 27¢ per 1,000 gallons; the Construction, Industrial and Mining Water Use fee from $4.00 per 1,000 gallons to $5.50 per 1,000 gallons; rescinding the waiver of the collection of the water use fee from commercial water users using less than 40,000 gallons of water during any three-month billing period; and applying the Navajo Nation 6% Sales Tax to the total water rate cost. All other water use fees will remain unchanged.

E. The Executive Review Form Document Number 011212 and Navajo Nation Department of Justice Document Review Request Form are attached as **Exhibit D** and shown to be "sufficient."

Section Three. Approval

A. Resources and Development Committee of the Navajo Nation Council hereby approves the amendments to the Navajo Nation Water Use Fee Structure as follows:

1. The Commercial Water Use Fee from 27¢ per 1,000 gallons to 50¢ per 1,000 gallons;
2. The Government Agency Water Use Fee from 13.5¢ per 1,000 gallons to 27¢ per 1,000 gallons;
3. The Construction, Industrial and Mining Water Use fee from $4.00 per 1,000 gallons to $5.50 per 1,000 gallons;

4. Rescinding the waiver of the collection of the water use fee from commercial water users using less than 40,000 gallons of water during any three-month billing period;

5. Applying the Navajo Nation 6% Sales Tax to the total water rate cost.

B. All other water use fees will remain unchanged.



RCAP-65-97



RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving a Revised Water Code Water Use Fee Structure for the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. § 691, et seq., the Resources Committee is established as a standing committee of the Navajo Nation Council and is responsible for overseeing all matters pertaining to the development and use of natural resources; and

2. Pursuant to 22 N.N.C. § 1307 of the Navajo Nation Water Code, the Resources Committee is authorized to impose reasonable fees for the use of the waters of the Navajo Nation and grant waivers of said fees if the use is of benefit to the Navajo Nation; and

3. By Resolution RCJA-02-97 (Exhibit "A"), the Resources Committee directed the Director of the Department of Water Resources (Department) to perform a comprehensive study of water use fees and waivers within six months of the date of that resolution and formulate recommendations for a new fee structure that "balances the resources related aim of conservation and to obtain the maximum benefit from the Nation's water resource while keeping in mind the economic development related need to create a climate favorable to business"; and

4. By Resolution RCAP-02-97, the Resources Committee directed the Director of the Department of Water Resources (Director) to suspend collection of retroactive fees, and to conduct public hearings and solicit comments on the proposed new fee structure (Exhibit "B"); and

5. The comprehensive study was performed, from which a recommended fee structure was developed (Exhibit "C", Technical Memorandum dated June 18, 1996). Public hearings were held and comments solicited on the proposed new fee structure (Exhibit "D", Summary of Public Hearings dated August 30, 1996). The public comments indicate that many business interests are opposed to any commercial water use fee, while other business interests support the recommended lower commercial water use fee and the suspension of retroactive collections, and recognize that protecting and managing the waters of the Navajo Nation helps to ensure a viable business climate; and

6. After evaluating the public comments, the Department recommends continuing the commercial water use fee of $0.27 per 1,000 gallons; and

7. The Department recommends continuing the current policy of water fee exemptions for the following uses: Domestic, stock watering, irrigated agriculture, and fish and wildlife; and

8. The Department recommends continuing the following current waiver policies: Waiving 50 percent of the fee for units of local, state and federal governments; and waiving 100 percent of the fee for use of sewer water, use by non-profit institutions; and de minimis uses of less than 10,000 gallons; and

9. The Department recommends continuing the current policy of charging $2.70 per 1,000 gallons for construction activities and other temporary bulk water uses; and

10. The Department recommends continuing the current water use fee of $2.70 per 1,000 gallons for industrial and mining activities, except when the rate is set by contract, lease or other agreement, but allowing the Director to consider exceptions on a case by case, industry by industry basis, subject to Resources Committee approval; and

11. The Department recommends continuing the current policy of charging a fixed fee per water well supplying water used to enhance oil recovery; and

12. The Department is hereby directed to waive collection of the water use fee from commercial water users using less than 40,000 gallons of water during any three month billing period; and

13. The Resources Committee believes it will be in the best interests of the Navajo Nation to continue the recommended water use fee structure in Exhibit "B".

