

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- First Year, 2019

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; RESCINDING RDCAP-010-19
WHICH AMENDED THE WATER USE FEE STRUCTURE AND APPROVING
AMENDMENTS TO THE NAVAJO NATION WATER USE FEE STRUCTURE

BE IT ENACTED:

SECTION ONE. AUTHORITY

Pursuant to 2 N.N.C. Section §501 (B)(2), The Resources and Development Committee of the Navajo Nation Council has the authority to grant final approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers, renewals, and terminations.

SECTION TWO. FINDINGS

- A. Resolution RDCAP-010-19 AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING AMENDMENTS TO THE NAVAJO NATION WATER USE FEE STRUCTURE is attached as **Exhibit A**.
- B. In 1997, by resolution RCAP-65-97, **Exhibit B**, the Resources Committee established a water use fee structure.
- C. In 2010, by resolution RCJA-04-10, **Exhibit C**, the Resources Committee further amended the Navajo Water Use Fee Structure.
- D. Due to continuing inflation, the rising cost of administration, and the increased costs to operate and maintain the Nation's water delivery systems the Navajo Nation Water Resources Department recommends amending the Navajo Water Use Fee Structure.
- E. The Executive Review Form Document Number 011212 and Navajo Nation Department of Justice Document Review Request Form are attached as **Exhibit D** and shown to be "sufficient".

SECTION THREE. RESCINDING RDCAP-010-19

The Resources and Development Committee of the Navajo Nation Council hereby rescinds RDCAP-010-19.

SECTION FOUR. APPROVING AMENDMENTS TO THE NAVAJO NATION WATER USE FEE STRUCTURE

Resources and Development Committee of the Navajo Nation Council hereby approves the amendments to the Navajo Nation Water Use Fee Structure as follows:

1. The Commercial Water Use Fee \$1.00 per 1,000 gallons;
2. The Government Agency Water Use Fee 50¢ per 1,000 gallons;
3. The Construction, Industrial and Mining Water Use fee \$6.00 per 1,000 gallons;
4. Rescinding the waiver of the collection of the water use fee from commercial water users using less than 40,000 gallons of water during any three-month billing period;
5. Applying the Navajo Nation Sales Tax to the total water rate cost.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting at the Twin Arrows Navajo Casino Resort, Leupp, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 18th day of June 2019.



Rickie Nez, Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Thomas Walker, Jr.

Second: Honorable Herman M. Daniels

Chairperson Rickie Nez not voting.



RDCAP-010-19

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- First Year, 2019

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING
AMENDMENTS TO THE NAVAJO NATION WATER USE FEE STRUCTURE

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 500 (C), exercises oversight authority over water.
- B. The Resources and Development Committee of the Navajo Nation Council is oversight authority over the Division of Natural Resources. 2 N.N.C. § 501 (C)(1).
- C. The Resources and Development Committee of the Navajo Nation Council is authorized to impose reasonable fees for the use of waters of the Navajo Nation. 22 N.N.C. § 130/.

SECTION TWO. FINDINGS

- A. The Navajo Nation Water Resources Department, Navajo Nation Division of Natural Resources is proposing amendments to the Navajo Water Use Fee Structure.
- B. In 1997, by resolution RCAP-65-97, **Exhibit A**, the Resources Committee established a water use fee structure.
- C. In 2010, by resolution RCJA-04-10, **Exhibit B**, the Resources Committee amended the Navajo Water Use Fee Structure by increasing the Construction, Industrial and Mining Water Use Fee from \$2.70 per 1,000 gallons to \$4.00 per 1,000 gallons as a result of inflation. The other water use fees remained unchanged.

