RESOLUTION OF THE BUDGET AND FINANCE COMMITTEE OF THE NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE COMMITTEES; APPROVING THE FUND MANAGEMENT PLAN FOR THE EMERGENCY RESERVE FUND AND REPLACEMENT RESERVE FUND FOR THE NAVAJO TRIBAL UTILITY AUTHORITY

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Resources and Development Committee (RDC) and the Budget and Finance Committee (BFC) are standing committees of the Navajo Nation Council. 2 N.N.C. § 300(A) and 500(A).

B. The RDC has oversight of utilities and water resources, and is authorized to establish Navajo Nation policy with respect to the optimum utilization of all Navajo Nation resources. 2 N.N.C. § 500(C)(1).

C. The BFC is empowered to approve fund management plans upon the recommendation of the appropriate oversight committee and the affected division or branch. 2 N.N.C. § 301(B)(14).

SECTION TWO. FINDINGS

A. The Navajo Nation Council approved an amendment to 24 N.N.C. § 620 of the Navajo Nation Sales Tax, which allowed for an Emergency Reserve and Replacement Reserve Fund for the Navajo Tribal Utility Authority. Navajo Nation Council Resolution CO-62-17.

B. The establishment of the Emergency Reserve Fund and the Replacement Reserve Fund meets the federal requirement as set forth by the Bureau of Reclamation to transfer the operation, maintenance, and repair for the Navajo Gallup Water Supply Project to the Navajo Nation.

C. The Fund Management Plan for the Emergency Reserve Fund and Replacement Reserve Fund for the Navajo Tribal Utility Authority is attached as **Exhibit A**.

D. The Fund Management Plan indicates that both the Resources and Development and Budget and Finance Committees are to provide legislative oversight.

SECTION THREE. APPROVAL

The Navajo Nation approves the Emergency Reserve Fund and Replacement Reserve Fund for the Navajo Tribal Utility Authority, attached as **Exhibit A**.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 3 in favor, 0 opposed and Chairman not voting this 27th day of December 2018.

Seth Damon, Chairperson
Budget and Finance Committee

Motion: Honorable Jimmy Yellowhair
Second: Honorable Tom T. Chee

EXHIBIT "A"

FUND MANAGEMENT PLAN

EMERGENCY RESERVE FUND
AND
REPLACEMENT RESERVE FUND
FOR THE NAVAJO TRIBAL UTILITY AUTHORITY

I. ESTABLISHMENT

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A. There is hereby established the "Fund Management Plan for the Emergency Reserve Fund and the Replacement Reserve Fund" for use by the Navajo Tribal Utility Authority (NTUA).

B. This Fund Management Plan is authorized by Navajo Nation Council Resolution No. CO-62-17, *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*, passed by the Navajo Nation Council on October 17, 2017, and signed into law by the Navajo President on November 6, 2017.

C. Pursuant to 24 N.N.C. § 620(D), as amended by CO-62-17, "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 [Sales Tax] shall be disbursed as follows: … 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 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."

D. The allocation of tax revenue to the NTUA is intended to assist in developing a Replacement Reserve Fund and an Emergency Reserve Fund for the public water and wastewater systems on the Navajo Nation, including the establishment of funds required 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.

E. The Replacement Reserve Fund will provide resources to repair or replace, as needed, the NTUA public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that the NTUA may operate and maintain) that have reached the end of their normal service or design life based on generally accepted engineering standards. 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.

F. The Emergency Reserve Fund will provide resources to cover costs incurred by the NTUA for public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that the 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.

II. PURPOSE

The Purpose of this Fund Management Plan is:

To establish procedures for the Office of the Navajo Tax Commission (ONTC) and the Navajo Nation Office of the Controller (OOC) to allocate to the NTUA for the Replacement Reserve Fund and the Emergency Fund, that portion of Sales Tax revenue collected from the construction of public water and wastewater systems, as authorized pursuant to 24 N.N.C. § 620(D), as amended by CO-62-17; and

A. To establish procedures for the NTUA for the administration, expenditure, accounting and investment of the Replacement Reserve Fund and of the Emergency Reserve Fund.

