

# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

May 4, 2021

Hon. Seth Damon  
Office of the Speaker  
Post Office Box 3390  
Window Rock, AZ 86515

RE: CAP-20-21, *An Action Relating to Resources and Development, Budget and Finance, and Naabik'iyáti' Committees and Navajo Nation Council; Approving Supplemental Funding from the Unreserved, Undesignated Fund Balance in the amount of two million dollars (\$2,000,000.00) for the Navajo Nation's Department of Justice Water Rights Litigation Unit to continue Litigation on behalf of the Navajo Nation and to protect the Navajo Nation's Water Rights; Waiving 12 N.N.C. §§ 820 (E), (F) and (N)*

Dear Speaker Damon,


Pursuant to the authority vested in the Navajo Nation President, CAP-20-21 is signed into law.

As we have learned over the past year, the Navajo Nation has many needs with access to water at the top of the list. We appreciate the Navajo Nation Council's support for the supplemental appropriation for the Navajo Nation Department of Justice's Water Rights Unit. Our Administration will continue to push for our fair share of natural resources. With the recent water rights settlement, the Navajo Nation is able to secure access to water for our citizens and for economic development. We thank the Division of Natural Resources and the Water Rights attorneys for all their hard work to ensure the health and welfare of the Navajo Nation. The Navajo Nation must be better prepared for any future threat that comes our way and securing water is an important step in that preparation.

Thank you to the 24<sup>th</sup> Navajo Nation Council for supporting this very important issue.

Sincerely,

  
Jonathan Nez, President  
THE NAVAJO NATION

  
Myron Lizer, Vice President  
THE NAVAJO NATION

RESOLUTION OF THE  
 NAVAJO NATION COUNCIL  
 24<sup>th</sup> NAVAJO NATION COUNCIL - THIRD YEAR, 2021

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF TWO MILLION DOLLARS (\$2,000,000) FOR THE NAVAJO NATION DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO CONTINUE LITIGATING ON BEHALF OF THE NAVAJO NATION AND TO PROTECT THE NAVAJO NATION'S WATER RIGHTS; WAIVING 12 N.N.C. §§ 820(E), (F), AND (N)

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation established the Resources and Development Committee ("RDC") as a Navajo Nation Council standing committee, and as such gave RDC oversight over matters involving the Navajo Nation's water resources. 2 N.N.C. §§ 164(A)(9), 501(C)(1).
- B. The Navajo Nation established the Budget and Finance Committee ("BFC") as a Navajo Nation Council standing committee, and as such empowered BFC to review and recommend to the Navajo Nation Council the management of all funds. 2 N.N.C. §§ 164(A)(9), 300(A), and 301(B)(2).
- C. The Navajo Nation Council established the Naabik'íyáti' Committee as a Navajo Nation standing committee, and proposed legislation requiring final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee. 2 N.N.C. §§ 164(A)(9) and 700(A).
- D. The Navajo Nation Council is the governing body of the Navajo Nation, with the authority to approve supplemental appropriations. 2 N.N.C. § 102(A), 12 N.N.C. § 820(L).
- E. Pursuant to 12 N.N.C. § 820(L), "[t]he Navajo Nation Council may adopt and approve supplemental appropriations to the Annual Comprehensive Budget during the fiscal year. Supplemental appropriations of General Funds within the current fiscal year are permitted, if and when additional sources of revenues above and beyond the initial or current revenue projections are projected and which are also in excess of the reserve amount set forth at § 820(J)."

- F. The Title 12 Supplemental Appropriation requirements include:
1. All requests for annual operating funds and supplemental funds shall be submitted to the Office of Management and Budget (OMB) for budget impact analysis. 12 N.N.C. § 820(M).
  2. When the Controller identifies additional sources of revenues above and beyond the initial or current revenue projections, supplemental appropriations may be approved by the Navajo Nation Council. 12 N.N.C. § 820(L).
  3. Supplemental Appropriations made from non-recurring revenues shall only be made for non-recurring operations or purposes, as set forth at § 820(F). The Controller of the Navajo Nation shall be responsible for the designation of recurring and non-recurring revenues. 12 N.N.C. § 820(L).
  4. The Nation shall budget all recurring operating expenses, including capital maintenance, from recurring revenues. Long term debt shall not be used to finance recurring operating expenses. 12 N.N.C. § 820(E).
  5. The Navajo Nation Code provides, "[t]he Nation shall restrict non-recurring revenues to budget non-recurring expenditures. In addition, non-recurring revenues will be budgeted only after an examination by the Controller to determine whether or not the revenues are subsidizing an imbalance between recurring revenues and expenditures, and expenditures may be authorized only if a long-term (three-five year) forecast shows that the operating deficit will not continue. Otherwise, non-recurring revenues will be added to the Unreserved, Undesignated Fund balance. This provision may be amended or waived by a two-thirds vote of the full Navajo Nation Council." 12 N.N.C. § 820(F).

