

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE
24th NAVAJO NATION COUNCIL -- First Year, 2019

AN ACTION
RELATING TO NAABIK'ÍYÁTI' COMMITTEE; MAKING APPOINTMENTS TO THE
NAABIK'ÍYÁTI' COMMITTEE'S SÍHASIN FUND SUBCOMMITTEE

BE IT ENACTED:

SECTION ONE. AUTHORITY

The Naabik'íyáti' Committee of the Navajo Nation Council is a standing committee of the Navajo Nation Council empowered to coordinate all state programs with other standing committees and branches of the Navajo Nation government. 2 N.N.C. § 700 (A) and 701 (A) (4).

SECTION TWO. FINDINGS

- A. The Naabik'íyáti' Committee of the Navajo Nation Council established the Naabik'íyáti' Committee's Síhasin Fund Subcommittee through the approval of Resolution NABIAP-20-15. See **Exhibit A**.
- B. The Síhasin Fund was established for the purpose of providing "...financial support and/or financing for:
- 1) The planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to , housing, commercial and government buildings, waterline, solid waste management development, powerline projects, and transportation and communication systems, within the Navajo Nation; and
 - 2) Education opportunities for members of the Navajo Nation; and

- 3) Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund shall be favored over direct funding in whole." See **Exhibit B**, CD-68-14 enacting 12 N.N.C. §2502 and **Exhibit C**, CJA-03-18 amending 12 N.N.C. §2502.
- C. The Naabik'iyáti' Committee's Síhasin Fund Subcommittee is charged to recommend to the Naabik'iyáti' Committee and the Navajo Nation Council "...financial support and/or financing plan(s) for the purposes designated in CD-68-14, enacting Title 12, § 2502". See Exhibits A, B, C.
 - D. The Naabik'iyáti' Committee's Síhasin Fund Subcommittee is also charged with presenting a report to the Navajo Nation Council by its Summer Session and shall present a final version for consideration by the Fall Session of the Council. See Exhibit A.

SECTION THREE. APPOINTMENT

The Naabik'iyáti' Committee of the Navajo Nation Council hereby appoints the following Delegates to the Naabik'iyáti' Committee Síhasin Fund Subcommittee on the basis of two members from each of the five (5) standing committees of the Navajo Nation Council:

- A. Resources and Development: Honorable Mark Freeland, Honorable Wilson C. Stewart, Jr.;
- B. Budget and Finance: Honorable Nathaniel Brown, Honorable Elmer P. Begay;
- C. Law and Order: Honorable Vince James, Honorable Eugene Tso;
- D. Health, Education and Human Services: Honorable Paul Begay, Honorable Nelson S. BeGaye;
- E. Naabik'iyáti': Honorable Daniel E. Tso, Honorable Rickie Nez.

SECTION FOUR. SUBCOMMITTEE TERM

The Naabik'iyáti' Committee Síhasin Fund Subcommittee shall exist until its assigned tasks are completed and shall report its recommendations to the Naabik'iyáti' Committee. 2 N.N.C. § 186.

CERTIFICATION

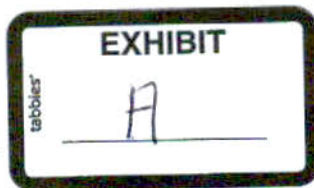
I, hereby, certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 14 in Favor, and 00 Opposed, on this 11th day of April 2019.



Honorable Daniel E. Tso, Chairman Pro Tem
Naabik'iyáti' Committee
24th Navajo Nation Council

Motion: Honorable Elmer P. Begay
Second: Honorable Pernell Halona

Chairman Pro Tem Daniel E. Tso not voting



NABIAP-20-15

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL—FIRST YEAR, 2015

AN ACTION

RELATING TO NAABIK'ÍYÁTI' COMMITTEE; ESTABLISHING THE
NAABIK'ÍYÁTI' SÍHASIN FUND SUBCOMMITTEE

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation Council gave the Naabik'íyáti' Committee the authority to delegate its authority as appropriate for efficiency and streamlining of government process to appropriate entities. 2 N.N.C. § 701(B) (2012) see also CO-45-12.
- B. Naabik'íyáti' Committee may establish a subcommittee that consists of committee members which the committee selects. 2 N.N.C. § 186 (2012) see also CO-45-12.
- C. On December 23, 2014 the Navajo Nation Council established the Síhasin Fund and the Navajo Nation President signed the enactment into law on December 31, 2014. See CD-68-14 attached as Exhibit A.
- D. The Síhasin Fund is established for the purpose of providing "financial support and/or financing for 1) the planning and development of regional infrastructure supporting economic and community development, including housing, within the Navajo Nation, and; 2) education opportunities for members of the Navajo Nation, 3) leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund shall be favored over direct funding in whole." CD-68-14 enacting 12 N.N.C. § 2502.
- E. The Office of the Speaker sponsored public hearings across the Navajo Nation to receive input from Navajo citizens on how the Síhasin Fund should be used for the benefit of the Navajo Nation. Summary of Public Hearings attached as Exhibit B.