III. LEGISLATIVE OVERSIGHT AND AUTHORITY

A. The Navajo Tribal Council in 1959 created the NTUA, and the NTUA is authorized to acquire, construct, operate and maintain utility systems throughout the Nation. 21 N.N.C. §1 *et seq.*

B. 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 (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 matters for the purposes of protecting the interests of the Navajo People through the prudent management of financial reserves of the Navajo Nation and the use of funds available for expenditure by the Navajo Nation. 2 N.N.C. § 300(A) and (C)(4).

IV. ADMINISTRATION

A. FUNDING SOURCE

The funding source for the Emergency Reserve Fund and the Replacement Reserve Fund shall be that portion of the allocation of Sales Tax revenue collected from the construction of public water and wastewater systems to the NTUA as authorized pursuant to 24 N.N.C. § 620(D), as amended by CO-62-17.

B. ONTC AND OOC ADMINISTRATION

1. The ONTC shall, in the ordinary course of business, process all Sales Tax revenue collected pursuant to 24 N.N.C. § 620 and deposit such revenue with the OOC.

2. At the end of each fiscal year quarter, the NTUA and the Department of Water Resources (DWR) shall timely file and pay a Sales Tax-Form 600 and Form 607, and report the revenue from construction associated with public water and wastewater systems that was generated during that fiscal quarter.

3. The ONTC, using the reported Sales Tax-Form 600 from the NTUA and the DWR, will calculate that portion of Sales Tax revenue collected that is associated with the construction of public water and wastewater systems for each quarter.

4. The ONTC shall deposit that portion of Sales Tax revenue collected from the construction of public water and wastewater systems each quarter into the Emergency Reserve Fund and the Replacement Reserve Fund, as authorized in accordance with 24 N.N.C. § 620(D), as amended by CO-62-17. The intent is to meet the Fund goals established under Sections I(E) and I(F).

5. Each fiscal quarter, the ONTC shall advise the OOC of amount of that quarter's portion of Sales Tax revenue collected from the construction of public water and wastewater systems to be released to the NTUA for the Replacement Reserve Fund and of the Emergency Reserve Fund.

C. NTUA ADMINISTRATION

1. The NTUA's management team (General Manager, Chief Financial Officer, and Deputy Chief Financial Officer) shall have the responsibility to ensure that the Replacement Reserve Fund and the Emergency Reserve Fund are

each administered, expended, and invested in compliance with this Fund Management Plan.

2. The NTUA's Management Board shall have the ultimate responsibility to ensure that the Replacement Reserve Fund and the Emergency Reserve Fund are each administered, expended, and invested in compliance with this Fund Management Plan.

3. All allocations to each of the Replacement Reserve Fund and the Emergency Reserve Fund shall be maintained separate and distinct from the general operating accounts of the NTUA's operations and shall not be comingled with the general funds used for daily costs and financial requirements of normal operations.

4. All financial books and records for each of the Replacement Reserve Fund and of the Emergency Reserve Fund shall be maintained in accordance with generally accepted accounting principles and the Navajo Nation's accounting policies and procedures.

5. All expenditures shall be used solely for purposes set forth in this Fund Management Plan at Sections I(E) and I(F)and may include administrative costs consistent with Section V(C).

6. All expenditures shall be processed through normal Navajo Nation policies and procedures.

7. All expenditures shall be in accordance with Navajo Nation law, including but not limited to the Navajo Business Opportunity Act, the Navajo Business and Procurement Act, and the Navajo Nation Procurement Code.

8. The NTUA's Management Board shall make an annual written report and presentation to each of the Budget and Finance Committee and the Resources and Development Committee detailing revenues received, expenditures made, and open commitments related to each of the Replacement Reserve Fund and of the Emergency Reserve Fund.

