



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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AG-01-24

**OPINION OF THE ATTORNEY GENERAL
OF THE NAVAJO NATION**

August 7, 2024

**The Base Budget Allocations Established by the
Budget & Finance Committee in BFJY-17-24 Are Invalid**

The Attorney General is the Chief Legal Officer of the Navajo Nation (the "Nation") and issues this Opinion pursuant to her authority under 2 N.N.C. § 1965 (A). No adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government who follows the advice contained in this Opinion.¹

I. ISSUE PRESENTED

Does the BFC have the exclusive authority to set the Base Planning Allocations without meaningful consultation with the Branch Chiefs? If not, what is the legal consequence of not having meaningful consultations with the Branch Chiefs? As the governing body of the Navajo Nation, can the Navajo Nation Council amend the law to eliminate the meaningful consultation requirement?

II. SHORT ANSWER

No. The BFC does not have exclusive authority to set the Base Planning Allocations without prior meaningful consultations with the Branch Chiefs. Amending the Budget Instructions Manual (the "BIM") does not eliminate this requirement because the balance of power in the budget process is established in organic Navajo Nation law that can only be changed by the Navajo People. The Navajo Nation Council also cannot eliminate the legal requirement for the BFC to have meaningful consultations with the Branch Chiefs prior to approving Base Planning Allocations for the same reason. The failure to have meaningful consultations prior to BFC's passage of

¹ This Opinion relies on the laws of the Navajo Nation on the date this Opinion was issued. If the Navajo Nation Council amends any of the laws relied on or the Navajo Nation Supreme Court issues a relevant opinion, the advice contained in this Opinion will need to be revised accordingly.

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Resolution BFJY-17-24 invalidates the Base Planning Allocations approved in Resolution BFJY-17-24.

III. FACTS

On June 18, 2024, the BFC passed Resolution BFJN-16-24 which, among other things, approved the Base Planning Allocations for all three Branches of Navajo Government.² On June 21, 2024, all three Branch Chiefs³ signed the "Navajo Nation Three Branch Chiefs' Agreement" setting forth their own set of amounts for the Base Planning Allocations.⁴

On June 25, 2024, the Executive Director for the Office of Management and Budget ("OMB") posed several questions to me on behalf of the Branch Chiefs regarding the respective roles and authorities of the BFC and the Branch Chiefs in setting the Base Planning Allocations. On July 16, 2024, I issued a memorandum explaining, among other things, that Section 6(A) of the BIM, clearly established the need for BFC to consider recommendations from the Branch Chiefs for the Base Planning Allocations.

The following day, the BFC introduced legislation to rescind BFC Resolution BFJN-16-24, approve new Base Planning Allocations, and adopt a revised BIM that amended Section 6(A) to eliminate the role of the Branch Chiefs in setting the Base Planning Allocations - thus attempting to vest the BFC with exclusive authority to set the Base Planning Allocations.

On July 23, 2024, the BFC approved the legislation that is now recognized as BFC Resolution BFJY-17-24. Under Section Two (D) of the Resolution, the BFC added the Three Branch Chiefs' Agreement as an exhibit and claimed to have "discussed and considered the recommendations of the Three Branch Chiefs." However, Section Two (E) contained the same Base Planning Allocations identified in Resolution BFJN-16-24.

² Findings Clause C expressed that the BFC "deliberated on proposed amounts for the FY2025 Base Planning Amounts...Executive Branch \$117,327,379[;] Legislative Branch \$18,056,491[; and] Judicial Branch \$18,094,114...[including other allocations totaling]...\$202,923,866[.]"

³ 12 N.N.C. § 810 (B). "Branch Chief" is defined as "President, Speaker, and Chief Justice of the Navajo Nation."

⁴ The Base Planning Allocations identified by the Branch Chiefs included: Executive Branch \$130,990,750; Legislative Branch \$20,159,261; and Judicial Branch \$20,201,266. Including other agreed upon allocations, the total recommended budget from the Branch Chiefs amounted to \$222,413,000.

