

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Third Year, 2017

AN ACT

RELATING TO THE RESOURCES AND DEVELOPMENT, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AMENDMENTS TO 24 N.N.C. § 620 OF THE NAVAJO NATION SALES TAX TO ALLOW FOR AN EMERGENCY RESERVE FUND AND A REPLACEMENT RESERVE FUND FOR THE NAVAJO TRIBAL UTILITY AUTHORITY

BE IT ENACTED:

Section One. Authority

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council and oversees utilities and public utilities to establish Navajo Nation policy with respect to optimum utilization of all Navajo Nation resources. 2 N.N.C. §500 (A) and §500(C)(1).
- B. The Law and Order Committee is a standing committee of the Navajo Nation Council and is empowered to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 2 N.N.C. §500 (A) and §500(C)(1).
- C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council and exercises oversight authority over budget and finance for the purposes of recommending to the Navajo Nation Council the adoption of resolutions designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation. 2 N.N.C. §§ 300 (A) and 300 (C)(3).
- D. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council. A proposed resolution that requires final action by the Navajo Nation Council shall be assigned to the standing committee having authority over the subject matter at issue and the Naabik'iyáti' Committee. 2 N.N.C. §§ 164(A)(9) and 700(A).

- E. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. §§ 164(A).

Section Two. Findings

- A. The Navajo Nation Department of Water Resources (NDWR) and the Navajo Tribal Utility Authority (NTUA) proposes an amendment to the Navajo Nation Sales Tax allocation of revenue to assist in developing a Replacement Reserve Fund and an Emergency Fund (Funds) for the public water and wastewater systems on the Navajo Nation.
- B. These two funds are a Federal requirement imposed upon the Navajo Nation by the Bureau of Reclamation in order to transfer the operation, maintenance, and repair of the Navajo Gallup Water Supply Project to the Navajo Nation.
- C. The proposed amendment to the allocation of sales tax revenue provides a method of how the Navajo Nation can meet the obligations set forth by the Bureau of Reclamation to transfer the operation, maintenance, and repair of the Navajo Gallup Water Supply Project to the Navajo Nation.
- D. NTUA operates more than 100 public water and wastewater systems with more than 5,800 miles of pipeline serving more than 130,000 people. Moreover, NTUA has no reserve of funds to replace its aging systems. NTUA collects water use fees from customers to address ongoing operations and maintenance, which is not applied towards funding an emergency reserve fund or a replacement funds. See Memoranda from Jason John, Branch Manager, Navajo Nation Department of Water Resources, and Water Management Branch, attached as **Exhibit 1**.
- E. NDWR and NTUA have provided a concept paper on the need for a Replacement Reserve Fund and an Emergency Fund (the Funds), including a portion of the sales tax collected on the construction of water and wastewater systems. The concept paper is attached as **Exhibit A**.
- F. The Management Board of NTUA has passed Resolution NTUA-27-09, entitled "Approving Pursuit of the Establishment of a Navajo Water System Reserve Trust Fund for the Repair and Future Replacement of Public Water Systems within the Navajo Nation." This Resolution is attached as **Exhibit B**.

- G. The Navajo Tax Commission's Policy Regarding the Use of Tax Revenue, Resolution TAX-09-213 is provided, which indicates its preference to remain neutral on the issue of earmarking tax revenue. This Resolution is attached as **Exhibit C**.
- H. A draft Fund Management Plan is attached as **Exhibit D**.
- I. A graphic representation is provided to show how the Sales Tax funds and others may be combined to establish adequate funding levels. This graphic is attached as **Exhibit E**.
- J. The proposal to amend the Navajo Nation Sales Tax has been reviewed through the 164 review process. Comments from the Office of the Controller, the Office of Management and Budget, and the Department of Justice are included as part of the 164 review. These documents are attached as **Exhibit 2**.

Section Three. Amendments to Title 24

The Navajo Nation amends the Navajo Nation Code 24 N.N.C. § 620, as follows:

**NAVAJO NATION CODE ANNOTATED
TITLE 24. TAXATION
CHAPTER 6. SALES TAX**

§ 620. Allocation of Revenue

After allocation to permanent or special revenue funds as required by Navajo Nation law, and allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed as follows:

- A. To the extent that any amount is collected pursuant to Section 605(B) above, that amount shall be transmitted by the Office of the Navajo Tax Commission to the chapter in a timely manner, to be expended in accordance with the ordinance referred to in Section 605(B), above.
- B. Except as otherwise provided in subsections (C) or (D), sixty percent (60%) of the revenue collected shall be deposited into the General Fund of the Navajo Nation, twenty percent (20%) of the revenue collected shall be

deposited into the Judicial/Public Safety Facilities Fund, ten percent (10%) of the revenue collected shall be deposited to the Scholarship Fund, and ten percent (10%) of the revenue shall be deposited to the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

- C. Sixty percent (60%) of the revenue collected from retail establishments located in the Navajo Nation shall be deposited into a trust fund to be appropriated pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee of the Navajo Nation Council; twenty percent (20%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; ten percent (10%) of the revenue collected shall be deposited into the Scholarship Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council and ten percent (10%) of the revenue collected shall be deposited into the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

- D. Sixty-percent (60%) of the revenue collected from the Sales Tax revenue associated with construction of public water and wastewater systems shall be deposited into the Navajo Tribal Utility Authority Emergency Reserve Fund and the Navajo Tribal Utility Authority Replacement Reserve Fund in accordance with a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council. Monies from those funds will be expended in accordance with the fund management plan. Twenty percent (20%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; ten percent (10%) of the revenue collected shall be deposited into the Scholarship Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council and ten percent (10%) of the revenue collected shall be deposited into the Economic Development Fund to be appropriated pursuant to a

fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

Section Four. Codification

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

Section Five. Saving Clause

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

Section Six. Effective Date

The provisions of this Act shall become effective in accordance with 2 N.N.C. § 221(B).

