

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0107-24_

SPONSOR: Crystalyn Curley

TITLE: An Action Relating to Resource and Development and Naabik'iyáti' Committees and the Navajo Nation Council; Approving the Rio San José Stream System Water Rights Settlement Agreement; and Approving a Limited Waiver of Sovereign Immunity to Allow Certain Actions to be Brought in State of New Mexico Court

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0107-24

DATE: May 10, 2024

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTON RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'IYATI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE RIO SAN JOSE STREAM SYSTEM WATER RIGHTS SETTLEMENT AGREEMENT; AND APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW CERTAIN ACTIONS TO BE BROUGHT IN STATE OF NEW MEXICO COURT

PURPOSE: The purpose of this legislation is to approve the Rio San Jose Stream System Water Rights Settlement Agreement and to approve a limited waiver of sovereign immunity.

Final Authority: Navajo Nation Council

Vote Required: 2/3 vote of the full membership of the Navajo Nation Council

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 AlMike TL
Website Posting Time/Date _____
Posting End Date: 05/15/24
Eligible for Action: 05/16/24

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

1 NAVAJO NATION COUNCIL RESOLUTION
2 25th NAVAJO NATION COUNCIL – Second Year, 2024

3 INTRODUCED BY

4 
5 _____
6 (Prime Sponsor)

7
8 TRACKING NO. 0107-24

9
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI'
12 COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE RIO
13 SAN JOSÉ STREAM SYSTEM WATER RIGHTS SETTLEMENT AGREEMENT; AND
14 APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW
15 CERTAIN ACTIONS TO BE BROUGHT IN STATE OF NEW MEXICO COURT

16
17 BE IT ENACTED:

18
19 **SECTION ONE. AUTHORITY**

- 20 A. The Resources and Development Committee is a standing committee of the Navajo
21 Nation Council empowered with oversight authority over the waters of the Navajo Nation
22 and to protect this resource for the Navajo Nation and the Navajo People, now and for
23 future generations. 2 N.N.C. §§ 500 (A) and 500 (C)(1).
24 B. The Naabik'iyáti' Committee is established as a standing committee of the Navajo Nation
25 Council empowered to review proposed legislation which requires final action by the
26 Navajo Nation Council. 2 N.N.C. §§ 164(A)(9), 700 (A), and 701 (A)(7).
27 C. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102
28 (A).
29
30

1 D. The Navajo Nation Council is authorized to approve a limited waiver of the Navajo
2 Nation's sovereign immunity by a two-thirds (2/3) vote of the full membership of the
3 Navajo Nation Council. 1 N.N.C § 554 and 2 N.N.C § 223(C).

4
5 **SECTION TWO. NEW MEXICO WATER RIGHTS IN THE RIO SAN JOSÉ**
6 **STREAM SYSTEM AND THE RIO PUERCO BASIN AND SETTLEMENT**
7 **NEGOTIATIONS**

8 A. Since Navajo creation, water has served as a fundamental element to Navajo life. *Tó béei*
9 *da' iiná*, (with water, there is life), and it is elemental to *Hózhóogo Oodáál* (the Navajo
10 Way of Life). We pray and make offerings for rain to fill our rivers so our animals, crops,
11 land, and people can grow and thrive. In the *Hózhóóji* (Blessingway Ceremony), we
12 cleanse our bodies with water and wash our hair to restore harmony to our lives. Many
13 Navajo People are connected to water through our clan names.

14 B. Water is a fundamental element to Navajo ceremonial life, provides nourishment and
15 hygiene for the Navajo People, waters Navajo crops and livestock, and sustains Navajo
16 wildlife and riparian vegetation.

17 C. In recognition of *Tó'ée'iiná at'e* (water is life), the Navajo Nation Council has determined
18 that water is essential "to provide for a permanent homeland for the Navajo People." 22
19 N.N.C. § 1101.

20 D. *Tó Ba'áadii* (Female River – the Rio Grande), born from one of our sacred mountains, is
21 one of the four sacred rivers that set the boundaries for *Dinétaah* (Navajoland) and is a
22 protector for the Navajo People. It is part of a 335,500 square-mile watershed that extends
23 across the Navajo Nation, the United States, and Mexico. The south is associated with
24 femaleness, and the section of *Tó Ba'áadii* that is best known to the Navajo People flows
25 almost directly south. The Rio Grande Basin intersects with Navajo Nation chapters
26 across three subbasins: Rio San José, Rio Puerco, and Rio Salado. The settlement of the
27 Navajo Nation's claims to waters in this watershed ensures that *Tó Ba'áadii* will continue
28 to protect the Navajo Nation and the Navajo People and sustain life on our lands –
29 forever.

