

# NAVAJO NATION DEPARTMENT OF JUSTICE

## QUARTER 1

<OCTOBER TO DECEMBER 2021>

Attorney General: Doreen N. McPaul  
Deputy Attorney General: Kimberly A. Dutcher

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<October to December 2021>

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STATUS OF THE DEPARTMENT

The Department of Justice (DOJ) is established by statute. The purpose of the DOJ is to provide legal services, subject to available resources, to the Navajo Nation Government, including the three branches of government, the Executive Branch Divisions, the 110 chapters, and entities. DOJ is also charged with administering the Navajo-Hopi Legal Services Program (NHLSP) and the Offices of the Prosecutor (OTP). DOJ is required to perform all duties and responsibilities in accordance with the highest standards of legal ethics as required by the Navajo Nation Bar Association and by the American Bar Association Model Rules of Professional Conduct.

Doreen N. McPaul has served as Attorney General since February 4, 2019. Kimberly A. Dutcher has served as Deputy Attorney General since April 8, 2019. Within DOJ, there is an Office of the Attorney General (OAG) which oversees the Office of the Prosecutor, seven (7) DOJ units, and the NHLSP. OTP has offices in Window Rock, Tuba City, and the Prosecutor's Office has 11 district offices throughout the Nation.

This quarter, OAG received 753 Requests for Legal Services (RFS) and completed 623. These requests do not include other work such as time spent in meetings, court appearances, preparing for litigation, phone-Zoom-WebEx calls, and responding to work/client email.

COVID-19: Since March 2020 and during the current 1st quarter, the Office of the Attorney General has continued to be deeply involved in all legal aspects of assisting the Navajo Nation government in responding to the myriad of challenges presented by COVID-19. Throughout the past year and during the two closures of the Nation's government, DOJ's attorneys, advocates, and prosecutors worked full time and beyond. OAG prioritized employee safety and adherence to safety protocols when working on site. Currently, over 95% of DOJ's employees are fully vaccinated against COVID-19, and over 50% have received booster shots.

On March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law. Section 9901 of ARPA established the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund, which will provide \$362 billion dollars for state, local and tribal governments, including \$20 billion for tribal governments. As of May 29, 2021, the United States Department of Treasury allocated \$1.8 billion to the Nation under the Fiscal Recovery Funds (FRF) provisions of ARPA. On August 16, 2021, the Nation received a second allocation of approximately \$218 million in FRF funding, for a total of approximately \$2.1 billion dollars in FRF funds. The FRF funds are intended to build upon and expand the relief provided in the CARES Act.

On August 2, 2021, the Navajo Nation enacted CJY-41-21, establishing the Nation's Fiscal Recovery Fund and the Expenditure Authorization Process, among other things. This legislation provides the Nation an unprecedented opportunity for it to mitigate and contain the COVID-19 pandemic as well as to respond to the health, social, and economic impacts of the COVID-19 pandemic. Ultimately, how this funding is prioritized and allocated are policy decisions for the Navajo Nation leadership. We understand that providing tribal members with much needed financial assistance, constructing water lines and wastewater systems, installing power lines, and expanding broadband capacity to Navajo communities are just a few of the Nation's priorities.

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This quarter, DOJ has played an important role in ARPA related matters. After enacting CJY-41-21, the Budget and Finance Committee, through resolution BFS-31-21, approved the FRF procedures and forms for initial eligibility determination reviews of proposed FRF expenditure plans. DOJ provided multiple presentations and reports to Navajo Nation leaders on the implementation of these procedures. DOJ also answered leadership questions on ARPA, CJY-41-21, BFS-31-21, and provided guidance on the FRF procedures to the Chapters. DOJ participated in weekly ARPA Support Work Group calls and in meetings with the Office of the Speaker, Office of Legislative Counsel, Office of Legislative Services, Office of the President and Vice President (OPVP), the FRF Office, and Division of Community Development (DCD), regarding drafting FRF matters. DOJ presented at several leadership meetings and Naabik'iyáti work sessions regarding proposed FRF expenditure plans, including legislation 0257-21. DOJ also reviewed and edited multiple drafts of the Nation's FRF Subrecipient Agreement for defunded CARES projects and participated in several meetings with subrecipients, the Office of the Controller (OOC), OPVP, DCD, Department of Water Resources (DWR), and Division of General Services (DGS). During the first quarter, DOJ's Tax and Finance Unit completed 143 FRF initial eligibility determination reviews for proposed expenditure plans seeking to utilize FRF. Currently, a total of 165 initial eligibility reviews have been completed.