- E. It is incumbent on the Navajo Nation Council to continue the discussion relative to the Síhasin Fund and its purpose as established in CD-68-14, enacting 12 N.N.C. § 2502.

Section Two. Naabik'íyáti' Síhasin Fund Subcommittee Establishment

- A. The Navajo Nation establishes the Naabik'íyáti' Síhasin Fund Subcommittee to review and evaluate the Public Hearing comments and recommendations from the Navajo People.
- B. The Navajo Nation establishes the Naabik'íyáti' Síhasin Fund Subcommittee to recommend to the Naabik'íyáti' Committee and Navajo Nation Council financial support and/or financing plan(s) for the purposes designated in CD-68-14, enacting Title 12, Section 2502.
- C. The Naabik'íyáti' Síhasin Fund Subcommittee shall consist of the following members the Navajo Nation Council:

Hon. Mel R. Begay, Fort Defiance
 Hon. Nelson BeGaye, Chinle
 Hon. Tom Chee, Northern
 Hon. Seth Damon, Eastern
 Hon. Davis Filfred, Northern
 Hon. Lee Jack, Sr., Fort Defiance
 Hon. Jonathan Perry, Eastern
 Hon. Walter Phelps, Western
 Hon. Nathaniel Brown, Western
 Hon. Otto Tso, Western
 Hon. Leonard Tsosie, Eastern
 Hon. Kee Allen Begay, Chinle

- D. The Naabik'íyáti' Síhasin Fund Subcommittee, by majority vote, shall select a chairperson and vice-chairperson at their first meeting. The chairperson and vice-chairperson shall serve at the Subcommittee's pleasure; replacement shall be by majority vote.
- E. The Naabik'íyáti' Síhasin Fund Subcommittee shall establish a regular meeting day(s) of the month.
- F. The Naabik'íyáti' Síhasin Fund Subcommittee shall present a report to the Navajo Nation Council by its Summer Session and shall present a final version for consideration by the Fall Session of the Navajo Nation Council.

Section Three. Subcommittee Term

The Naabik'iyáti' Síhasin Fund Subcommittee shall exist until their assigned tasks are completed and shall report on the recommendations to the Naabik'iyáti' Committee and the Navajo Nation Council.

Section Four. Directives

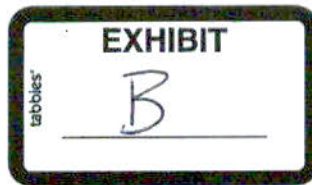
- A. The Speaker's Chief of Staff shall assign one staff assistant or policy analyst to assist the Naabik'iyáti' Síhasin Fund Subcommittee.
- B. The Legislative Services' Executive Director shall assign two Office of Legislative Services' staffers to assist the Naabik'iyáti' Síhasin Fund Subcommittee.
- C. The Speaker shall determine a Subcommittee budget and identify the funds.
- D. The Naabik'iyáti' Síhasin Fund Subcommittee shall hold a work session two weeks prior to the Navajo Nation Council's Summer Session to update the Delegates.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 13 in favor and 1 opposed, this 9th day of April, 2015.


Mel R. Begay, Chairperson Pro Tem
Naabik'iyáti' Committee

Motion: Honorable Davis Filfred
Second: Honorable Benjamin Bennett



CD-68-14

[Established Bih. Fund]

12/31/14

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACTION

RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; ENACTING "THE NAVAJO NATION TRUST SETTLEMENT ACT OF 2014" BY AMENDING TITLE 12 OF THE NAVAJO NATION CODE AND ESTABLISHING "THE SÍHASIN FUND" TO INCLUDE THOSE SETTLEMENT MONIES RECEIVED FROM THE UNITED STATES THROUGH SETTLEMENT OF NAVAJO NATION v. UNITED STATES, No. 06-945L, AND THOSE MONIES RECEIVED THROUGH FUTURE SETTLEMENT OR JUDGEMENT OF OTHER LITIGATION BROUGHT AGAINST THE UNITED STATES FOR ITS FAILURE TO ENSURE THAT THE NAVAJO NATION RECEIVES ALL FUNDING OWED TO IT VIA THE UNITED STATES' TRUST AND FIDUCIARY RESPONSIBILITIES TO THE NAVAJO NATION

BE IT ENACTED:

Section 1. Findings

The Navajo Nation Council hereby finds that:

- A. As recognized in the Navajo Tribe's Treaty of 1848 with the United States, 9 Stat. 974, 974-75 (Sept. 9, 1849), as well as in numerous decisions of the United States Supreme Court and defined in a range of federal public laws, statutes and regulations, the United States holds ceded Navajo tribal lands in trust for the collective benefit of the Diné.
- B. In exchange for the cessation of Navajo tribal lands, the United States assumed the duties and responsibilities of a trustee for the tribal land and resources of the Navajo Nation. In its capacity as trustee for the Nation, the United States has a continuing fiduciary obligation of the highest order to properly manage and account for the Nation's interests in tribal trust lands and the attendant natural resources, including the income and revenue derived from such interests, with the greatest skill and care possessed by the trustee.