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 11 in favor and 03 opposed, on this 17TH day of October 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council

10-27-17

Date

Motion: Honorable Nathaniel Brown

Second: Honorable Otto Tso

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 6th day of November 2017.



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 _____ 2017 for reason(s) _____ expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation



**THE NAVAJO NATION
DEPARTMENT OF WATER RESOURCES
WATER MANAGEMENT BRANCH**

P.O. BOX 678 * FORT DEFIANCE, ARIZONA 86504 * (928)729-4004 * FAX (928)729-4126



**RUSSELL BEGAYE
PRESIDENT**

**JONATHAN NEZ
VICE PRESIDENT**

MEMORANDUM

Date: February 9, 2017

To: Council Delegate Alton Shepherd
Chairperson, Resources and Development Committee

From: 
Jason John, Branch Manager
Water Management Branch

Re: **Summary of 164 Review Document 005290 to Modify the Navajo Nation Tax Code for NTUA Emergency Reserve and Replacement Funds**

This proposal seeks to modify the Navajo Nation Tax Code to set aside a portion of the tax collected from the construction of public water and waste water systems, and a portion of the sales tax from the Navajo Tribal Utility Authority (NTUA) water and wastewater services, to be used by NTUA for the Capital Replacement Reserve and Emergency Fund for the Public Water and Wastewater Systems Operated by NTUA. If the changes in the Tax Code are authorized, the specific details of this plan will be defined and approved by the appropriate oversight committee before funds can be accessed.

NTUA operates more than 100 public water and wastewater systems with more than 5,800 miles of pipeline serving more than 130,000 people. The depreciated value of these existing systems is more than \$400 hundred million dollars. The Navajo Gallup Water Supply Project and the impending Sihsain and PTF projects will bring the total value of those assets to more than \$1 billion. However, there is no fund set up to deal with these aging and impending facilities. Many of the older systems are deteriorating. Even now, NTUA has a tough time maintaining and repairing these existing systems. As they age the problem worsens. During cold hard freezes, during droughts, and during heavy monsoon events, systems will fail. It will become harder and harder for NTUA to keep up with this increasing load. These system failures will drive away businesses and economic development. This issue is a Navajo Nation problem, and not just an NTUA operation problem. The future well-being of the Nation is at stake. A majority of the current public water systems were construction through Navajo Area Indian Health Service and those construction agreements did not and do not provide funds for this purpose. NTUA only collects water use fees to address ongoing operation and maintenance, not to create an emergency reserve and replacement fund.

This proposal is one of several steps that the Navajo Nation and NTUA anticipate will generate funds for this purpose. For instance, in addition to this measure, the Council has committed \$10 million from the Sihasin Budget. However, these Sihasin funds are intended to be used primarily for the projects constructed pursuant to the Sihasin Budget, and not for water projects constructed through different authorities. A figure showing graphically how these and others resources may be combined to establish adequate funds is included. Specifically, the new proposed Tax Code language would allocate:

Sixty percent (60%) of the revenue collected from the Sales Tax revenue associated with construction of public water systems and the Sales Tax revenue associated with Navajo Tribal Utility Authority operating revenue from the provision of water and wastewater services shall be deposited into the Navajo Tribal Utility Authority Emergency Reserve and Replacement Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

Over the next ten years it is estimated that this Tax Code change may generate approximately \$39 million for this purpose. The reasons for modifying the Tax Code and creating these NTUA Funds include:

1. Funds of this type have not been set up in the past to address aging existing water systems that deliver water to businesses and more than 130,000 residents of the Navajo Nation. During the last few decades, many of these facilities were constructed pursuant to MOA's between the Navajo Nation and the Indian Health Service with ownership being transferred to the Navajo Nation. Without Funds of this type to address emergencies and replacement, restoring basic services to customers may be delayed by weeks.
2. The Bureau of Reclamation will require Funds of this type for the operator of the \$1.13 billion Navajo Gallup Water Supply Project. The Navajo Nation Municipal Pipeline will require a similar transfer agreement with provisions for Emergency Reserve and Replacement Funds. These requirements are an obligation of the Navajo Nation.
3. Much of the overall expense associated with these systems is due to federal regulations, for instance the Safe Drinking Water Act and the Clean Water Act.
4. Charging water users directly for creating these Funds could result in significant rate hikes that could make it difficult for many households to afford drinking water.
5. These Funds will help enable NTUA to continue to operate public water systems throughout the Navajo Nation long into the future.