## SECTION TWO. FINDINGS

- A. This request for supplemental funding seeks the amount of two million dollars (\$2,000,000) out of the Unreserved, Undesignated Fund Balance, to assist the Navajo Nation Department of Justice Water Rights Unit in its water rights litigation efforts on behalf of the Navajo Nation. The supplemental funding proposal, budget forms and related documents, including Appendix K "Supplemental Funding Proposal Summary," for the Water Rights Unit are attached hereto as **Exhibit 1**. *NOTE: all documents in Exhibit 1 have been designated CONFIDENTIAL by the Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A) (6).*

- B. The Water Rights Unit of the Navajo Nation Department of Justice oversees the water rights litigation efforts on behalf of the Navajo Nation and the Navajo People.
- C. In recognition of Tó'éeí'iiiná (water is life), the Navajo Nation Council has determined that water is essential "to provide for a permanent homeland for the Navajo People." 22 N.N.C. § 1101.
- D. The waters of the Navajo Nation are defined as: "(1) all waters reserved at any time for any purpose to the Navajo Nation, and to Navajo Indian lands by the Navajo Nation or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (2) all waters held by the Navajo Nation through prior or existing use, appropriation, purchase, contract, gift, bequest or other means of acquisition; (3) all surface and groundwaters which are contained within hydrologic systems located exclusively within the lands of the Navajo Nation; and (4) all groundwaters located beneath the surface of the lands held in trust by the United States of America for the Navajo Nation." 22 N.N.C. § 1104.
- E. Navajo Nation communities have severe water infrastructure deficiencies that impact the health, economy, and welfare of the Navajo people.
- F. In Resolution No. CMY-47-02, the Navajo Nation Council determined that "water rights claims of the Navajo Nation must be placed as a top priority of the Navajo government. Water is one of the fundamental aspects of Navajo customs and must be protected. Without the assurance that Navajo water rights claims is a top priority, the Navajo Nation stands to lose its rightful claim to the allocation of wet water from the Little Colorado River . . ." and further found that "it is in the best interest of the Navajo Nation that funding for the pursuit of Navajo Nation Water Rights should be afforded the highest priority in future budget development actions by the Navajo Nation and therefore believes such funding should be made available to pursue Water Rights Claims in a special fund."
- G. To comply and sustain the mandate in Resolution No. CMY-47-02, the Navajo Nation Council enacted the Navajo Nation Water Rights Claim Fund and appropriated a minimum of two million dollars (\$2,000,000) into the Fund for the purpose of providing annual funding for the protection of the Nation's water rights in the states of Arizona, Utah, and New Mexico, and delegated

to the Water Rights Commission the authority to approve the Fund's budget.

- H. The annual budget for the Water Rights Claim Fund consists of allocations to the Navajo Nation Department of Water Resources - Water Management Branch, which provides technical work regarding the Nation's water rights; to the Water Rights Commission, which provides public education regarding the Nation's water rights efforts; and to the Water Rights Unit of the Department of Justice, which provides legal representation for the Nation's water rights claims. Due to the increased litigation costs, the reserves within the Water Rights Claims Fund, specifically reserved for outside counsel and expert witnesses, will be fully depleted in Fiscal Year 2021.
- I. If Water Rights Unit funds are exhausted, the Navajo Nation will be forced to rely on the United States, as trustee, to protect Navajo Nation interests; this could be severely detrimental to the Nation's best interest as the United States is also currently serving as trustee for other tribes for commonly held water resources.
- J. The Executive Branch has completed its Section 164 review of the supplemental appropriation request; the review is attached hereto as **Exhibit 2**. *NOTE: all documents in Exhibit 2 have been designated CONFIDENTIAL by the Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A) (6).*
- K. The Office of the Controller issued a memorandum dated February 8, 2021, to satisfy the requirements in 12 N.N.C. § 820(L), attached as **Exhibit 3**. *NOTE: all documents in Exhibit 3 have been designated CONFIDENTIAL by the Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A) (6).*
- L. The Office of Management and Budget issued a memorandum dated February 18, 2021, to satisfy the requirements in 12 N.N.C. § 820(M), attached as **Exhibit 4**. *NOTE: all documents in Exhibit 4 have been designated CONFIDENTIAL by the Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A) (6).*

### **SECTION THREE. APPROVING SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE**

- A. The Navajo Nation hereby approves supplemental funding from the Unreserved, Undesignated Fund Balance in the amount of two million dollars (\$2,000,000) for the Water Rights Litigation Unit of the Navajo Nation Department of Justice, Business Unit No. N01372, to fund the litigation costs necessary to further protect and secure the Navajo Nation's water rights.

