

LEGISLATIVE SUMMARY SHEET

Tracking No. 0280-20

DATE: October 28, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AD DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES; URGING THE UNITED STATES HOUSE OF REPRESENTATIVES TO EXPEDITIOUSLY PASS S. 886, WHICH INCLUDES THE "NAVAJO UTAH WATER RIGHTS SETTLEMENT ACT OF 2019," AS APPROVED BY THE SENATE.

PURPOSE: To urge the United States House of Representatives to expeditiously pass S. 886, which includes the 'Navajo Utah Water Rights Settlement Act of 2019,' as approved by the Senate.

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.

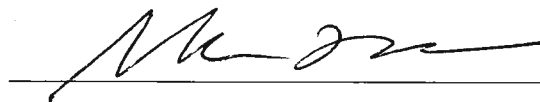
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Resources & Development Committee
Thence
Naabik'iyáti' Committee

PROPOSED NAVAJO NATION STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL – Second Year 2020

INTRODUCED BY



(Prime Sponsor)



Herman M. Daniels, Jr.

TRACKING NO. 0280-20

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI'
COMMITTEES; URGING THE UNITED STATES HOUSE OF
REPRESENTATIVES TO EXPEDITIOUSLY PASS S. 886, WHICH INCLUDES
THE "NAVAJO UTAH WATER RIGHTS SETTLEMENT ACT OF 2019," AS
APPROVED BY THE SENATE.

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee of the Navajo Nation Council exercises oversight authority over water to protect this resource for the Navajo Nation and People, now and for future generations. 2 N.N.C. § 500 (C).
- B. The Naabik'iyáti' Committee of the Navajo Nation Council and among other statutory powers, to coordinate all requests for information, appearances and testimony relating to proposed federal legislation impacting the Navajo Nation; to review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments; and to coordinate with all communities, Chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees, departments of the

1 United States government, state legislatures and departments and county and local
2 governments. 2 N.N.C. §§ 701 (A)(6) – (A)(8).
3

4 **SECTION TWO. FINDINGS**

- 5 A. On June 4, 2020, the United States Senate passed S. 886 by unanimous consent,
6 without a single Senator voting in opposition. **Exhibit A.**
- 7 B. S. 886 includes five pieces of legislation, unanimously approved by the Senate
8 Indian Affairs, including the Navajo Utah Water Rights Settlement Act of 2019,
9 found at Section 4 of the bill.
- 10 C. The proposed Navajo Utah Water Rights Settlement Act of 2019:
- 11 a. Ratifies and authorizes the Secretary of the Interior to execute the Navajo
12 Utah Water Rights Settlement Agreement, approved by the Navajo Nation
13 Council on January 26, 2016.
- 14 b. Recognizes the right of the Navajo Nation to the consumptive use of eighty-
15 one thousand five hundred (81,500) acre-feet of water per year within the
16 State of Utah;
- 17 c. Authorizes approximately \$210 million for water infrastructure on Navajo
18 Nation lands within Utah; and
- 19 d. Requires the State of Utah to contribute \$8 million to the Navajo Water
20 Development Projects Account of the Trust Fund in accordance with the
21 Navajo Utah Water Rights Settlement Agreement.
- 22 D. The COVID-19 pandemic has been particularly pernicious on the Navajo Nation
23 largely due to the lack of access to potable water by Navajo residents, especially
24 within the Utah portion of the Navajo Nation, where it is estimated that over 40% of
25 the homes lack running water.
- 26 E. Because S. 886 provides significant funding for critically needed water
27 infrastructure, it is critical that S. 886 be passed as expeditiously as possible.
28

29 **SECTION THREE. SUPPORTING S. 886**

30

1 The Navajo Nation supports S. 886 and urges the United States House of
2 Representatives to expeditiously approve the bill as passed by the Senate incorporated
3 herein as **Exhibit A**.
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116TH CONGRESS
2D SESSION

S. 886

To amend the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Indian Water Rights
3 Settlement Extension Act”.

4 **SEC. 2. TRIBAL WATER RIGHTS.**

5 (a) **DEFINITION OF 611(g) AGREEMENT.**—Section
6 602 of the Aamodt Litigation Settlement Act (Public Law
7 111–291; 124 Stat. 3134) is amended—

8 (1) by redesignating paragraphs (1) through
9 (23) as paragraphs (2) through (24), respectively;
10 and

11 (2) by inserting before paragraph (2) (as so re-
12 designated) the following:

13 “(1) **611(g) AGREEMENT.**—The term ‘611(g)
14 Agreement’ means the agreement dated July 2,
15 2019, to be executed by the United States, the
16 State, the Pueblos, the County, and the City pursu-
17 ant to section 611(g).”.

18 (b) **FINAL PROJECT DESIGN.**—Section 611(b) of the
19 Aamodt Litigation Settlement Act (Public Law 111–291;
20 124 Stat. 3137) is amended, in the matter preceding para-
21 graph (1), by striking “within 90 days of” and inserting
22 “as soon as feasible after”.

23 (c) **CONSTRUCTION COSTS FOR PUEBLO WATER FA-**
24 **CILITIES.**—Section 611(f) of the Aamodt Litigation Set-
25 tlement Act (Public Law 111–291; 124 Stat. 3138) is
26 amended—

1 (1) in paragraph (1)—

2 (A) in subparagraph (A), by striking
3 “\$106,400,000” and inserting “\$243,400,000”;
4 and

5 (B) by striking subparagraph (B) and in-
6 serting the following:

7 “(B) EXCEPTION.—Of the amount de-
8 scribed in subparagraph (A)—

9 “(i) the initial \$106,400,000 shall be
10 increased or decreased, as appropriate,
11 based on ordinary fluctuations in construc-
12 tion costs since October 1, 2006, as deter-
13 mined using applicable engineering cost in-
14 dices; and

15 “(ii) any amounts made available in
16 excess of the amount described in clause
17 (i) shall be increased or decreased, as ap-
18 propriate, based on ordinary fluctuations
19 in construction costs since October 1,
20 2018, as determined using applicable engi-
21 neering cost indices.”; and

22 (2) in paragraph (3), by inserting “and the
23 611(g) Agreement” after “the Cost-Sharing and
24 System Integration Agreement”.