9. Unexpended funds shall remain in each of the Replacement Reserve Fund and of the Emergency Reserve Fund until fully expended, unless otherwise provided by formal resolution of the Budget and Finance Committee.

V. EXPENDITURES

A. DEFINITIONS OF FUND PRINCIPAL AND FUND INCOME

1. "Fund Principal" shall consist of that portion of Navajo Nation Sales Tax revenue collected from the construction of public water and wastewater systems, as set forth in 24 N.N.C. § 620(D), as amended by CO-62-17

2. "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated by Fund Principal.

B. EXPENDITURES OF FUND PRINCIPAL AND FUND INCOME

1. No Fund Income or Fund Principal shall be expended until the combined Fund Principal of the Replacement Reserve Fund and the Emergency Reserve Fund has reached $10 million, or ten years after the enactment of the Budget and Finance Committee's Resolution approving this Fund Management Plan, whichever occurs first. Thereafter, Fund Income or Fund Principal may be expended.

2. Fund Income or Fund Principal from the Replacement Reserve Fund shall be used:

    a. to repair or replace, as needed, the NTUA public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that the NTUA may operate and maintain) that have reached the end of their normal service or design life based on generally accepted engineering standards; or
    b. to address system improvements needed as a result of regulatory compliance.

3. Fund Income or Fund Principal from the Emergency Reserve Fund shall be used to meet costs incurred by the NTUA for public water and wastewater system facilities (including the sections of the Navajo Gallup Water Supply Project that the 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.

C. EXPENSES FOR ADMINSTRATION AND MANAGEMENT OF FUNDS

All expenses directly associated with the administration and management of the Replacement Reserve Fund and of the Emergency Reserve Fund shall be paid from the Fund Income. Such expenses shall include investment advisory and management fees, audit costs, and other related expenses, all pursuant to duly approved contracts for such services.

D. For the Replacement Reserve Funds, the funds will be set aside in a designated account and will not be expended until the water and/or wastewater facilities have reached the end of their normal service or design life based on generally accepted engineering standards.

E. For the Emergency Reserve Funds, the funds will be set aside in a designated account and will not be expended until NTUA water and/or wastewater facilities experience periods of special stress caused by damaging droughts, storms, earthquakes, floods or other emergencies threatening or causing interruption of water or wastewater service.

VI. INVESTMENT OF THE FUNDS

All amounts of Fund Income and Fund Principal of each of the Replacement Reserve Fund and of the Emergency Reserve Fund will be deposited into accounts designated by the NTUA on a quarterly basis and shall be administered by the NTUA and invested as soon as practical in accordance with the NTUA Investment Policy (Long-Term Assets), attached hereto as Exhibit A.

VII. ANNUAL AUDITED REPORT

The Replacement Reserve Fund and the Emergency Reserve Fund will be included in the NTUA's annual audit.

VIII. AMENDMENT

This Fund Management Plan may be amended by the Budget and Finance Committee of the Navajo Nation Council upon recommendation of the Resources and Development Committee of the Navajo Nation Council.

BUDGET AND FINANCE COMMITTEE

27 December 2018

Special Meeting

VOTE TALLY SHEET:

Legislation No. 0402-18:

An Action Relating to Resources and Development and Budget and Finance Committees, Approving the Fund Management Plan for the Emergency Reserve Fund and Replacement Reserve Fund for the Navajo Tribal Utility Authority *Sponsored by Alton Joe Shepherd and Seth A. Damon, Council Delegates*

Motion: Jimmy Yellowhair
Second: Tom T. Chee
Vote: 3-0, Chairman not voting

Vote Tally:

Seth A. Damon		
Jimmy Yellowhair	**yay**	
Tom T. Chee	**yay**	
Lee Jack, Sr.	**yay**	
Leonard Tsosie		
Tuchoney Slim, Jr.		

Absent: *Leonard Tsosie, Tuchoney Slim, Jr.*

Seth A. Damon, Chairman
Budget & Finance Committee

Peggy Nakai, Legislative Advisor
Budget & Finance Committee