Litigation: This quarter also featured litigation activity in which DOJ litigated or participated on behalf of the Nation:

On December 8, 2021, the Navajo Nation Department of Justice (DOJ) filed the Navajo Nation's Brief in Opposition to the Brackeen and Texas petitions for certiorari pending before the United States Supreme Court. To prepare the brief, DOJ's Litigation Unit worked with the Supreme Court Clinic of Stanford Law School, which provided free assistance of Supreme Court experts. This is the ongoing challenge to the constitutionality of the Indian Child Welfare Act (ICWA) filed by several non-Indian families and three states. Earlier this year, the Fifth Circuit Court of Appeals issued a 325-page decision concluding certain provisions of ICWA were unconstitutional, but upheld most of the statute. There are presently four cert. petitions pending, filed by the Brackeens, the family who adopted one Navajo child, and who seeks to adopt another, the State of Texas, the United States, and the Cherokee Nation along with three other tribes. The Navajo Nation's position is that this matter should not be heard by the U.S. Supreme Court, given that court's conservative majority and the uncertainty whether they will hold ICWA to be unconstitutional in total. The Nation's brief challenged the standing of the Brackeens and other families, as well as the State of Texas, and also asserted that the Fifth Circuit correctly held ICWA does not violate Equal Protection or the Anti-Commandeering doctrine. The Nation's brief is unique in that it asserts ICWA fulfills our two ratified treaties by protecting the integrity of Navajo families. DOJ expects the Court will first review whether to grant cert on this case in January. As always, DOJ will keep the Navajo Nation leadership updated on this important case. If the Court grants cert, DOJ will participate as a party to the case to protect ICWA as a constitutional statute.

On November 19, 2021, Acting Chief Prosecutor Vernon Jackson participated in a Listening Session hosted by the U.S. Attorney for the District of Arizona. Mr. Jackson discussed several of OTP's priorities toward effectively addressing crime in the Nation, requesting federal partners to 1) provide information to the Nation about federally declined cases; 2) share investigative information with OTP; 3) coordinate information for detainer hearings; and 4) engage consistently in Multi-Disciplinary Team (MDT) meetings. Mr. Jackson's participation focused on constructive collaboration toward mutual goals and maintaining a positive working relationship with the Nation's federal partners.

HCOC Donation Branch Report: In response to accusations during this first quarter that Executive Branch departments are mishandling COVID-19 Donations, the Attorney General initiated a comprehensive Donation Fund report describing the background, the laws governing the Donation Fund,

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the approved budget, and expenditures to date. The Report is public and provides information about monetary and non-monetary donations. The Donation Report was finalized and provided to the Navajo Nation leadership on January 10, 2022.

Personnel: We are saddened to report that OTP Senior Prosecutor Cathie Begay passed away. Most recently, Cathie served OTP and the Nation as a Senior Prosecutor in the Ramah, Alamo and Tohajiilee districts for eleven (11) years. Cathie's career also included serving as a district court judge. Cathie is remembered for her dedication to ensuring justice for Navajo children and families.

In May 2021, DOJ requested the Department of Personnel Management (DPM) to reclassify nine (9) of its 17 support staff positions, many of which had never been reclassified since their creation decades earlier. This quarter, on October 25, 2021, DPM informed DOJ that the first of these reclassifications were completed and effective after the employees completed a background check. DOJ support staff tend to be long serving employees, and as a result of this restructure, these employees' positions now reflect changes in technology, duties, and the department. Support staff are also more fairly compensated for their expertise and experience. While this is a positive development, it took several months to process, and we anticipate background checks and PAFs will be completed in the second quarter.

Notwithstanding the continuing COVID-19 pandemic, DOJ filled three (3) vacancies this quarter, including hiring a Principal Attorney for ECDU, an Attorney Candidate for HSGU, and transitioning a temporary OAG Office Aide to a permanent employee. Two (2) of the three (3) new hires are Navajo. This quarter, all DOJ attorneys completed continuing legal education for the Navajo Nation and state bar associations to fulfil licensure requirements.

The first quarter vacancies include:

- Chief Prosecutor (OTP) – Position advertised since 6/2020; filled on an acting basis; awaiting DPM approval of PCQ to re-advertise
- Principal Attorney (WRU) - Position vacated on 3/12/21; candidate interviewed on 12/17; candidate declined offer; position being advertised
- Senior Attorney (HSGU)- Position vacated on 9/30/21; position being advertised
- Attorney (HSGU) – Position vacated on 9/30/21; position being advertised
- Attorney (WRU) – Position vacated on 9/27/21; position being advertised
- Principal Tribal Court Advocate (HSGU) – Position vacated on 3/12/21; position being advertised
- Senior Programmer Analyst (OAG) – Position vacated on 8/27/21; position being advertised; revised PCQ pending at DPM
- Legal Secretary (WRU) – Position vacated on 10/22/21; applications received in December; interviews in January; offer made and accepted, and new hire to start in second quarter.