Supporting documents include: Exhibit A the Concept Paper that describes the reasons for the creation of the NTUA Emergency Reserve and Replacement Funds; Exhibit B, a supporting resolution from the NTUA Management Board; Exhibit C, a neutral resolution from the Navajo Tax Commission; Exhibit D, Draft Fund Management Plan; Exhibit E, ~~The proposed amendments to the Tax Code~~, and Exhibit **E**, a Figure showing graphically how these and others resources may be combined to establish adequate funds.

If you have any questions, please contact me at the Navajo Nation Department of Water Resources at (928) 729-4004. Thank you for your time and attention to this matter.



**THE NAVAJO NATION
DEPARTMENT OF WATER RESOURCES
WATER MANAGEMENT BRANCH**

P.O. BOX 678 * FORT DEFIANCE, ARIZONA 86504 * (928)729-4004 * FAX (928)729-4126

**RUSSELL BEGAYE
PRESIDENT**

**JONATHAN NEZ
VICE PRESIDENT**

MEMORANDUM

Date: January 19, 2016

To: 164 Reviewers

From:


Jason John, Branch Manager
Water Management Branch

Re: **Proposal to Modify the Navajo Nation Tax Code for a NTUA Emergency Reserve and Replacement Funds**

This proposal seeks to modify the Navajo Nation Tax Code to set aside taxes collected from the construction of public water and waste water systems, and sales tax from the Navajo Tribal Utility Authority (NTUA) water and wastewater services and to deposit those funds into a proposed NTUA Emergency Reserve and Replacement Funds. Funds from the NTUA Emergency Reserve and Replacement Fund will not be accessed until a fund management plan is approved by the Budget and Finance Committee. Supporting documents include: The proposed amendments to the Tax Code include the following supporting documents: Exhibit A - Concept Paper that describes the reasons for the creation of the NTUA Emergency Reserve and Replacement Funds; Exhibit B - supporting resolution from the NTUA Management Board; Exhibit C - a neutral resolution from the Navajo Tax Commission; and Exhibit D - a draft Fund Management Plan.

The reasons from modifying the Tax Code and creating these funds include:

1. There is currently no fund of this type to address NTUA's existing aging water systems that deliver water to businesses and more than 130,000 residents of the Navajo Nation. Without a fund of this type to address emergencies and replacement, basic services to customers may take days or weeks to address.
2. Public Law 111-11 will require funds of this type for the operator of the \$1.13 billion Navajo Gallup Water supply Project.
3. These fund will help enable NTUA to continue to operate public water systems throughout the Navajo Nation.

If you have any questions, please contact me at the Navajo Nation Water Management Branch at (928) 729-4501. Thank you for your time and attention to this matter.



**Navajo Tribal Utilities Authority
Replacement Reserve and Emergency Fund
Concept Paper
(January 2016)**

I. Issue

A. Existing water infrastructure

The Navajo Tribal Utility Authority (NTUA) has more than 100 public water and wastewater systems with more than 5,800 miles of pipeline serving more than 130,000 people. The value of these systems is more than \$400 hundred million dollars. However, there is no fund set up to deal with these aging utility systems. These systems are deteriorating. Even now, NTUA has a tough time maintaining and repairing these systems. As they age, the problem worsens. During cold hard freezes, during droughts, and during heavy monsoon events, systems will fail. It will become harder and harder for NTUA to keep up with this increasing work load. These failures will drive away economic development. This problem is a Navajo Nation problem and not just an NTUA problem. The future well-being of the Nation is at stake.

B. Navajo Nation Municipal Pipeline and Navajo Gallup Water Supply Project.

The Navajo Nation Municipal Pipeline from Farmington to Shiprock cost more than \$50 million. The Navajo Gallup Water Supply Project cost will cost \$1.13 billion (June 2015 dollars). Major project failures could cost millions of dollars to address. In addition to the existing infrastructure, these new projects will significantly increase the long term operation, maintenance and repair burden for NTUA.

Before these new projects can begin operating, the Bureau of Reclamation (Reclamation) will require some type of Replacement Reserve and Emergency Fund for them. While the Navajo Nation and Reclamation have not determined what it should be, the required funding levels could be many millions of dollars.

II. Possible Sources of Funding

A. Increase rates. NTUA can pass the cost on to its water and wastewater customers. However, NTUA rates are already among the highest water and wastewater rates in the region while its customers are among the poorest. In addition, if rates go up too much, then users will

use less water or they will be forced to disconnect due to non-payment. This situation may create a downward spiral with less water use, resulting in less income for NTUA. Less income results in more expensive water for the remaining water users.

B. Navajo Nation sales tax on water and wastewater consumption sales. Sale tax is already being collected by the Navajo Nation. In 2014, this amount was approximately \$1,075,000. This tax could be directed to a fund for these public water systems. Taxing essential commodities like food and water may be considered regressive. However, if the sales tax on water and wastewater is directed to a fund to support the water and wastewater projects, then it would help the water users in the long run.

C. Navajo Nation sales tax on the construction of public water and wastewater systems. This tax is already being collected by the Navajo Nation. In 2014, this amount was approximately \$231,000 for Indian Health Service (IHS) projects constructed by NECA. This tax could be directed to a fund to support these public water and wastewater systems. IHS will only construct feasible water and wastewater projects. Part of determining whether or not a project is feasible depends on the cost per household, and also on having a viable operator. IHS is running out of feasible Navajo projects. If IHS stops constructing water and wastewater projects, then there will be no tax revenue from this source. But, if directing this tax to the fund helps NTUA to be able to operate more projects, IHS will be able to continue building more projects.