1 (d) FUNDING FOR REGIONAL WATER SYSTEM.—Sec-
 2 tion 617(a)(1) of the Aamodt Litigation Settlement Act
 3 (Public Law 111–291; 124 Stat. 3147) is amended—

4 (1) in subparagraph (B)—

5 (A) by striking the period at the end and
 6 inserting “; and”;

7 (B) by striking “section 616 \$50,000,000”
 8 and inserting the following: “section 616—

9 “(i) \$50,000,000”; and

10 (C) by adding at the end the following:

11 “(ii) subject to the availability of ap-
 12 propriations and in addition to the
 13 amounts made available under clause (i),
 14 \$137,000,000, as adjusted under para-
 15 graph (4), for the period of fiscal years
 16 2021 through 2028.”; and

17 (2) by adding at the end the following:

18 “(C) PROHIBITION.—Notwithstanding any
 19 other provision of law, any additional amounts
 20 made available under subparagraph (B)(ii) shall
 21 not be made available from the Reclamation
 22 Water Settlements Fund established by section
 23 10501(a) of the Omnibus Public Land Manage-
 24 ment Act of 2009 (43 U.S.C. 407(a)).”.

1 (c) ADJUSTMENT.—Section 617(a)(4) of the Lamont
 2 Litigation Settlement Act (Public Law 111–291; 124 Stat.
 3 3147) is amended—

4 (1) by striking “The amounts” and inserting
 5 the following:

6 “(A) IN GENERAL.—The amounts”;

7 (2) in subparagraph (A) (as so designated), by
 8 striking “since October 1, 2006, as determined using
 9 applicable engineering cost indices” and inserting
 10 “pursuant to section 611(f)(1)(B)”;

11 (3) by inserting at the end the following:

12 “(B) PROHIBITION.—Notwithstanding any
 13 other provision of law, any additional amounts
 14 made available as a result of this paragraph, as
 15 compared to this paragraph as in effect on the
 16 day before the date of enactment of this sub-
 17 paragraph, shall—

18 “(i) be subject to the availability of
 19 appropriations; and

20 “(ii) not be made available from the
 21 Reclamation Water Settlements Fund es-
 22 tablished by section 10501(a) of the Omni-
 23 bus Public Land Management Act of 2009
 24 (43 U.S.C. 407(a)).”.

1 (f) EXECUTION OF AGREEMENT UNDER SECTION
2 611(g).—Section 621 of the Amodeo Litigation Settle-
3 ment Act (Public Law 111–291; 124 Stat. 3149) is
4 amended by striking subsections (a) and (b) and inserting
5 the following:

6 “(a) APPROVAL.—To the extent the Settlement
7 Agreement, the Cost-Sharing and System Integration
8 Agreement, and the 611(g) Agreement do not conflict with
9 this title, the Settlement Agreement, the Cost-Sharing and
10 System Integration Agreement, and the 611(g) Agreement
11 (including any amendments to the Settlement Agreement,
12 the Cost-Sharing and System Integration Agreement, and
13 the 611(g) Agreement that are executed to make the Set-
14 tlement Agreement, the Cost-Sharing and System Integra-
15 tion Agreement, or the 611(g) Agreement consistent with
16 this title) are authorized, ratified, and confirmed.

17 “(b) EXECUTION.—To the extent the Settlement
18 Agreement, the Cost-Sharing and System Integration
19 Agreement, and the 611(g) Agreement do not conflict with
20 this title, the Secretary shall execute the Settlement
21 Agreement, the Cost-Sharing and System Integration
22 Agreement, and the 611(g) Agreement (including any
23 amendments that are necessary to make the Settlement
24 Agreement, the Cost-Sharing and System Integration

1 Agreement, or the 611(g) Agreement consistent with this
2 title).”.

3 (g) REQUIREMENTS FOR DETERMINATION OF SUB-
4 STANTIAL COMPLETION OF THE REGIONAL WATER SYS-
5 TEM.—Section 623(c) of the Amodeo Litigation Settle-
6 ment Act (Public Law 111–291; 124 Stat. 3151) is
7 amended—

8 (1) by striking paragraph (1) and inserting the
9 following:

10 “(1) CRITERIA FOR SUBSTANTIAL COMPLETION
11 OF REGIONAL WATER SYSTEM.—Subject to the pro-
12 visions of section 611(d) concerning the extent, size,
13 and capacity of the County Distribution System, the
14 Regional Water System shall be determined to be
15 substantially completed if—

16 “(A) the infrastructure has been con-
17 structed capable of—

18 “(i) diverting, treating, transmitting,
19 and distributing a supply of 2,500 acre-
20 feet of water to the Pueblos consistent with
21 the Engineering Report (as amended by
22 the 611(g) Agreement and the Operating
23 Agreement); and

24 “(ii) diverting, treating, and transmit-
25 ting the quantity of water specified in the

1 Engineering Report to the County Dis-
2 tribution System and consistent with the
3 Engineering Report (as amended by the
4 611(g) Agreement and the Operating
5 Agreement); or

6 “(B) the Secretary—

7 “(i) issues a notice to proceed author-
8 izing the commencement of Phase I con-
9 struction of the Regional Water System by
10 December 31, 2019, and subsequently
11 commences construction of the Regional
12 Water System;

13 “(ii) diligently proceeds to construct
14 the Regional Water System in accordance
15 with the Engineering Report (as amended
16 by the 611(g) Agreement), on a schedule
17 for completion by June 30, 2028;

18 “(iii) expends all of the available
19 funding provided to construct the Regional
20 Water System under section 611(f)(1)(A),
21 in the Cost-Sharing and System Integra-
22 tion Agreement, and in the 611(g) Agree-
23 ment;

24 “(iv) complies with the terms of the
25 611(g) Agreement; and

“(v) despite diligent efforts cannot complete construction of the Regional Water System as described in the final Engineering Report (as amended by the 611(g) Agreement), due solely to the lack of additional authorized funding.”;

(2) in paragraph (2)—

(A) by striking “2021” and inserting “2025”; and

(B) by striking “2024” and inserting “2028”;

(3) in paragraph (3), in the matter preceding subparagraph (A), by striking “2021” and inserting “2025”;

(4) in paragraph (4)(B)(ii)(II), by striking “2023” and inserting “2027”; and

(5) in paragraph (5)(A), by striking “2024” and inserting “2028”.

