

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0373-19\_\_\_\_\_

SPONSOR: Seth Damon

**TITLE: An Action Relating to Budget and Finance, Resources and Development, Naabik'iyáti' Committees, and Navajo Nation Council; Approving and advance of Supplemental Funding from the Unreserved, Undesignated Fund Balance in the amount of One Million Nine Hundred Thousand Six Hundred Ninety Four Dollars and Ten Cents (\$1,900,694.10) for the 2020 Transmission Charge for the Navajo Nation's use of Five Hundred (500) Megawatts of electricity pursuant to the Navajo Generating Station Extension Lease and underlying Transmission Agreement with the Bureau of Reclamation; Waiving 12 N.N.C. §§820 (E) and (F); Adopting the 500 Megawatts Revenue & Repayment Plan; Designating the revenues generated by the 500 Megawatts to fund the 500 Megawatts Revenue & Repayment Plan**

*Date posted: December 11, 2019 at 5:31pm*

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**Executive Director  
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**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0373-19

**DATE:** December 10, 2019

**TITLE OF RESOLUTION: AN ACTION**

RELATING TO BUDGET AND FINANCE, RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES, AND NAVAJO NATION COUNCIL; APPROVING AN ADVANCE OF SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF ONE MILLION NINE HUNDRED THOUSAND SIX HUNDRED NINETY-FOUR DOLLARS AND TEN CENTS (\$1,900,694.10) FOR THE 2020 TRANSMISSION CHARGE FOR THE NAVAJO NATION'S USE OF FIVE HUNDRED (500) MEGAWATTS OF ELECTRICITY PURSUANT TO THE NAVAJO GENERATING STATION EXTENSION LEASE AND UNDERLYING TRANSMISSION AGREEMENT WITH THE BUREAU OF RECLAMATION; WAIVING 12 N.N.C. §§ 820 (E) AND (F); ADOPTING THE 500 MEGAWATTS REVENUE & REPAYMENT PLAN; DESIGNATING THE REVENUES GENERATED BY THE 500 MEGAWATTS TO FUND THE 500 MEGAWATTS REVENUE & REPAYMENT FUND

**PURPOSE:** This resolution, if approved, will advance a supplemental appropriation from the Undesignated, Unreserved Fund Balance (UUFb) in the amount of \$1,900,694.10 to pay the Nation's 2020 Transmission Charges for 500 Megawatts of electricity pursuant to the Navajo Generating Station Transmission Agreement with the Bureau of Reclamation and establish the 500 Megawatts Revenue Repayment Plan and Fund to receive revenues generated by the 500 Megawatts and repay the UUFb advance of \$1,900,694.10, pay future annual Transmission Charges and fund energy-related projects.

**This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.**

5-DAY BILL HOLD PERIOD:                       
Website Posting Time/Date:                       
Posting End Date: 12-16-19  
Eligible for Action: 12-17-19

Budget & Finance Committee  
Thence  
Resources & Development Committee  
Thence  
Naabik'iyáti' Committee  
Thence  
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
2 24<sup>TH</sup> NAVAJO NATION COUNCIL – First Year, 2019

4 INTRODUCED BY

5  
6   
7 (Prime Sponsor)

8  
9 TRACKING NO. 0373-19

10  
11  
12 AN ACTION

13 RELATING TO BUDGET AND FINANCE, RESOURCES AND DEVELOPMENT,  
14 NAABIK'ÍYÁTI' COMMITTEES, AND NAVAJO NATION COUNCIL; APPROVING  
15 AN ADVANCE OF SUPPLEMENTAL FUNDING FROM THE UNRESERVED,  
16 UNDESIGNATED FUND BALANCE IN THE AMOUNT OF ONE MILLION NINE  
17 HUNDRED THOUSAND SIX HUNDRED NINETY-FOUR DOLLARS AND TEN  
18 CENTS (\$1,900,694.10) FOR THE 2020 TRANSMISSION CHARGE FOR THE NAVAJO  
19 NATION'S USE OF FIVE HUNDRED (500) MEGAWATTS OF ELECTRICITY  
20 PURSUANT TO THE NAVAJO GENERATING STATION EXTENSION LEASE AND  
21 UNDERLYING TRANSMISSION AGREEMENT WITH THE BUREAU OF  
22 RECLAMATION; WAIVING 12 N.N.C. §§ 820 (E) AND (F); ADOPTING THE 500  
23 MEGAWATTS REVENUE & REPAYMENT PLAN; DESIGNATING THE REVENUES  
24 GENERATED BY THE 500 MEGAWATTS TO FUND THE 500 MEGAWATTS  
25 REVENUE & REPAYMENT PLAN

26  
27 BE IT ENACTED:

28  
29 **Section One. Authority**  
30

- 1 A. The Navajo Nation established the Budget and Finance Committee (BFC) as a  
2 standing committee of the Navajo Nation Council and empowered BFC to review  
3 and recommend to the Navajo Nation Council the management of all funds and  
4 to approve Fund Management Plans pursuant to the recommendations of the  
5 appropriate oversight committee and affected Division or Branch. 2 N.N.C. §§  
6 164 (A)(9), 300 (A), 301 (B)(2) and (14).
- 7 B. The Navajo Nation established the Resources and Development Committee  
8 (RDC) as a standing committee of the Navajo Nation Council and empowered  
9 RDC with authority to establish Navajo Nation policy with respect to optimum  
10 utilization of all Navajo Nation resources and to make recommendations to the  
11 Navajo Nation Council for energy development agreements. 2 N.N.C. §§ 164  
12 (A)(9), 500 (A) and (C)(1), 501 (B)(4)(a).
- 13 C. The Navajo Nation established the Naabik`iyáti` Committee as a standing  
14 committee of the Navajo Nation Council and mandated that legislation requiring  
15 final action by the Navajo Nation Council shall be assigned to the Naabik`iyáti`  
16 Committee. 2 N.N.C. §§ 164 (A)(9), 700 (A).
- 17 D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C.  
18 § 102.
- 19 E. The Navajo Nation Appropriations Act, 12 N.N.C. *et seq.*, requirements for  
20 Supplemental Appropriations from the Unreserved Undesignated Fund Balance  
21 include:
- 22 1. When the Controller of the Navajo Nation identifies additional sources  
23 of revenues above and beyond the initial or current revenue projections,  
24 supplemental appropriations may be allocated by the Navajo Nation  
25 Council. 12 N.N.C. § 820(L).
  - 26 2. The Controller shall be responsible for designating recurring and non-  
27 recurring revenues. 12 N.N.C. § 820(L). Supplemental appropriations  
28 made from non-recurring revenues shall only be made for non-recurring  
29 operations or purposes and the Nation shall budget all recurring  
30

1 operating expenses, including maintenance of capital facilities, from  
2 recurring revenues. 12 N.N.C. §§ 820 (E) and (F).

3 3. All requests for supplemental funds shall be submitted to the Office of  
4 Management and Budget (OMB) for budget impact analysis. 12 N.N.C.  
5 § 820(M).

6 F. The Navajo Nation Appropriations Act further states that funds received in excess  
7 of the initial or current revenue projection shall be deposited into the General  
8 Fund Unreserved Undesignated Fund Balance unless otherwise designated by  
9 Navajo Nation Council. 12 N.N.C. § 820 (K).

10  
11 **Section Two. Findings**

12 A. In June 2017, the Navajo Nation Council approved a lease with Salt River Project  
13 Agricultural Improvement and Power District, Arizona Public Service Company,  
14 Tucson Electric Power Company, Nevada Power Company d/b/a Nevada Energy  
15 and the Los Angeles Department of Water and Power (the "NGS Owners")  
16 regarding the shutdown, decommissioning and remediation of the Navajo  
17 Generating Station (the "Extension Lease").

18 B. As part of the Nation's compensation under the Extension Lease, the Nation  
19 received the right to use (or market) 500 Megawatts ("500MW") of electricity  
20 belonging to the Bureau of Reclamation (BOR) on the NGS transmission systems  
21 for thirty-five (35) years beginning on December 23, 2019. Extension Lease §  
22 8(A)(i).

23 C. The NGS owners agreed to cover the Nation's operation and maintenance costs  
24 related to the 500MW for ten (10) years beginning on December 23, 2019, but  
25 the Nation will be responsible for all other costs associated with the 500MW  
26 (herein referred to as "Transmission Costs" or "Capital Costs"). Extension Lease  
27 § 8(A)(ii).

28 D. On December 13, 2017, the Nation entered into a separate agreement with BOR  
29 and the Western Area Power Administration further detailing the Nation's rights  
30 and obligations related to the 500MW (the "Transmission Agreement").

