

THE NAVAJO NATION

Kelsey A. Begaye, *President*

Taylor McKenzie, M.D., *Vice-President*



The Honorable Edward T. Begay
The Speaker of the Navajo Nation Council
The Navajo Nation Council
Window Rock, Navajo Nation (Arizona)
May 30, 2002

RE: Resolution No. CMY-47-02: Establishing the Navajo Nation Water Rights Claim Fund

Dear Speaker Begay:

I have decided not to veto Resolution No. CMY-47-02, because of the desperate need to effectively address water acquisition issues and file claims to the mainstream of the Colorado River. I am pleased that the Navajo Nation Council took action to pursue Navajo Nation water rights. My administration recommended this very action last year, but the Council rejected my requests for funding and action. My administration made the Water Rights Commission a priority by finding \$2,100,000 in programmatic funds for the first year and all subsequent years that the litigation funds are needed. I have heard the demands of the Navajo people and have provided the foundations of effective management of the problem to successful resolution.

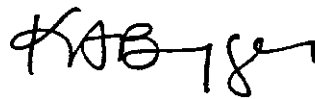
However, there are problems with the provisions of the Water Rights Claims Fund legislation that should be addressed.

First, subsections B and C of the "Expenditure of the Fund . . ." section must be amended to clarify who has authority to determine policies, priorities and expenditures of the fund. The authority of the Navajo Nation Water Rights Commission and the officials and Committees empowered to " . . . promulgate a Fund Expenditure Plan . . ." are in conflict. Moreover, the Government Services Committee is not part of the policy and procedure making structure even though it has oversight authority over Departments and subject matter identified in the legislation. The Division of Natural Resources was also deleted from any management and decision-making participation even though the Navajo Nation Water Code and Title Two of the Navajo Nation Code empower it to participate in water rights matters. It is vital that the Navajo Nation Council, in approving legislation, abide by the provisions of the Navajo Nation Water Code and the protocols set forth in Title Two of the Navajo Nation Code. There must be positive results and accountability in litigation activities with the ability to implement necessary adjustments to policy and actions or the lack thereof. This legislation fails in this regard.

Another problem is that this legislation may only be amended by a ninety percent (90%) affirmative vote of the Council. I am not aware of any legislation that has been approved by a ninety percent (90%) margin even when there was ninety percent (90%) of the delegates in attendance at any one meeting of the Council. The legislation must be subject to reasonable amendment from time to time to meet the needs and demands of the Navajo Nation public. This provision lacks flexibility to meet the demands of an ever-changing social and legal environment. As currently written, the ninety percent (90%) rule is unreasonable and virtually impossible to meet. My administration recommends that a simple majority of the Council should be able to amend the fund legislation.

Sincerely,

THE NAVAJO NATION

A handwritten signature in black ink, appearing to read 'KAB 7/8', written over the typed name.

Kelsey A. Begaye, President

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Establishing the Navajo Nation Water Rights Claim Fund

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), the Navajo Nation Council is the governing body of the Navajo Nation; and

2. From December 2000 to March 2002, the Government Services Committee and Resources Committee of the Navajo Nation Council, through the full committees or their Subcommittees, reviewed very serious allegations of wrong-doing by Navajo Nation employees such as work being conducted against the Navajo Nation interests in water rights litigation and said employees are not diligently pursuing the Navajo Nation water rights claims; and

3. On July 6, 2001 and March 27, 2002, the Government Services Committee of the Navajo Nation Council issued directives to the Office of the Attorney General and Office of the President. The directives included, but were not limited to, 1) the development of specific policies and procedures for the management of confidential attorney-client communications, attorney work-products and other confidential materials and information; 2) the appointment of one or more Navajo attorneys to be trained in the area of water law and water rights litigation; 3) the review of all statutes of the United States and the individual states relative to the leasing or sale of water rights by Indian tribes; and 4) the review of all Congressional acts relative to the quantification of reserved Indian water rights; and

4. On April 9, 2002, the Navajo Nation Council received a report from the Navajo Department of Justice, including experts hired by the Navajo Nation, regarding the efforts to determine the level of the Navajo Nation's water rights claims. It was reported to the Navajo Nation Council that water rights claims are based upon a complex combination scientific (fact-based) and legal issues that require significant financial resources to present and pursue by any party, including the Navajo government; and