The Chief Prosecutor position has been filled on acting basis since April 2019. Last year, DOJ initiated legislation 0108-21 to amend 2 N.N.C § 1973 to remove the domicile and tribal membership requirements for the Chief Prosecutor position. On July 12, 2021, the Law & Order Committee discussed 0108-21 and voted 3-0 to refer it to the Naabik'iyáti Committee. On July 15, the Naabik'iyáti Committee voted 14-2 to table legislation 0108-21 for no more than 30 days to have a work session with DOJ. The work session did not occur, and the legislation expired on August 30. DOJ has since revised the Chief Prosecutor Job Vacancy Announcement (JVA) and Position Classification Questionnaire (PCQ), amending the education

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and professional experience requirements, while keeping the domicile and tribal membership requirements, consistent with 2 N.N.C § 1973. The Chief Prosecutor position will be re-advertised when the Department of Personnel Management (DPM) approves the revised PCQ and JVA.

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Within DOJ, the Office of the Prosecutor and Juvenile Justice have important legal enforcement responsibilities. A quarterly report from the Office of the Prosecutor as well as a report regarding the quarterly work of each unit within DOJ follows. These do not reflect all of the projects that DOJ is currently working on. Some have privileged and confidential elements, and this report provides limited information.

**A. Office of the Prosecutor**

The Office of the Prosecutor was established pursuant to Title 2 Navajo Nation Code § 1971 as a department within the Navajo Department of Justice. The purpose of the Office of the Prosecutor (OTP) is to prosecute to completion all cases involving alleged violations of the Navajo Nation Code by Indian persons, to conduct investigations and other activities necessary for the conduct of its affairs, and to assume certain responsibilities with respect to civil matters, including extradition and exclusion proceedings. A Chief Prosecutor is the head of the OTP and is appointed by the Attorney General (AG) and he/she serves at the pleasure of the AG. Moreover, all the prosecutors, within OTP, serves at the pleasure of the Chief Prosecutor. All other OTP support staff are hired and compensated pursuant to the Navajo Nation Personnel Policies and Procedures. The Chief Prosecutor position within OTP has been vacant since March 2019 when a succession of OTP prosecutors started serving as Acting Chief Prosecutor. Since July 30, 2021, Vernon L. Jackson, Sr., has been acting as the Chief Prosecutor and his delegation is expected to expire on January 30, 2022.

**TRENDS WITHIN THE PROGRAM**

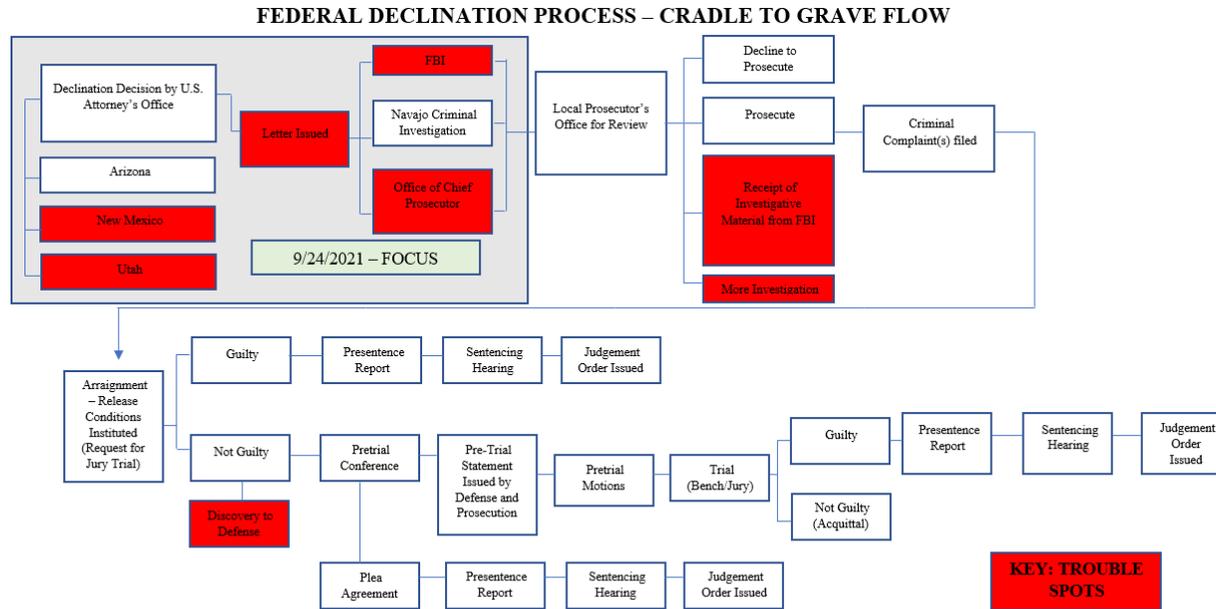
**Public Relations:**

One of the primary ways to provide information and promote good public relations with Navajo communities depends on having an informative and up-to-date internet website. Currently, OTP's webpage, situated under the Department of Justice is outdated. This is a counter-productive situation to the urgent need to project to the public a responsive OTP. This is especially true in the Covid-19 pandemic environment. OTP looks forward to DOJ updating its technology and website to improve public outreach.

