

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0045-22\_

SPONSOR: Thomas Walker, Jr.

**TITLE: An Act Relating to Resources and Development, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Approving \$4,000,000 from the Unreserved, Undesignated Fund Balance ("UUFB") for the Navajo Nation Department of Justice Water Rights Litigation Unit to Continue Litigating and Protecting the Navajo Nation's Water Rights; Waiving 12 N.N.C. § 820(E), § 820(F), § 820(J), and § 820(L)**

***Date posted:*** March 03, 2022 at 6:32PM

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## LEGISLATION SUMMARY

TrackingNo. 0045-22

Date: March 2, 2022

Re: **AN ACT RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND TO THE NAVAJO NATION COUNCIL; APPROVING \$4,000,000 FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE ("UUFB") FOR THE NAVAJO NATION DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO CONTINUE LITIGATING AND PROTECTING THE NAVAJO NATION'S WATER RIGHTS; WAIVING 12 N.N.C. §820(E), §820(F), §820(J), and §820(L)**

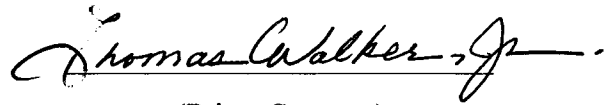
Purpose: to approve \$4,000,000 from the UUFB for DOJ to continue litigating the Nation's water rights; and waiving 12 N.N.C. §820(E), §820(F), §820(J), and §820(L) to allow the UUFB to be used for recurring government expenses.

5-DAY BILL HOLD PERIOD:                       
Website Posting Time/Date:                       
Posting End Date: 03-08-22  
Eligible for Action: 03-09-22

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

PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
24th NAVAJO NATION COUNCIL - Fourth Year, 2022

Introduced by:



(Prime Sponsor)

Tracking No. 0045-22

AN ACT

**RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND TO THE NAVAJO NATION COUNCIL; APPROVING \$4,000,000 FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE ("UUFb") FOR THE NAVAJO NATION DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO CONTINUE LITIGATING AND PROTECTING THE NAVAJO NATION'S WATER RIGHTS; WAIVING 12 N.N.C. §820(E), §820(F), §820(J), and §820(L)**

**BE IT ENACTED:**

**SECTION ONE. AUTHORITY**

- A. The Resources and Development Committee was established as a standing committee of the Navajo Nation Council with oversight over water matters and the authority to make recommendations to the Navajo Nation Council regarding proposed resolutions that required the Council's final approval to accomplish or impact the Resources and Development Committee's purposes. 2 N.N.C. §500 (C)(1), §501(B)(4)(f).
- B. The Budget and Finance Committee was established as a standing committee of the Navajo Nation Council with the authority to review and recommend to the Council the budgeting, appropriation, investment and management of all funds. 2 N.N.C. §300(A), §301(B)(2).
- C. The Naabik'iyáti' Committee was established as a standing committee of the Navajo

1 Nation Council with authority to hear all proposed resolutions that require final action by  
2 the Navajo Nation Council. 2 N.N.C. §164 (A)(9), §700(A).

3 D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).

4 As such, the Council “. . . may adopt and approve supplemental appropriations to the  
5 Annual Comprehensive Budget during the fiscal year. Supplemental appropriations of  
6 General Funds within the current fiscal year are permitted, if and when additional sources  
7 of revenues above and beyond the initial or current revenue projections are projected and  
8 which are also in excess of the reserve amount set forth at §820(J).” 12 N.N.C. §820(L).

9 E. The restrictions on supplemental appropriations, including all amounts from the UUFB,  
10 include:

11 1. Payment of recurring government operating expenses shall be from recurring revenues,  
12 and payment of nonrecurring expenses shall be from nonrecurring revenues such as  
13 UUFB funds. 12 N.N.C. §820(E), §820(F).

14 2. Specifically, the UUFB shall not be used for recurring government expenditures or  
15 operations. 12 N.N.C. §820(J), §820(L).

16 3. Nonrecurring revenues such as UUFB funds may be used only after the Controller  
17 determines whether or not such revenues are subsidizing an imbalance between the  
18 Navajo Nation’s recurring revenues and expenditures, and government expenditures  
19 shall only be authorized if a long-term (3-year to 5-year year) forecast shows that the  
20 operating deficit will not continue; otherwise, nonrecurring revenues will be added to  
21 the Unreserved, Undesignated Fund Balance. 12 N.N.C. §820(F).