SEC. 3. KICKAPOO TRIBE.

(a) DEFINITION OF UPPER DELAWARE AND TRIBUTARIES WATERSHED PLAN.—In this section, the term “Upper Delaware and Tributaries Watershed Plan” means the plan described in the document entitled “Watershed Plan and Environmental Impact Statement Upper Delaware and Tributaries Watershed Atchison, Brown,

1 Jackson, and Nemaha Counties, Kansas”, dated January
2 1994, and supplemented in June 1994—

3 (1) developed, pursuant to the Watershed Pro-
4 tection and Flood Prevention Act (16 U.S.C. 1001
5 et seq.)—

6 (A) by the Kickapoo Tribe, certain water-
7 shed and conservation districts in the State of
8 Kansas, and the Department of Wildlife and
9 Parks of the State of Kansas; and

10 (B) with the cooperation and technical as-
11 sistance of the Natural Resources Conservation
12 Service; and

13 (2) described in the report of the Committee on
14 Environment and Public Works of the Senate (Sen-
15 ate Report 105-13; April 22, 1997).

16 (b) STUDY; RECOMMENDATIONS.—To support the
17 purposes of achieving a fair, equitable, and final settle-
18 ment of claims to water rights for the Kickapoo Tribe in
19 the State of Kansas, the Secretary of Agriculture (acting
20 through the Chief of the Natural Resources Conservation
21 Service), in consultation with the Secretary of the Interior
22 (acting through the Director of the Secretary’s Indian
23 Water Rights Office), shall—

1 (1) commence a study of the multipurpose dam
2 described in the Upper Delaware and Tributaries
3 Watershed Plan; and

4 (2) not later than 2 years after the date of en-
5 actment of this Act, make recommendations to Con-
6 gress with respect to the material alterations or
7 changes to the Upper Delaware and Tributaries Wa-
8 tershed Plan that are necessary to effectuate, in
9 part, the Tribal water rights agreed to by the Kick-
10 apoo Tribe and the State of Kansas on September
11 9, 2016, in the Kickapoo Tribe Water Rights Settle-
12 ment Agreement, which otherwise remains subject to
13 approval and authorization by Congress.

14 **SEC. 4. NAVAJO-UTAH WATER RIGHTS SETTLEMENT.**

15 (a) PURPOSES.—The purposes of this section are—

16 (1) to achieve a fair, equitable, and final settle-
17 ment of all claims to water rights in the State of
18 Utah for—

19 (A) the Navajo Nation; and

20 (B) the United States, for the benefit of
21 the Nation;

22 (2) to authorize, ratify, and confirm the agree-
23 ment entered into by the Nation and the State, to
24 the extent that the agreement is consistent with this
25 section;

1 (3) to authorize and direct the Secretary—

2 (A) to execute the agreement; and

3 (B) to take any actions necessary to carry
4 out the agreement in accordance with this sec-
5 tion; and

6 (4) to authorize funds necessary for the imple-
7 mentation of the agreement and this section.

8 (b) DEFINITIONS.—In this section:

9 (1) AGREEMENT.—The term “agreement”
10 means—

11 (A) the document entitled “Navajo Utah
12 Water Rights Settlement Agreement” dated De-
13 cember 14, 2015, and the exhibits attached
14 thereto; and

15 (B) any amendment or exhibit to the docu-
16 ment or exhibits referenced in subparagraph
17 (A) to make the document or exhibits consistent
18 with this section.

19 (2) ALLOTMENT.—The term “allotment” means
20 a parcel of land—

21 (A) granted out of the public domain that
22 is—

23 (i) located within the exterior bound-
24 aries of the Reservation; or

(ii) Bureau of Indian Affairs parcel number 792 634511 in San Juan County, Utah, consisting of 160 acres located in Township 41S, Range 20E, sections 11, 12, and 14, originally set aside by the United States for the benefit of an individual identified in the allotting document as a Navajo Indian; and

(B) held in trust by the United States—

(i) for the benefit of an individual, individuals, or an Indian Tribe other than the Navajo Nation; or

(ii) in part for the benefit of the Navajo Nation as of the enforceability date.

(3) ALLOTTEE.—The term “allottee” means an individual or Indian Tribe with a beneficial interest in an allotment held in trust by the United States.

(4) ENFORCEABILITY DATE.—The term “enforceability date” means the date on which the Secretary publishes in the Federal Register the statement of findings described in subsection (g)(1).

(5) GENERAL STREAM ADJUDICATION.—The term “general stream adjudication” means the adjudication pending, as of the date of enactment of this Act, in the Seventh Judicial District in and for

1 Grand County, State of Utah, commonly known as
2 the “Southeastern Colorado River General Adjudica-
3 tion”, Civil No. 810704477, conducted pursuant to
4 State law.

5 (6) INJURY TO WATER RIGHTS.—The term “in-
6 jury to water rights” means an interference with,
7 diminution of, or deprivation of water rights under
8 Federal or State law, excluding injuries to water
9 quality.

10 (7) MEMBER.—The term “member” means any
11 person who is a duly enrolled member of the Navajo
12 Nation.