**Improvements/Challenges with Major Crimes Prosecutions**

On September 24, 2021, the Office of the Chief Prosecutor (OCP), presented data to the Sexual Assault Prevention Sub-Committee of the Navajo Nation Council, reporting the reasons provided by the respective U.S. Attorney Offices for declining prosecution of major crimes that occurred on the Navajo Nation. The data provided covered years 2019, 2020 and 2021. A description of the federal declination process was provided to the committee (see chart below) with indications of apparent dysfunctions and bottlenecks (in red) within the process.

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**FOR: SEXUAL ASSAULT PREVENTION SUBCOMMITTEE OF  
 NAABIK'IYTAI' COMMITTEE OF THE  
 24<sup>TH</sup> NAVAJO NATION COUNCIL**

During this quarter, OTP had several accomplishments and lessons learned which strengthen OTP's work to prosecute cases that have been declined for prosecution by the U.S. Attorney's Offices.

In early October 2021, OTP conducted a detailed analysis of cases that have been declined by the various United States Attorneys office. In this effort to collect declination letters and to categorized the data, OTP learned the U.S. Attorney's Office in Utah had not submitted declination letters to OTP for several years. As a result, in September 2021, OTP received 15 declination letters for years 2019-2021 from the Utah AUSA's office. This was a significant development in terms of accounting for the prosecution of cases that have been declined by the U.S. Attorney's Office in Arizona, New Mexico and Utah. More importantly, the lack of communication affects the Navajo Nation's ability to review those cases declined for federal prosecution for possible filing in Navajo Nation courts. OTP learned that the Utah AUSA's office were sending declination letters to the FBI, but not to the Navajo Nation. The Navajo Nation is now receiving declination letters directly from the Utah AUSA's office.

Navajo Nation vs Dwayne Lake is a Criminal Homicide case that resulted in OTP pressing the FBI and the Arizona AUSA's Office to produce investigative material developed by the federal government. The FBI and the AUSA's office were challenged to produce their evidence to support

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the Navajo Nation's prosecution of the defendant. The transfer of evidence was slow, but substantial discovery was eventually received.. This case has a lengthy procedural history as it was initially filed in Kayenta, transferred to Dzil Yijiin, sent back to Kayenta, and eventually dismissed without prejudice. The case was then refiled in the Dzil Yijiin District Court. Lake's defense counsel mounted a strong defense asking for the court to institute sanctions/dismissal of the case due to perceived discovery violation tied to the federal government's developed evidence. This case represents what could happen when federally developed evidence is not transferred to the Navajo Nation in a timely manner. It is also a case that reveals to OTP that it should request federally developed evidence early in the prosecution of the case. This case was initially prosecuted by a prosecutor who is no longer employed by OTP and it is now in the capable hands of Senior Prosecutor Tyson Yazzie.

Navajo Nation vs Dylan Sheppard is a case that involved a bench trial that was scheduled for October 1, 2021, involving a double-homicide that occurred on May 12, 2021 in Ft. Defiance. The victims in the case were both shot in the head with a handgun. A now-retired prosecutor inappropriately charged the defendant with Involuntary Manslaughter, an offense not found in the Navajo Nation's criminal code. After repeated consultation with the FBI, the Navajo Nation was able to obtain ninety three (93) pages of the federal government's investigative material on September 27, 2021 that previously had not been provided. With only days before the trial, the Navajo Nation was forced to dismiss the charges against the defendant because the court denied a stipulated motion for a new bench trial date. The Navajo Nation has the option of refileing the charges and the Arizona AUSA's office is continuing to review this case for federal prosecution. OTP learned that a major crime case cannot be prosecuted in Navajo Nation courts with a police report and body camera footage only. This case also reveals the need to request federally developed investigative material early in the prosecution; even in cases the federal government is still investigating. Troy Cook is now the lead prosecutor in this case.

Navajo Nation vs. Marc Gene Clark is a case that demonstrates how the prosecution of a major case can be handled to ensure effective justice for a victim. On October 24, 2021, the defendant was seen on a surveillance video footage stabbing the victim with a knife in the parking lot of a 7-2-11 store in Shiprock, New Mexico. When apprehended, the defendant was found with the knife he used to stab and kill the victim. The next day, Shiprock contract prosecutors immediately filed a criminal complaint and a motion to deny the defendant's release from custody. Fortunately, in this case, the Navajo Nation had sufficient evidence to support the charge of Criminal Homicide. This is not always the case in these major crime cases because the federal government develops a significant amount of investigative material that is not always readily available to Navajo Nation prosecutors. On October 25, 2021, a U.S. Magistrate Judge signed a federal arrest warrant for the defendant charging him with Murder under 18 U.S.C. § 1111(a). The Navajo Nation promptly initiated a federal detainer proceeding when the defendant waived his right to a hearing and was promptly transferred into federal custody. Robust coordination among the contract prosecutor, criminal investigator and the New Mexico AUSA office and strong evidence against the Defendant facilitated the successful case processing for immediate federal prosecution.