22 4. The above provisions in Title 12 may be amended or waived by a two-thirds vote of the  
23 full Navajo Nation Council. 12 N.N.C. §820(F), 12 N.N.C. §880.

24 5. In compliance with 12 N.N.C. §820(F) all UUFB funding requests must be reviewed by  
25 the Controller. Such review is also required because the Controller determines which  
26 revenues and expenses are recurring and which are non-recurring. 12 N.N.C. §820(L).

27 6. In compliance with 12 N.N.C. §820(M) all UUFB funding requests must be submitted to  
28 the Office of Management and Budget (“OMB”) for a budget impact analysis.

29 7. Supplemental funding such as UUFB appropriations shall lapse at the end of the current  
30 fiscal year unless the Navajo Nation Council decides otherwise. 12 N.N.C. §820(N).

1 **SECTION TWO. FINDINGS.**

2 A. The Water Rights Litigation Unit of the Navajo Nation Department of Justice (“DOJ”) is  
3 requesting \$4,000,000 out of the UUFB to fund its continuing litigation activities to protect  
4 the Navajo Nation’s water rights.

5 B. Based on *Tó’éi’iiná* (water is life), the Navajo Nation Council finds that water is essential  
6 “to provide for a permanent homeland for the Navajo People.” 22 N.N.C. §1101.

7 C. According to 22 N.N.C. §1104 the Navajo Nation’s water rights pertain to:

- 8 1. all waters reserved at any time for any purpose to the Navajo Nation, and to Navajo  
9 Indian lands by the Navajo Nation or by the United States including any waters which,  
10 in the course of nature or as the result of artificial works or artificial streamflow  
11 enhancement or weather modification methods, flow into or otherwise enhance such  
12 waters;
- 13 2. all waters held by the Navajo Nation through prior or existing use, appropriation,  
14 purchase, contract, gift, bequest, or other means of acquisition;
- 15 3. all surface and groundwaters which are contained within hydrologic systems located  
16 exclusively within the lands of the Navajo Nation; and
- 17 4. all groundwaters located beneath the surface of the lands held in trust by the United  
18 States of America for the Navajo Nation.

19 D. The Navajo Nation Council has long recognized that many Navajo communities have  
20 severe water infrastructure deficiencies that negatively impact the Navajo Nation’s  
21 economy and the health and well-being of the Navajo people.

22 E. In Resolution No. CMY-47-02, the Navajo Nation Council determined that “water rights  
23 claims of the Navajo Nation must be placed as a top priority of the Navajo government.  
24 Water is one of the fundamental aspects of Navajo customs and must be protected. Without  
25 the assurance that Navajo water rights claims is a top priority, the Navajo Nation stands to  
26 lose its rightful claim to the allocation of wet water from the Little Colorado River . . . .”  
27 The Council further found that “it is in the best interest of the Navajo Nation that funding  
28 for the pursuit of Navajo Nation Water Rights should be afforded the highest priority in  
29 future budget development actions by the Navajo Nation and therefore believes such  
30 funding should be made available to pursue Water Rights Claims in a special fund.”

1 F. To comply with the mandate in CMY-47-02, the Navajo Nation Council enacted the  
2 Navajo Nation Water Rights Claims Fund (“Claims Fund”) and appropriated a minimum of  
3 \$2,000,000.00 (two million dollars) into the Claims Fund to provide annual funding for the  
4 litigation and protection of the Navajo Nation’s water rights in the States of Arizona, Utah,  
5 and New Mexico. The Council also delegated the authority to approve the budget for the  
6 Claims Fund to the Navajo Nation Water Rights Commission.

7 G. The annual budget for the Claims Fund consists of allocations to the Navajo Nation  
8 Department of Water Resources - Water Management Branch, which provides technical  
9 work regarding the Nation’s water rights; to the Navajo Nation Water Rights Commission,  
10 which provides public education regarding the Nation’s water rights efforts; and to the DOJ  
11 Water Rights Litigation Unit, which provides legal representation for the Navajo Nation’s  
12 water rights claims.

13 H. Due to increased litigation costs, the amount in the Claims Fund specifically reserved for  
14 payments to outside counsel and expert witnesses, will soon be fully depleted in Fiscal  
15 Year 2022.