D. Navajo Nation sales tax on the construction of the Navajo Gallup Water Supply Project. The Navajo Nation will collect tax on the construction of the Navajo Gallup Water Supply Project. The total project cost is estimated to be \$1.13 billion in 2015 dollars. Reclamation has estimated that during the next 14 years, the total Navajo Nation tax will be \$24.6 million which could be directed to this fund.

E. Federal and State Funding. The Navajo Nation could approach the federal and state governments for funding for this purpose. However, it seems very unlikely that there would be strong political support for this option.

F. Various Navajo settlement funds. Various Navajo settlement funds could be directed to this fund. For instance, the San Juan River settlement includes a \$50 million water development fund. In the future, a portion of that funding could be directed to the RREF funds.

III. Structure of the Replacement Reserve and Emergency Fund (RREF)

A proposal for establishing and authorizing the Navajo Tribal Utility Authority Capital Replacement Reserve and Emergency Fund for the Public Water and Wastewater Systems Operated by the Navajo Tribal Utility Authority has been developed. If the fund is authorized, the specific details of the RREF plan will be defined and approved by the appropriate oversight committee before funds can be accessed. This fund needs to be established immediately to ensure the prompt transfer and operation of the Navajo Nation Municipal Pipeline between Farmington and Shiprock from Reclamation to the Navajo Nation, and to take advantage of near term appropriations that will be used to construct the Navajo-Gallup Water Supply Project.

COPY

**RESOLUTION OF THE
MANAGEMENT BOARD OF THE
NAVAJO TRIBAL UTILITY AUTHORITY**

NTUA-27-09

**Approving Pursuit of the Establishment of a Navajo Water System
Reserve Trust Fund for the Repair and Future Replacement of Public
Water Systems Within the Navajo Nation**

WHEREAS:

1. The Management Board of the Navajo Tribal Utility Authority ("Authority") is delegated authority and responsibility for the management and operation of the Authority pursuant to 21 N.N.C. § 7(a)(1); and
2. NTUA Management is in discussions with the Navajo Nation Department of Water Resources concerning the creation of a public trust fund to pay the costs of repair and replacement of existing public water systems within the Navajo Nation, such funds to be derived from Navajo Nation Sales Tax revenue generated from the construction of Public Water Systems and Gross Water Revenues; and
3. NTUA Management seeks Management Board approval of continued discussions and development of a proposal for the establishment of a Navajo Water System Reserve Trust Fund to be presented to the Navajo Nation Council, appropriate standing committees of the Navajo Nation Council, Navajo Nation executive offices, and the Office of Navajo Tax Commission.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Management Board of the Navajo Tribal Utility Authority hereby approves and authorizes Authority Management to pursue development of a proposal and to continue discussions with the Navajo Nation Department of Water Resources, appropriate Navajo Nation Council standing committees, the Office of Navajo Tax Commission, other appropriate Navajo Nation executive offices, and Indian Health Services to establish a Navajo Water System Reserve Trust Fund for the repair and replacement of public water systems within the Navajo Nation, such funds to be derived from Navajo Nation Sales Tax revenue generated from the construction of Public Water Systems and Gross Water Revenues.
2. The General Manager is directed to report to the Management Board prior to presentation of such proposal to the Navajo Nation Council for final approval.

NTUA-27-09

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Management Board of the Navajo Tribal Utility Authority at a duly called meeting in Dilkon, Arizona on this 25th day of June 2009, at which a quorum was present, and the same was passed by a vote of 5 in favor, 0 opposed, and 0 abstaining.


Sonny Clark, Secretary

EXHIBIT C

to Exhibit 1
TAX-09-213

EXHIBIT C

RESOLUTION OF THE NAVAJO TAX COMMISSION

REAFFIRMING THE TAX COMMISSION'S POLICY REGARDING USE OF TAX REVENUE

WHEREAS:

1. Pursuant to 2 N.N.C. §3353, the Navajo Tax Commission has the authority to review and study all sources of wealth within the Navajo Nation, to lay and collect taxes, and to adopt appropriate rules and regulations; and
2. From time to time, various entities have approached the Commission requesting that the Commission take action to earmark tax revenue, including amounts to be released from the Tax Administration Suspense Fund; and
3. The Commission's primary purpose is to develop tax policy and to administer the tax system. Decisions regarding the expenditure of tax revenues are the responsibility of the Navajo Nation Council and the President of the Navajo Nation; and
4. The Commission previously determined that it was appropriate to adopt a formal policy stating that the Commission is neutral on the earmarking of tax revenue, and in October, 2003, the Commission, in TAX-03-183, adopted the policy of remaining neutral on the issue of the use of tax revenue, except when its position was specifically solicited by the Council or the President; and
5. The Commission has now determined that it would prefer to remain neutral in all circumstances, even when its position is solicited by the Council or the President; and
6. It is therefore appropriate to reaffirm the Commission's position regarding the use of tax revenue, and, by removing the reference to requests from the Council or the President, to clarify that this neutrality applies in all circumstances.

