

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0228-21_

SPONSOR: Edmund Yazzie

TITLE: An Action Relating to Resources and Development Committee and Naabik'iyáti' Committee; Approving the Proposed Consent Decree Regarding the Closed Fort Wingate Depot Activity

Date posted: November 4, 2021 at 5:05 PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0228-21

DATE: September 22, 2021

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; APPROVING THE PROPOSED CONSENT DECREE REGARDING THE CLOSED FORT WINGATE DEPOT ACTIVITY

PURPOSE: The purpose of this legislation to approve the proposed Consent Decree Regarding the Closed Fort Wingate Depot Activity, attached as Exhibit A, and authorize the President of the Navajo Nation to execute the same.

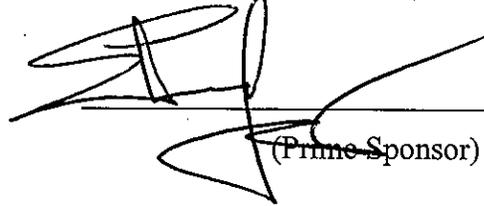
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: VSIMANVSK
Website Posting Time/Date:
Posting End Date: November 9, 2021
Eligible for Action: November 10, 2021

Resources & Development Committee
Thence
Naabik'iyáti' Committee

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

3 INTRODUCED BY

4 
5 _____
6 (Prime Sponsor)

7 TRACKING NO. 0228-21

8 AN ACTION

9 RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND
10 NAABIK'ÍYÁTI' COMMITTEE; APPROVING THE PROPOSED CONSENT
11 DECREE REGARDING THE CLOSED FORT WINGATE DEPOT ACTIVITY
12

13 BE IT ENACTED:

14 **Section One. Authorities**

- 15
- 16 A. The Resources and Development Committee of the Navajo Nation Council,
17 pursuant to 2 N.N.C. § 500(C), exercises oversight authority over environmental
18 protection for the Navajo Nation and People, now and for future generations.
- 19 B. The Naabik'iyáti' Committee of the Navajo Nation Council is established as a
20 standing committee and it shall use Nitsáhákees, Nahat'á, Iiná and Siihasin in
21 exercising oversight authority.
- 22 C. The Naabik'iyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C.
23 § 701(A)(4)(6)(7)(9), coordinates all federal, county and state programs with other
24 standing committees and branches of the Navajo Nation government to provide the
25 most efficient delivery of services to the Navajo Nation; to review and continually
26 monitor the programs and activities of federal and state departments; to assist
27 development of such programs designed to serve the Navajo People and Navajo
28 Nation through intergovernmental relationships between the Navajo Nation and
29 such departments; to assist and coordinate all request for information, appearances
30 and testimony relating to proposed county, state and federal legislation impacting

1 the Navajo Nation; and to coordinate with all committees, Chapters, branches and
2 entities concerned with all Navajo appearances and testimony before Congressional
3 committees, departments of the United States government, state legislatures and
4 departments and county and local governments.

5 **Section Two. Findings**

- 6
- 7 A. The Consent Decree is to be filed with the United States District Court for the
8 District of New Mexico. The parties to the Consent Decree are (i) the United States
9 of America, on behalf of the United States Department of the Army, (ii) the State
10 of New Mexico, acting through the New Mexico Natural Resources Trustee and the
11 New Mexico Office of Natural Resources Trust, and the New Mexico Attorney
12 General and the New Mexico Attorney General's Office, (iii) the Pueblo of Zuni,
13 and (iv) the Navajo Nation. The Proposed Fort Wingate Depot Activity Draft
14 Consent Decree Clean Draft 5-31-2021 ("Consent Decree") is attached as **Exhibit**
15 **A**.
- 16 B. The full text of the Consent Decree is attached as **Exhibit A** and includes the topics:
17 I. Jurisdiction, at pages 3 and 4; II. Parties Bound, at page 4; III. Definitions, at
18 pages 6 through 8; IV. Statement of Purpose, at page 8; V. Payment by the United
19 States, at pages 8 through 11; VI. Release and Covenant Not to Sue, at pages 11
20 and 12; VII. Effect of Settlement; Contribution Protection, at pages 12 and 13;
21 VIII. Notices and Submissions, at page 13 and 14; IX. Dispute Resolution, at pages
22 14 and 15; X. Effective Date and Retention of Jurisdiction, at page 15; XI.
23 Integration, at page 15; XII. Inadmissibility and Privilege, at page 15 and 16; XIII.
24 Modification, page 16; XIV. Signatures and Counterparts, at page 16; and XVIII.
25 Final Judgment, at page 16.
- 26 C. The Consent Decree concerns the Fort Wingate Depot Activity Depot ("Depot"), a
27 federal facility located in McKinley County, New Mexico, which occupies 24
28 square miles and is almost entirely surrounded by federally-owned or administered
29 lands, including both national forest and tribal lands. **Exhibit A**, page 2.
- 30 D. Pursuant to the Comprehensive Environmental Response, Compensation, and
Liability Act (CERCLA), environmental remediation of the Depot began in 1980