- 1 E. The Rio San José Basin, also known as the Rio San José Stream System, is primarily
2 supplied by runoff from the Zuni Mountains. The Rio San José Stream System flows
3 eastward through New Mexico, generally following the path of Interstate 40 before
4 joining Rio Puerco.
- 5 F. The Rio Puerco's headwaters are in northwestern New Mexico. From there, the Rio
6 Puerco flows south through the Arroyo San José and several other canyons before joining
7 *Tó Ba'áadii* in Bernardo, New Mexico.
- 8 G. Navajo communities located in the Rio San José Stream System and the Rio Puerco Basin
9 in northwestern New Mexico have severe water infrastructure deficiencies that
10 negatively impact the health, economy, and welfare of the Navajo People and the Navajo
11 Nation.
- 12 H. In 2020, during the Coronavirus ("COVID-19") pandemic, the lack of water
13 infrastructure on the Navajo Nation exacerbated the spread of the virus, which infected
14 more than 90,000 Navajo People, resulted in the death of more than 2,000 Navajo People,
15 and placed the Navajo Nation in the global and national spotlight for its lack of access to
16 clean water. Without access to potable water, Navajo communities remain
17 disproportionately vulnerable to COVID-19 and other infectious diseases.
- 18 I. The lack of water infrastructure and access to potable water sources on the Navajo Nation
19 is compounded by intensifying and rapid climate change and a megadrought impacting
20 the American Southwest, including the Navajo Nation. Settlement of additional aspects
21 of the Navajo Nation's water rights claims in New Mexico will protect the Navajo People
22 from these impacts and sustain continued life on the Navajo Nation by ensuring that a
23 meaningful water source will be available and accessible to the Navajo People in the near
24 term and for generations to come.
- 25 J. Beginning in the 1980s, proceedings were initiated in the Rio San José Stream System in
26 Cibola County, New Mexico. The Pueblos of Laguna and Acoma, the United States, and
27 other defendants, both public and private, were brought into the ongoing adjudication.
- 28 K. In 1987, the Navajo Nation joined the proceedings and filed its original statement of
29 claims with respect to the Rio San José Stream System.
- 30

- 1 L. The Pueblo of Acoma, the Pueblo of Laguna, the State of New Mexico, the City of
2 Grants, the Village of Milan, the Association of Community Ditches of the Rio San José,
3 and nine individual Acequias and Community Ditches entered into the Rio San José
4 Stream System Water Rights Local Settlement Agreement dated May 13, 2022 (the
5 “Local Settlement Agreement”).
- 6 M. Prior to that, the Navajo Nation entered into negotiations that have led to a settlement
7 that will resolve the Navajo Nation’s water rights claims within the Rio San José Stream
8 System and the Rio Puerco Basin, benefiting fifteen chapter communities. The Rio San
9 José Stream System Water Rights Settlement Agreement (the “Settlement Agreement”)
10 is attached as **Exhibit A**.
- 11 N. The Rio San José Stream System Water Rights Settlement Agreement is the “Navajo
12 Nation Addendum” referenced in Article 17 of the Local Settlement Agreement. By
13 approving this “Navajo Nation Addendum”, the Navajo Nation is also agreeing to be a
14 Signatory Party to the Local Settlement Agreement. The Local Settlement Agreement is
15 attached as **Exhibit B**.
- 16 O. A map showing the area covered by the negotiations is included as **Exhibit C**.
- 17 P. The Rio San José Stream System Water Rights Settlement Agreement, **Exhibit A**, once
18 approved and ratified by Congress, will recognize the water rights of the Navajo Nation
19 in the Rio San José Stream System and the Rio Puerco Basin and provide funding for
20 infrastructure development that will benefit members of the Navajo Nation. The
21 Settlement Agreement is summarized here:
- 22 a. Article 17.1 – Definitions. This article defines key terms to avoid future controversy
23 concerning the interpretation of the Settlement Agreement.
- 24 b. Article 17.2 – Navajo Nation Water Rights Based on Past and Present Uses in the Rio
25 San José Stream System. This article describes and quantifies the Navajo Nation’s
26 water rights based on past and present uses in the Rio San José Stream System,
27 including:
- 28 i. 638 acre-feet per year (AFY) of groundwater with a priority date of 1849.
29 ii. 35 AFY for the purpose of livestock and wildlife watering, 493 acre-feet
30 quantified storage right for stock ponds, and 382 AFY consumptive use right

1 through evaporation for stock ponds, all with a priority date of 1849, provided
2 that the priority date for stock ponds on Navajo fee lands is the construction
3 date.