5. On April 12, 2002, the Government Services and Resources Committees of the Navajo Nation Council submitted their findings and recommendations regarding the very serious allegations. Said committees informed the Navajo Nation Council that of the 38 allegations 30 were not substantiated; and

6. The Government Services and Resources Committees of the Navajo Nation Council further reported to the Navajo Nation Council that 1) there exists a serious need to improve the level and quality of communication between the Office of the President/Vice President, Division of Natural Resources and Office of Attorney General; 2) the Navajo Nation must dedicate adequate level of resources for the pursuit of the Navajo Nation water rights; and 3) the Navajo Nation Government must communicate to the Navajo people all of the Nation's water rights claims; and

7. By Resolution CAU-57-93, the Navajo Nation Council established the Fixed Cost Litigation Account from which costs that are associated with litigation are paid for by the Attorney General of the Navajo Nation. To ensure that a special account is established solely for the Navajo Nation water rights claims, it is necessary to establish a separate Navajo Nation Water Rights Claim Fund created by statutory provision as set forth in Exhibit "A"; and

8. The Navajo Nation Council determines that water rights claims of the Navajo Nation must be placed as a top priority of the Navajo government. Water is one of the fundamental aspects of Navajo customs and must be protected. Without the assurance that Navajo water rights claims is a top priority, the Navajo Nation stands to lose its rightful claim to the allocation of wet water from the Little Colorado River, Colorado River Main Stem, San Juan River in Utah and San Juan River in New Mexico; and

9. The Resources and Government Services Committees of the Navajo Nation Council through Resolution RCAP-43-02 and GSCAP-18-02, respectively, have reviewed and recommends this action to the Navajo Nation Council; and

10. The Budget and Finance Committee of the Navajo Nation Council through Resolution BFAP-33-02 reviewed and recommends this action to the Navajo Nation Council; and

11. The Navajo Nation Council finds that it is in the best interest of the Navajo Nation that funding for the pursuit of Navajo Nation Water Rights should be afforded the highest priority in future budget development actions by the Navajo Nation and therefore believes such funding should be made available to pursue Water Rights Claims in a special fund.

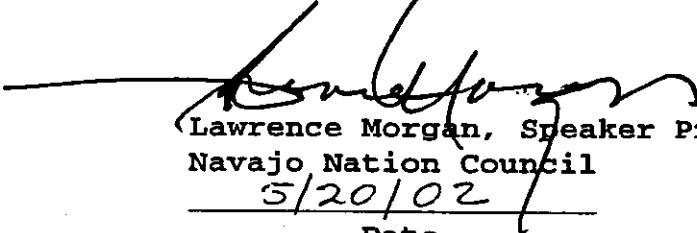
NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby establishes the Navajo Nation Water Rights Claim Fund as set forth in Exhibit "A" attached hereto.

2. The Navajo Nation Council further directs that the Office of the Legislative Counsel shall codify this action as appropriate.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 61 in favor, 6 opposed and 0 abstained, this 17th day of May 2002.


Lawrence Morgan, Speaker Pro Tem
Navajo Nation Council

5/20/02

Date

Motion: Wallace Charley
Second: Kenneth Maryboy

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby give notice that I will not veto the foregoing legislation, pursuant to 2 N.N.C. Section 1005 (C) (10), on this 29th day of May 2002.



Kelsey A. Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. Section 1005(C)(10) this _____ day of _____ 2002 for the reason(s) expressed in the attached letter to the Speaker.

Kelsey A. Begaye, President
Navajo Nation

EXHIBIT "A"

NAVAJO NATION WATER RIGHTS CLAIM FUND

Section _____ Establishment

There is hereby established the "Navajo Nation Water Rights Claim Fund" (hereinafter the "Fund"). During the annual operating budget appropriations the Navajo Nation Council shall appropriate no less than \$2,000,000.00 to the Fund from any and all projected revenue. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall be used only as provided in this chapter. These funds shall not lapse on an annual basis pursuant to 12 N.N.C. Section 820(N), but shall be a continuing account.