13 (8) NAVAJO NATION OR NATION.—The term
14 “Navajo Nation” or “Nation” means a body politic
15 and federally recognized Indian nation, as published
16 on the list established under section 104(a) of the
17 Federally Recognized Indian Tribe List Act of 1994
18 (25 U.S.C. 5131(a)), also known variously as the
19 “Navajo Nation”, the “Navajo Nation of Arizona,
20 New Mexico, & Utah”, and the “Navajo Nation of
21 Indians” and other similar names, and includes all
22 bands of Navajo Indians and chapters of the Navajo
23 Nation and all divisions, agencies, officers, and
24 agents thereof.

1 (9) NAVAJO WATER DEVELOPMENT
2 PROJECTS.—The term “Navajo water development
3 projects” means projects for domestic municipal
4 water supply, including distribution infrastructure,
5 and agricultural water conservation, to be con-
6 structed, in whole or in part, using monies from the
7 Navajo Water Development Projects Account.

8 (10) NAVAJO WATER RIGHTS.—The term “Nav-
9 ajo water rights” means the Nation’s water rights in
10 Utah described in the agreement and this section.

11 (11) OM&R.—The term “OM&R” means oper-
12 ation, maintenance, and replacement.

13 (12) PARTIES.—The term “parties” means the
14 Navajo Nation, the State, and the United States.

15 (13) RESERVATION.—The term “Reservation”
16 means, for purposes of the agreement and this sec-
17 tion, the Reservation of the Navajo Nation in Utah
18 as in existence on the date of enactment of this Act
19 and depicted on the map attached to the agreement
20 as Exhibit A, including any parcel of land granted
21 out of the public domain and held in trust by the
22 United States entirely for the benefit of the Navajo
23 Nation as of the enforceability date.

1 (14) SECRETARY.—The term “Secretary”
 2 means the Secretary of the Interior or a duly au-
 3 thorized representative thereof.

4 (15) STATE.—The term “State” means the
 5 State of Utah and all officers, agents, departments,
 6 and political subdivisions thereof.

7 (16) UNITED STATES.—The term “United
 8 States” means the United States of America and all
 9 departments, agencies, bureaus, officers, and agents
 10 thereof.

11 (17) UNITED STATES ACTING IN ITS TRUST CA-
 12 PACITY.—The term “United States acting in its
 13 trust capacity” means the United States acting for
 14 the benefit of the Navajo Nation or for the benefit
 15 of allottees.

16 (c) RATIFICATION OF AGREEMENT.—

17 (1) APPROVAL BY CONGRESS.—Except to the
 18 extent that any provision of the agreement conflicts
 19 with this section, Congress approves, ratifies, and
 20 confirms the agreement (including any amendments
 21 to the agreement that are executed to make the
 22 agreement consistent with this section).

23 (2) EXECUTION BY SECRETARY.—The Sec-
 24 retary is authorized and directed to promptly exe-

1 cute the agreement to the extent that the agreement
2 does not conflict with this section, including—

3 (A) any exhibits to the agreement requir-
4 ing the signature of the Secretary; and

5 (B) any amendments to the agreement
6 necessary to make the agreement consistent
7 with this section.

8 (3) ENVIRONMENTAL COMPLIANCE.—

9 (A) IN GENERAL.—In implementing the
10 agreement and this section, the Secretary shall
11 comply with all applicable provisions of—

12 (i) the Endangered Species Act of
13 1973 (16 U.S.C. 1531 et seq.);

14 (ii) the National Environmental Policy
15 Act of 1969 (42 U.S.C. 4321 et seq.); and

16 (iii) all other applicable environmental
17 laws and regulations.

18 (B) EXECUTION OF THE AGREEMENT.—
19 Execution of the agreement by the Secretary as
20 provided for in this section shall not constitute
21 a major Federal action under the National En-
22 vironmental Policy Act of 1969 (42 U.S.C.
23 4321 et seq.).

24 (d) NAVAJO WATER RIGHTS.—

1 (1) CONFIRMATION OF NAVAJO WATER
2 RIGHTS.—

3 (A) QUANTIFICATION.—The Navajo Na-
4 tion shall have the right to use water from
5 water sources located within Utah and adjacent
6 to or encompassed within the boundaries of the
7 Reservation resulting in depletions not to ex-
8 ceed 81,500 acre-feet annually as described in
9 the agreement and as confirmed in the decree
10 entered by the general stream adjudication
11 court.

12 (B) SATISFACTION OF ALLOTTEE
13 RIGHTS.—Depletions resulting from the use of
14 water on an allotment shall be accounted for as
15 a depletion by the Navajo Nation for purposes
16 of depletion accounting under the agreement,
17 including recognition of—

18 (i) any water use existing on an allot-
19 ment as of the date of enactment of this
20 Act and as subsequently reflected in the
21 hydrographic survey report referenced in
22 subsection (f)(2);

23 (ii) reasonable domestic and stock
24 water uses put into use on an allotment;
25 and

1 (iii) any allotment water rights that
 2 may be decreed in the general stream adju-
 3 dication or other appropriate forum.

4 (C) SATISFACTION OF ON-RESERVATION
 5 STATE LAW-BASED WATER RIGHTS.—Depletions
 6 resulting from the use of water on the Reserva-
 7 tion pursuant to State law-based water rights
 8 existing as of the date of enactment of this Act
 9 shall be accounted for as depletions by the Nav-
 10 ajo Nation for purposes of depletion accounting
 11 under the agreement.

12 (D) IN GENERAL.—The Navajo water
 13 rights are ratified, confirmed, and declared to
 14 be valid.

15 (E) USE.—Any use of the Navajo water
 16 rights shall be subject to the terms and condi-
 17 tions of the agreement and this section.

18 (F) CONFLICT.—In the event of a conflict
 19 between the agreement and this section, the
 20 provisions of this section shall control.

21 (2) TRUST STATUS OF NAVAJO WATER
 22 RIGHTS.—The Navajo water rights—

23 (A) shall be held in trust by the United
 24 States for the use and benefit of the Nation in

1 accordance with the agreement and this section;
2 and

3 (B) shall not be subject to forfeiture or
4 abandonment.