4 iii. Recognition of the existing state-law based water rights of the Navajo Nation
5 and express recognition that the Navajo Nation may acquire additional state-
6 law based rights consistent with Article 17.10.

7 iv. All of the quantities of water stated in Articles 17.2 and 17.4 shall be reviewed
8 under a process for technical correction under Article 17.2.4, under which the
9 Navajo Nation, the United States, and the State of New Mexico will prepare a
10 joint report providing the basis for the quantifications based on past and present
11 uses on Navajo Nation lands and the quantities will be corrected for inclusion
12 in the Partial Final Judgement and Decree of the Navajo Nation's Water Rights
13 in the Stream System.

14 c. Article 17.3 – Traditional Agricultural Water Use Practices. This article excludes the
15 practices of seasonal works farming and soil conservation from priority
16 administration, providing that no party to the adjudication may seek to enjoin or
17 otherwise prohibit the Navajo Nation or its members from engaging in these
18 practices.

19 d. Article 17.4 – Navajo Nation's Out of Basin Water Rights for Past and Present Uses.
20 This article describes and quantifies the Navajo Nation's water rights based on past
21 and present uses in the Rio Puerco Basin, including:

22 i. 363 AFY diversion within the Rio Puerco subbasin and 143 AFY diversion
23 within the Arroyo Chico subbasin of groundwater with a priority date of 1849.

24 ii. Water rights for livestock water uses in the Rio Puerco Basin are to be
25 quantified and described using the same methodology used for the Rio San José
26 Stream System livestock rights recognized in Article 17.2.4.

27 iii. Recognition of the existing state-law based water rights of the Navajo Nation
28 and express recognition that the Navajo Nation may acquire additional state-
29 law based rights consistent with Article 17.10
30

1 iv. For the Rio Puerco Basin, the Navajo Nation agrees not to claim additional
2 water rights beyond those described in the Settlement Agreement, provided that
3 in the event that any of the water rights described in this article and Article 17.5
4 are not upheld in any administrative or judicial proceeding, the claims
5 limitations provided in this article will no longer apply and the State and Navajo
6 Nation will activate the process under Article 17.14.20.2 to modify the terms
7 applying in the Rio Puerco Basin.

8 e. Article 17.5 – Additional Groundwater Rights. This article recognizes a right to an
9 additional groundwater right of 1,300 AFY with a priority date of 1849. Diversion
10 and use of this additional groundwater right is subject to the permit requirements
11 established under the Navajo Nation Water Code and the Settlement Agreement.

12 f. Article 17.6 – Fulfillment of Need with Imported Water. This article recognizes the
13 right of the Navajo Nation to divert and consume water imported to the Rio Puerco
14 Basin and the Rio San José Stream System, and provides that the Navajo Nation will
15 conjunctively manage its sources of supply to prioritize the importation of water
16 supplies from sources outside either the Rio Puerco Basin or the Rio San José Stream
17 System to the extent feasible in a manner that minimizes effects on groundwater and
18 surface water supplies.

19 g. Article 17.7 – Cooperation with Settlement Parties. This article provides for
20 settlement parties to provide points of contact and satisfy meet and confer processes,
21 including any application to the State Engineer by the Navajo Nation or a Navajo
22 Nation Water Use Permit application pending before the Navajo Nation during the
23 public notice period.

24 h. Article 17.8 - Leasing of Navajo Nation’s Water Rights. This article allows the
25 Navajo Nation to lease water rights under this settlement subject to the approval of
26 the Secretary of the Interior.

