

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0208-21_

SPONSOR: Wilson C. Stewart, Jr.

TITLE: An Action Relating to the Resources and Development, Budget and Finance, and Naabik'iyáti' Committees and the Navajo Nation Council; Approving a Limited Waiver of Sovereign Immunity of the Navajo Nation to Authorize the Navajo Nation to Register and Sell Offset Credits for Carbon Sequestration Under the California Cap and Trade Program Administered by the California Air Resources Board, and to Provide the Courts of the State of California Subject Matter and Equitable Jurisdiction Over the Navajo Nation for the Sole Purpose of Enforcing the Navajo Nation's Obligations with Respect to its Participation in the California Cap and Trade Program; Approving the Carbon Development and Marketing Agreement and Authorizing the Navajo Nation President to Sign the Same

Date posted: October 05, 2021 at 4:11PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0208-21

DATE: October 4, 2021

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE NAVAJO NATION TO AUTHORIZE THE NAVAJO NATION TO REGISTER AND SELL OFFSET CREDITS FOR CARBON SEQUESTRATION UNDER THE CALIFORNIA CAP AND TRADE PROGRAM ADMINISTERED BY THE CALIFORNIA AIR RESOURCES BOARD, AND TO PROVIDE THE COURTS OF THE STATE OF CALIFORNIA SUBJECT MATTER AND EQUITABLE JURISDICTION OVER THE NAVAJO NATION FOR THE SOLE PURPOSE OF ENFORCING THE NAVAJO NATION'S OBLIGATIONS WITH RESPECT TO ITS PARTICIPATION IN THE CALIFORNIA CAP AND TRADE PROGRAM; APPROVING THE CARBON DEVELOPMENT AND MARKETING AGREEMENT AND AUTHORIZING THE NAVAJO NATION PRESIDENT TO SIGN THE SAME

PURPOSE: The purpose of this legislation to approve a limited waiver of sovereign immunity of the Navajo Nation to authorize the Navajo Nation to register and sell offset credits for carbon sequestration under the California Cap and Trade Program administered by the California Air Resources Board, and to provide the courts of the State Of California subject matter and equitable jurisdiction over the Navajo Nation for the sole purpose of enforcing the Navajo Nation's obligations with respect to its participation in the California Cap and Trade Program; approving the Carbon Development And Marketing Agreement and authorizing the Navajo Nation President to sign the same.

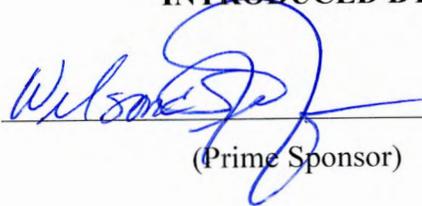
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: VSREANORSC
Website Posting Time/Date:
Posting End Date: October 10, 2021
Eligible for Action: October 11, 2021

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

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Third Year, 2021

3 INTRODUCED BY

4 
5 _____
6 (Prime Sponsor)

7 TRACKING NO. 0208-21

8 AN ACTION

9
10 RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND
11 FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION
12 COUNCIL; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY OF
13 THE NAVAJO NATION TO AUTHORIZE THE NAVAJO NATION TO REGISTER
14 AND SELL OFFSET CREDITS FOR CARBON SEQUESTRATION UNDER THE
15 CALIFORNIA CAP AND TRADE PROGRAM ADMINISTERED BY THE
16 CALIFORNIA AIR RESOURCES BOARD, AND TO PROVIDE THE COURTS OF
17 THE STATE OF CALIFORNIA SUBJECT MATTER AND EQUITABLE
18 JURISDICTION OVER THE NAVAJO NATION FOR THE SOLE PURPOSE OF
19 ENFORCING THE NAVAJO NATION'S OBLIGATIONS WITH RESPECT TO ITS
20 PARTICIPATION IN THE CALIFORNIA CAP AND TRADE PROGRAM;
21 APPROVING THE CARBON DEVELOPMENT AND MARKETING AGREEMENT
22 AND AUTHORIZING THE NAVAJO NATION PRESIDENT TO SIGN THE SAME
23
24

25
26 BE IT ENACTED:

27
28 SECTION ONE. AUTHORITY

29 A. The Navajo Nation Council is the governing body of the Navajo Nation. 1 N.N.C. §
30 102(A).

- 1 B. The Navajo Nation Council is authorized to approve a limited waiver of the Navajo
2 Nation's sovereign immunity. 1 N.N.C. § 554.
- 3 C. The Resources and Development Committee of the Navajo Nation Council is a standing
4 committee of the Navajo Nation Council and is authorized to make recommendations to
5 the Navajo Nation Council for approval of legislation within the Committee's purpose. 2
6 N.N.C. § 500(A) and 501(B)(4).
- 7 D. The Resources and Development Committee of the Navajo Nation Council has oversight
8 authority over the Division of Natural Resources, Forestry Department, the Navajo
9 Nation's forest natural resources, and has oversight authority on the Navajo Nation
10 regarding alterations of the natural state of the Nation's forestry resource. 2 N.N.C. §
11 500.
- 12 E. The Budget and Finance Committee of the Navajo Nation Council is a standing
13 committee of the Navajo Nation Council and is established for the purpose of
14 recommending to the Navajo Nation Council the adoption of resolutions designed to
15 strengthen the fiscal and financial position of the Navajo Nation and to promote the
16 efficient use of the fiscal and financial resources of the Navajo Nation. 2 N.N.C. § 300
17 (A) and (C)(3).
- 18 F. The Naabik'íyáti' Committee of the Navajo Nation Council is a standing committee of
19 the Navajo Nation Council and recommends legislation to Navajo Nation Council on
20 matters within the Committee's jurisdiction. 2 N.N.C. § 700(A) and 701(A)(3).

21
22 **SECTION TWO. FINDINGS**

- 23 A. The Navajo Nation is a sovereign nation which is immune from suit. 1 N.N.C. § 553 (A).
- 24 B. The jurisdiction and powers of the courts of the Navajo Nation, particularly with regard
25 to suits against the Navajo Nation, are derived from and limited by the Navajo Nation
26 Council as the governing body of the Navajo Nation. 1 N.N.C. § 553(C).
- 27 C. The Navajo Nation sovereign immunity can be waived for lawsuits filed in the Navajo
28 Nation courts for matters authorized by explicit resolutions of the Navajo Nation Council.
29 1 N.N.C. §§ 554 (B), (C), and (K).
- 30

- 1 D. The Navajo Nation desires to participate in California's Cap-and-Trade Program for U.S.
2 Forests authorized by the California Global Warming Solutions Act of 2006.
- 3 E. The Navajo Nation desires to utilize its commercial forest natural resource to create a
4 carbon sequestration project from which the Nation will be able to register and sell carbon
5 offset credits.
- 6 F. The Navajo Nation Forestry Department, Division of Natural Resources, has procured
7 the Nation's carbon sequestration credits sales manager and agent, Bluesource, L.L.C,
8 through the competitive procurement process required by Navajo Nation law. The
9 Navajo Nation has negotiated an acceptable Carbon Development and Marketing
10 Agreement with Bluesource, L.L.C to bring this project to reality as soon as possible. A
11 copy of the Carbon Development Marketing Agreement (CDMA) is attached hereto and
12 incorporated herein as **Exhibit 1**. The Navajo Nation's participation in the Cap-and-
13 Trade Program will not interfere in the current uses of the Navajo Nation Commercial
14 Forest that the Navajo Nation has authorized. Moreover, this proposed use of the Navajo
15 Nation Commercial Forest is authorized by the Navajo Nation's 10-year Forest
16 Management Plan in that sales of timber will occur over the life of the Navajo Nation's
17 participation in the Cap-and- Trade Program.
- 18 G. To authorize the Navajo Nation to be subject to the civil subject matter and equitable
19 jurisdiction of the State of California, California Air Resources Board, for purposes of
20 participation in the California Cap-and-Trade Program administered by the California
21 Air Resources Board (CARB), the Navajo Nation Council must authorize a limited
22 waiver of the Navajo Nation's sovereign immunity. (California Code of Regulations,
23 Title 17, Section 95975(1).)
- 24 H. The applicable California regulation regarding a tribe's limited wavier of sovereign
25 immunity specifically requires in relevant part:
- 26 (1) The governing body of the Tribe must enter into a limited waiver of
27 sovereign immunity with [C]ARB related to its participation in the
28 requirements of the Cap-and-Trade Program for the duration required by
29 the applicable Compliance Offset Protocol(s). This waiver must include a
30 consent to suit by the State of California, Air Resources Board, in the courts

1 of the State of California, with respect to any action in law or equity
2 commenced by the State of California, Air Resources Board to enforce the
3 obligations of the Tribe with respect to its participation in the Cap-and-
4 Trade Program, irrespective of the form of relief sought, whether monetary
5 or otherwise, except for purposes of relief under this limited waiver, Tribes
6 shall be treated in the same manner as a California public entity under
7 California Government Code sections 818 and 818.8.