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Tax Commission hereby reaffirms its current policy that it will remain neutral on the issue of the use of tax revenue, including amounts released from the Tax Administration Suspense Fund.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tax Commission 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 4 in favor and 0 opposed, with 0 abstaining, this 26th day of May, 2009.

Motioned: Scott Taylor
Seconded: Moroni Benally

Collette Lee-Lynn

Vice Chairperson
Navajo Tax Commission



**THE
NAVAJO
NATION**

RUSSELL BEGAYE
PRESIDENT

OFFICE OF THE NAVAJO TAX COMMISSION
Post Office Box 1903 • Window Rock, Navajo Nation (Arizona) 86515-1903
(928) 871-6681 • (928) 871-7608 FAX

JONATHAN NEZ
VICE - PRESIDENT

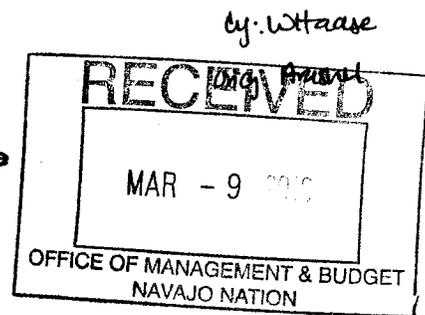
January 5, 2016

Arash Moalemi, Corporate Attorney
Navajo Tribal Utility Authority
P.O. Box 170
Ft. Defiance, AZ 86504

Received

JAN 07 2016

NTUA
General Manager's Office



Re: Navajo Tax Commission Neutrality on Tax Revenue Policy

Mr. Moalemi,

This letter is to update the Navajo Tribal Utility Authority (“NTUA”) on the Navajo Tax Commission’s (“Commission”) consideration to formally support establishment of the proposed Replacement Reserve and Emergency Fund (“proposed fund”).

As the Commission understands, NTUA is charged with managing more than 100 public water and wastewater systems, which includes over 5,800 miles of pipeline serving more than 130,000 people. While the value of these systems is several hundred million dollars, there is no fund set up to deal with these aging utility systems. The proposal at issue would divert collections from the Navajo Sales Tax into the proposed fund.

The Commission indeed understands the urgency of this need and the important role the proposed fund can play in serving the Navajo Nation. However, the Commission has adopted a policy of neutrality in terms of earmarking tax revenues once a Navajo tax has been fully established. Attached to this correspondence is Navajo Tax Commission Resolution TAX-09-213, which articulates this policy. Specifically, the Resolution states that “[d]ecisions regarding the expenditure of tax revenues are the responsibility of the Navajo Nation Council and the President of the Navajo Nation.” Thus the Commission will remain committed to this policy and not take a formal position with regard to the proposed fund.

The Commission appreciates NTUA’s collaboration and understanding. If there are any further questions or concerns, please feel free to reach me by phone at 928.871.6992 or email at mashley@navajotax.org.

Sincerely,

Martin E. Ashley, Executive Director
Office of the Navajo Tax Commission

Letter to Arash Moleni, Corporate Attorney .

Dated January 5, 2016

Page Two

Cc: Geraldine Kee-Yazzie, Chairperson, NTC (via email)
Robert Joe, "Acting" Chief of Staff, OPVP (via email)
Chad Yazzie, Tax Attorney, ONTC (via email)

Draft Fund Mgmt. Plan

"EXHIBIT D"

EXHIBIT D
to ~~XXXX~~ Exhibit 1

Establishing and Authorizing the Navajo Tribal Utility Authority Capital Replacement Reserve Fund and Emergency Fund for the Public Water and Wastewater Systems Operated by the Navajo Tribal Utility Authority

(December 21, 2015 Draft)

SECTION 1. ESTABLISHMENT *(Note: This paragraph will be subject to the final legislation approved by the Navajo Nation Council.)*

There is hereby established the *Navajo Tribal Utility Authority Capital Replacement Reserve Fund and Emergency Fund* (Funds) for the public water and wastewater systems operated by the Navajo Tribal Utility Authority (NTUA). All projected revenues generated from the sales tax on the construction of public water and wastewater systems and on NTUA's gross water and wastewater revenues will be deposited into the Funds, as well as any contributions made by other parties or entities, funds provided through the Navajo Nation Water Resources Development Trust Fund as authorized through Public Law 111-11, funds provided through other settlements, and any additional appropriations made by the Navajo Nation Council.

The Capital Replacement Reserve Fund will provide resources to repair or replace NTUA public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that NTUA may operate and maintain) that have reached the end of their normal service or design life based on generally accepted engineering standards, as needed. The goal is to establish repair and replacement funds equal to 20 percent of the undepreciated values (as reported in the NTUA Annual Audit Report) of these facilities.

The Emergency Fund will provide resources to cover costs incurred by NTUA for public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that NTUA may operate and maintain) during periods of special stress caused by damaging droughts, storms, earthquakes, floods or other emergencies threatening or causing interruption of water or wastewater service. The goal is to establish emergency funds equal to one year of annual operation and maintenance of these facilities.