- 1 E. Pursuant to the Transmission Agreement, the Nation will be billed by BOR for  
2 annual Capital Costs with payment due within thirty (30) calendar days after  
3 issuance of BOR's invoice or by December 31<sup>st</sup>, whichever is later. Transmission  
4 Agreement, Operating Procedure 3, Section 6.1.
- 5 F. On December 4, 2019, the Nation received an invoice from BOR for the 2020  
6 Transmission Charges (aka Capital Costs), attached as **Exhibit A**, in the amount  
7 of one million nine hundred thousand six hundred ninety four dollars and ten cents  
8 (\$1,900,694.10); payment of the bill is due January 3, 2020. The details of BOR's  
9 calculation of the 2020 Transmission Charge is attached as **Exhibit B**  
10 [Designated as confidential by the Navajo Nation Attorney General pursuant to 2  
11 N.N.C. § 164 (A)(6)] .
- 12 G. Annual revenue projections for the marketing of the 500 MW in 2020 and 2021  
13 range from \$888,000.00 for 20% of the 500 MW to \$7,230,000.00 for 100% of  
14 the 500 MW. Navajo Transmission System 500 MW Asset, attached as **Exhibit**  
15 **C** [Designated as confidential by the Navajo Nation Attorney General pursuant  
16 to 2 N.N.C. § 164 (A)(6)].
- 17 H. This is a request for an advance from the Unreserved Undesignated Fund Balance  
18 to pay the 2020 Transmission Charges with the advance to be repaid with revenue  
19 generated from the use and marketing of the 500MW; the supplemental funding  
20 request forms are attached as **Exhibit D**.
- 21 I. Pursuant to its 12 N.N.C. § 820(M) authorities and responsibilities, the Office of  
22 Management and Budget has provided a budget impact analysis dated December  
23 10, 2019, attached as **Exhibit E**.
- 24 J. Pursuant to the Office of the Controller's 12 N.N.C. §§ 820 (F) and (L) authorities  
25 and responsibilities, the Controller has provided a memorandum dated December  
26 6, 2019, attached as **Exhibit F**, indicating that the balance in the Unreserved,  
27 Undesignated Fund Balance is \$16,817,205.00 and that revenues generated by  
28 the 500 MW are deemed recurring.
- 29  
30

1 **Section Three. Waiving §§ 820(F) and (L) Regarding the Restriction of**  
2 **Appropriations of Non-Recurring Revenues to Recurring Costs**

3 The Navajo Nation Council hereby waives 12 N.N.C. §§ 820(E) and (F) with regard to  
4 the restriction of appropriations of non-recurring revenues to recurring costs.  
5

6 **Section Four. Approving the Supplemental Appropriation Advance from the**  
7 **Unreserved, Undesignated Fund Balance in the Amount of One**  
8 **Million Nine Hundred Thousand Six Hundred Ninety-Four Dollars**  
9 **and Ten Cents (\$1,900,694.10) to Pay the 2020 Transmission**  
10 **Charges for the 500 MW**

11 A. This supplemental appropriation advance of \$1,900,694.10 shall be from that  
12 amount of funds that exceeds the minimum fund balance of the Unreserved,  
13 Undesignated Fund Balance as determined by the Office of the Controller and to  
14 the Division of Natural Resource, Business Unit Number, New.

15 B. The Navajo Nation hereby approves the supplemental appropriation advance  
16 from the Unreserved, Undesignated Fund Balance to the Division of Natural  
17 Resources, Business Unit Number, New, for \$1,900,694.10 to pay the 2020  
18 Transmission Charges for the 500 MW, as set forth in **Exhibit A**.  
19

20 **Section Five. Approving and Adopting the 500 MW Revenue & Repayment Plan**  
21 **and Fund and Designating Revenues Generated by the 500 MW**  
22 **into the Revenue & Repayment Fund**

23 The Navajo Nation hereby approves and adopts the 500 MW Revenue & Repayment Plan as  
24 follows:

25 A. The Office of the Controller and Office of Management & Budget shall work with  
26 the Division of Natural Resources to establish a fund, hereby called the 500 MW  
27 Revenue & Repayment Fund ("500 MW Fund"), to receive and hold any and all  
28 revenue received by the Nation for the use and marketing of the 500 MW and to fund  
29 expenditures as delineated below.  
30

1 B. Any and all revenue received from the use and marketing of the 500 MW shall not  
2 be deposited in the General Fund and shall instead be designated to fund the 500 MW  
3 Fund and deposited therein.

4 C. The Office of the Controller shall determine an investment program for the 500 MW  
5 Fund wherein interest earnings are reinvested in the Fund.

6 D. The Division of Natural Resources shall work with the Office of the Controller and  
7 Office of Management & Budget to establish a Fund Management Plan governing  
8 the 500 MW Fund, for approval by the Budget and Finance Committee upon the  
9 recommendation of the Resources & Development Committee, that establishes,  
10 among other things, use of the 500 MW Fund in the following order and priority:

- 11 1. Repayment to the Unreserved Undesignated Fund Balance of the  
12 supplemental appropriation advance in the amount of \$1,900,694.10;
- 13 2. Payment of the following year Transmission Charges; and
- 14 3. Funding of energy-related projects.

15 E. After the supplemental appropriation advance of \$1,900,694.10 to the Unreserved  
16 Undesignated Fund Balance has been repaid, expenditures of the 500 MW Fund shall  
17 be limited to payment of annual Transmission Charges and energy-related projects  
18 recommended by the Division of Natural Resources and Office of the President &  
19 Vice-President and approved by the Resources & Development Committee.

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21 **Section Six. Effective Date**

22 This legislation shall become effective in accord with 2 N.N.C. § 221(B).  
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