- 1a. Due to continuing inflation, the rising cost of maintenance, and the increased costs to operate and maintain the Nation's water delivery systems (see, **Exhibit C**), the Navajo Nation Water Resources Department recommends amending the Commercial Water Use Fee from 20¢ per 1,000 gallons to 50¢ per 1,000 gallons; the Government Agency Water Use Fee from 13.5¢ per 1,000 gallons to 27¢ per 1,000 gallons; the Construction, Industrial and Mining Water Use Fee from \$4.00 per 1,000 gallons to \$5.50 per 1,000 gallons; rescinding the waiver of the collection of the water use fee from commercial water users using less than 40,000 gallons of water during any three-month billing period; and applying the Navajo Nation 6% Sales Tax to the total water rate cost. All other water use fees will remain unchanged.
- 1b. The Executive Review Form Document Number 611/12 and Navajo Nation Department of Justice Review Request Form are attached as **Exhibit D** and shown to be "sufficient".

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the amendments to the Navajo Nation Water Use Fee Structure as follows:
1. The Commercial Water Use Fee from 20¢ per 1,000 gallons to 50¢ per 1,000 gallons;
 2. The Government Agency Water Use Fee from 13.5¢ per 1,000 gallons to 27¢ per 1,000 gallons;
 3. The Construction, Industrial and Mining Water Use fee from \$4.00 per 1,000 gallons to \$5.50 per 1,000 gallons;
 4. Rescinding the waiver of the collection of the water use fee from commercial water users using less than 40,000 gallons of water during any three-month billing period;
 5. Applying the Navajo Nation 6% Sales Tax to the total water rate cost.
- B. All other water use fees will remain unchanged.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting at the Twin Arrows Navajo Casino, Leupp, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 24th day of April 2019.



Rickie Nez, Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Second: Honorable Thomas Walker, Jr.
Second: Honorable Herman Daniels

Chairperson Rickie Nez not voting.

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving a Revised Water Code Water Use Fee Structure
for the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. § 691, et seq., the Resources Committee is established as a standing committee of the Navajo Nation Council and is responsible for overseeing all matters pertaining to the development and use of natural resources; and
2. Pursuant to 22 N.N.C. § 1307 of the Navajo Nation Water Code, the Resources Committee is authorized to impose reasonable fees for the use of the waters of the Navajo Nation and grant waivers of said fees if the use is of benefit to the Navajo Nation; and
3. By Resolution RCJA-02-97 (Exhibit "A"), the Resources Committee directed the Director of the Department of Water Resources (Department) to perform a comprehensive study of water use fees and waivers within six months of the date of that resolution and formulate recommendations for a new fee structure that "balances the resources related aim of conservation and to obtain the maximum benefit from the Nation's water resource while keeping in mind the economic development related need to create a climate favorable to business"; and
4. By Resolution RCAP-02-97, the Resources Committee directed the Director of the Department of Water Resources (Director) to suspend collection of retroactive fees, and to conduct public hearings and solicit comments on the proposed new fee structure (Exhibit "B"); and
5. The comprehensive study was performed, from which a recommended fee structure was developed (Exhibit "C", Technical Memorandum dated June 18, 1996). Public hearings were held and comments solicited on the proposed new fee structure (Exhibit "D", Summary of Public Hearings dated August 30, 1996). The public comments indicate that many business interests are opposed to any commercial water use fee, while other business interests support the recommended lower commercial water use fee and the suspension of retroactive collections, and recognize that protecting and managing the waters of the Navajo Nation helps to ensure a viable business climate; and
6. After evaluating the public comments, the Department recommends continuing the commercial water use fee of \$0.27 per 1,000 gallons; and

7. The Department recommends continuing the current policy of water fee exemptions for the following uses: Domestic, stock watering, irrigated agriculture, and fish and wildlife; and

8. The Department recommends continuing the following current waiver policies: Waiving 50 percent of the fee for units of local, state and federal governments; and waiving 100 percent of the fee for use of sewer water, use by non-profit institutions; and de minimis uses of less than 10,000 gallons; and

9. The Department recommends continuing the current policy of charging \$2.70 per 1,000 gallons for construction activities and other temporary bulk water uses; and

10. The Department recommends continuing the current water use fee of \$2.70 per 1,000 gallons for industrial and mining activities, except when the rate is set by contract, lease or other agreement, but allowing the Director to consider exceptions on a case by case, industry by industry basis, subject to Resources Committee approval; and

11. The Department recommends continuing the current policy of charging a fixed fee per water well supplying water used to enhance oil recovery; and

12. The Department is hereby directed to waive collection of the water use fee from commercial water users using less than 40,000 gallons of water during any three month billing period; and

13. The Resources Committee believes it will be in the best interests of the Navajo Nation to continue the recommended water use fee structure in Exhibit "B".

NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council hereby approves the waiver of the commercial water use fee for commercial water users using less than 40,000 gallons in a three month period; the Water Code water use fee structure, attached hereto as Exhibit "B". (See Exhibit "C", Technical Memorandum dated June 18, 1996 and Exhibit "D", Summary of Public Hearings dated August 30, 1996.)

2. Because of the numerous concerns pertaining to retroactive collection of fees, the Resources Committee hereby suspends the collection of all past water use fees owed the Nation prior to January 1, 1997. This suspension is intended to benefit those water users who have not paid because of lack of notice. The suspension does not apply to those water users who have valid permits and contracts with the Navajo Nation which obligate them to pay for water use. While the Resources Committee is considering the matter, no new legal action shall be taken to collect any outstanding fees, no interest shall be asserted nor shall any penalty be imposed for failure to pay during this suspension.

3. The Resources Committee hereby rescinds any prior conflicting authority.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 10th day of April, 1997.



Elmer L. Milford, Chairperson
Resources Committee

Motion: Sylvester Chas
Second: Harold Tunney



RCJA-04-10

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - Fourth Year, 2010

AN ACTION

RELATING TO RESOURCES; CLARIFYING THE NAVAJO NATION WATER CODE
WATER USE FEE STRUCTURE AND AMENDING THE CONSTRUCTION,
INDUSTRIAL AND MINING WATER USE FEE

BE IT ENACTED:

I. The Navajo Nation finds the following with respect
to this legislation:

- A. Pursuant to 22 N.N.C. § 1307 of the Navajo Nation Water Code, the Resources Committee is authorizing to impose reasonable fees for the use of the waters of the Navajo Nation ("Nation");
- B. Pursuant to RCAP-65-97, Exhibit A, the Resources Committee first established water use fees based on relevant cost data compiled in 1996;
- C. Pursuant to RCAP-65-97, in 1997 the water use fees were implemented by the Navajo Nation Water Code Administration ("WCA") as follows:
 1. Fees are waived for Domestic, Agricultural, Fish & Wildlife, Stock Watering uses, and uses by bona fide non-profit organizations or institutions, i.e., non-profit under the federal tax code and/or Nation law;
 2. The standard fee for construction water use from a Nation source is \$2.70 per 1,000 gallons, with pre-payment required based on projected water use figures reported by the permittee, or its engineers, and ultimately determined and verified by the WCA;
 3. Construction water imported from a non-Nation source is subject to a water import permit (and

ORIGINAL

\$25 fee) to help protect the public and to help insure that only water of a generally acceptable quality for the intended use is transported onto the Nation;

4. The standard fee for industrial water use from a Nation source is \$2.70 per 1,000 gallons (or as otherwise negotiated by the Nation for special projects);
5. Water use fees for the Navajo Agricultural Products Industry are (a) food processing is \$0.27 (27¢) per 1,000 gallons, (b) industrial use is \$0.27 per 1,000 gallons, and (c) construction water use is the standard \$2.70 per 1,000 gallons;
6. The standard fee for the Nation's water used for mining purposes is \$2.70 per 1,000 gallons;
7. The standard oil recovery water use fee is \$1,000/yr. for each water well used;
8. The standard fee for commercial business use of Nation water through the public water systems of the Navajo Tribal Utility Authority ("NTUA"), or through other water systems using Nation water, is \$0.27 per 1,000 gallons;
9. Use of Nation water through NTUA's water system (or other water systems) at government building/offices is \$0.135 (13½¢) per 1,000 gallons;
10. All direct government agency water use for construction receives a 50% fee waiver (see (k) below), but if an agency hires a private contractor to do the agency's project, such as a road construction project, the contractor is responsible for obtaining project water use permits and receives no government fee waiver, unless the Committee or the Navajo Nation Council gives the waiver on a case-by-case basis;