Section _____ Purpose

The purpose of this Fund is to provide assured annual funding for the protection of the Nation's water rights in the States of Arizona, Utah and New Mexico. On April 9 and 12, 2002, the Navajo Nation Council received reports from the Navajo Nation water rights experts, Navajo Department of Justice, Navajo Nation President, and Navajo people all indicating that the Navajo Nation must diligently pursue and protect the Navajo Nation's water rights in

the Little Colorado River, Colorado River Main Stem, San Juan River in Utah and San Juan River in New Mexico. As used in this chapter, water rights shall mean the development, filing and adjudication or settlement of claims in any jurisdiction and the establishment and operation of whatever program or offices are deemed necessary to further the purposes stated herein.

Section _____ Expenditure of the Fund; Authorization; Fund Expenditure Plan

- A. The Fund shall be expended pursuant to a Fund Expenditure Plan .

- B. The Navajo Nation Water Rights Commission shall establish the policies and priorities for the expenditure of the Fund and the Commission is hereby delegated the authority to approve the budget and expenditure of the Fund. Said policies and priorities shall be developed and in place by August 1, 2002.

- C. The Navajo Nation Water Rights Commission, the Attorney General, the Controller, the Budget and Finance Committee, and the Resources Committee are hereby authorized to promulgate a Fund Expenditure Plan specifying the procedures for requesting the use of money from the Fund.

Section _____ Fund Accounting

- A. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund with its own balance sheet and

revenue and expenditure statement. The day-to-day accounting for the Fund shall be performed by the Division of Finance in accordance with generally accepted accounting principles.

- B. The Office of the Attorney General shall account for the money spent out of the Fund. Such accounting shall be included as part of the quarterly program reports submitted to the Resources Committee of the Navajo Nation Council and the Navajo Nation Council.

Section _____ Investment of the Fund

All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

- A. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and
- B. The Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

Section _____ Audit Requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government.

Section _____ Amendments

This Chapter may be amended only by ninety percent (90%) vote of all members of the Navajo Nation Council and upon the recommendation of the Resources Committee of the Navajo Nation Council.

Section _____ Effective Date

The effective date of the Fund shall be the beginning of Fiscal Year 2003 and shall remain in affect until the Navajo Nation Council terminates the Fund by resolution.

RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
OF THE NAVAJO NATION COUNCIL

Supporting and Recommending the Establishment of the Navajo
Nation Water Rights Claim Fund

WHEREAS:

1. Pursuant to 2 N.N.C. Sections 371 and 372(C), the Budget and Finance Committee is established and continued as a standing committee of the Navajo Nation Council for the purpose of recommending to the Navajo Nation Council the adoption of legislation designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation; and
2. Pursuant to 2 N.N.C. Section 374 (B) (1), the Budget and Finance Committee of the Navajo Nation Council is authorized to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds; and
3. From December 2000 to March 2002, the Government Services Committee and Resources Committee of the Navajo Nation Council, through the full committees or their subcommittees, reviewed very serious allegations of wrong-doing by Navajo Nation employees such as work being conducted against the Navajo Nation interests in water rights litigation and said employees are not diligently pursuing the Navajo Nation water rights claims; and
4. On July 6, 2001 and March 27, 2002, the Government Services Committee of the Navajo Nation Council issued directives to the Office of the Attorney General and Office of the President. The directive included, but were not limited to, 1) the development of specific policies and procedures for the management of confidential attorney-client communications, attorney work-products and other confidential materials and information; 2) the appointment of one or more Navajo attorneys to be trained in the area of water law and water rights litigation; 3) the review of all statutes of the United States and the individual states relative to the leasing or sale of water rights by Indian tribes; and 4) the review of all

Congressional acts relative to the quantification of reserved Indian water rights; and

5. On April 9, 2002, the Navajo Nation Council received a report from the Navajo Department of Justice, including experts hired by the Navajo Nation, regarding the efforts to determine the level of the Navajo Nation's water rights claims. It was reported to the Navajo Nation Council that water rights claims are based upon a complex combination of scientific fact-based and legal issues that require significant financial resources to present and pursue by any party, including the Navajo government; and

6. On April 12, 2002, the Government Services and Resources Committees of the Navajo Nation Council submitted their findings and recommendations regarding the very serious allegations. Said committees informed the Navajo Nation Council that of the 38 allegations 30 were not substantiated; and

7. The Government Services Committee and Resources Committee of the Navajo Nation Council further reported to the Navajo Nation Council that 1) there exists a serious need to improve the level and quality of communication between the Office of the President/Vice President, Division of Natural Resources and Office of Attorney General; 2) the Navajo Nation must dedicate adequate level of resources for the pursuit of the Navajo Nation water rights; and 3) the Navajo Nation Government must communicate to the Navajo people all of the Nation's water rights claims; and