5 (3) AUTHORITY OF THE NATION.—

6 (A) IN GENERAL.—The Nation shall have
7 the authority to allocate, distribute, and lease
8 the Navajo water rights for any use on the Res-
9 ervation in accordance with the agreement, this
10 section, and applicable Tribal and Federal law.

11 (B) OFF-RESERVATION USE.—The Nation
12 may allocate, distribute, and lease the Navajo
13 water rights for off-Reservation use in accord-
14 ance with the agreement, subject to the ap-
15 proval of the Secretary.

16 (C) ALLOTTEE WATER RIGHTS.—The Na-
17 tion shall not object in the general stream adju-
18 dication or other applicable forum to the quan-
19 tification of reasonable domestic and stock
20 water uses on an allotment, and shall admin-
21 ister any water use on the Reservation in ac-
22 cordance with applicable Federal law, including
23 recognition of—

24 (i) any water use existing on an allot-
25 ment as of the date of enactment of this

1 Act and as subsequently reflected in the
 2 hydrographic survey report referenced in
 3 subsection (f)(2);

4 (ii) reasonable domestic and stock
 5 water uses on an allotment; and

6 (iii) any allotment water rights de-
 7 creed in the general stream adjudication or
 8 other appropriate forum.

9 (4) EFFECT.—Except as otherwise expressly
 10 provided in this subsection, nothing in this section—

11 (A) authorizes any action by the Nation
 12 against the United States under Federal, State,
 13 Tribal, or local law; or

14 (B) alters or affects the status of any ac-
 15 tion brought pursuant to section 1491(a) of
 16 title 28, United States Code.

17 (c) NAVAJO TRUST ACCOUNTS.—

18 (1) ESTABLISHMENT.—The Secretary shall es-
 19 tablish a trust fund, to be known as the “Navajo
 20 Utah Settlement Trust Fund” (referred to in this
 21 section as the “Trust Fund”), to be managed, in-
 22 vested, and distributed by the Secretary and to re-
 23 main available until expended, consisting of the
 24 amounts deposited in the Trust Fund under para-
 25 graph (3), together with any interest earned on

1 those amounts, for the purpose of carrying out this
2 section.

3 (2) ACCOUNTS.—The Secretary shall establish
4 in the Trust Fund the following Accounts (referred
5 to in this subsection as the “Trust Fund Ac-
6 counts”):

7 (A) The Navajo Water Development
8 Projects Account.

9 (B) The Navajo OM&R Account.

10 (3) DEPOSITS.—The Secretary shall deposit in
11 the Trust Fund Accounts—

12 (A) in the Navajo Water Development
13 Projects Account, the amounts made available
14 pursuant to subsection (f)(1)(A); and

15 (B) in the Navajo OM&R Account, the
16 amount made available pursuant to subsection
17 (f)(1)(B).

18 (4) MANAGEMENT AND INTEREST.—

19 (A) MANAGEMENT.—Upon receipt and de-
20 posit of the funds into the Trust Fund Ac-
21 counts, the Secretary shall manage, invest, and
22 distribute all amounts in the Trust Fund in a
23 manner that is consistent with the investment
24 authority of the Secretary under—

1 (i) the first section of the Act of June
2 24, 1938 (25 U.S.C. 162a);

3 (ii) the American Indian Trust Fund
4 Management Reform Act of 1994 (25
5 U.S.C. 4001 et seq.); and

6 (iii) this subsection.

7 (B) INVESTMENT EARNINGS.—In addition
8 to the deposits under paragraph (3), any invest-
9 ment earnings, including interest, credited to
10 amounts held in the Trust Fund are authorized
11 to be appropriated to be used in accordance
12 with the uses described in paragraph (8).

13 (5) AVAILABILITY OF AMOUNTS.—Amounts ap-
14 propriated to, and deposited in, the Trust Fund, in-
15 cluding any investment earnings, shall be made
16 available to the Nation by the Secretary beginning
17 on the enforceability date and subject to the uses
18 and restrictions set forth in this subsection.

19 (6) WITHDRAWALS.—

20 (A) WITHDRAWALS UNDER THE AMERICAN
21 INDIAN TRUST FUND MANAGEMENT REFORM
22 ACT OF 1994.—The Nation may withdraw any
23 portion of the funds in the Trust Fund on ap-
24 proval by the Secretary of a tribal management
25 plan submitted by the Nation in accordance

1 with the American Indian Trust Fund Manage-
2 ment Reform Act of 1994 (25 U.S.C. 4001 et
3 seq.).

4 (i) REQUIREMENTS.—In addition to
5 the requirements under the American In-
6 dian Trust Fund Management Reform Act
7 of 1994 (25 U.S.C. 4001 et seq.), the trib-
8 al management plan under this subpara-
9 graph shall require that the Nation shall
10 spend all amounts withdrawn from the
11 Trust Fund and any investment earnings
12 accrued through the investments under the
13 Tribal management plan in accordance
14 with this section.

15 (ii) ENFORCEMENT.—The Secretary
16 may carry out such judicial and adminis-
17 trative actions as the Secretary determines
18 to be necessary to enforce the Tribal man-
19 agement plan to ensure that amounts with-
20 drawn by the Nation from the Trust Fund
21 under this subparagraph are used in ac-
22 cordance with this section.

23 (B) WITHDRAWALS UNDER EXPENDITURE
24 PLAN.—The Nation may submit to the Sec-
25 retary a request to withdraw funds from the

1 Trust Fund pursuant to an approved expendi-
2 ture plan.

3 (i) REQUIREMENTS.—To be eligible to
4 withdraw funds under an expenditure plan
5 under this subparagraph, the Nation shall
6 submit to the Secretary for approval an ex-
7 penditure plan for any portion of the Trust
8 Fund that the Nation elects to withdraw
9 pursuant to this subparagraph, subject to
10 the condition that the funds shall be used
11 for the purposes described in this section.