B. This supplemental appropriation of \$2,000,000 shall be from that amount of funds that exceeds the minimum fund balance of the Unreserved, Undesignated Fund Balance as determined by the Office of the Controller.

**SECTION FOUR. WAIVING 12 N.N.C. §§ 820(E), (F), AND (N)**

The Navajo Nation Council hereby waives 12 N.N.C. §§ 820 (E), (F) and (N) in order to allow UUFB funds to be used for recurring expenditures and government operations.

**SECTION 5. SAVING CLAUSE**

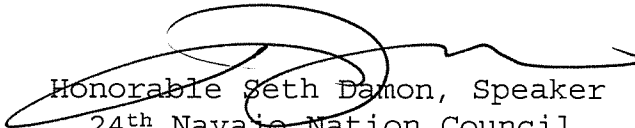
Should any provision(s) of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

**SECTION 6. 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 24<sup>th</sup> 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 19 in Favor, and 00 Opposed, on this 19<sup>th</sup> day of April 2021.

  
Honorable Seth Damon, Speaker  
24<sup>th</sup> Navajo Nation Council

4.27.2021

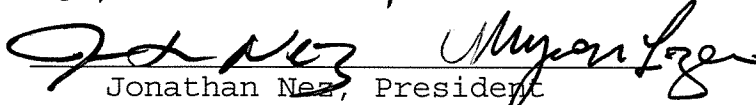
DATE

Motion: Honorable Daniel E. Tso  
Second: Honorable Pernell Halona

Speaker Seth Damon 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 04 day of MAY, 2021.

  
Jonathan Nez, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (11), on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Jonathan Nez, President  
Navajo Nation

3. I, hereby, exercise line-item veto pursuant to the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Jonathan Nez, President  
Navajo Nation



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
*OFFICE OF THE ATTORNEY GENERAL*

DOREEN N. McPAUL  
Attorney General

KIMBERLY A. DUTCHER  
Deputy Attorney General

**MEMORANDUM**

TO: Dana L. Bobroff, Chief Legislative Counsel  
Office of Legislative Counsel

FROM: *Doreen N. McPaul*  
Doreen N. McPaul, Attorney General  
Navajo Nation Department of Justice

DATE: February 23, 2021

SUBJECT: **Exhibits for Doc. 15686: Proposed Legislation Seeking FY2021 Supplemental Funding for the Water Rights Unit**

Generally, exhibits to legislation are posted online for public view. However, pursuant to 2 N.N.C. §164(A)(6), “[a]ny matters or exhibits determined by the Navajo Nation Department of Justice to be confidential shall be properly marked ‘confidential’ and shall not be placed on the website or otherwise released.” The attachments to the above referenced legislation, which DOJ deems confidential, should be kept from public view. Under 2 N.N.C. §1964(G), only the Attorney General is authorized to waive the confidential and attorney-client privileged communication. Since these exhibits contain such sensitive information, the Attorney General maintains the confidentiality of these documents.

If you have any questions concerning this memorandum, please contact the Office of the Attorney General office at (928) 871-6345. Thank you.



NAVAJO NATION

739

4/19/2021

Navajo Nation Council Spring Session

05:30:23 PM

Amd# to Amd#	Legislation 0042-21: Approving	PASSED
MOT Tso, D	Supplemental Funding from the	
SEC Halona, P	UUFB in the amount of \$2,000,000	
	from Navajo Nation Department...	

Yeas : 19	Nays : 0	Excused : 0	Not Voting : 4
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**Yea : 19**

Begay, E	Crotty	Slater, C	Walker, T
Begay, K	Freeland, M	Stewart, W	Wauneka, E
Begay, P	Halona, P	Tso	Yazzie
Brown	Henio, J	Tso, C	Yellowhair
Charles-Newton	Nez, R	Tso, D	

**Nay : 0**

**Excused : 0**

**Not Voting : 4**

Smith	Tso, E	James, V	Daniels
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**Presiding Speaker: Damon**