8. By Resolution CAU-57-93, the Navajo Nation Council established the Fixed Cost Litigation Account from which costs that are associated with litigation are paid for by the Attorney General of the Navajo Nation. To ensure that a special account is established solely for the Navajo Nation water rights claims, it is necessary to establish a separate Navajo Nation Water Rights Claim Fund created by statutory provision as set forth in Exhibit "A"; and

9. By Resolution RCAP-43-02, attached hereto as Exhibit "B", the Resources Committee of the Navajo Nation Council supported and recommended the adoption of the Navajo Nation Water Rights Claim Fund, attached hereto as Exhibit "A"; and

10. The Budget and Finance Committee of the Navajo Nation Council determines that water rights claims of the Navajo Nation must be placed as a top priority of the Navajo government. Water is one of the fundamental aspects of Navajo values and customs and must be protected. Without the assurance that Navajo water rights claims is a top priority, the Navajo Nation stands to lose its rightful claims to the allocation of wet water from the Little Colorado River, Colorado River Main Stem, San Juan River in Utah and San Juan River in New Mexico; and

11. The Budget and Finance Committee finds that it is necessary to recommend to the Council that funding for the pursuit of Navajo Nation Water Rights should be afforded the highest priority in future budget development actions by the Navajo Nation and therefore believes such funding should be made available to pursue water rights claims in a specific fund.

NOW THEREFORE BE IT RESOLVED THAT:

The Budget and Finance Committee of the Navajo Nation Council hereby supports and recommends the establishment of the Navajo Nation Water Rights Claim Fund as set forth in Exhibit "A" attached hereto.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 3 in favor, 0 opposed, and 2 abstained, this 29th day of April, 2002.



Bennie Cohoe
Vice Chairperson

Motion: Richard T. Begaye
Second: Ernest Hubbell

RESOLUTION
OF THE RESOURCES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Supporting and Recommending the Establishment of the Navajo
Nation Water Rights Claim Fund

WHEREAS:

1. Pursuant to 2 N.N.C. §§ 691 and 693, the Resources Committee is established and continued as a standing committee of the Navajo Nation Council for the purpose of ensuring the optimum utilization of all resources of the Navajo Nation and to protect the rights, interests and freedoms of the Navajo Nation and People to such resources; and

2. From December 2000 to March 2002, the Government Services Committee and Resources Committee of the Navajo Nation Council, through the full committees or their Subcommittees, reviewed very serious allegations of wrongdoing by Navajo Nation employees such as work being conducted against the Navajo Nation interests in water rights litigation and said employees are not diligently pursuing the Navajo Nation water rights claims; and

3. On July 6, 2001 and March 27, 2002, the Government Services Committee of the Navajo Nation Council issued directives to the Office of the Attorney General and Office of the President. The directives included, but were not limited to, 1) the development of specific policies and procedures for the management of confidential attorney-client communications, attorney work-products and other confidential materials and information; 2) the appointment of one or more additional Navajo attorneys to be trained in the area of water law and water rights litigation; 3) the review of all statutes of the United States and the individual states relative to the leasing or sale of water rights by Indian tribes; and 4) the review of all Congressional acts relative to the quantification of reserved Indian water rights; and

priority, the Navajo Nation stands to lose its rightful claim to the allocation of wet water from the Little Colorado River, Colorado River Main Stem, San Juan River in Utah and San Juan River in New Mexico; and

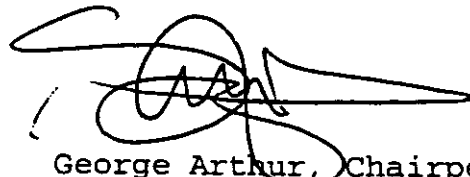
9. The Resources Committee finds that it is necessary to recommend to the Council that funding for the pursuit of Navajo Nation Water Rights should be afforded the highest priority in future budget development actions by the Navajo Nation and therefore believes such funding should be made available to pursue water rights claims in a special fund.

NOW THEREFORE BE IT RESOLVED THAT:

The Resources Committee of the Navajo Nation Council hereby supports and recommends the establishment of the Navajo Nation Water Rights Claim Fund as set forth in Exhibit "A" attached hereto.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 1 opposed and 0 abstained, this 29th day of April, 2002.