SECTION 2. INVESTMENT OF THE FUNDS

All amounts of money deposited in the Funds shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

SECTION 3. DEFINITIONS OF FUNDS INCOME AND FUNDS PRINCIPAL

- (a) **Funds Income** All earnings (Interest, dividends, etc) generated by the Principal of the Fund.
- (b) **Funds Principal** All Navajo Nation projected revenue generated from the sales tax on the construction of public water and wastewater systems and on NTUA's gross water and wastewater revenues, any contributions made by other parties or entities, funds provided through the Navajo Nation Water Resources Development Trust Fund as authorized through Public Law 111-11, funds provided through other settlements, and any additional appropriations made by the Navajo Nation Council.

SECTION 4. EXPENDITURES OF FUNDS PRINCIPAL AND INCOME

- (a) No **Fund Income or Principal** shall be expended until the **Funds' Combined Principal** has reached \$10 million, or ten years after the enactment of the Fund Management Plan, whichever occurs first.
- (b) **Fund Income or Principal** shall be used to repair or replace, as needed, NTUA public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that NTUA may operate and maintain) that have reached the end of their normal service or design life based on generally accepted engineering standards.
- (c) **Fund Income or Principal** shall be used to address system improvements needed as a result of regulatory compliance.
- (d) **Fund Income or Principal** shall be used to meet costs incurred by NTUA for public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that NTUA may operate and maintain) during periods of special stress caused by damaging droughts, storms, earthquakes, floods or other emergencies threatening or causing interruption of water or wastewater service.
- (e) The expenditure of the Funds Income **or Principal** shall be entrusted to the NTUA.

SECTION 6. ANNUAL AUDITED REPORT

The Fund shall be audited annually by outside external auditors. The audit report shall be made available to the oversight committees, the Office of the Speaker, the Office of the President and the Vice President, and members of the Navajo Nation Council. This audit report may be combined with the existing reporting processes that NTUA currently utilizes.

SECTION 7. AMENDMENTS

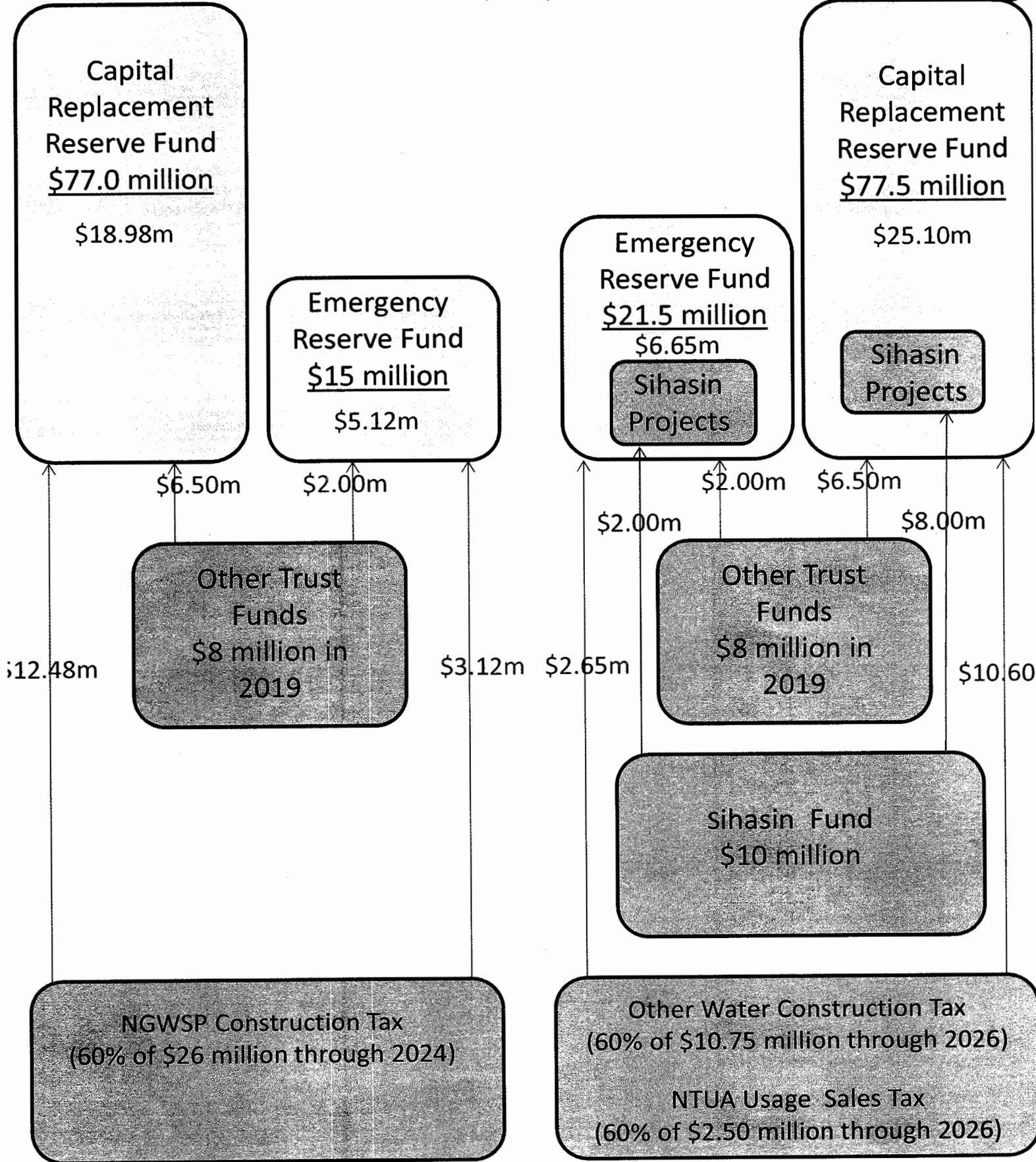
Any section or sections herein may be amended by the majority vote of the full membership of the Navajo Nation Council.