- 1007.002 C. Through the enactment of various federal laws and statutes, Congress delegated the duty and authority to approve encumbrances and conveyances of interests in tribal trust lands to the Secretary of Interior ("Secretary"). The specific terms and conditions under which the Secretary makes such encumbrances and conveyances are established through federal laws and statutes which generally require that compensation be paid to the tribal government for the use of tribal trust lands.
- D. Congress charged the Secretary with the exercise of the United States' trustee duties including its fiduciary obligations to collect income and revenue generated through the use of tribal trust lands and natural resources, as well as the obligation to properly deposit that income and revenue in the United States' Treasury and other depository institutions for the benefit of the particular tribe. Congress also required that the Secretary invest tribal trust funds, regardless of source, and that the interest earnings accrue to the benefit of the particular tribe.
- E. Under Congress' charge, the Secretary assumed trustee responsibilities for the management and administration of the Nation's tribal trust lands and natural resources, as well as the collection, deposit and investment of the revenue and income generated by those tribal trust lands and resources. Under the management of the Secretary, the Nation's tribal trust lands have generated income and revenue through, among others, timber sales; right-of-way payments; grazing and agricultural leases; coal, uranium, vanadium, sand & gravel, and oil & gas bid deposits, bonuses, rents, leases and royalty payments; and judgments paid to the Nation stemming from such activities.
- F. The Secretary's trustee responsibilities extend to its continuing fiduciary obligation to formally account for all aspects of federal management of the Nation's tribal trust lands and natural resources, including the administration of the Nation's tribal trust funds. The United States' trustee responsibilities, as exercised through the Secretary, encompass its comprehensive duty to ensure that the Nation's tribal trust lands and resources and trust funds are protected, preserved and properly administered and invested, as well as discrete duties to maintain adequate records with respect to the trust property; ensure adequate systems and controls to guard against error or

dishonesty; and provide regular and formal accountings to the Nation as the tribal trust beneficiary.

- G. Between 1950 and 1983, the Nation filed six separate lawsuits against the Secretary, Department of Interior ("Interior") and United States alleging various violations of the United States' trustee responsibilities relating to mismanagement of trust funds and mismanagement of certain of the Nation's tribal trust lands and natural resources. These lawsuits, Docket Numbers 69, 299 and 353 in the Indian Claims Commission and Docket Numbers 256-69, 377-70 and 588-83L in the U.S. Court of Claims, were resolved by four different settlements. Docket Number 353 as well as Docket Numbers 69 and 299 in part were settled in 1982. The remainder of Docket Numbers 69 and 299, as well as all of the Court of Claims dockets, were settled through three additional settlements in 1987.
- H. Numerous federal agencies, including the Inspector General for the Department of the Interior and the United States General Accounting Office, found that over the course of the last century there were massive and long-standing problems with the Interior's management and administration of Indian trust funds. After a series of oversight hearings focused specifically on Interior's management of Indian trust funds through its Bureau of Indian Affairs ("BIA"), Congress publically condemned Interior's management and administration practices. See *Misplaced Trust, Bureau of Indian Affairs Mismanagement of the Indian Trust Fund*, H.R. Rpt. No. 102-499 (1992). In its 1992 post-hearing report Congress found that

"Scores of reports over the years by the Interior Department's Inspector General, the U.S. General Accounting Office, the Office of Management and Budget, have documented significant, habitual problems in BIA's ability to fully and accurately account for trust fund moneys, to properly discharge its fiduciary responsibilities, and to prudently manage the trust funds." [Id. at 2].

- I. In that same 1992 report, Congress also expressly found Interior's

"[A]dministration of Indian trust funds to be: Grossly inadequate in numerous important respects. The Bureau [of Indian Affairs] has failed to accurately account for trust

fund moneys. Indeed, it cannot even provide account holders with meaningful periodic statements on their balances. It cannot consistently and prudently invest trust funds and pay interest to account holders. It does not have consistent written policies or procedures that cover all of its trust fund accounting practices. Under the management of the Bureau of Indian Affairs, the Indian trust fund is equivalent to a bank that doesn't know how much money it has." [Id. at 56].

- J. While the Congressional oversight hearings identified that Interior's management and administration of tribal trust funds resulted in losses to the Tribe(s), the exact extent of such losses was unknown to the Tribe(s), including the Nation, because Interior failed to provide the Tribe(s) with an accounting of their tribal trust funds. See *Misplaced Trust*, H.R. Rpt. No. 102-499 at 37-41. Interior further failed to maintain accurate books and records of account, lost and destroyed relevant trust account records, failed or refused to disclose known losses to the trust beneficiaries, failed or refused to reimburse trust beneficiaries for losses to their trust funds. Id.
- K. Through Pub. L. No. 100-202, 101 Stat. 1329, December 22, 1987 ("1987 Act"), Congress mandated Interior to audit and reconcile tribal trust funds and provide individual tribes with a formal accounting of such funds. Congress reaffirmed these mandates in three (3) subsequent statutes and further required that Interior certify, through an independent party, the results of the reconciliation of tribal trust funds.
- L. At the time of the 1992 Congressional oversight hearings, Interior had not fully complied with the mandates of the 1987 Act and on October 25, 1994, Congress enacted the American Indian Trust Fund Management Reform Act, codified at 25 U.S.C. §§ 4001-61. Under this Act, Congress recognized the United States' pre-existing trust responsibilities, and charged Interior with additional responsibilities to ensure proper discharge of the trust responsibilities of the United States, including the duty to provide periodic, timely accountings of trust funds to tribal and individual Indian beneficiaries, and the duty to cause an annual audit of all trust funds to be conducted. 25 U.S.C. § 4011; 25 U.S.C. § 162a(d).