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council hereby approves the waiver of the commercial water use fee for commercial water users using less than 40,000 gallons in a three month period; the Water Code water use fee structure, attached hereto as Exhibit "B". (See Exhibit "C", Technical Memorandum dated June 18, 1996 and Exhibit "D", Summary of Public Hearings dated August 30, 1996.)

2. Because of the numerous concerns pertaining to retroactive collection of fees, the Resources Committee hereby suspends the collection of all past water use fees owed the Nation prior to January 1, 1997. This suspension is intended to benefit those water users who have not paid because of lack of notice. The suspension does not apply to those water users who have valid permits and contracts with the Navajo Nation which obligate them to pay for water use. While the Resources Committee is considering the matter, no new legal action shall be taken to collect any outstanding fees, no interest shall be asserted nor shall any penalty be imposed for failure to pay during this suspension.

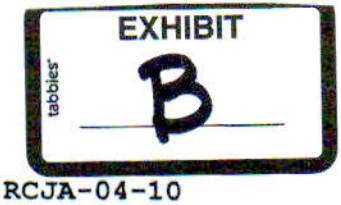
3. The Resources Committee hereby rescinds any prior conflicting authority.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 10th day of April, 1997.

Elmer L. Milford, Chairperson
Resources Committee

Motion: Sylvester Chee
Second: Harold Tunney



RCJA-04-10

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - Fourth Year, 2010

AN ACTION

RELATING TO RESOURCES; CLARIFYING THE NAVAJO NATION WATER CODE WATER USE FEE STRUCTURE AND AMENDING THE CONSTRUCTION, INDUSTRIAL AND MINING WATER USE FEE

BE IT ENACTED:

I. The Navajo Nation finds the following with respect to this legislation:

A. Pursuant to 22 N.N.C. § 1307 of the Navajo Nation Water Code, the Resources Committee is authorizing to impose reasonable fees for the use of the waters of the Navajo Nation ("Nation");

B. Pursuant to RCAP-65-97, Exhibit A, the Resources Committee first established water use fees based on relevant cost data compiled in 1996;

C. Pursuant to RCAP-65-97, in 1997 the water use fees were implemented by the Navajo Nation Water Code Administration ("WCA") as follows:

1. Fees are waived for Domestic, Agricultural, Fish & Wildlife, Stock Watering uses, and uses by bona fide non-profit organizations or institutions, i.e., non-profit under the federal tax code and/or Nation law;

2. The standard fee for construction water use from a Nation source is $2.70 per 1,000 gallons, with pre-payment required based on projected water use figures reported by the permittee, or its engineers, and ultimately determined and verified by the WCA;

3. Construction water imported from a non-Nation source is subject to a water import permit (and

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$25 fee) to help protect the public and to help insure that only water of a generally acceptable quality for the intended use is transported onto the Nation;

4. The standard fee for industrial water use from a Nation source is $2.70 per 1,000 gallons (or as otherwise negotiated by the Nation for special projects);

5. Water use fees for the Navajo Agricultural Products Industry are (a) food processing is $0.27 (27¢) per 1,000 gallons, (b) industrial use is $0.27 per 1,000 gallons, and (c) construction water use is the standard $2.70 per 1,000 gallons;

6. The standard fee for the Nation's water used for mining purposes is $2.70 per 1,000 gallons;

7. The standard oil recovery water use fee is $1,000/yr. for each water well used;

8. The standard fee for commercial business use of Nation water through the public water systems of the Navajo Tribal Utility Authority ("NTUA"), or through other water systems using Nation water, is $0.27 per 1,000 gallons;

9. Use of Nation water through NTUA's water system (or other water systems) at government building/offices is $0.135 (13½¢) per 1,000 gallons;

10. All direct government agency water use for construction receives a 50% fee waiver (see (k) below), but if an agency hires a private contractor to do the agency's project, such as a road construction project, the contractor is responsible for obtaining project water use permits and receives no government fee waiver, unless the Committee or the Navajo Nation Council gives the waiver on a case-by-case basis;

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11. Federal, state, county, local, and Nation government agencies, such as the Navajo Division of Transportation, who use their own government employees and equipment to do construction work, qualify for a 50% fee waiver, but if they subcontract government waiver does not apply;