12 (ii) INCLUSIONS.—An expenditure
13 plan under this subparagraph shall include
14 a description of the manner and purpose
15 for which the amounts proposed to be
16 withdrawn from the Trust Fund will be
17 used by the Nation, in accordance with
18 paragraphs (3) and (8).

19 (iii) APPROVAL.—On receipt of an ex-
20 penditure plan under this subparagraph,
21 the Secretary shall approve the plan, if the
22 Secretary determines that the plan—

23 (I) is reasonable;

1 (II) is consistent with, and will
2 be used for, the purposes of this sec-
3 tion; and

4 (III) contains a schedule which
5 describes that tasks will be completed
6 within 18 months of receipt of with-
7 drawn amounts.

8 (iv) ENFORCEMENT.—The Secretary
9 may carry out such judicial and adminis-
10 trative actions as the Secretary determines
11 to be necessary to enforce an expenditure
12 plan to ensure that amounts disbursed
13 under this subparagraph are used in ac-
14 cordance with this section.

15 (7) EFFECT OF TITLE.—Nothing in this section
16 gives the Nation the right to judicial review of a de-
17 termination of the Secretary regarding whether to
18 approve a Tribal management plan or an expendi-
19 ture plan except under subchapter II of chapter 5,
20 and chapter 7, of title 5, United States Code (com-
21 monly known as the “Administrative Procedure
22 Act”).

23 (8) USES.—Amounts from the Trust Fund
24 shall be used by the Nation for the following pur-
25 poses:

1 (A) The Navajo Water Development
2 Projects Account shall be used to plan, design,
3 and construct the Navajo water development
4 projects and for the conduct of related activi-
5 ties, including to comply with Federal environ-
6 mental laws.

7 (B) The Navajo OM&R Account shall be
8 used for the operation, maintenance, and re-
9 placement of the Navajo water development
10 projects.

11 (9) LIABILITY.—The Secretary and the Sec-
12 retary of the Treasury shall not be liable for the ex-
13 penditure or investment of any amounts withdrawn
14 from the Trust Fund by the Nation under para-
15 graph (6).

16 (10) NO PER CAPITA DISTRIBUTIONS.—No por-
17 tion of the Trust Fund shall be distributed on a per
18 capita basis to any member of the Nation.

19 (11) EXPENDITURE REPORTS.—The Navajo
20 Nation shall submit to the Secretary annually an ex-
21 penditure report describing accomplishments and
22 amounts spent from use of withdrawals under a
23 Tribal management plan or an expenditure plan as
24 described in this section.

25 (f) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) AUTHORIZATION.—There are authorized to
2 be appropriated to the Secretary—

3 (A) for deposit in the Navajo Water Devel-
4 opment Projects Account of the Trust Fund es-
5 tablished under subsection (c)(2)(A),
6 \$198,300,000, which funds shall be retained
7 until expended, withdrawn, or reverted to the
8 general fund of the Treasury; and

9 (B) for deposit in the Navajo OM&R Ac-
10 count of the Trust Fund established under sub-
11 section (c)(2)(B), \$11,100,000, which funds
12 shall be retained until expended, withdrawn, or
13 reverted to the general fund of the Treasury.

14 (2) IMPLEMENTATION COSTS.—There is author-
15 ized to be appropriated non-trust funds in the
16 amount of \$1,000,000 to assist the United States
17 with costs associated with the implementation of this
18 section, including the preparation of a hydrographic
19 survey of historic and existing water uses on the
20 Reservation and on allotments.

21 (3) STATE COST SHARE.—The State shall con-
22 tribute \$8,000,000 payable to the Secretary for de-
23 posit into the Navajo Water Development Projects
24 Account of the Trust Fund established under sub-
25 section (c)(2)(A) in installments in each of the 3

1 years following the execution of the agreement by
2 the Secretary as provided for in subsection (c)(2).

3 (4) FLUCTUATION IN COSTS.—The amount au-
4 thorized to be appropriated under paragraph (1)
5 shall be increased or decreased, as appropriate, by
6 such amounts as may be justified by reason of ordi-
7 nary fluctuations in costs occurring after the date of
8 enactment of this Act as indicated by the Bureau of
9 Reclamation Construction Cost Index—Composite
10 Trend.

11 (A) REPETITION.—The adjustment process
12 under this paragraph shall be repeated for each
13 subsequent amount appropriated until the
14 amount authorized, as adjusted, has been ap-
15 propriated.

16 (B) PERIOD OF INDEXING.—The period of
17 indexing adjustment for any increment of fund-
18 ing shall end on the date on which funds are
19 deposited into the Trust Fund.

20 (g) CONDITIONS PRECEDENT.—

21 (1) IN GENERAL.—The waivers and releases
22 contained in subsection (h) shall become effective as
23 of the date the Secretary causes to be published in
24 the Federal Register a statement of findings that—

1 (A) to the extent that the agreement con-
2 flicts with this section, the agreement has been
3 revised to conform with this section;

4 (B) the agreement, so revised, including
5 waivers and releases of claims set forth in sub-
6 section (h), has been executed by the parties,
7 including the United States;

8 (C) Congress has fully appropriated, or the
9 Secretary has provided from other authorized
10 sources, all funds authorized under subsection
11 (f)(1);

12 (D) the State has enacted any necessary
13 legislation and provided the funding required
14 under the agreement and subsection (f)(3); and

15 (E) the court has entered a final or inter-
16 locutory decree that—

17 (i) confirms the Navajo water rights
18 consistent with the agreement and this sec-
19 tion; and

20 (ii) with respect to the Navajo water
21 rights, is final and nonappealable.

22 (2) EXPIRATION DATE.—If all the conditions
23 precedent described in paragraph (1) have not been
24 fulfilled to allow the Secretary's statement of find-

1 ings to be published in the Federal Register by Oc-
 2 tober 31, 2030—

3 (A) the agreement and this section, includ-
 4 ing waivers and releases of claims described in
 5 those documents, shall no longer be effective;

6 (B) any funds that have been appropriated
 7 pursuant to subsection (f) but not expended, in-
 8 cluding any investment earnings on funds that
 9 have been appropriated pursuant to such sub-
 10 section, shall immediately revert to the general
 11 fund of the Treasury; and

12 (C) any funds contributed by the State
 13 pursuant to subsection (f)(3) but not expended
 14 shall be returned immediately to the State.