- M. In the early 1990s, Interior contracted the Arthur Andersen accounting firm to provide a reconciliation, as opposed to an actual audit, of certain tribal trust fund accounts. In 1995, a report prepared by Arthur Andersen was delivered to the Nation. This report (generally referred to as the "Andersen Report") attempted to provide an accounting for Navajo tribal trust funds held and administered by B.I.A. from 1972 through 1992.
- N. The Andersen Report, which was not certified by an independent party as mandated by Congress, expressly states that the work done does "not constitute an audit made in accordance with generally accepted auditing standards." The Andersen Report was strongly criticized by the United States General Accounting Office ("GAO"). In a report to the Senate Committee on Indian Affairs, GAO identified that the Andersen Report does not reflect reliable, accurate or complete accountings of a tribe's trust funds, for among other reasons: (a) the report was not conducted pursuant to generally accepted accounting principles, but was based on procedures defined by the B.I.A., which imposed limitations on the scope of the work and made changes in methodologies over the course of the project that were not disclosed to the Tribe(s); (b) the report was premised on the erroneous assumption that an accounting of trust funds could be done based on review of information recorded in the B.I.A.' accounting system, without determining whether all receipts or income due had been collected and properly recorded and therefore fails to address the possibility that materially significant transactions were not recorded by the B.I.A. or that the information as recorded by the B.I.A. was inaccurate or in error; (c) the report does not disclose adjustments that were recommended by Arthur Andersen but which the B.I.A. did not accept and input; (d) the report expressly fails to address many transactions where accounting records could not be located. See United States General Accounting Office, *Report to Senate Committee on Indian Affairs, Tribal Reconciliation Results*, GAO Report No. B-266127, May 3, 1996.
- O. In 1995, the Secretary asked tribal governments, including the Nation, whether the Tribe would accept the findings of the Andersen Report as a full and complete accounting of their tribal trust funds, and whether the Tribe would accept the balances of its tribal trust funds as reflected in the Andersen Report as settlement of tribal trust fund mismanagement claims. Arthur Anderson had speculated that

the Nation's financial or trust fund claims for the period of 1972 to 1992 could be settled in the range of \$28 million to \$52 million. The Nation, through its Division of Finance and Office of the Controller, did not accept the Andersen Report as a full and complete accounting of the Nation's tribal trust funds, nor did they accept the balances of the Nation's tribal trust funds reflected in the report. The actions of the Office of the Controller preserved the Nation's rights to bring subsequent litigation against the United States, such as, *Navajo Nation v. United States*, No. 06-945L, for mismanagement of the Nation's tribal trust funds and tribal trust resources.

- P. To protect the rights of tribes until accountings of their trust funds could be completed by Interior, Congress provided, in each Interior Department Appropriations Act since 1990 to at least 2006 that "the statute of limitations shall not commence to run on any claim concerning losses to or mismanagement of trust funds until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the [tribe as] beneficiary can determine whether there has been a loss." See, e.g., Act of November 5, 1990, Pub. L. No. 101-512, 104 Stat. 1915. As of the end of October 2006, the Secretary had not provided the Nation with a full accounting of its tribal trust funds. The Interior Department Appropriations Acts' provisions delaying the start of the statute of limitations only applied to claims concerning mismanagement of the trust funds and did not apply to claims concerning mismanagement of the actual trust resources.
- Q. On November 1, 2006, the 20th Navajo Nation Council unanimously passed Legislation No. CN-57-06 authorizing the Navajo Nation Attorney General to file a lawsuit against the United States for the alleged breach of its fiduciary duties to the Nation arising under treaties, executive orders, public laws, statutes, regulations and contracts due to its mismanagement of the Nation's tribal trust assets, including tribal trust funds and select tribal resources, specifically excluding water and assets held in trust for individual Navajo members. Navajo Nation President, Joe Shirley, Jr., signed Legislation No. CN-57-06 into law on November 13, 2006.