IV. LEGAL AUTHORITIES

1. "The Controller shall prepare an annual long term revenue projection for use by the Navajo Nation government...*The Budget and Finance Committee will present the same to the Branch Chiefs by the end of the second quarter of each fiscal year.* A written narrative describing the methodology utilized to estimate revenues and a discussion of key variables affecting the actual revenue, including assumptions made, shall be included in the report..."⁵
2. "The Controller shall review and recommend an annual fiscal year revenue projection for all revenue generating sources for all governmental, proprietary and fiduciary funds of the Navajo Nation. The annual fiscal year revenue projection shall be submitted for review by the Budget and Finance Committee...and will serve as the official revenue estimate at the beginning of the annual budget process for the next fiscal year. *The Budget and Finance Committee will present the annual fiscal year revenue projection to the Branch Chiefs by the end of the second quarter of each fiscal year...*"⁶
3. "The Office of Management and Budget shall prepare an estimate of all external funding to be received by the Navajo Nation in the upcoming fiscal year and shall present this information to the Budget and Finance Committee and the Controller by the end of the second quarter of each fiscal year."⁷
4. "The Office of Management and Budget shall prepare an annual long term expense projection which includes all projected expenditures for at least the next three fiscal years for operations, programs, projects and transfer payment to the Navajo people or to outside non-Navajo Nation government entities. *Such report shall be presented to the Branch Chiefs and the Budget and Finance Committee by the end of the second quarter of each fiscal year. This report, along with the long term revenue projection and the annual General Fund revenue projects and the external funding projection is intended to provide guidance to the Branches of Navajo Nation government in preparation and*

⁵ 12 N.N.C. § 830 (B). Emphasis added.

⁶ 12 N.N.C. § 830 (C). Emphasis added.

⁷ 12 N.N.C. § 830 (D).

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*adoption of the Navajo Nation budget for the next fiscal year."*⁸

5. "The President may prepare an annual budget preparation message. This budget preparation message may include the President's vision of expected goals and objectives and broad priorities for the fiscal year Navajo Nation Comprehensive Budget. This Section does not amend, nor is it in addition to, any powers granted to the President pursuant to 2 N.N.C. § 1005."⁹
6. "*The Office of Management and Budget shall prepare budget instructions for each fiscal year which shall be approved by the Budget and Finance Committee no later than 30 days after the Controller releases the annual revenue projection as delineated at § 830(C). The budget instructions shall include fiscal, operational, policy guidelines, budget development timelines and planning base amounts for each fiscal year for the Executive Branch, the Judicial Branch and the Legislative Branch.*"¹⁰
7. "Each oversight committee shall review and make recommendations to the Budget and Finance Committee concerning the budget in accordance with the annual budget instructions. . . . Oversight committee recommendations shall not exceed the planning base amounts set pursuant to § 830(H). The Budget and Finance Committee shall consult and negotiate with the respective oversight committees if any changes are to be made before making final recommendations to the Navajo Nation Council. *Changes made pursuant to this consultation and negotiation process shall neither increase nor decrease the planning base amount set for the Executive Branch divisions, the Judicial Branch and Legislative Branch, but shall be limited to internal reallocations of the planning base amounts for the entities. The Budget and Finance Committee shall review and make recommendations concerning the budget according to the annual budget instructions.*"¹¹
8. The President shall have the power to "[r]ecommend to the Budget and Finance Committee an annual operating budget or amendments thereof for the Executive Branch and advise the

⁸ 12 N.N.C. § 830 (E). Emphasis added.

⁹ 12 N.N.C. § 830 (G).

¹⁰ 12 N.N.C. § 830 (H). Emphasis added.

¹¹ 12 N.N.C. § 840 (A). Emphasis added.

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Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee."¹²

9. The Speaker's power shall include "[r]ecommend[ing] to the Budget and Finance Committee an annual operating budget or amendments thereof for the Legislative Branch and advis[ing] the Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee."¹³
10. The BFC shall have the power "[t]o review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds."¹⁴
11. The BFC also has the power "[w]ith prior approval of the President, Speaker and/or Chief Justice to recommend to the Navajo Nation Council amendment of the approved annual budgets by reallocating funds between branches."¹⁵
12. "In all cases the courts of the Navajo Nation shall first apply applicable Navajo Nation statutory laws and regulations to resolve matters in dispute before the courts. The Courts shall utilize Diné bi beenahaz'áanii (Navajo Traditional, Customary, Natural or Common Law) to guide the interpretation of Navajo Nation statutory laws and regulations. The courts shall also utilize Diné bi beenahaz'áanii whenever Navajo Nation statutes or regulations are silent on matters in dispute before the courts."¹⁶
13. *Íishjání ádoolníít* - To make plain or clear; laws must be clear so they can be understood.
14. *Baa yáti'* - Talking things out; the opportunity to speak.
15. *Hozhó* - Harmony, balance, beauty, or happiness.
16. *K'é* - Fosters fairness through mutual respect, and requires that an individual is fully informed and provided an opportunity to speak. It is the high standard that the Navajo People hold Navajo Nation leadership to in their enactments and exercise of powers and in dealings with each other.