27 i. Article 17.9 – Basin Administration. This article provides that the Navajo Nation will
28 forbear making a priority call against any non-Tribal administrable water right
29 existing prior to the Enforceability Date of the Settlement Agreement, provided that
30 this does not affect the right of the Navajo Nation or the United States as a trustee to

1 assert and defend its senior right in response to any priority call made against Navajo
2 Nation water rights. This article also provides that the Hydrology Bureau will
3 develop a hydrologic model to simulate the effects on groundwater and surface water
4 for use in water rights administration.

5 j. Article 17.10 – Navajo Water Rights Administration. This article provides details on
6 how the Navajo Nation will administer water rights recognized under this Settlement
7 Agreement. It provides for measurement of Navajo diversions and flow on Navajo
8 lands, annual reports of diversions and depletions, detailed provisions regarding the
9 process for public notice, hydrologic analysis, and review of Navajo Nation Water
10 Use Permits. This article also allows a right of appeal of Navajo Nation Water Use
11 Permit decisions to the State of New Mexico District Court for the 13th Judicial
12 District.

13 k. Article 17.11 – Settlement Funding for Navajo Nation. This article provides that the
14 funding from the United States under this settlement will be in the amount of
15 \$243,271,000 provided in a federally funded trust fund plus an inflation adjustment.

16 l. Article 17.12 – Signatory Acequia Projects Fund. This article provides for state
17 funding for a Signatory Acequias Projects Fund for the acequias to use for acquiring
18 water rights or water supplies or for Signatory Acequia Offset Projects.

19 m. Article 17.13 – Relation to Allotments. This article provides that the Settlement
20 Agreement does not quantify or affect any water right, or any claim or entitlement to
21 water, of an Allottee in the Rio San José Stream System or the Rio Puerco Basin.
22 Water rights for allotments will be separately adjudicated from the Navajo Nation
23 water rights to be quantified under this Settlement Agreement, and the Settlement
24 Agreement does not preclude allottees from making claims for water rights in the Rio
25 San José Stream System or the Rio Puerco Basin. This article also describes
26 conditions under which the Navajo Nation would forbear the use of its water rights if
27 non-stock water use on allotments or adjudicated water rights for allotments exceed
28 a specified amount.

29 n. Article 17.14 – General Provisions. This article provides for a number of general
30 provisions, including a limited waiver of sovereign immunity by the Navajo Nation

1 to enforce the terms of the settlement and for review of a Navajo Water Use Permit
2 Decision in state court. It also describes the procedure and contents of the Partial
3 Final Judgment and Decree of the Navajo Nation's Water Rights in the Stream
4 System as related to the litigation. This article further provides a negotiation process
5 to be triggered for modification of terms applying in the Rio Puerco Basin in the event
6 that the water rights for the Rio Puerco Basin described in Articles 17.4 or 17.5 are
7 not recognized or upheld in any administrative or judicial proceeding. In this event,
8 the State of New Mexico, Navajo Nation, and the United States in its capacity as
9 trustee for Navajo Nation will convene and negotiate mutually acceptable alternative
10 solutions.

- 11 o. Article 17.15 – Waivers and Releases of Claims. This article provides for various
12 waivers by the parties, including the release of certain water claims by the Navajo
13 Nation in the Rio San José Stream System. Upon the Enforceability Date, the
14 Settlement Agreement becomes a final, binding and permanent quantification of the
15 water rights of the Navajo Nation in the Rio San José Stream System. The Navajo
16 Nation retains the right to make claims in the Rio Puerco Basin only as provided in
17 Article 17.4.5. The Navajo Nation cannot claim water rights in the Rio San José
18 Stream System or the Rio Puerco Basin beyond those described in this Settlement
19 Agreement; however, nothing in the Settlement Agreement prevents the Nation from
20 acquiring additional water rights by purchase in the future.
- 21 p. Article 17.16 – Conditions Precedent. This article provides for the conditions that
22 must be met before the Enforceability Date.
- 23 q. Article 17.17 – Effect; Enforceability Dates. This article describes the effect of the
24 execution of the Settlement Agreement. The Navajo Nation's execution of this
25 Settlement Agreement is deemed an execution of both this Settlement Agreement on
26 the Navajo Nation's water rights and the Local Settlement Agreement dated May 13,
27 2022, once the other parties execute this Settlement Agreement. This article also
28 provides that the Local Settlement Agreement dated May 13, 2022, shall become
29 final and enforceable when the conditions precedent in Article 16 have been met, and
30 this Settlement Agreement shall become final and enforceable when the Secretary of

1 the Interior publishes a statement in the Federal Register finding that the conditions
2 precedent in Article 17.16 have been met.