- R. On December 29, 2006, the Nation, under the 2 N.N.C. § 1964 (F) authorities of its Attorney General, filed suit against the United States in the United States Court of Federal Claims seeking monetary damages from the federal government for its mismanagement of the Nation's tribal trust resources and tribal trust funds. The lawsuit is captioned *Navajo Nation v. United States*, No. 06-945L, and, depending on the particular tribal trust resource at issue, generally spans the period from August 14, 1946 to the present.
- S. The Court of Federal Claims is the only trial court with jurisdiction to hear claims against the United States for monetary relief exceeding \$10,000.00. The Court is, nonetheless, a court of limited jurisdiction and lacks authority to adjudicate tribal or individual Indian monetary claims against the federal government for periods prior to August 14, 1946. The Indian Claims Commission, which is no longer in existence, was the forum available for tribal or individual Indian monetary claims for periods prior to August 14, 1946.
- T. Between 1995 and the beginning of 2007, over one hundred (100) tribal governments had filed lawsuits against the United States analogous to *Navajo Nation v. United States*, No. 06-945L. As was the practice in the majority of Court of Federal Claims' tribal trust mismanagement cases, the trial judge referred the Nation's lawsuit to Alternative Dispute Resolution ("ADR") to determine whether the case could be resolved without the length and expense of formal litigation and discovery. In October of 2007, the Nation and the United States voluntarily agreed to stay the litigation and pursue settlement under the supervision of a federal ADR judge appointed by the Court of Federal Claims. In February of 2008, the Court issued a Confidentiality Agreement and Protective Order ("CAPO") restricting both parties' dissemination of settlement communications and materials.
- U. In July of 2012, the Court of Federal Claims trial judge lifted the stay for ADR and *Navajo Nation v. United States*, No. 06-945L, returned to active litigation. The litigation was bifurcated into two phases, with Phase I concerning the trust fund mismanagement claims and Phase II concerning the trust resource mismanagement claims. Under this bifurcation, the parties agreed to fully litigate Phase I claims before commencing any discovery and pre-trial

motioning on Phase II claims. The Court set an expedited fact discovery deadline of May 2014 for the Phase I claims with a trial expected sometime in 2015.

- V. Once the Court established the Phase I discovery deadline, the United States' attorneys aggressively pursued extremely broad discovery requests requiring the Nation to produce massive volumes of tribal documents. The Nation's Office of the Attorney General determined that additional legal resources were needed to meet the aggressive trial calendar and handle both offensive and defensive discovery while also pursuing negotiations in ADR. To provide the additional legal resources needed, the Office of the Attorney General retained additional outside legal counsel, BuckleySandler LLP, for the Nation as substitute lead counsel.
- W. Once BuckleySandler was retained, the Nation's attorneys expedited discovery and litigation preparation efforts for a Phase I trial predicted to commence in early 2015, enlisting the efforts of over 35 attorneys over the course of the litigation efforts. As part of these efforts, a rotating team of attorneys were assigned to work on the Navajo reservation to preserve, gather, organize and review millions of pages of Navajo Nation records in response to the United States' discovery demands and to interview potential witnesses. Over all, the Nation's attorneys reviewed millions of Navajo and federal government documents, totaling more than seven million pages, and interviewed or deposed dozens of current and former tribal and federal government officials and employees. The Nation's attorneys also served additional focused written discovery demands on the United States' government and filed motions based on the failure of the United States to timely provide documents and depositions previously requested by the Nation.
- X. During the expedited trial preparation efforts, the Nation's attorneys continued to engage the United States' attorneys in confidential settlement discussions under the supervision of the ADR judge and in June of 2013, the United States made its first formal proposal to settle *Navajo Nation v. United States*, No. 06-945L, before the trial commenced. Pursuant to his 2 N.N.C. § 1964(F) authorities, the Nation's Attorney General and outside legal counsel rejected the settlement proposal as substantially insufficient.

- Y. On September 26, 2013, the Naabik'íyáti' Committee of the Navajo Nation Council passed NABIS-42-13 creating a Trust Mismanagement Litigation Task Force ("Task Force"), composed of Council Delegates, from each agency and each standing committee, as well as Presidential appointees, to assist and consult with the Navajo Nation Office of the Attorney General, Department of Justice, outside legal counsel and the Office of the Navajo Nation President & Vice-President in evaluating whether any proposals put forth by the United States to settle *Navajo Nation v. United States*, No. 06-945L, were in the best interests of the Nation.
- Z. Between June of 2013 and mid May of 2014, the United States made six (6) formal settlement proposals to the Nation. After evaluation by the Nation's attorneys, the Task Force, and the Office of the President and Vice-President, each of the United States' settlement proposals were rejected as unacceptable, insufficient and not in the best interests of the Nation. On May 16, 2014, the United States made a settlement offer that was acceptable to the Nation's Attorney General, outside legal counsel, the Task Force and the Office of the President & Vice-President as being in the best interests of the Navajo Nation. On May 30, 2014, the settlement was adopted by the Navajo Nation Council through Resolution No. CMY-28-14 and signed into law by the President of the Navajo Nation on June 4, 2014.
- AA. This settlement secures redress and resolution to the historical mismanagement of the Navajo Nation's trust assets by the United States. Under the terms of the settlement agreement, the Navajo Nation dismissed its pending lawsuit and in return received a payment of \$554 million, as well as non-monetary benefits, from the United States. Under the agreement, the United States also commits to providing the Nation with all required reports of assets that continue to be held in trust for the benefit of the tribe and its members. The settlement specifically does not settle claims concerning the Nation's water rights or concerning environmental or health impacts from historical uranium mining or processing on or near the Navajo reservation. It also does not settle any claims held by individual Navajo members, and only settles claims held by the Navajo Nation as a tribal government.