Navajo Nation vs. O'Bryan Largo is a case involving a Crownpoint police officer who may have shot a defendant with his government-issued firearm on November 1, 2021. On November 2, 2021, OTP was notified of the officer involved shooting and a police report was provided that revealed very few facts about the incident. Officials from the Office of Internal Affairs, local police supervisors, criminal investigators and the FBI all responded to the scene in Crownpoint, New Mexico. The police report supported the arrest of the Defendant, but was lacked of details, and OTP is required by statute to prosecute, when possible, violations of Navajo Nation laws no matter who the accused may be. As of the date of this report, the federal investigation has been completed, the New Mexico AUSA's office in the District of New Mexico had not provided its findings to

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OTP. It was not until OTP inquired about the disposition of the investigation that federally developed investigative material was provided. This investigative material was not promptly provided to OTP in a manner that facilitates review of the case for potential prosecution.

Navajo Nation vs. Larson Brown is a domestic violence case involving allegations that the defendant strangled, kidnapped, violated a protection order and committed aggravated battery upon his significant other. The incidents occurred on October 21, 2021 in Aneth, Utah. Shiprock contract prosecutors immediately filed criminal complaints against the defendant and filed a motion to deny bail on November 1, 2021. A denial of bail hearing was scheduled on November 15, 2021. The contract prosecutor and assigned criminal investigator were having on-going conversation with an Assistant U.S. Attorney for the District of Utah regarding the development of the case. On November 10, 2021, Larson Brown was indicted in the District of Utah and charged with Domestic Violence Assault by Strangulation and Suffocation while in Indian Country and Domestic Assault by a Habitual Offender. The progression of this case within the Navajo District Court in Aneth and the U.S. District Court, District of Utah shows how close coordination results in swift federal prosecution. The federal indictment of the defendant is the beginning toward providing the victim the justice she deserves and protecting the community from a habitual offender. This quarter, Attorney positions in Kayenta (position #204557) and Ramah (position #243867) were moved to Window Rock (OCP) to facilitate the hiring of attorney prosecutors to prosecute major crime cases declined by the U.S. Attorney's offices in New Mexico, Arizona and Utah. This move will further strengthen OTP's ability to focus on the prosecution of these cases which involved complex prosecutorial responsibilities. Currently, local OTP prosecutors handle these major crime prosecutions in addition to their regular, significant workload. The transfer of these positions was approved by DPM on December 20, 2021.

In November 2021, OCP presented OTP concerns at the 2021 U.S. Attorney-District of Arizona Listening conference which focused on the Navajo Nation's effort to improve prosecution of cases that have been declined by the U.S. Productive discussion about how the Navajo Nation could obtain FBI investigative material for cases that are currently under federal investigation. OTP requested the U.S. to provide information to readily identify cases that are being declined because many of the notifications lacked adequate identifying data and forensic analysis of physical evidence involving cases that have been declined be continued for lab analysis. OTP also asked that the FBI attend MDT meetings involving child sexual and physical abuse cases and that FBI agents be permitted to testify during federal detainer hearings conducted in the Navajo Nation courts. FBI and representatives from the USA's office engaged and provided favourable responses to OTP's requests. In January 2022, OTP, FBI, Navajo Criminal Investigation and USA's office will meet in Window Rock to continue efforts to strengthen the prosecution of federally declined major cases that are filed in the Navajo Nation courts.

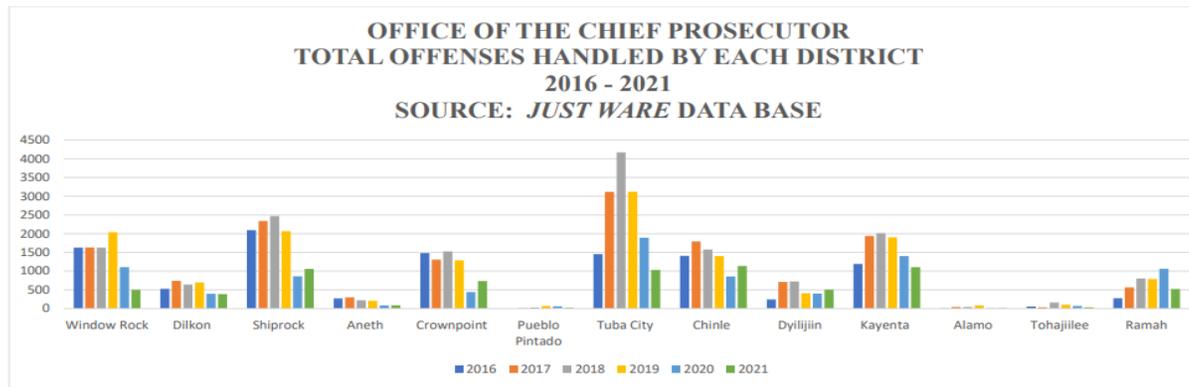
This quarter, OTP launched the Tribal Access Program for National Crime Information which empowers (6) prosecutors to make direct inquiries into a national crime information database. This system has been available to OTP however queries were required to be made from a stationary antiquated computer system. The new structure allows prosecutors to query a computerized index of criminal justice information from their government-issued lap tops. Furthermore, this arrangement permits Navajo Nation prosecutors to more effectively serve and protect the Navajo people by ensuring the exchange of critical data across the Criminal Justice Information Services and other national crime information systems. For example, Navajo Nation prosecutors can query the national criminal history records for defendants who have been arrested and charged with major crimes. For example, the results from these queries can assist prosecutors who argue cases in Navajo Nation courts to deny the release of a defendant