15 (3) EXTENSION.—The expiration date set forth
 16 in paragraph (2) may be extended if the Navajo Na-
 17 tion, the State, and the United States (acting
 18 through the Secretary) agree that an extension is
 19 reasonably necessary.

20 (h) WAIVERS AND RELEASES.—

21 (1) IN GENERAL.—

22 (A) WAIVER AND RELEASE OF CLAIMS BY
 23 THE NATION AND THE UNITED STATES ACTING
 24 IN ITS CAPACITY AS TRUSTEE FOR THE NA-
 25 TION.—Subject to the retention of rights set

1 forth in paragraph (3), in return for confirma-
2 tion of the Navajo water rights and other bene-
3 fits set forth in the agreement and this section,
4 the Nation, on behalf of itself and the members
5 of the Nation (other than members in their ca-
6 pacity as allottees), and the United States, act-
7 ing as trustee for the Nation and members of
8 the Nation (other than members in their capac-
9 ity as allottees), are authorized and directed to
10 execute a waiver and release of—

11 (i) all claims for water rights within
12 Utah based on any and all legal theories
13 that the Navajo Nation or the United
14 States acting in its trust capacity for the
15 Nation, asserted, or could have asserted, at
16 any time in any proceeding, including to
17 the general stream adjudication, up to and
18 including the enforceability date, except to
19 the extent that such rights are recognized
20 in the agreement and this section; and

21 (ii) all claims for damages, losses, or
22 injuries to water rights or claims of inter-
23 ference with, diversion, or taking of water
24 rights (including claims for injury to lands
25 resulting from such damages, losses, inju-

ries, interference with, diversion, or taking
 of water rights) within Utah against the
 State, or any person, entity, corporation,
 or municipality, that accrued at any time
 up to and including the enforceability date.

(2) CLAIMS BY THE NAVAJO NATION AGAINST
 THE UNITED STATES.—The Navajo Nation, on be-
 half of itself (including in its capacity as allottee)
 and its members (other than members in their ca-
 pacity as allottees), shall execute a waiver and re-
 lease of—

(A) all claims the Navajo Nation may have
 against the United States relating in any man-
 ner to claims for water rights in, or water of,
 Utah that the United States acting in its trust
 capacity for the Nation asserted, or could have
 asserted, in any proceeding, including the gen-
 eral stream adjudication;

(B) all claims the Navajo Nation may have
 against the United States relating in any man-
 ner to damages, losses, or injuries to water,
 water rights, land, or other resources due to
 loss of water or water rights (including dam-
 ages, losses, or injuries to hunting, fishing,
 gathering, or cultural rights due to loss of

1 water or water rights; claims relating to inter-
2 ference with, diversion, or taking of water; or
3 claims relating to failure to protect, acquire, re-
4 place, or develop water or water rights) within
5 Utah that first accrued at any time up to and
6 including the enforceability date;

7 (C) all claims the Nation may have against
8 the United States relating in any manner to the
9 litigation of claims relating to the Nation's
10 water rights in proceedings in Utah; and

11 (D) all claims the Nation may have against
12 the United States relating in any manner to the
13 negotiation, execution, or adoption of the agree-
14 ment or this section.

15 (3) RESERVATION OF RIGHTS AND RETENTION
16 OF CLAIMS BY THE NAVAJO NATION AND THE
17 UNITED STATES.—Notwithstanding the waivers and
18 releases authorized in this section, the Navajo Na-
19 tion, and the United States acting in its trust capac-
20 ity for the Nation, retain—

21 (A) all claims for injuries to and the en-
22 forcement of the agreement and the final or in-
23 terlocutory decree entered in the general stream
24 adjudication, through such legal and equitable
25 remedies as may be available in the decree

1 court or the Federal District Court for the Dis-
2 trict of Utah;

3 (B) all rights to use and protect water
4 rights acquired after the enforceability date;

5 (C) all claims relating to activities affect-
6 ing the quality of water, including any claims
7 under the Comprehensive Environmental Re-
8 sponse, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9601 et seq.) (including claims
10 for damages to natural resources), the Safe
11 Drinking Water Act (42 U.S.C. 300f et seq.),
12 and the Federal Water Pollution Control Act
13 (33 U.S.C. 1251 et seq.), the regulations imple-
14 menting those Acts, and the common law;

15 (D) all claims for water rights, and claims
16 for injury to water rights, in States other than
17 the State of Utah;

18 (E) all claims, including environmental
19 claims, under any laws (including regulations
20 and common law) relating to human health,
21 safety, or the environment; and

22 (F) all rights, remedies, privileges, immu-
23 nities, and powers not specifically waived and
24 released pursuant to the agreement and this
25 section.

1 (4) EFFECT.—Nothing in the agreement or this
2 section—

3 (A) affects the ability of the United States
4 acting in its sovereign capacity to take actions
5 authorized by law, including any laws relating
6 to health, safety, or the environment, including
7 the Comprehensive Environmental Response,
8 Compensation, and Liability Act of 1980 (42
9 U.S.C. 9601 et seq.), the Safe Drinking Water
10 Act (42 U.S.C. 300f et seq.), the Federal Water
11 Pollution Control Act (33 U.S.C. 1251 et seq.),
12 the Solid Waste Disposal Act (42 U.S.C. 6901
13 et seq.), and the regulations implementing those
14 laws;

15 (B) affects the ability of the United States
16 to take actions in its capacity as trustee for any
17 other Indian Tribe or allottee;

18 (C) confers jurisdiction on any State court
19 to—

20 (i) interpret Federal law regarding
21 health, safety, or the environment or deter-
22 mine the duties of the United States or
23 other parties pursuant to such Federal
24 law; and

