



Judicial Branch fund approved by Navajo Nation Council with federal lawsuit award

FOR IMMEDIATE RELEASE: April 29, 2021

WINDOW ROCK, Ariz. — Proceeds from a lawsuit filed by the Navajo Nation on behalf of the Judicial Branch against the United States Government were approved by the Navajo Nation Council Apr. 19 to be deposited into a newly established fund called the *Hashkééji Nahat'á Bá Hooghan*.

The judgment by the US District Court for the District of Columbia on Jun. 12, 2020, awarded the Navajo Nation \$15,762,985 after it held the Navajo Region of the Bureau of Indian Affairs (BIA) under the US Department of the Interior did not respond to the Judicial Branch's funding proposal for the 2014 fiscal year within the required timeframe. With interest, the final awarded to the Navajo Nation totaled \$18,279,923.32.

Council Delegate Eugenia Charles-Newton (Shiprock), chair of the Council's Law and Order Committee (LOC), sponsored Legislation No. 0011-21 which the Council voted to approve with a vote of 22 in favor and none opposed.

"The goal of this legislation is to give the funds to the Judicial Branch," said Charles-Newton in her presentation to the Budget and Finance Committee (BFC). She indicated the Judicial Branch has continuously reported its budget shortfalls to the BIA and to the Navajo Nation. The fund would set aside the award for exclusive use by the Judicial Branch.

Stephen Etsitty, administrative director of the Navajo Nation Administrative Offices of the Courts, said the process of creating the annual budget proposal began in 2013. At the time, the Judicial Branch submitted its 2014 fiscal year funding proposal within the appropriate deadlines to the BIA, which administers the federal funding contracts the Navajo Nation utilizes to partly run public safety and judicial programs.

"In 2014, this budget request that we compiled as a branch reflected the amount that would be needed to operate the branch for one full year and that was a little over \$17 million," said Etsitty. He continued to explain the branch has submitted similar budget proposals to the BIA in the years since. However, the BIA has only ever granted partial awards. For this fiscal year, Etsitty said the BIA awarded the Judicial Branch a partial award of \$1,460,349.

Once established, the fund's principle and any subsequent revenue may be directed to the needs and expenses recommended by the Chief Justice for Judicial Branch purposes. Those proposals would require approval by the BFC and the LOC.

The legislation approved by the Navajo Nation Council would also require litigation expenses to be first reimbursed from the proceeds awarded to the Navajo Nation before being deposited into the fund.

Navajo Nation Attorney General Doreen McPaul added that each year since the initial award year, the Navajo Nation has pursued lawsuits that include similar claims on behalf of the Judicial Branch.

“At issue is \$15.8 million every year as recurring funding for the additional services under the 638 agreement. So, at issue is about \$110 million in added funding for the Navajo Nation judicial services funding agreements for those years,” said McPaul. Portions of the awarded funds would help to replenish the fixed costs litigation account that helps drive lawsuits on behalf of the Navajo Nation.

The legislation also establishes a means for any future awards related to the Judicial Branch’s federal contracts cases to be automatically deposited into the fund.

If enacted by the Navajo Nation President, the legislation would establish the fund in Title 12 of the Navajo Nation Code relating to financial matters. The fund would additionally keep the majority of the award from undergoing automatic diversions to the Navajo Nation’s various trust funds.

Possible future uses, Etsitty indicated, are likely to be capital projects that can assist the Judicial Branch with its long-standing unmet needs. The legislation approved by the Council will create the fund, if enacted, with specific projects to be considered following the fund’s establishment.

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MEDIA CONTACTS

Byron C. Shorty, Communications Director, bcshorty@navajo-nsn.gov, (928) 287-2085
Timothy E. Benally, Public Information Officer, timothybenally@navajo-nsn.gov, (928) 380-6121