SECTION 8. EXPENSES FOR ADMINISTRATION AND MANAGEMENT OF FUNDS

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

NGWSP Facilities

Other NTUA





Document No. 005290

Date Issued: 01/19/2016

SECTION 164 REVIEW FORM

Title of Document: Proposal to Modify NN Tax Code for NTUA Contact Name: JOHN, JASON G

Program/Division: DIVISION OF NATURAL RESOURCES

Email: jasonjohn@navajo-nsn.gov Phone Number: (928) 729-4004

Division Director Approval for 164A: [Signature]

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

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

<input type="checkbox"/> Statement of Policy or Positive Law:		Sufficient	Insufficient
1. OAG:	_____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)			
<input checked="" type="checkbox"/>	1. OMB: <u>[Signature]</u>	Date: <u>3-11-16</u>	<input checked="" type="checkbox"/> <input type="checkbox"/>
	2. OOC: <u>[Signature]</u>	Date: <u>4-6-16</u>	<input type="checkbox"/> <input type="checkbox"/>
	3. OAG: <u>[Signature]</u>	Date: <u>6/23/16</u>	<input type="checkbox"/> <input checked="" type="checkbox"/>
	<u>ORIG (2)</u>	<u>10/17/16</u>	<input checked="" type="checkbox"/> <input type="checkbox"/>

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

<input type="checkbox"/>	Grant/Funding Agreement or amendment:		
	1. Division: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	2. OMB: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	3. OOC: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	4. OAG: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	Subcontract/Contract expending or receiving funds or amendment:		
	1. Division: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	2. BRD: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	3. OMB: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	4. OOC: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	5. OAG: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:		
	1. Division: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	2. OAG: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	M.O.A. or Letter of Assurance expending or receiving funds or amendment:		
	1. Division: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	2. OMB: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	3. OOC: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>
	4. OAG: _____	Date: _____	<input type="checkbox"/> <input type="checkbox"/>



THE NAVAJO NATION

**RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE-PRESIDENT**

MEMORANDUM:

TO : 2 NNC § 164 Reviewers
Delegates & 2 NNC '164 Reviewers
Navajo Nation Government

FROM : Robert Willie
Robert Willie, Accounting Manager
Office of the Controller

DATE : April 6, 2016

SUBJECT : 164 Review-005290- Proposal to Modify the Navajo Nation Tax Code for
NTUA Emergency Reserve and Replacement Funds.

The Office of the Controller has reviewed the above referenced document.

1. The proposed plan is asking for 60% of the Sales Tax Revenue. What effect on the General Funds revenue would this cause. Currently the FY 17 revenue projection is about 15 million less than FY 16, 24 if you consider that the Tax Admin Suspense fund released dollars to help the General Fund. Any further reduction in the General Fund would result in cost cutting measures that would need to be addressed.
2. A schedule showing the prior 60% collected in previous years would be helpful in determining how much is being considered.

If you should have any questions you can contact me at tribal extension X6125.



THE NAVAJO NATION.

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

March 11, 2016

MEMORANDUM:

TO : Reviewers/Sponsors/Division/Committees
FROM : Rhonda Johnson
Rhonda Johnson, Principal Program Analyst
OMB/Management and Policy Section

SUBJECT : 164 Number #005290 – Proposal to Modify the Navajo Nation Tax Code for NTUA Emergency Reserve and Replacement Funds

Pursuant to authority established at 2 NNC §1201-1205 and 12 NNC §820 (M) for budget analysis, the Office of Management & Budget (OMB) reviewed the above and offers the following:

1. Although Navajo Tax Commission is “neutral”, the following should be provided:
 - a. How much tax revenue involved?
 - b. Sales Tax from water projects/systems, at 60%, would be what amount?

OMB recommends the above issues and questions be addressed. Should there be any questions, please contact OMB at (928) 871-6570.

