LEGISLATIVE SUMMARY SHEET
Tracking No. 0048-20

DATE: March 4, 2020

TITLE OF RESOLUTION: 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)

PURPOSE: This resolution, if approved, will provide a Supplemental Appropriation of $2,000,000 from the UUFB to Department of Justice's Water Rights Unit to continue and sustain the Nation's water rights litigations.

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

5-DAY BILL HOLD PERIOD: SNOTAH
Website Posting Time/Date: 450pm 03-06-20
Posting End Date: 03-11-20
Eligible for Action: 03-12-20

Resources and Development Committee
Thence
Budget and Finance Committee
Thence
Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

Elmer Begay

(Prime Sponsor)

TRACKING NO. 0048-20

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'íyát'i' 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).

F. 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'iiná (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: Y2020 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).

EXHIBIT
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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

EXHIBIT
B
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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

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

Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO: Honorable Elmer Begay
Dilcon, Indian Wells, Teesto, Whitecone, and Greasewood Springs Chapters

FROM: _____
Dana Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

DATE: March 4, 2020

SUBJECT: **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)**

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.

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).
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 NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0048-20_____ SPONSOR: Elmer P. Begay

TITLE: 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)

Date posted: March 6, 2020 at 4:50pm

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.*