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due to a history of non-appearance. The information can also support Navajo prosecutors’ arguments that a defendant is a danger to the community or others.

**Navajo Nation Justice Buildings/Navajo Nation Prosecutor’s Offices:**

Throughout the first quarter of FY 2022, OCP participated in Navajo Nation Public Safety Judicial Complex meetings held and conducted by Navajo Nation Council Delegate Eugenia Charles-Newton. OCP provided information that Delegate Charles Newton distributed during her visit to Washington DC for meetings with congressional and BIA officials. OCP also provided a five-year data analysis (see chart below) depicting the number offenses reviewed by OTP from 2016-2021 to assist with ensuring office space is provided to OTP offices in justice complex buildings that are being planned.



<b>Data Source for Chart - 2016-2021</b>							
<b>Districts:</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Totals:</b>
Window Rock	1630	1633	1628	2039	1104	503	8537
Dilkon	529	741	641	698	397	386	3392
Shiprock	2094	2338	2473	2066	864	1060	10895
Aneth	272	300	221	209	86	87	1175
Crownpoint	1480	1309	1529	1288	441	737	6784
Pueblo Pintado	0	11	29	69	60	21	190
Tuba City	1452	3115	4168	3120	1894	1031	14780
Chinle	1406	1793	1577	1402	859	1138	8175
Dyilijiin	245	714	727	409	399	505	2999
Kayenta	1195	1940	2013	1903	1403	1108	9562
Alamo	7	45	45	83	5	9	194
Tohajiilee	59	34	162	104	72	34	465
Ramah	277	565	803	790	1065	525	4025
	<b>10646</b>	<b>14538</b>	<b>16016</b>	<b>14180</b>	<b>8649</b>	<b>7144</b>	<b>71173</b>

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**DISTRICT REPORTING**  
**WINDOW ROCK OTP**

Noteworthy Accomplishments

In a period when the Navajo Nation government is struggling to hire individuals who are licensed to practice law in Navajo Nation courts, OTP recruited and hire Troy D. Cook as the Senior Prosecutor for Window Rock OTP. Mr. Cook started his OTP employment on October 11, 2021, to oversee prosecutions and to supervise the Window Rock OTP. Mr. Cook has extensive experience practicing law as a prosecutor both in the Navajo Nation and Hopi courts. He also has substantial experience as a federal and tribal law enforcement officer. During the first quarter, Mr. Cook used his experience to conduct an internal evaluation of the prosecutor's office and he identified deficiencies that are now being addressed. He has invigorated relationships with the Navajo Department of Family Services (DFS) located in Gallup, Ganado and Ft. Defiance. He has also enhanced communication with the Navajo Division of Public Safety programs by strengthening how reports and criminal complaints are composed and sent to his office. Mr. Cook has integrated the Victim Witness Advocate within his office to coordinate with Navajo DPS concerning crimes under the Family Violence Act. Mr. Cook is also mentoring other prosecutors in the OTP office. Finally, Mr. Cook has strengthened communication with the Arizona U.S. Attorney's Office to collaborate in the investigation and prosecution of major crimes.

Education/Training Outreach

- Report and complaint writing training has been completed with police officers from the Navajo Police Department, Window Rock, Arizona and law enforcement officers from the Navajo Division of Resource Enforcement
- Taught at the Navajo Police academy on several legal aspects of their basic training.

Problems/Challenges

- Lack of permanent leadership under a permanent Chief Prosecutor, which affects to OTP's ability to meet program mission, goals and objectives
- Need to fill vacant prosecutor positions
- Lack of safe and healthy work space for OTP-Window Rock personnel; a plan is being developed to address the structural and environmental concerns
- Lack of consistency in receiving up-to-date court dockets has slightly improved
- Need to decentralize the administrative functions from OCP to the local OTP offices.