12. Federal, state, county, local, and Nation business enterprises, such as the Navajo Nation Gaming Enterprise, do not qualify for a government agency fee waiver, with the exception that townships and Local Governance Act chapters, although listed as "Enterprise Participants" under the Chart of Accounts by the Navajo Nation Office of Management and Budget, qualify for the 50% government agency fee waiver; and

D. The current average construction water use fee per 1,000 gallons from adjacent regional sources to the east, south, west, and north of the Nation, and from NTUA is $5.66 as derived from data obtained in August and September 2009 as listed below:

1. Cuba $7.50 (only one source available, Gutierrez Family Corp.)

2. Gallup $9.59 (contractors can use non-potable water only)

3. Winslow $2.49 (contractors can use public system water only)

4. Flagstaff $1.07 (contractors can use public system water only)

5. Farmington $2.85 (contractors can use public system water only)

6. NTUA $8.45 (rarely-available potable water; this NTUA rate includes the Navajo Nation's mandatory $2.70 fee on top of NTUA's mandatory $5.75 "O & M" fee)

E. Due to inflation, the Resources Committee's original $2.70 fee per 1,000 gallons (based on 1996 prices) for construction, mining and industrial use is equal to $3.70 today as shown below with inflation rates from 1996 to 2008, the last full year with reported inflation figures:

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Year	CPI (Inflation) U.S. Gov't %	$2.70/1,000 Gallons Original Water Use Fee, Adjusted for Inflation Since 1996
1997	2.3%	$2.76
1998	1.6%	$2.80
1999	2.2%	$2.87
2000	3.4%	$2.97
2001	2.8%	$3.05
2002	1.6%	$3.10
2003	2.3%	$3.17
2004	2.7%	$3.25
2005	3.4%	$3.36
2006	3.2%	$3.47
2007	2.8%	$3.57
2008	3.8%	$3.70

F. The Resources Committee is not proposing to make any changes to the 1997 commercial fees for potable water use in businesses (to remain 27¢ per 1,000 gallons) or to the 1997 government agency fees for water use in agency buildings (to remain 13½¢ per 1,000 gallons).

II. The Navajo Nation hereby amends the standard construction, industrial and mining water use fees from $2.70 per 1,000 gallons to $4.00 per 1,000 gallons starting October 1, 2010 and ending December 31, 2013 or until the Resources Committee amends the rate.

III. The Navajo Nation hereby leaves the remaining water use fee rates unchanged.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation

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(Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor and 0 opposed, this 14th day of January, 2010.

George Arthur, Chairperson
Resources Committee

Motion: Harry Williams, Sr.
Second: Curran Hannon

EXHIBIT



Navajo Nation Rate Comparison as of January 03, 2019

Navajo Tribal Utility Authority	Construction	$7.14 per 1,000 gallons
	Commercial	$6.77 per 1,000 gallons
Gallup, NM.	Construction and Commercial $13.53 per 1,000 gallons plus Meter Size	
Winslow, AZ.	Construction	$13.93 per thousand
	Commercial	$ 7.52 per thousand
Flagstaff, AZ.	Construction	$8.07 per thousand
	Commercial	$4.23 per thousand
Page, AZ.	Construction and Commercial $14.13 per 1,000 gallons plus Meter Size	
Farmington, NM.	Base Charge plus Meter Size (see attached water rates)	

Document No. 011212

EXHIBIT tabbies D

Date Issued: 09/21/2018

SECTION 164 REVIEW FORM

Title of Document: Proposed amendment: DWR Water Use Fee Contact Name: SCOTT, TALIA FAITH

Program/Division: DIVISION OF NATURAL RESOURCES

Email: tscott@navajo-nsn.gov Phone Number: 928-729-4039, 4031

Division Director Approval for 164A: Natural Resources [signature] 10/01/2018

Check document category: only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

			Date	Sufficient	Insufficient
X	**Statement of Policy or Positive Law:**				
	1. OAG:	[signature]	Date: 10/11/18	☑	☐
☐	**IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)**				
	1. OMB:		Date:	☐	☐
	2. OOC:		Date:	☐	☐
	3. OAG:		Date:	☐	☐