¹² 2 N.N.C. § 1005 (C) (6). Emphasis added.

¹³ 2 N.N.C. § 285 (B) (6). Emphasis added.

¹⁴ 2 N.N.C. § 301 (B) (2).

¹⁵ 2 N.N.C. § 301 (B) (4).

¹⁶ 7 N.N.C. § 204 (A).

V. ANALYSIS

BFC amended, on July 23, 2024, in Resolution BFJY-17-24, Section 6(A) of the BIM as follows:

~~At the beginning of the annual Comprehensive Budget process, the three Branch Chiefs recommend to BFC the Base Planning Allocations for the three Branches. BFC then decides upon the Base Planning Allocations and approves such figures via Resolution. After the Base Planning Allocations are established, each Branch Chief then directs the allocation and budgeting of the General Fund planning amounts for their respective Branches and Programs.~~

Pursuant to its authority under 12 N.N.C. §830(H), BFC establishes the Base Planning Allocations each fiscal year. Then, according to 12 N.N.C. §830(I), Navajo Nation programs use the Base Planning Allocations to prepare their fiscal year budgets.

By making this amendment, the BFC asserted that it has exclusive authority to set the Base Planning Allocations pursuant to §830(H). However, it is difficult to extract such an interpretation based on a plain language reading of §830(H).

Literally, the first sentence in §830(H) indicates that OMB prepares the "budget instructions" every fiscal year and those budget instructions "shall be approved" by BFC. The second sentence in §830(H) states that the budget instructions include "the planning base amounts for each fiscal year for the Executive Branch, the Judicial Branch, and the Legislative Branch." If the Base Planning Allocations are already included in the budget instructions when OMB presents it to the BFC, the question becomes how the Base Planning Allocations are initially established? A more reasonable interpretation of §830(H) is that the BFC will eventually approve the Base Planning Allocations but it is an unreasonable interpretation to say that §830(H) empowers the BFC to establish the Base Planning Allocations by itself and without meaningful recommendations from the Branch Chiefs. Indeed, the plain language of §830(H) could be read such that BFC must approve whatever OMB presents to it without making any changes to the budget instructions or the Base Planning Allocations. *Diné Bi Beehaz'áanii* offers valuable teachings to help interpret §830(H) and other laws cited herein.

Our Courts have established that it is an elementary rule of construction to give effect "to every word, clause and sentence of

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a statute."¹⁷ Our Courts have also expressed that under the principle of *íishjáńí ádoolnííł*,¹⁸ "laws must be clear so that they may be understood." Generally, when laws are not clear or understood, it can lead to invalidity of a statute. However, we can make the necessary inferences from the surrounding circumstances to provide clarity.¹⁹ In addition, *Diné Bi Beehaz'áanii*²⁰ can be used "to guide the interpretation of Navajo Nation statutory laws and regulations."²¹ The Navajo Nation Council has also declared that the Diné Life Way must be protected and assured by incorporating these fundamental laws into the Navajo Nation Code in a manner that will openly acknowledge and recognize their importance and would generate interest to learn among all Diné.²²

As mentioned, the Controller presents the Long Term Revenue Projection²³ and the Annual Revenue Projection²⁴ to the BFC. In turn, the BFC is statutorily mandated to present both reports to all Three Branch Chiefs by the end of the second quarter, which would be March 31st of each year.²⁵ Additionally, the OMB presents the Long Term Expense Projection to BFC and the Three Branch Chiefs.²⁶ Collectively, these reports are "intended to provide guidance to the Branches of the Navajo Nation government in preparation and adoption of the Navajo Nation budget for the next fiscal year."²⁷ The language is clear that the Three Branches utilize these reports in order to prepare their budgets. It is significant that the provision mentions the Three Branches and not the BFC.

The Appropriations Act also allows the Navajo Nation President to provide an annual budget preparation message.²⁸ In Title Two, the President has statutory authority to "[r]ecommend to the Budget and Finance Committee an annual operating budget or

¹⁷ *Shirley v. Morgan*, 9 Nav. R. 325, 331 (Nav. Sup. Ct. 2010).