11. Federal, state, county, local, and Nation government agencies, such as the Navajo Division of Transportation, who use their own government employees and equipment to do construction work, qualify for a 50% fee waiver, but if they subcontract government waiver does not apply;

12. Federal, state, county, local, and Nation business enterprises, such as the Navajo Nation Gaming Enterprise, do not qualify for a government agency fee waiver, with the exception that townships and Local Governance Act chapters, although listed as "Enterprise Participants" under the Chart of Accounts by the Navajo Nation Office of Management and Budget, qualify for the 50% government agency fee waiver; and

D. The current average construction water use fee per 1,000 gallons from adjacent regional sources to the east, south, west, and north of the Nation, and from NTUA is \$5.66 as derived from data obtained in August and September 2009 as listed below:

1. Cuba \$7.50 (only one source available, Gutierrez Family Corp.)
2. Gallup \$9.59 (contractors can use non-potable water only)
3. Winslow \$2.49 (contractors can use public system water only)
4. Flagstaff \$1.07 (contractors can use public system water only)
5. Farmington \$2.85 (contractors can use public system water only)
6. NTUA \$8.45 (rarely-available potable water; this NTUA rate includes the Navajo Nation's mandatory \$2.70 fee on top of NTUA's mandatory \$5.75 "O & M" fee)

E. Due to inflation, the Resources Committee's original \$2.70 fee per 1,000 gallons (based on 1996 prices) for construction, mining and industrial use is equal to \$3.70 today as shown below with inflation rates from 1996 to 2008, the last full year with reported inflation figures:

ORIGINAL

Year	CPI (Inflation)	\$2.70/1,000 Gallons Original Water Use Fee, U.S. Gov't %	Adjusted For Inflation Since 1996
1997	2.3%	\$2.76
1998	1.6%	\$2.80
1999	2.2%	\$2.87
2000	3.4%	\$2.97
2001	2.8%	\$3.05
2002	1.6%	\$3.10
2003	2.3%	\$3.17
2004	2.7%	\$3.25
2005	3.4%	\$3.36
2006	3.2%	\$3.47
2007	2.8%	\$3.57
2008	3.8%	\$3.70

F. The Resources Committee is not proposing to make any changes to the 1997 commercial fees for potable water use in businesses (to remain 27¢ per 1,000 gallons) or to the 1997 government agency fees for water use in agency buildings (to remain 13¢ per 1,000 gallons).

II. The Navajo Nation hereby amends the standard construction, industrial and mining water use fees from \$2.70 per 1,000 gallons to \$4.00 per 1,000 gallons starting October 1, 2010 and ending December 31, 2013 or until the Resources Committee amends the rate.

III. The Navajo Nation hereby leaves the remaining water use fee rates unchanged.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation

ORIGINAL

(Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor and 0 opposed, this 14th day of January, 2010.



George Arthur, Chairperson
Resources Committee

Motion: Harry Williams, Sr.
Second: Curran Hannon

RCJA-04-10

(Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor and 0 opposed, this 14th day of January, 2010.

A handwritten signature in blue ink, appearing to be "George Arthur", written over a circular stamp or seal.

George Arthur, Chairperson
Resources Committee

Motion: Harry Williams, Sr.
Second: Curran Hannon



Document No 011212

Date Issued: 09/21/2018

SECTION 164 REVIEW FORM

Title of Document Proposed amendment DWR Water Use Fee Contact Name: SCOTT, TALIA FAITH

Program/Division: DIVISION OF NATURAL RESOURCES

Email: tscott@navajo-nsn.gov Phone Number: 928-729-4039, 4031

Division Director Approval for 164A

Natural Resources

BRD/Division 10/11/12

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

Statement of Policy or Positive Law:

1. OAG:

Vin Blum

Date: 10/11/12

Sufficient Insufficient



IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)

1. OMB:

Date:



2. OOC:

Date:



3. OAG:

Date:

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

Grant/Funding Agreement or amendment:

1. Division:

Date:



2. OMB:

Date:



3. OOC:

Date:



4. OAG:

Date:



Subcontract/Contract expending or receiving funds or amendment:

1. Division:

Date:



2. BRD:

Date:



3. OMB:

Date:



4. OOC:

Date:



5. OAG:

Date:



Letter of Assurance M.O.A., M.O.U./Other agreement not expending funds or amendment:

1. Division:

Date:



2. OAG:

Date:



M.O.A. or Letter of Assurance expending or receiving funds or amendment:

1. Division:

Date:



2. OMB:

Date:



3. OOC:

Date:



4. OAG:

Date:



Maryann 6872

NAVAJO NATION DEPARTMENT OF JUSTICE



**REQUEST
FOR
SERVICES**

☒ RESUBMITTAL

10/19/2018

DOJ

DATE / TIME

REF #

611212

UNIT

NRL

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

CLIENT TO COMPLETE

DATE OF REQUEST: 10/3/2018

ENTITY/DIVISION: Natural Resources

CONTACT NAME: Laurita Begay

DEPARTMENT: Water Resources

PHONE NUMBER:

E-MAIL:

COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents):
Section 164 Review Form - Proposed Amendment to the Navajo Nation Water Use Fee Structure

DEADLINE: 10/19/2018

REASON:

To get it process in a timely manner

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:

REVIEWING ATTORNEY/ADVOCATE:

DATE / TIME OUT OF UNIT:

PREPARED BY (initial):

DOJ ATTORNEY / ADVOCATE COMMENTS

REVIEWED BY: (PRINT)

DATE / TIME:

DOJ Secretary Called

for Document Pick Up on

at

By

PICKED UP BY: (PRINT)

DATE / TIME:



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM



DOJ	10-08-18 @ 1040
DATE / TIME	11/7 Day Deadline
DOC #	011212
SAS #	
UNIT	NRW

☐ RESUBMITTAL

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

CLIENT TO COMPLETE

DATE OF REQUEST:	10-5-2018	DIVISION:	Of Natural Resources
CONTACT NAME:	Laurita Begay	DEPARTMENT:	Water Resources
PHONE NUMBER:		E-MAIL:	
TITLE OF DOCUMENT: Section 164 Process Form - Proposed amendment to the Navajo Nation Water Use Fee Structure			

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT:	10/08/18 11:37 AM	REVIEWING ATTORNEY/ADVOCATE:	Oliver Whaley 10/17/18
DATE/TIME OUT OF UNIT:	10-15-18 10:10 AM		

DOJ ATTORNEY / ADVOCATE COMMENTS

Sufficient

REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Oliver Whaley	10/11/18 2:45 pm	V Bluckhat	10/11/18 4:20 pm
DOJ Secretary Called: Marjorie W. for Document Pick Up on 10-15-18 at 10 AM By: Bz			
PICKED UP BY: (Print)	DATE / TIME:		

NNDJ/DRRT-July 2013

COMPLETED

"No Answer"

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council
Special Meeting

ROLL CALL
VOTE TALLY SHEET:

Legislation # 0143-19: An Action Relating to Resources and Development; Rescinding RDCAP-10-19 Which Amended The Water Use Fee Structure and Approving Amendments to the Navajo Nation Water Use Fee Structure. *Sponsor: Wilson C. Stewart, Jr.*

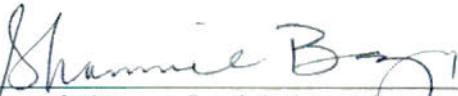
Date: June 18, 2019 - Special Meeting
Meeting Location: TANCR, Twin Arrows, Arizona

MAIN MOTION:

M: Thomas Walker, Jr. S: Herman M. Daniels. Vote: 4-0-1 (CNV)
Yeas: Wilson C. Stewart, Jr., Kee Allen Begay, Jr. Thomas Walker, Jr., and Herman M. Daniels
Nays: None
Excused: Mark A. Freeland



Honorable Rickie Nez, Presiding Chairman
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services