1 (ii) conduct judicial review of Federal
2 agency action; or

3 (D) modifies, conflicts with, preempts, or
4 otherwise affects—

5 (i) the Boulder Canyon Project Act
6 (43 U.S.C. 617 et seq.);

7 (ii) the Boulder Canyon Project Ad-
8 justment Act (43 U.S.C. 618 et seq.);

9 (iii) the Act of April 11, 1956 (com-
10 monly known as the “Colorado River Stor-
11 age Project Act”) (43 U.S.C. 620 et seq.);

12 (iv) the Colorado River Basin Project
13 Act (43 U.S.C. 1501 et seq.);

14 (v) the Treaty between the United
15 States of America and Mexico respecting
16 utilization of waters of the Colorado and
17 Tijuana Rivers and of the Rio Grande,
18 signed at Washington February 3, 1944
19 (59 Stat. 1219);

20 (vi) the Colorado River Compact of
21 1922, as approved by the Presidential
22 Proclamation of June 25, 1929 (46 Stat.
23 3000); and

(vii) the Upper Colorado River Basin Compact as consented to by the Act of April 6, 1949 (63 Stat. 31, chapter 48).

(5) TOLLING OF CLAIMS.—

(A) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim waived by the Navajo Nation described in this subsection shall be tolled for the period beginning on the date of enactment of this Act and ending on the enforceability date.

(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(C) LIMITATION.—Nothing in this subsection precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

(i) MISCELLANEOUS PROVISIONS.—

(1) PRECEDENT.—Nothing in this section establishes any standard for the quantification or litigation of Federal reserved water rights or any other

1 Indian water claims of any other Indian Tribe in
2 any other judicial or administrative proceeding.

3 (2) OTHER INDIAN TRIBES.—Nothing in the
4 agreement or this section shall be construed in any
5 way to quantify or otherwise adversely affect the
6 water rights, claims, or entitlements to water of any
7 Indian Tribe, band, or community, other than the
8 Navajo Nation.

9 (j) RELATION TO ALLOTTEES.—

10 (1) NO EFFECT ON CLAIMS OF ALLOTTEES.—
11 Nothing in this section or the agreement shall affect
12 the rights or claims of allottees, or the United
13 States, acting in its capacity as trustee for or on be-
14 half of allottees, for water rights or damages related
15 to lands allotted by the United States to allottees,
16 except as provided in subsection (d)(1)(B).

17 (2) RELATIONSHIP OF DECREE TO
18 ALLOTTEES.—Allottees, or the United States, acting
19 in its capacity as trustee for allottees, are not bound
20 by any decree entered in the general stream adju-
21 dication confirming the Navajo water rights and
22 shall not be precluded from making claims to water
23 rights in the general stream adjudication. Allottees,
24 or the United States, acting in its capacity as trust-
25 ee for allottees, may make claims and such claims

1 may be adjudicated as individual water rights in the
2 general stream adjudication.

3 (k) **ANTIDEFICIENCY.**—The United States shall not
4 be liable for any failure to carry out any obligation or ac-
5 tivity authorized by this section (including any obligation
6 or activity under the agreement) if adequate appropri-
7 ations are not provided expressly by Congress to carry out
8 the purposes of this section.

9 **SEC. 5. SHARING ARRANGEMENTS WITH FEDERAL AGEN-**
10 **CIES.**

11 Section 405 of the Indian Health Care Improvement
12 Act (25 U.S.C. 1645) is amended—

13 (1) in subsection (a)(1), by inserting “urban In-
14 dian organizations,” before “and tribal organiza-
15 tions”; and

16 (2) in subsection (c)—

17 (A) by inserting “urban Indian organiza-
18 tion,” before “or tribal organization”; and

19 (B) by inserting “an urban Indian organi-
20 zation,” before “or a tribal organization”.

21 **SEC. 6. AMENDMENT TO THE INDIAN HEALTH CARE IM-**
22 **PROVEMENT ACT.**

23 Section 409 of the Indian Health Care Improvement
24 Act (25 U.S.C. 1647b) is amended by inserting “or the

1 Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501
2 et seq.)” after “(25 U.S.C. 450 et seq.)”.

Passed the Senate June 4, 2020.

Attest:

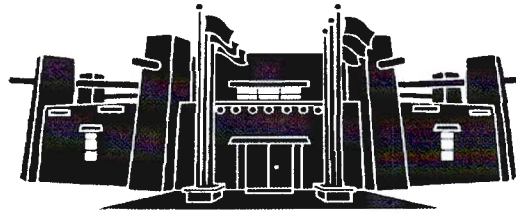
Secretary.

116TH CONGRESS
2D SESSION

S. 886


AN ACT

To amend the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent.



MEMORANDUM

TO : Hon. Mark Freeland, Delegate
Navajo Nation Council

FROM : 
Troy D. Cook, Senior Tribal Court Advocate
Office of Legislative Counsel

DATE : October 29, 2020

RE : **AN ACTION RELATING TO RESOURCES AND DEVELOPMENT,
AND NAABIK'ÍYÁTI' COMMITTEES; URGING THE UNITED
STATES HOUSE OF REPRESENTATIVES TO EXPEDITIOUSLY
PASS S. 886, WHICH INCLUDES THE "NAVAJO UTAH WATER
RIGHTS SETTLEMENT ACT OF 2019," AS APPROVED BY THE
SENATE.**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. As to format, the resolution as drafted is legally sufficient. Regarding substance, as with any legislation, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. 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. Ahéhee'.

20-402-1

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0280-20_

SPONSOR: Mark Freeland

TITLE: An Action Relating to Resources and Development, and Naabik'íyáti' Committees; Urging the United States House of Representatives to Expediently Pass S. 886, Which Includes the "Navajo Utah Water Rights Settlement Act of 2019," as Approved by the Senate.

Date posted: November 9, 2020 at 6:56PM

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.*