LEGISLATION NO: _0065-21___ SPONSOR: Paul Begay

TITLE: An Action Relating to Resources and Development, Budget and Finance, and Naahík’íyáti’ Committees, and the Navajo Nation Council; Allocating $58,225,000 in Síhasin Funds to the Navajo Nation Water Management Branch for the Western Navajo Pipeline Phase I project; Approving and Adopting the Western Navajo Pipeline Phase I Project Expenditure Plan Pursuant to 12 N.N.C §§ 2501 – 2508

Date posted: __April 6, 2021__ at 2:32PM

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DATE: April 6, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK’ÍYÁTI’ COMMITTEES, AND THE NAVAJO NATION COUNCIL; ALLOCATING $58,225,000 IN SÍHASIN FUNDS TO THE NAVAJO NATION WATER MANAGEMENT BRANCH FOR THE WESTERN NAVAJO PIPELINE PHASE 1 PROJECT; APPROVING AND ADOPTING THE WESTERN NAVAJO PIPELINE PHASE 1 PROJECT EXPENDITURE PLAN PURSUANT TO 12 N.N.C §§ 2501 – 2508

PURPOSE: The purpose of this resolution is for the Navajo Nation to allocate $58,225,000 in Sihasin Funds to the Navajo Nation Water Management Branch for the Western Navajo Pipeline Phase 1 Project (in the Antelope Canyon Development Area), and to approve the Project Expenditure Plan.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Third Year, 2021

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0065-21

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK’ÍYÁTI’ COMMITTEES, AND THE NAVAJO NATION COUNCIL; ALLOCATING $58,225,000 IN SIHASIN FUNDS TO THE NAVAJO NATION WATER MANAGEMENT BRANCH FOR THE WESTERN NAVAJO PIPELINE PHASE 1 PROJECT; APPROVING AND ADOPTING THE WESTERN NAVAJO PIPELINE PHASE 1 PROJECT EXPENDITURE PLAN PURSUANT TO 12 N.N.C §§ 2501–2508

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Resources and Development Committee is empowered to exercise oversight of matters involving water, land, environment, economic and community development, and public utilities, among others. 2 N.N.C. §500(C).

B. The Budget and Finance Committee is empowered to “appropriate, allocate, cancel, re-appropriate and review the use of Navajo Nation funds received including but not limited to all grants, contracts, gifts and other funds from all sources.” 2 N.N.C. § 301(B)(3).

C. The Naabik’íyáti’ Committee is a standing committee of the Navajo Nation Council with the responsibility to hear proposed resolution(s) that require final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).
D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).

E. The Navajo Nation Code (at 12 N.N.C. § 2502, as amended by CJA-03-18) provides that the purpose of the Navajo Nation Sihasin Fund ("Sihasin Fund") is as follows:

§ 2502 Purpose
A. The purposes of this Fund are to provide financial support and/or financing for:
1. The planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterline, solid waste management development, powerline projects, and transportation and communication systems, within the Navajo Nation; and
2. Education opportunities for members of the Navajo Nation.
B. For the Purpose in § 2502(A)(1), Fund expenditures for infrastructure shall not be limited by 12 NNC § 1310(F) or TCDCJY-77-99.
C. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund, including loan financing from the Fund, for the purposes in § 2502(A)(1), shall be favored over direct funding in whole.

F. The Sihasin Fund provides that "Fund Principal" shall consist of all deposits made to the Sihasin Fund and that "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and realized by the Fund Principal, and that Fund Income shall be deposited in and added to Fund Principal until such time as a Fund Expenditure Plan is duly adopted. 12 N.N.C. §§ 2504 and 2505 (C).

G. The Sihasin Fund provides that "Fund Principal and Income shall not be expended except pursuant to a Fund Expenditure Plan consistent with the purposes set forth in § 2502 of this Chapter and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council." 12 N.N.C. § 2505(A).
SECTION TWO. FINDINGS

A. The Western Navajo Pipeline Phase 1 Project ("Project") is a $84,265,000 project planned for the Antelope Canyon Development Area, as detailed in the ten separate Project Descriptions attached as Exhibit A.