George Arthur, Chairperson
Resources Committee

Motion: Jack Colorado
Second: Henry B. Hudson

**RESOLUTION OF THE
GOVERNMENT SERVICES COMMITTEE
OF THE NAVAJO NATION COUNCIL**

**Supporting and Recommending to the Navajo Nation Council
the Establishment of the Navajo Nation Water Rights Claims Fund**

WHEREAS:

1. Pursuant to 2 N.N.C. §§341(A) and 343(B)(4), the Government Services Committee is established and continued as a standing committee of the Navajo Nation Council with the authority to oversee the conduct and operations of entities of the Navajo Nation not otherwise under the oversight authority of other standing committees of the Navajo Nation. Therefore, the Government Services Committee serves as the oversight committee for the Office of the Attorney General/Navajo Department of Justice; and

2. From December 2000 to March 2002, the Government Services Committee and Resources Committee of the Navajo Nation Council, through the full committees or their subcommittees, reviewed very serious allegations of wrongdoing by Navajo Nation employees such as work being conducted against the Navajo Nation interests in water rights litigation and said employees are not diligently pursuing the Navajo Nation water rights claims; and

3. On July 6, 2001 and March 27, 2002, the Government Services Committee of the Navajo Nation Council issued directives to the Office of the Attorney General and Office of the President. The directives included, but were not limited to: 1) the development of specific policies and procedures for the management of confidential attorney-client communications, attorney work-products and other confidential materials and information; 2) the appointment of one or more Navajo attorneys to be trained in the area of water law and water rights litigation; 3) the review of all statutes of the United States and the individual states relative to the leasing or sale of water rights by Indian tribes; and 4) the review of all Congressional acts relative to the quantification of reserved Indian water rights; and

4. On April 9, 2002, the Navajo Nation Council received a report from the Navajo Department of Justice, including experts hired by the Navajo Nation, regarding the efforts to determine the level of the Navajo Nation's water rights claims. It was reported to the Navajo Nation Council that water rights claims are based upon a complex combination of scientific fact-based and legal issues that require significant financial resources to present and pursue by any party, including the Navajo government; and

5. On April 12, 2002, the Government Services Committee and Resources Committee of the Navajo Nation Council submitted their findings and recommendations regarding the very serious allegations. Said committees informed the Navajo Nation Council that of the 38 allegations, 32 were not substantiated; and

6. The Government Services Committee and Resources Committee of the Navajo Nation Council further reported to the Navajo Nation Council that: 1) there exists a serious need to improve the level and quality of communication between the Office of the President/Vice President, Division of Natural Resources and Office of Attorney General; 2) the Navajo Nation must dedicate adequate level of resources for the pursuit of the Navajo Nation water rights and 3) the Navajo Nation government must communicate to the Navajo people all of the Nation's water rights claim; and

7. By Resolution CAU-57-93, the Navajo Nation Council established the Fixed Cost Litigation Account from which costs that are associated with litigation are paid for by the Attorney General of the Navajo Nation. To ensure that a special account is established solely for the Navajo Nation water rights claims, it is necessary to establish a separate Navajo Nation Water Rights Claim Fund created by statutory provision as set forth in Exhibit "A"; and

8. By Resolution CAP-39-02, the Navajo Nation Council established the Navajo Water Rights Commission by adopting the enabling legislation for said Commission. The Council further directed that resolutions be developed to approve budget requests for Fiscal Year 2002 supplemental appropriations and Fiscal Year 2003 annual appropriations; and

9. The Government Services Committee of the Navajo Nation Council finds that it is necessary to recommend to the Navajo Nation Council that funding for the pursuit of Navajo Nation water rights should be afforded the highest priority in future budget development actions by the Navajo Nation and therefore believes such funding should be made available to pursue water rights claims by a special fund.

NOW THEREFORE BE IT RESOLVED THAT:

The Government Services Committee of the Navajo Nation Council hereby supports and recommends to the Navajo Nation Council the establishment of the Navajo Nation Water claims Fund as set forth in Exhibit "A" attached hereto.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Government Services Committee of the Navajo Nation Council at a duly called

meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 29th day of April 2002.



Ervin M. Keeswood, Sr., Chairperson
Government Services Committee

Motion: Harold Wauneka
Second: John Perry, Jr.