Section 164(B) Final approval rests with the President of the Navajo Nation

☐	**Grant/Funding Agreement or amendment:**				
	1. Division:		Date:	☐	☐
	2. OMB:		Date:	☐	☐
	3. OOC:		Date:	☐	☐
	4. OAG:		Date:	☐	☐
☐	**Subcontract/Contract expending or receiving funds or amendment:**				
	1. Division:		Date:	☐	☐
	2. BRD:		Date:	☐	☐
	3. OMB:		Date:	☐	☐
	4. OOC:		Date:	☐	☐
	5. OAG:		Date:	☐	☐
☐	**Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:**				
	1. Division:		Date:	☐	☐
	2. OAG:		Date:	☐	☐
☐	**M.O.A. or Letter of Assurance expending or receiving funds or amendment:**				
	1. Division:		Date:	☐	☐
	2. OMB:		Date:	☐	☐
	3. OOC:		Date:	☐	☐
	4. OAG:		Date:	☐	☐

Maryann 6872

NAVAJO NATION DEPARTMENT OF JUSTICE

REQUEST FOR SERVICES

DOJ

DATE / TIME

RFS #: 011212

UNIT: NRU

☒ RESUBMITTAL 10/08/2018

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST:	10/3/2018	ENTITY/DIVISION:	Natural Resources
CONTACT NAME:	Laurita Begay	DEPARTMENT:	Water Resourxes
PHONE NUMBER:	928) 729-4147	E-MAIL:	lauritajbegay@hotmail.com

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):
Section 164 Review Form - Proposed Amendment to the Navajo Nation Water Use Fee Structure

DEADLINE:	10/19/2018	REASON:	To get it process in a timely manner

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: REVIEWING ATTORNEY/ADVOCATE:

DATE TIME OUT OF UNIT: PREPARED BY *(initial)*:

DOJ ATTORNEY / ADVOCATE COMMENTS

REVIEWED BY: *(PRINT)* DATE / TIME:

DOJ Secretary Called: for Document Pick Up on at By:

PICKED UP BY: *(PRINT)* DATE / TIME:

NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL

RECEIVED
OCT - 8 2018
DEPARTMENT OF JUSTICE
RECEPTIONIST DESK

DOJ
10-08-18 @ 1040a
DATE / TIME
☐ 7 Day Deadline
DOC #: 011212
SAS #:
UNIT: NRW

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST:	10/5/2018	DIVISION:	Of Natural Resources
CONTACT NAME:	Laurita Begay	DEPARTMENT:	Water Resources
PHONE NUMBER:	(928) 729-4147	E-MAIL:	lauritajbegay@hotmail.com

TITLE OF DOCUMENT: Section 164 Process Form - Proposed amendment to the Navajo Nation Water Use Fee Structure

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 10/08/18 11:37AM

REVIEWING ATTORNEY/ADVOCATE: Oliver Whaley 10/17/18

DATE TIME OUT OF UNIT: 10.15.18 10:10 am

DOJ ATTORNEY / ADVOCATE COMMENTS

Sufficient

REVIEWED BY: (*Print*)	Date / Time	SURNAMED BY: (*Print*)	Date / Time
Oliver Whaley	10/11/18 2:45pm	VBluethat	10/11/18 4:20pm

DOJ Secretary Called: Marjorie N. for Document Pick Up on 10.15.18 at 10 am By: BJ

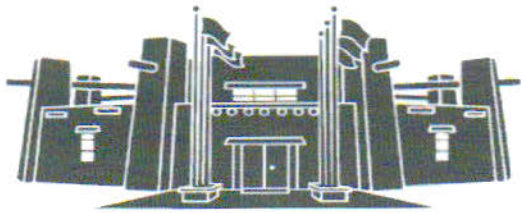
PICKED UP BY: (*Print*) DATE / TIME:

"No Answer"

NNDOJ/DRRF-July 2013

COMPLETED

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



Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO: Honorable Wilson Stewart, Jr.
Crystal, Fort Defiance, Red Lake, Sawmill Chapters

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

DATE: April 3, 2019

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION, AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING AMENDMENTS TO THE NAVAJO NATION WATER USE FEE STRUCTURE

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. 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. Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

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).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0087-19_____ SPONSOR: Wilson Stewart, Jr.

TITLE: An Action Relating To Resources And Development; Approving Amendments To The Navajo Nation Water Use Fee Structure

Date posted: April 12, 2019 at 4:18pm

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) 871-7590

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.*