8 (2) The Tribe must provide (C)ARB with documentation demonstrating that
9 the limited waiver of sovereign immunity entered into pursuant to section
10 95975(l) (1) has been properly adopted in accordance with the Tribe's
11 Constitution or other organic law, by-laws and ordinances, and applicable
12 federal laws. *(California Code of Regulations, Title 17, Section 95975 (l)*
13 *(1) and (2). (edits supplied)*

14 I. Under the California Cap and Trade Program, which is authorized by the California
15 Global Warming Solutions Act of 2006, CARB issues "ARB Offset Credits" to
16 qualifying projects that reduce or sequester greenhouse gases. California, through
17 CARB, allows forests located throughout the United States to be utilized to generate
18 carbon sequestration credits for sale on the CARB regulated market. In order to
19 participate in the Cap-and-Trade Program, the Navajo Nation is required to qualify and
20 certify its commercial forest through forest inventory, harvesting practices, and
21 management so as to ensure that the carbon sequestered from the air is not re-released
22 over the lives of each of the carbon credits. The purpose of the limited waiver of
23 sovereign immunity is to ensure these conditions are enforceable by CARB.

24 J. The Navajo Division of Natural Resources Navajo Forestry Department's Forest
25 Manager Memorandum dated May 5, 2021, attached as **Exhibit 2**, provides a summary
26 of the Forest Carbon Offset Project.

27
28 **SECTION THREE. APPROVAL OF LIMITED WAIVER OF SOVEREIGN**
29 **IMMUNITY**
30

1 A. The Navajo Nation Council hereby authorizes a limited waiver of sovereign immunity
2 of the Navajo Nation for the limited purpose of satisfying the requirements of the
3 CARB program as follows:

4 The Navajo Nation hereby expressly waives any and all defenses based on
5 tribal sovereign immunity from suit with respect to any action in law or
6 equity commenced by the State of California, Air Resources Board, to
7 enforce the obligations of the Navajo Nation with respect to its participation
8 in the Cap and Trade Program, for the duration required in the Compliance
9 Offset Protocol for the U.S. Forest Projects (adopted June 25, 2015), and
10 irrespective of the form of relief sought, whether monetary or otherwise,
11 including the submission or replacement, as applicable of valid CARB
12 offset credits or other approved compliance instruments as required by the
13 Cap and Trade Program, including in Sections 95983 (c) and 95985. The
14 Navajo Nation, for purposes of this limited waiver, shall be treated in the
15 same manner as a California public entity under California Government
16 Code sections 818 and 818.8. The Navajo Nation consents to the
17 jurisdiction and venue in the courts of the State of California for the limited
18 purpose expressed herein and does not waive any aspect of its sovereign
19 immunity with respect to actions commenced by third parties other than the
20 State of California, Air Resources Board.

21 B. Nothing about the Navajo Nation's Forest Project, including without limitation any
22 attestations to the CARB, shall confer upon any other agency of the State of California
23 or any other state government, or any state, county, or other subdivision, any general
24 civil regulatory authority over the Navajo Nation or the Navajo Nation's reservation or
25 commercial forest, including without limitation those acres that the Navajo Nation has
26 placed into the Project.

27
28 **SECTION FOUR. AUTHORIZING PRESIDENT AND DIVISION OF NATURAL**
29 **RESOURCES EXECUTIVE DIRECTOR TO INITIATE AND COMPLETE**
30

1 **REQUIREMENTS FOR THE NAVAJO NATION'S PARTICIPATION IN THE**
2 **CALIFORNIA CAP-AND-TRADE PROGRAM**

3 The Navajo Nation Council authorizes the President of the Navajo Nation and the
4 Division of Natural Resources Executive Director to initiate and complete the
5 requirements for the Navajo Nation's participation in the California Cap-and-Trade
6 Program.

7
8 **SECTION FIVE. APPROVING THE CARBON DEVELOPMENT AND**
9 **MARKETING AGREEMENT AND AUTHORIZING THE PRESIDENT TO SIGN**
10 **THE SAME**

11 The Navajo Nation Council hereby approves the Carbon Development and Marketing
12 Agreement in the form of or substantially similar to the form of **Exhibit 1** as attached,
13 and authorizes the President of the Navajo Nation to execute the same.