¹⁸ Also referred to as *ashjoni adoolnil*. See *Rough Rock v. Navajo Nation*, 7 Nav. R. 168, 174 (Nav. Sup. Ct. 1995).

¹⁹ *Shirley*, at 332.

²⁰ The Diné bi beenahaz'áanii embodies Diyin bitsáádée' beehaz'áanii (Traditional Law), Diyin Dine'é bitsáádée' behaz'áanii (Customary Law), Nahasdzaán dóó Yádiłhił bitsáádée' beehaz'áanii (Natural Law), and Diyin Nohookáá Diné bi beehaz'áanii (Common Law). 1 N.N.C. § 2.

²¹ 7 N.N.C. § 204 (A).

²² Navajo Nation Council Resolution CN-69-02, Whereas Clause 5.

²³ 12 N.N.C. § 830(B).

²⁴ 12 N.N.C. § 830 (C).

²⁵ To the best of our knowledge and belief, these reports were not given by the end of the second quarter.

²⁶ 12 N.N.C. § 830 (E).

²⁷ *Id.*

²⁸ 12 N.N.C. § 830 (G).

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amendments thereof for the Executive Branch and advise the Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee."²⁹ The Speaker also has statutory authority to "[r]ecommend to the Budget and Finance Committee an annual operating budget or amendments thereof for the Legislative Branch and advise the Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee."³⁰ Although the Code does not have similar statutory language for the Chief Justice, the Chief Justice is a Branch Chief and would have an implied authority to recommend the Judicial Branch's budget to the BFC, which is normally the case every year.³¹ Essentially, these laws provide added clarity to recognize the important roles of each Branch Chief in making their recommendations to the BFC of their planned budgets. Historically, their recommendations have been memorialized in a Three Branch Chiefs' Agreement which was also done for the fiscal year 2025 annual budget.

With respect to the BFC, the role and power of the BFC to review and recommend a budget to the Navajo Nation Council is without question.³² However, the BFC's power is not unbridled. There are two important statutory provisions that limit the authority of the BFC. First, the Appropriations Act expresses that after budget hearings are held and presented by Branch entities to applicable oversight committees, the BFC "shall neither increase nor decrease the planning base amount set for the Executive Branch divisions, the Judicial Branch and Legislative Branch, but shall be limited to internal reallocations of the planning base amounts for the entities."³³ If the BFC had exclusive and unrestricted authority to establish the Base Planning Allocations, the BFC should also possess the authority to change

²⁹ 2 N.N.C. § 1005 (C) (6).

³⁰ 2 N.N.C. § 285 (B) (6).

³¹ Under Title Seven, "[i]n addition to his or her judicial duties, the Chief Justice of the Navajo Nation shall supervise all Justices and Judges of the Navajo Nation and administer the Judicial Branch in accordance with applicable standards, rules, policies or procedures. The Chief Justice shall also exercise such duties that are consistent with the Office of Chief Justice." 7 N.N.C. § 371. Clearly, the planning, implementing, monitoring, and controlling of the Judicial Branch's budget are administrative duties of the Chief Justice. The duty of the Chief Justice to plan her branch budget would naturally extend to communicating with the other Branch Chiefs, the BFC, and the Council regarding the Judicial Branch's base planning allocation of the total General Funds planning amount available for budgeting among the three branches. Additionally, the Appropriations Act establishes responsibilities for all Branch Chiefs, including the Chief Justice, to prepare budget requests, to implement the approved budget, to create evaluation standards, to monitor and evaluate programs within their branches, and to receive and provide budgetary reports. 12 N.N.C. § 830(I) and § 850.

³² 2 N.N.C. § 301 (B) (2).

³³ 12 N.N.C. § 840 (A).

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those amounts during the budgeting process. However, the BFC does not have such authority.

Second, Title II organic law requires that once the budgets are set for the Three Branches, the BFC is required to obtain approval from the applicable Branch Chiefs prior to the BFC even recommending budget reallocations to the Council.³⁴ For example, if the BFC plans to recommend to Council the reallocation of funds from the Executive Branch budget to the Legislative Branch, the BFC must first obtain approval from the President and Speaker in order to recommend the budget reallocation. To make sense of these statutory limitations, we cannot infer that the BFC does not need input or approval from the Branch Chiefs to establish the Base Planning Allocations due to a statutory requirement for the BFC to obtain "approval" from the Branch Chiefs for a budget reallocation between Branches.