- BB. The \$554 million settlement is the highest payment by the United States in any trust mismanagement breach of trust case filed by a tribe against the United States. More than 70 other tribes have already litigated to judgment or settled claims against the United States, but even the highest recovery by another tribe is still more than \$170 million less than the amount the Navajo Nation will receive to resolve its claims. The vast majority of tribes received less than \$20 million.
- CC. The settlement resolves many serious risks raised by the United States in its defense that the Nation would potentially face if it continued to pursue its claims through litigation. For instance, it resolves the risks from the United States' numerous affirmative defenses wherein the United States argued, based on the language of prior settlement documents, that the vast majority of the Nation's claims had already been addressed in prior settlements or were barred by the statute of limitations, and that the Nation was precluded from raising those claims now. The United States also argued that the Nation was unable to prove its claimed damages. The position of the United States was that based on recent decisions from the United States' Supreme Court in Indian breach of trust cases that any victory by the Nation at trial would ultimately be reversed by the Supreme Court, much like what the Nation has experienced in past cases.
- DD. The settlement also resolves the risk that the Nation would not actually receive any money damages until a decade or more after being awarded damages because of the lengthy appeals process. Any such money damages would not earn interest during the appeals process. The settlement ensures that the Nation can use and invest the money now rather than continue to spend money to litigate and prove damages, especially given that many of the documents relevant to the case have been lost or destroyed, and many witnesses relevant to the case have passed away or no longer recall details concerning the funds and resources at issue.
- EE. During the many decades that the United States was in breach of its fiduciary duties to the Nation and engaged in the mismanagement of the Nation's tribal trust assets and resources, the tribal government was without sufficient funds to provide basic services and amenities to the Dine' of past generations. The tribal government was also without funds to develop an infrastructure within the four sacred

mountains that would support the growth and development of opportunities crucial for the prosperity of future generations of Diné.

- FF. Between October 6, 2014 and November 8, 2014 the Office of the Speaker held seven (7) public hearings, as directed by the Navajo Nation Council's Naabik'íyáti' Committee on July 10, 2014, to receive input from Navajo Nation members on how the settlement proceeds should be used and/or invested. During that same time period the Office of the President & Vice-President held five (5) town hall meetings for a similar purpose.
- GG. The following amendments to the Navajo Nation Code are in the best interest of the Nation and consistent with the collective wishes expressed by its members. These amendments are intended to ensure that the net proceeds from the redress of the United States breach of its fiduciary duties and mismanagement of the Nation's tribal trust assets and resources buttress the planning and development of regional infrastructure supporting economic and community development, including housing, within the Navajo Nation, as well as support education opportunities for Navajo members, essential to prevent sacrifices endured by past generations of the Dine' from being revisited on future generations.

Section 2. Purpose of the Navajo Nation Breach of Trust Settlement Act of 2014

Under the authorities of 12 N.N.C. § 820 (K), this Act clarifies and designates that the net proceeds received from the settlement of Navajo Nation v. United States, No. 06-945L, and other litigation against the United States for breach of its fiduciary responsibilities are not projected revenues as used in the Navajo Nation Appropriations Act, 12 N.N.C. § 800 et seq., and other provisions of the Navajo Nation Code and shall not be deposited into the Nation's General Fund or Unreserved, Undesignated Fund Balance ("UUFB"). Instead such monies shall be deposited into the Navajo Nation Síhasin Fund and managed and invested to provide for the planning and development of regional infrastructure supporting economic and community development, including housing, within the Navajo Nation, as well as education opportunities for Navajo members of this and future generations.

TITLE 12. FISCAL MATTERS

CHAPTER 24. HISTORICAL TRUST MISMANAGEMENT LITIGATION TRUST FUND

§ 2401. Establishment

~~E. The Navajo Nation Controller shall deposit the full amount of any monetary award or settlement to the Navajo Nation resulting from the final resolution of the Navajo Nation's historical trust asset mismanagement litigation against the United States in the Unreserved, Undesignated Fund Balance of the Navajo Nation.~~

TITLE 12. FISCAL MATTERS

CHAPTER 25. NAVAJO NATION SÍHASIN FUND

§ 2501. Establishment

There is established the "Navajo Nation Síhasin Fund (hereinafter "Fund").

A. The Navajo Nation Council hereby designates that the net proceeds and earnings thereon received by the Navajo Nation through settlement of the litigation captioned Navajo Nation v. United States, No. 06-945L, shall be deposited into the Fund. Additional deposits, when duly designated, may be made to the Fund from the net proceeds of settlement or judgment awards of other litigation brought against the United States concerning its failure to ensure that the Navajo Nation received all funds due and owing under the United States' trust obligations and fiduciary duties.

B. Proceeds from settlements shall not be deemed as projected revenues subject to statutory set-asides under Title 12 of the Navajo Nation Code unless otherwise designated by the Navajo Nation Council.