B. As shown in Exhibit A, a portion of the funds necessary for the Project, the total amount of $26,040,000, has been approved as follows:
- $3,000,000 in prior Sihasin funding;
- $21,309,000 from the Permanent Trust Fund;
- $1,500,000 from the Navajo Nation Parks and Recreation Department;
- $150,000 from the Bureau of Indian Affairs (documents attached as Exhibit B).

C. Because the Project is estimated to cost $84,265,000 in total, the amount of $58,225,000 is needed to complete the Project, as shown in Exhibit A.

D. The Navajo Nation Water Management Branch ("NNWMB") will perform or provide planning and design, engineering and technical services, construction work, and overall project management for the Project. The Navajo Tribal Utility Authority ("NTUA") will perform operation and maintenance for the Project. The cooperation on this Project between NNWMB and NTUA will be governed by a Memorandum of Agreement, to be approved by both entities. A draft of the MOA between NNWMB and NTUA is attached as Exhibit C.

E. The allocation of the $58,225,000 for this Project meets the statutory criteria for Sihasin expenditures because this Project involves "infrastructure supporting economic development and community development" and "waterline" projects, as mentioned in 12 N.N.C. § 2502(A)(1).

F. The allocation of the $58,225,000 for this Project meets the statutory preference for leveraging Sihasin funds, as mentioned in 12 N.N.C. § 2502(C), because $26,040,000 from other funding sources has been approved or designated for this Project.
SECTION THREE. APPROVAL OF SÍHASIN FUNDING AND ADOPTION OF EXPENDITURE PLAN

A. The Navajo Nation hereby approves and adopts funding for the Western Navajo Pipeline Phase 1 Project Expenditure Plan in the amount of $58,225,000 from the Navajo Nation Síhasin Fund, in accordance with 12 N.N.C. § 2505(A).

B. The Navajo Nation hereby approves and adopts the Western Navajo Pipeline Phase 1 Project Expenditure Plan, attached as Exhibit A.

C. The Síhasin Funds allocated for the Western Navajo Pipeline Phase 1 Project Expenditure Plan may be further leveraged by bond or loan financing pursuant to the Navajo Nation Bond Financing Act, 12 N.N.C. § 1300 et seq., as amended, using Síhasin Fund earnings for repayment and financing costs upon the recommendation of the Budget and Finance Committee and approval by a two-thirds (2/3) vote of all members of the Navajo Nation Council.

SECTION FOUR. APPROVAL AND ADOPTION OF EXPENDITURE PLAN ADMINISTRATION

The Navajo Nation Council hereby approves administration of the Western Navajo Pipeline Phase 1 Project Expenditure Plan as follows:

A. The Navajo Nation Controller shall determine whether the source of the annual allocations from the total allocation of $58,225,000 will be Síhasin Fund Principal or Income or a combination of both.

B. The Síhasin funding for the Western Navajo Pipeline Phase 1 Project will be distributed to the Navajo Nation Water Management Branch within ten (10) days after the effective date of this legislation. The NNWMB shall be responsible for carrying out the Project, in accordance with the Western Navajo Pipeline Phase 1 Project described in Exhibit A.

C. The Síhasin funds allocated for the Western Navajo Pipeline Phase 1 Project shall be used solely to design, plan, and/or construct the Western Navajo Pipeline Phase 1 Project described in Exhibit A. Any and all cost-savings shall be returned to the Síhasin Fund once the project is completed.
D. The funds allocated for the Western Navajo Pipeline Phase 1 Project shall not lapse on an annual basis pursuant to 12 N.N.C. §820(N), however, any funds not spent or encumbered within thirty-six (36) months of the date funds are made available to the NNWMB shall revert to the Sihasin Fund principal, unless otherwise recommended by the Resources and Development Committee of the Navajo Nation Council and approved by the Naabik'iyáti’ Committee.

E. The Western Navajo Pipeline Phase 1 Project shall be constructed by the NNWMB, and operation, maintenance and repairs for the Project shall be performed by the NTUA.

SECTION FIVE. DIRECTIVES
The Navajo Nation Water Management Branch shall report the status of the Western Navajo Pipeline Phase 1 Project to the Resources and Development Committee, and to the Naabik'iyáti' Committee, on a quarterly basis.

SECTION SIX. EFFECTIVE DATE
This legislation and the Western Navajo Pipeline Phase 1 Project Expenditure Plan, as set forth above, shall become effective pursuant to 12 N.N.C. § 2505.

SECTION SEVEN. 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.