3 Q. The settlement requires that the Navajo Nation provide a limited waiver of sovereign
4 immunity and consent to be added as a party and allow actions by any party concerning
5 settlement interpretation or enforcement of the Settlement Agreement, or review of a
6 Navajo Nation Water Use Permit Decision under the Settlement Agreement that is
7 brought in State of New Mexico Court for the 13th Judicial District, and in the New
8 Mexico Court of Appeals, and the New Mexico Supreme Court on appeal therefrom in
9 the same manner as provided under New Mexico law.

10 R. The Navajo Nation Water Rights Commission, with legal and technical assistance from
11 the Department of Justice Water Rights Unit and the Department of Water Resources,
12 made presentations on the Settlement Agreement available to the fifteen chapter
13 communities that will be impacted, to the Eastern Agency Council and to the Eastern
14 Land Commission. Interactive forums were also held on radio and on social media
15 livestreams.

16 S. On May 9, 2024, the Navajo Nation Water Rights Commission, through NNWRC-2024-
17 013, attached as **Exhibit D**, passed a resolution endorsing and recommending approval
18 by the Resources and Development Committee, the Naabik'iyáti' Committee, and the
19 Navajo Nation Council of the Rio San José Stream System Water Rights Settlement
20 Agreement.

21 T. Consistent with the concept of *Tó'éí'íiná At'e* (Water is Life), the Navajo Nation Council
22 has determined that it is in the best interest of the members and chapters of the Navajo
23 Nation residing within the Rio San José Stream System and Rio Puerco Basin and the
24 Navajo Nation in general, to approve the Rio San José Stream System Water Rights
25 Settlement Agreement.

26 U. It is in the best interest of the Navajo Nation, that a limited waiver of sovereign immunity
27 be approved by the Navajo Nation Council and that the President of the Navajo Nation
28 and the Attorney General of the Navajo Nation be authorized to sign the Settlement
29 Agreement attached as **Exhibit A**, allowing actions related to interpretation or
30 enforcement of the Settlement Agreement or federal implementing legislation, or review

1 of a Navajo Nation Water Use Permit Decision, to add the Navajo Nation as a party and
2 to be brought in State of New Mexico Court for the 13th Judicial District, in the New
3 Mexico Court of Appeals, and in the New Mexico Supreme Court on appeal therefrom
4 in the same manner as provided under New Mexico law.

5
6 **SECTION THREE. APPROVALS**

7 A. The Navajo Nation Council hereby approves the Rio San José Stream System Water
8 Rights Settlement Agreement in the form of or substantially similar to the form of
9 **Exhibit A** as attached.

10 B. Notwithstanding the Navajo Nation Sovereign Immunity Act, 1 N.N.C. §§ 551-555, the
11 Navajo Nation Council hereby approves a limited waiver of sovereign immunity to enter
12 into the Settlement Agreement attached as **Exhibit A**, for the limited and sole purpose of
13 interpretation or enforcement of the Settlement Agreement or federal implementing
14 legislation or review of a Navajo Nation Water Use Permit Decision to be brought in the
15 State of New Mexico District Court for the 13th Judicial District and in the New Mexico
16 Court of Appeals and the New Mexico Supreme Court on appeal therefrom in the same
17 manner as provided under New Mexico law.

18 C. The Navajo Nation Council hereby authorizes the President of the Navajo Nation and the
19 Attorney General of the Navajo Nation to execute the Rio San José Stream System Water
20 Rights Settlement Agreement in the form of or substantially similar to the form of
21 **Exhibit A** as attached and any and all other documents necessary or appropriate to
22 effectuate the intent and purpose of this resolution.

23
24 **SECTION FOUR. PROCEDURES FOR APPROVING CHANGES IN THE**
25 **SETTLEMENT AGREEMENT**

26 In the event changes are made to the Rio San José Stream System Water Rights
27 Settlement Agreement during the congressional process such that the form of the
28 Settlement Agreement is not substantially similar to **Exhibit A** as attached, the Navajo
29 Nation Council delegates to the Navajo Nation Water Rights Commission the authority
30 to make necessary technical and conforming changes to the Settlement Agreement, and

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authorizes the President of the Navajo Nation and the Attorney General of the Navajo Nation to execute the same.