1 with the New Mexico Environmental Department as the lead regulatory agency.

2 **Exhibit A**, page 2.

- 3 E. “[A]fter land parcels within the Depot that are not designated to remain under U.S.
4 Army control have met all applicable environmental requirements, such parcels
5 have been or will be transferred to the Department of the Interior-Bureau of Indian
6 Affairs, in trust of the benefit of either the Pueblo of Zuni or the Navajo Nation.”

7 **Exhibit A**, page 2.

- 8 F. “[T]he State [of New Mexico] the Pueblo of Zuni, and the Navajo Nation
9 (collectively, “the Plaintiffs”), have filed a Complaint asserting a claim against the
10 United States under CERCLA for alleged damages for injury to, destruction of, or
11 loss of natural resources belonging to, managed by, or controlled by the Plaintiffs,
12 resulting from the releases of hazardous substances at or from the Depot, including
13 the costs of assessing such injury, destruction, or loss[.] **Exhibit A**, page 3.

- 14 G. “The mutual objectives of the Parties in entering into this Consent Decree are to:
15 (i) restore, replace, or acquire the equivalent of the Natural Resources injured,
16 destroyed, or lost as a result of hazardous substances released at or from the Depot;
17 (ii) reimburse Past Costs incurred by the State and Tribal Trustees prior to the
18 Effective Date of this Consent Decree; (iii) resolve the United States’ liability for
19 Natural Resource Damages as provided herein; and (iv) avoid potentially costly and
20 time-consuming litigation.” **Exhibit A**, page 8.

- 21 H. “Natural Resources Damages” shall mean any damages recoverable by the State
22 and the Tribal Trustees on behalf of the public for injury to, destruction of, loss or
23 impairment of Natural Resources as set forth in CERCLA Section 107(a)(4)(C), 42
24 U.S.C. § 9607(a)(4)(C), as a result of hazardous substance releases at or from the
25 Depot, including but not limited to: (i) the costs of assessing such injury,
26 destruction, loss of use, or impairment; (ii) the costs of restoration, rehabilitation,
27 or replacement of injured or lost Natural Resources or of acquisition of equivalent
28 resources; (iii) the costs of identifying, planning, implementing, and monitoring
29 such restoration, rehabilitation, replacement or acquisition activities; (iv)
30 compensation for injury, destruction, loss of use, or impairment of Natural
Resources; and (v) each of the categories of recoverable damages described in 43

1 C.F.R. § 11.14 and/or the NMNRTA. For purposes of this Consent Decree, Natural
2 Resources Damages shall include Future Costs and Past Costs as defined in this
3 Consent Decree.” **Exhibit A**, page 6.

- 4 I. The United States is to pay sums to the State of New Mexico, Pueblo of Zuni and
5 the Navajo Nation to reimburse for Past Costs, to settle Plaintiffs’ claims for Future
6 Costs of natural resource restoration activities, in addition to other sums. **Exhibit**
7 **A**, pages 8 through 11.

8
9 **Section Three. Approving the Proposed Consent Decree Regarding the Closed Fort**
10 **Wingate Depot Activity**

11 The Navajo Nation Council hereby approves the Proposed Fort Wingate Depot Activity
12 Draft Consent Decree Clean Draft 5-31-2021 in the form of or substantially similar to
13 the form of **Exhibit A** as attached, and authorizes the President of the Navajo Nation
14 to execute the same.