16 I. If such reserves are exhausted, the Navajo Nation will no longer be able to litigate its water  
17 rights on its own, and will be forced to rely on the United States, as trustee, to protect the  
18 Nation’s interests. Such reliance could harm the Navajo Nation because the United States  
19 also serves as trustee for other tribes regarding commonly-held water resources.

20 J. The Attorney General and the DOJ Water Rights Litigation Unit have submitted  
21 memoranda explaining the **CONFIDENTIAL NATURE OF ALL DOCUMENTS** that  
22 DOJ has provided in support of its UUFb request. **EXHIBIT 1.** Pursuant to 2 N.N.C.  
23 §164(A)(6) and §1964(G), the **Attorney General has designated all such documents as**  
24 **CONFIDENTIAL and such documents shall not be publicly released.**

25 K. DOJ has provided a CONFIDENTIAL memorandum to the Navajo Nation President and  
26 Chief of Staff, dated December 30, 2021, which is a narrative in support of its UUFb  
27 request. **EXHIBIT 2.**

28 L. DOJ has provided its “Supplemental Funding Proposal Summary” (Appendix K) and  
29 related budget forms, including Attachments A-D to Appendix K, all of which are deemed  
30 CONFIDENTIAL documents. **EXHIBIT 3.**

1 M. The Executive Branch has completed its Section 164 Review of DOJ's UUFB funding  
2 request, and the CONFIDENTIAL review documents are attached as **EXHIBIT 4**.

3 N. As required by 12 N.N.C. §820(F) and §820(L), the Office of the Controller ("OOC") has  
4 prepared a CONFIDENTIAL memorandum, dated December 20, 2021, regarding this  
5 UUFB request. **EXHIBIT 5**. OOC has designated DOJ's water rights litigation costs as  
6 "recurring" so a waiver of the requirements in 12 N.N.C. §820(E), §820(F), §820(J), and  
7 §820(L) is necessary.

8 O. OMB was asked for a budget impact analysis pursuant to 12 N.N.C. §820(M). This  
9 analysis may be provided to the assigned Committees and the Navajo Nation Council when  
10 this legislation is up for consideration. OMB did indicate on the Section 164 review sheet  
11 that this funding request is "sufficient." **EXHIBIT 4**.

12 P. It is in the best interest of the Navajo Nation to approve DOJ's UUFB supplemental  
13 funding request, as set forth in the attached **EXHIBITS 2 and 3**.

14  
15 **SECTION THREE. APPROVAL OF \$4,000,000 OUT OF THE UUFB FOR THE**  
16 **DOJ WATER RIGHTS LITIGATION UNIT**

17 A. The Navajo Nation hereby approves a supplemental appropriation of four-million dollars  
18 (\$4,000,000) out of the Unreserved, Undesignated Fund Balance to the Navajo Nation  
19 Department of Justice Water Rights Litigation Unit, WRU Business Unit No. N01372, as  
20 explained in the attached **EXHIBITS 2 and 3**. The purpose of this \$4,000,000 UUFB  
21 allocation is to fund litigation and related expenses that are necessary and appropriate for  
22 DOJ to continue protecting and securing the Navajo Nation's water rights.

23 B. The \$4,000,000 for DOJ approved herein shall be from those funds that exceed the 10%  
24 minimum balance of the UUFB which must be maintained according to 12 N.N.C. §820(J).

25 C. The \$4,000,000 UUFB amount for DOJ approved herein shall **not** lapse at the end of Fiscal  
26 Year 2022, as would otherwise occur pursuant to 2 N.N.C. §820(N).

27  
28 **SECTION FOUR. WAIVING 12 N.N.C. §820(E), §820(F), §820(J), and §820(L)**

29 The Navajo Nation hereby waives 12 N.N.C. §820(E), §820(F), §820(J), and §820(L) to allow  
30 use of the \$4,000,000 UUFB amount by DOJ for its Water Rights Litigation Unit to continue

1 litigating and protecting the Navajo Nation’s water rights. This waiver is necessary because  
2 the proposed DOJ expenditures are considered recurring expenses.

3  
4 **SECTION FIVE. EFFECTIVE DATE**

5 This Act shall become effective pursuant to 2 N.N.C. §221(B) and 2 N.N.C. §164(A)(17).  
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7 **SECTION SIX. SAVING CLAUSE**

8 If any portion of this Act is determined invalid by the Navajo Nation Supreme Court, or by a  
9 District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the  
10 remainder of this Act shall be the law of the Navajo Nation.  
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