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**SHIPROCK/ANETH OTP**  
Noteworthy Accomplishments

Contract prosecutors have been handling Shiprock adult criminal cases this quarter and have been instrumental in streamlining two cases that have been highlighted in this quarter's report concerning the immediate charging of individuals in the District of New Mexico and District of Utah.

The Shiprock/Aneth District worked diligently this quarter to catch up on the backlog of police reports and charging. During this quarter, the District reviewed 156 reports and recommended 119 cases for prosecution and 37 cases for declination. The District also reviewed an additional 25 cases and determined follow up was necessary to make a charging decision. The prosecutors also represented the Navajo Nation in pre-trial conferences, bench trials, review hearings and sentencing hearings before the Aneth District Court and the Shiprock District Court. Finally, this quarter the Shiprock/Aneth District assisted the Navajo Police Department, the Federal Bureau of Investigation (FBI) and the Assistant United States Attorney (AUSA) for the Utah and New Mexico Districts with several cases referred for federal prosecution.

Education/Training Outreaches

- The contract prosecutors for Shiprock/Aneth are new this quarter and there was a lot of learning about the process and procedures of the Office of the Prosecutor and the Courts. There was no formal education or training this quarter.

Problems/Challenges

- The Shiprock/Aneth District continues to experience problems getting timely notices about hearings from the Shiprock Court. The District is working on communication with Court and prosecution staff. The District also still has a backlog of cases to review from summer-fall 2021, but is diligently working to resolve the backlog. There were also some technological issues this quarter in which hearings had to be rescheduled.

**CROWNPOINT OTP**  
Noteworthy Accomplishments

Michael Platero, is an attorney-candidate and district prosecutor in Crownpoint OTP. He oversees the legal staff and all adult and criminal cases.

Michael demonstrated outstanding leadership ability in successfully securing two federal witnesses in a sensitive children's Dependency Case arising under *Álchíni Bi Beehaz'áannii*. Amanda Arthur, Legal Secretary, made initial contact with Indian Health Services, the Gallup Indian Medical Center, to schedule phone calls with Michael and the proposed witnesses. Michael then discussed with the General Counsel for the Health and Human Services Administration obtaining federal witnesses for their testimony. At the request of the General Counsel at HHS, Michael complied with certain preliminary *Touhy* requirements to justify the need for these witnesses to testify in tribal court. Then, Michael contacted the witnesses to prepare their testimonies. This a significant accomplishment as many federal agencies refuse to allow their employees to testify in Navajo Nation courts.

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Amanda and Mary Tom, Victim/Witness Advocate, for Crownpoint District continue to demonstrate a strong work ethic and commitment to the Navajo people. Mary has assisted approximately eight victims of crimes of assault, 14 individuals subjected to and/or related to acts of abuse and neglect of minor children, and 29 individuals subjected to domestic/family violence. Mary continues to demonstrate professionalism and dedication in pursuit of her work for those who are most vulnerable in our communities.

More noteworthy, Amanda has also become more immersed in the intricacies of the criminal justice system in Crownpoint District by preparing discovery and subpoenas for both civil and criminal litigation. Amanda has routinely handled challenging correspondence with the general public. She has scheduled court hearings for both civil and criminal litigation and tracked both civil/criminal cases for this quarter.

Education/Training Outreaches

Prosecutor for Crownpoint District provided two in-depth trainings for two dozen new law enforcement officer recruits at the Navajo Nation Police Academy on December 22, 2021. The subject matter presented covered warrants, subpoenas, and summonses for both civil and criminal litigation. Other subjects presented included the civil process and how law enforcement would be involved in various types of civil issues, including repossessions and garnishments. New recruits were meaningfully engaged and asked thoughtful questions. Prosecutor is set to train these recruits on two more subjects during the week of January 3, 2022.

Problems/Challenges

On October 28, 2021, the Office of the Prosecutor, Crownpoint District Court, Navajo Police Department, Criminal Investigations, Probation and Parole Services, and the Department of Family Services engaged in discussion at its routinely held Resource Meeting. Challenges and problems that arose concerns the lack of prosecuting cases involving elder abuse, coverage of multiple districts by the Prosecutor and Judge, and service of process of summons for individuals residing outside the Navajo Nation. These challenges were and will continue to be addressed as all involved departments and entities were made aware of such challenges. The next Resource Meeting is set to be held in early 2022.

The Victim/Witness Advocate for Crownpoint District participated in the followed Victim/Witness Meetings:

- October 25, 2021
- November 8, 2021
- November 22, 2021
- December 6, 2021
- December 7, 2021
- December 20, 2021
- October 19, 2021 – Child Abuse Multi-Disciplinary Team of San Juan County Training.