CONCURRENCE:

Dominic Beyal
Dominic Beyal, Executive Director
Office of Management and Budget

xc: OMB file

RECEIVED
2016 MAR 11 PM 4:48





NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ 06-08-16 1140am DATE/TIME [] 7 Day Deadline DOC #: 005290#2 SAS #: UNIT: Nru

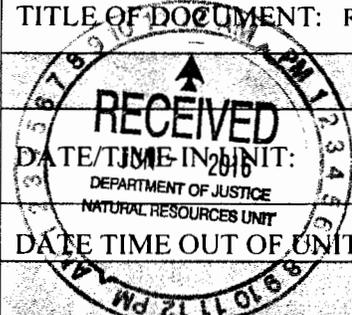
RESUBMITTAL (April 2014)

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

CLIENT TO COMPLETE

DATE OF REQUEST: 6/8/2016 DIVISION: Of Natural Resources CONTACT NAME: Jason John DEPARTMENT: Water Resources PHONE NUMBER: 729-4004 E-MAIL: jasonjohn@navajo-nsn.gov

TITLE OF DOCUMENT: RESUB: Proposal to Modify NN Tax Code for NTUA



DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 6-8-16 12:05 PM REVIEWING ATTORNEY/ADVOCATE: Veronica 6-19-16 DATE TIME OUT OF UNIT: 06/23/16 11:53am EB

DOJ ATTORNEY / ADVOCATE COMMENTS

legally insufficient - see memo

REVIEWED BY: (Print) Date / Time SURNAME BY: (Print) Date / Time Veronica Blackford 6/23/16 9:54 AM

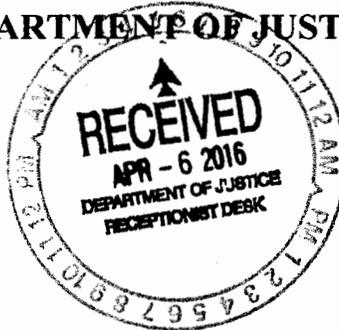
DOJ Secretary Called: Malynnda Tome for Document Pick Up on 6/23/16 at 11:42am By: EB

PICKED UP BY: (Print) DATE / TIME:



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ 04-06-16 4:58pm DATE/TIME 7 Day Deadline DOC #: 005290 SAS #: UNIT: NAW

RESUBMITTAL

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

CLIENT TO COMPLETE

DATE OF REQUEST: 1/19/2016 DIVISION: Natural Resources CONTACT NAME: Jason John DEPARTMENT: DWR-Water Management Branch PHONE NUMBER: (928) 729-4004 E-MAIL: jasonjohn@navajo-nsn.gov

TITLE OF DOCUMENT: Proposal to Modify the Navajo Nation Tax Code for NTUA Emergency Reserve and Replacement Funds

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 04/07/16 8:12 AM REVIEWING ATTORNEY/ADVOCATE: Veronica 04/18/16

DATE TIME OUT OF UNIT: 04/19/16 3:20 pm SB

DOJ ATTORNEY / ADVOCATE COMMENTS

Prog to pick up DOC 005290 + resubmit at later date

REVIEWED BY: (Print) Date / Time SURNAME BY: (Print) Date / Time Veronica Blackhat 4-19-16 3:05pm

DOJ Secretary Called: Returned to Jason John via hand-delivery for Document Pick Up on 4/19/16 at By: SB

PICKED UP BY: (Print) DATE / TIME:



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

RODGERICK T. BEGAY
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Jason John, Branch Manager
Water Management Branch
Department of Water Resources

FROM:

A handwritten signature in black ink, appearing to read "Veronica Blackhat", written over a horizontal line.

Veronica Blackhat, Asst. Attorney General
Natural Resources Unit
Navajo Nation Department of Justice

DATE: June 23, 2016

SUBJECT: **Doc. 005290: Review of Proposal to Modify the Navajo Nation Tax Code for the Navajo Tribal Utility Authority.**

The Department of Justice has reviewed the proposed amendments to the Navajo Nation Tax Code and has determined it be legally insufficient. The Navajo Tribal Utility Authority (NTUA) is the entity proposing this legislation; therefore, NTUA should submit this legislation to the legislative branch. The Department of Water Resources – Water Management Branch is not the agent in this matter. This should not have been submitted through the 164 review process as it is not legislation being proposed by an Executive Branch entity.

If you have any questions regarding this memorandum, please contact me at 871-6347. Thank you.

Y:\NRU\Veronica Blackhat\Correspondence\2016-06-23

OFFICE OF THE PRESIDENT & VICE PRESIDENT
REQUEST FOR SERVICES

Date of request 1/19/2016

Name: Jason John
Phone Number: (928) 729-4004

Department: DWR/Water Management Branch
Division: Natural Resources

164 Review No. 5207

Support Letter Subject: _____

Description of Service:

Proposal to Modify the Navajo Nation Tax Code for NTUA Emergency Reserve and Replacement Funds

RECOMMENDATIONS: (Authorized Personnel Only)

Called: _____ for document pickup Date: _____ Time: _____ am/pm
Called: _____ for document pickup Date: _____ Time: _____ am/pm

Picked up by: _____ Date/Time: _____ : _____ am/pm
PLEASE PRINT NAME

NAVAJO NATION

RCS# 851

NNC Fall Session

10/17/2017

08:19:21 PM

Amd# to Amd#

Legislation No. 0136-17

PASSED

MOT Brown

Approving amendments to 24

SEC Tso

N.N.C. Section 620 of the NN

Sale Tax to allow for emergency

Yea : 11

Nay : 3

Not Voting : 9

Yea : 11

Begay, K
BeGaye, N
Brown

Chee
Damon
Perry

Shepherd
Slim
Tso

Witherspoon
Yazzie

Nay : 3

Smith

Phelps

Begay, S

Not Voting : 9

Bates
Begay, NM
Bennett

Crotty
Daniels
Filfred

Hale
Jack

Pete
Tsosie