Basically, we cannot read §830(H) in isolation and even if we could do that, §830(H) is vague on its face such that there cannot be a finding that it empowers the BFC to establish the Base Planning Allocations in isolation. Instead, when reading and applying the provisions in the Appropriations Act, as well as the Branch Chiefs' authorities in Title Two, we can draw reasonable inferences that there is a balance of powers among the three branches and the BFC, and the Branch Chiefs play a significant role in setting the Base Planning Allocations. As Fundamental Law recognized by our courts establishes, "there should not be concentrated power. There are different components of government that must work together."³⁵

Can the BFC, nevertheless, establish the Base Planning Allocations without first consulting with the Branch Chiefs? Based on the analysis provided above, the answer is no. The powers of the Branch Chiefs to provide their recommendations to the BFC of their budgets and the restrictions on the BFC to change the Base Planning Allocations once established infers that there is, at a minimum, a need for the BFC to meaningfully consult with the Branch Chiefs to establish the Base Planning Allocations. This follows the Navajo practice of *baa yáti* ("talking things out") where such consultations conducted by our *Náat'áanii* (leaders) are performed with *k'é* (relation, kinship, etc.) to ensure *hozhó* (harmony) is maintained and/or restored. "All leaders chosen by the Diné are

³⁴ 12 N.N.C. § 810 (D). Budget Reallocations are defined as "the redesignation of appropriated or budgeted funds from one account to another account or to a newly-created account for a different use or purpose.

³⁵ *Shirley*, at 337.

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to carry out their duties and responsibilities in a moral and legal manner in representing the people and the government; the people's trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of the Diné bi beenahaz'áanii."³⁶ Here, the BFC set the Base Planning Allocations in Resolution BFJN-16-24 prior to receiving the Three Branch Chiefs' Agreement. Thereafter, the BFC passed another resolution claiming to have considered the Three Branch Chief's Agreement but essentially ignored the Branch Chiefs' recommendation because the BFC kept the same Base Planning Allocations in BFJY-17-24. What should have happened is that the BFC should have held a meeting with the Branch Chiefs to engage in a robust and meaningful discussion regarding the budgetary needs of each branch and to give careful consideration to the Branch Chiefs' recommendations for the Base Planning Allocations. That is the *k'é* that our Branch leaders deserve from the BFC. It simply isn't enough for BFC to say that the Branch Chiefs' Agreement was "discussed and considered."

Can the Navajo Nation Council, as the governing body of the Navajo Nation, amend the laws relied upon in this memorandum in order to give the BFC exclusive authority to establish the Base Planning Amounts? No. It has been long understood that "there is a Navajo higher law in fundamental customs and traditions, as well as substantive rights found in the Treaty of 1868, the Navajo Nation Bill of Rights, the Judicial Reform Act of 1985, and the *Title Two Amendments of 1989*."³⁷ These are commonly referred to as "organic laws."³⁸ Our history demonstrates that when organic laws are amended, especially when there are significant changes in powers, our Courts will scrutinize and strike down those changes.³⁹ The delegated powers of the President and Speaker, as well as, the delegated (restricted) powers of the BFC have been in existence since 1989. In order for the Council to amend the laws to provide the BFC with exclusive power to establish Base Planning Allocations, without consultation with the Branch Chiefs, would require the taking of rights from the Branch Chiefs. In other words, our organic Title Two law has already expressed the delegated powers that each entity has with regards to the budgeting process. Such cannot be amended by the Council but can be amended by an Initiative of the People.

³⁶ 1 N.N.C. § 203 (B).

³⁷ *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 324 (Nav. Sup. Ct. 1990). Emphasis added.

³⁸ *Judy v. White*, 8 Nav. R. 510, 538 (Nav. Sup. Ct. 2004).

³⁹ *Shirley*, at 337-340.

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VI. CONCLUSION

Resolution BFJY-17-24 approved revised language in section 6(A) of the BIM which incorrectly interprets §830(H) as providing the BFC with exclusive authority to establish the Base Planning Allocation amounts. Although no single law indicates which entity establishes the Base Planning Allocation amounts, it is clear from the use and application of *Diné Bi Beehaz'áanii* principles to help bring clarity to our statutes by reasonable inferences that our Branch Chiefs and the BFC must work together and engage in meaningful consultations (*baa yáti'*) in setting forth the Base Planning Allocations every year. This memorandum is provided with the utmost respect to all of our *náat'áanii* because the Department of Justice desires that *hozhó* be reached amongst all of our leaders.

Navajo Nation Department of Justice



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