C. The Navajo Nation Council may make additional appropriations to the Fund from any other sources of revenue that become available to the Navajo Nation.

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

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

§ 2502. Purpose

A. The purposes of this Fund are to provide financial support and/or financing for:

1. the planning and development of regional infrastructure supporting economic and community development, including housing, within the Navajo Nation; and
 2. education opportunities for members of the Navajo Nation.
- B. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund shall be favored over direct funding in whole.

§ 2503. Investment of the Fund

All monies deposited in the Fund shall be invested as soon as practical in accordance with:

- A. 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; and

- B. Specific investment objectives and policies as formally adopted by the Naabik'iyáti' Committee of the Navajo Nation Council.

§ 2504 Definition of Fund Principal and Income

- A. "Fund Principal" shall consist of all deposits made to the Fund pursuant to § 2501 of this Chapter.
- B. "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and realized by the principal of the Fund.

§ 2505 Expenditure of the Fund

- A. With the exception of outstanding and accrued litigation costs, the Fund Principal and Income shall not be expended except pursuant to a Fund Expenditure Plan consistent with the purposes set forth in § 2502 of this Chapter and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council.
- B. Expenditures for outstanding and accrued litigation costs shall be approved by the Law & Order and Budget & Finance Committees upon the recommendations of the Attorney General and Controller of the Navajo Nation.
- C. Until such time as the Fund Expenditure Plan is duly adopted, all Fund Income shall be deposited in the Fund and added to the Fund Principal.

§ 2506 Annual audited report

The Fund shall be audited annually. Within 120 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Fund from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and information relevant to the management of the Fund.

§ 2507 Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Naabik'iyati' Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts pursuant to Navajo Preference for such services.

§ 2508 Amendments

Any section(s) herein may be amended by a ninety percent (90%) vote of the full membership of the Navajo Nation Council and signature of the President of the Navajo Nation.

Section 3. Effective Date

The Act is effective upon its approval pursuant to 2 N.N.C. §221.

Section 4. Codification

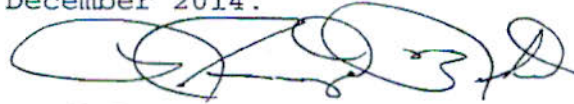
The provisions of this act which amends or adopts new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section 5. Saving Clause

Should any provisions of this ordinance 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, those portions of this ordinance which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 17 in favor and 0 opposed, this 23rd day of December 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

12-27-14

Date

Motion: Honorable Nelson BeGaye
Second: Honorable Walter Phelps

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of DEC 31 2014 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(11), this _____ day of _____ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation



CJA-03-18

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI'
COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING CD-68-14, THE
NAVAJO NATION SÍHASIN FUND

BE IT ENACTED:

Section One. Authority

- A. The Law and Order Committee is empowered to review and recommend proposed Navajo Nation Code enactments and amendments. 2 N.N.C. § 601(B)(14).
- B. 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. 2 N.N.C. § 301(B)(2).
- C. The Naabik'iyáti' 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).
- D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102 (A).

Section Two. Findings

- A. On November 1, 2006, the 20th Navajo Nation Council unanimously passed Legislation No. CN-57-06 authorizing the Navajo Nation Attorney General to file a lawsuit against the United States for the alleged breach of its fiduciary duties to the Nation arising under treaties, executive orders, public laws, statutes, regulations and contracts due to its mismanagement of the Nation's tribal trust assets, including tribal trust funds and select tribal resources, specifically excluding water and assets held in trust for individual Navajo members. Navajo Nation President, Joe Shirley, Jr., signed Legislation No. CN-57-06 into law on November 13, 2006.
- B. On September 26, 2013, the Naabik'iyáti' Committee of the Navajo Nation Council passed NABIS-42-13 creating a Trust Mismanagement Litigation Task Force ("Task Force"),

composed of Council Delegates, from each agency and each standing committee, as well as Presidential appointees, to assist and consult with the Navajo Nation Office of the Attorney General, Department of Justice, outside legal counsel and the Office of the Navajo Nation President & Vice-President in evaluating whether any proposals put forth by the United States to settle *Navajo Nation v. United States*, No. 06-945L, were in the best interests of the Nation.

- C. On May 16, 2014, the United States made a settlement offer to the Nation that the Nation's Attorney General, outside legal counsel, the Task Force and the Office of the President & Vice-President determined to be in the best interests of the Navajo Nation. On May 30, 2014, the settlement was adopted by the Navajo Nation Council through Resolution No. CMY-28-14 and signed into law by the President of the Navajo Nation on June 4, 2014.
- D. During the many decades that the United States was in breach of its fiduciary duties to the Nation and engaged in the mismanagement of the Nation's tribal trust assets and resources, the tribal government was without sufficient funds to provide basic services and amenities to the Diné of past generations. The tribal government was also without funds to develop an infrastructure within the four sacred mountains that would support the growth and development of opportunities crucial for the prosperity of future generations of Diné.
- E. The Navajo Nation established the Síhasin Fund, 12 N.N.C. §§ 2501 et seq., in the best interest of the Nation and consistent with the collective wishes expressed by its members. The Síhasin Fund is intended to ensure that the net proceeds from the redress of the United States breach of its fiduciary duties and mismanagement of the Nation's tribal trust assets and resources buttress the planning and development of economic development and regional infrastructure supporting economic and community development as well as support education opportunities for Navajo members, essential to prevent sacrifices endured by past generations of the Diné from being revisited on future generations. See CD-68-14
- F. It is in the best interest of the Navajo Nation to amend the Navajo Nation Síhasin Fund, 12 N.N.C. §§ 2501 et seq., as approved in CD-68-14, to continue to meet the Navajo

Nation's economic development and community development needs.

Section Three. Amending the Navajo Nation Síhasin Fund

The Navajo Nation hereby amends the Navajo Nation Síhasin Fund as follows:

**TITLE 12. FISCAL MATTERS
CHAPTER 25. NAVAJO NATION SÍHASIN FUND**

§ 2501. Establishment

There is established the "Navajo Nation Síhasin Fund (hereinafter "Fund").

- A. The Navajo Nation Council hereby designates that the net proceeds and earnings thereon received by the Navajo Nation through settlement of the litigation captioned *Navajo Nation v. United States*, No. 06-945L, shall be deposited into the Fund. Additional deposits, when duly designated, may be made to the Fund from the net proceeds of settlement or judgment awards of other litigation brought against the United States concerning its failure to ensure that the Navajo Nation received all funds due and owing under the United States' trust obligations and fiduciary duties.
- B. The Navajo Nation Council may make additional appropriations to the Fund from any other sources of revenue 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 in this Chapter.
- D. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant to 12 N.N.C. § 820(N).

§ 2502. Purpose

- A. The purposes of this Fund are to provide financial support and/or financing for:
 - 1. The planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterline, solid waste management development, powerline projects, and

transportation and communication systems, within the Navajo Nation; and

2. Education opportunities for members of the Navajo Nation.

B. For the purpose in § 2502(A)(1), Fund expenditures for infrastructure shall not be limited by 12 N.N.C. § 1310(F) or TCDCJY-77-99.

C. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund, including loan financing from the Fund, for the purposes in § 2502(A)(1), shall be favored over direct funding in whole.

§ 2503. Investment of the Fund

All monies deposited in the Fund shall be invested as soon as practical in accordance with:

- A. 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; and
- B. Specific investment objectives and policies as formally adopted by the Naabik'iyáti' Committee of the Navajo Nation Council.

§ 2504. Definition of Fund Principal and Income

- A. "Fund Principal" shall consist of all deposits made to the Fund pursuant to § 2501 of this Chapter.
- B. "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and realized by the principal of the Fund.

§ 2505. Expenditure of the Fund

- A. With the exception of outstanding and accrued litigation costs, the Fund Principal and Income shall not be expended except pursuant to a Fund Expenditure Plan consistent with the purposes set forth in § 2502 of this Chapter and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council.
- B. Expenditures for outstanding and accrued litigation costs shall be approved by the Law & Order and Budget & Finance

Committees upon the recommendations of the Attorney General and Controller of the Navajo Nation.

- C. Until such time as the Fund Expenditure Plan is duly adopted, all Fund Income shall be deposited in the Fund and added to the Fund Principal.

§ 2506. Annual Audited Report

The Fund shall be audited annually. Within 120 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Fund from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and information relevant to the management of the Fund.

§ 2507 Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Naabik'iyáti' Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts pursuant to Navajo Preference for such services.

§ 2508 Amendments

Any section(s) herein may be amended by a ninety percent (90%) majority vote of the full membership of the Navajo Nation Council and signature of the President of the Navajo Nation.

Section Four. Effective Date

The Act is effective upon its approval pursuant to 12 N.N.C. § 2508 and 2 N.N.C. §221(B).

Section Five. Codification

The provisions of this act which amends or adopts 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.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 22 in favor and 01 opposed, on this 24th day of January 2018.



LoRenzo C. Bates, Speaker
Navajo Nation Council

1-31-18

Date

Motion: Honorable Walter Phelps
Second: Honorable Leonard Pete

Speaker Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(10), on this 8th day of February 2018.



Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2018 for reason(s) _____ expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

NAVAJO NATION

137

4/11/2019
03:37:57 PM

Naa'bik'iyati Committee

Amd# to Amd# Legislation 0077-19: Making
MOT Begay, E Appointments to the Naabikiyati
SEC Halona, P Committee's Sihasin Fund
 Subcommittee.

PASSED

Yea : 14

Nay : 0

Excused : 0

Not Voting : 9

Yea : 14

Begay, E	Crotty	James, V	Tso, E
Begay, P	Daniels	Nez, R	Wauneka, E
BeGaye, N	Freeland, M	Stewart, W	Yellowhair
Brown	Halona, P		

Nay : 0

Excused : 0

Not Voting : 9

Begay, K	Henio, J	Tso, C	Walker, T
Charles-Newton	Smith	Tso, O	Yazzie
Damon			

Presiding Chair: Tso, D