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The Victim/Witness Advocate participated in the following trainings:

- October 29, 2021 – Community Resource Fair organized by Battered Families Services Gallup, NM.
- December 7, 2021 – Exploring the Prevalence of Domestic and Sexual Violence, and Missing and Murdered Indigenous Persons.
- December 9, 2021 – Selfcare Strategies: Minimizing Impacts as Responders to Sexual and Domestic Violence.
- December 13, 2021 – Supporting Native Survivors through a Medical/Forensic Exam.

**Momentous/Honorable Case Remarks**

*Navajo Nation v. Lang Etc* involved allegations of sexual assault that commenced in early 2021. On December 14, 2021, the Defendant charged in this matter was successfully transferred to federal custody with careful cooperation and coordination with OTP's various partners. The Crownpoint Criminal Investigations, Department of Corrections, and the Crownpoint District Court worked together to ensure that each entity complied with the federal detainer Process. The significant outcome for this case is the successful transfer of a defendant to federal custody due to a federal indictment for which the defendant is set to serve a 30-year mandatory minimum sentence.

The prosecutor for Crownpoint District made several proposed amendments to the Office of the Chief Prosecutor concerning changes to Title 17 of the Navajo Nation Criminal Code. Each of the proposals below are the result of cases that arose in 2021. Proposed amendments include:

- Development of Rape Shield Laws due to the lack of any such law binding on Navajo Nation courts.
- Amending the language of DUIs to be more broadly defined to include those substances that constitute an intoxicating substance.
- Amending the language of "sexual contact" to be defined more broadly for prosecutorial purposes
- Amending the definition of "without consent" to encompass situations where a victim initially consents to intercourse and later withdraws such consent.
- Amending language of the definition of "deadly weapon" to broadly define what constitutes deadly weapon.
- Development of definitions of Hearsay Exceptions to the Rule Against Hearsay to be identical or similar to the definitions under the Federal Rules of Evidence and have such definitions binding on Navajo Nation courts.

**TUBA CITY OTP**  
Noteworthy Accomplishments

Marie James is the Senior Prosecutor in Tuba City. Marie supervises the legal support staff and victim advocate assigned to this office.

Tuba City OTP reviewed and processed all Navajo/AZDPS police reports and Department of Family Services reports that came in this quarter. 1145 cases were closed by support staff dating back from 2018 (backlog) in efforts to organize and separate office files from viable cases. This work will continue as more cases are closed dating back to 2017 and beyond after the office catches up with the backlog of viable cases. The backlog appears to have developed during periods of time when the Tuba City Prosecutor position was vacant or filled short term.

**QUARTER 1**  
<October to December 2021>

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Education/Training Outreaches

Attended NNBA Annual Conference and submitted CLE credits to maintain bar membership.

Problems/Challenges

Implementation of victim contact information sharing: DOC receives victim information from NPD when offenders are booked into custody but refuse to share victim contact information with VWA. Not all victims of crime are notified by NPD of the availability of VWA's in the TC community who can assist victims.

Momentous/Honorable Case Remarks

Tuba City OTP commends support staff members for their dedication to work from their homes to stay on top of the work load despite challenges.

**CHINLE & DZIL YIJIIN OTP**

Noteworthy Accomplishments

Tyson Yazzie is the Senior Prosecutor overseeing Chinle and Dzil Yijiin OTP prosecutions. Tyson submitted 13 state extraditions to OPVP, one defendant requested an extradition hearing and requested legal counsel. Court conducted an Extradition Hearing and appointed Office of the Navajo Public Defender as the defendant's counsel. At the end, Court granted extradition.

Education/Training Outreaches

OTP Chinle presented to a law advocate class at Navajo Technical University.

Problems/Challenges

Courts are still physically closed to the public. Courts insist on holding criminal trials entirely by telephone. This is problematic because there is insufficient means to present evidence to the Court. The presiding judge, as a factfinder, should be able to see evidence as it is being offered in order to rule on its admissibility and to make a determination on guilt.

**KAYENTA OTP**

Noteworthy Accomplishments

Charmaine James is the acting supervising prosecutor in Kayenta OTP. On October 15, 2021, Prosecutor James travelled to Bluff, Utah, and met with Utah FBI, San Juan Sheriff, Navajo criminal investigators and Utah AUSA. She also completed online training in National Crime Information

**QUARTER 1**  
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Certification Course during this quarter. Ms. James has completed all required annual CLE hours through 2021 Navajo Nation Bar Association Annual Conference Webinar: Beyond Covid-19. Kayenta Prosecutor's Office hosted an MDT meeting this quarter and Olivia Begay, Victim Advocate participated. Ms. Begay has been a great asset for victims of domestic violence. She often reaches out to the victims regarding protection orders and assists with other court proceedings that involve crime victims.

Kayenta OTP office staff are doing a fantastic job in every area of their job duty and responsibilities.

Momentous/Honorable Case Remarks

In October of 2021, Ms. James filed a motion to deny bail against an individual, as the offense committed was felonious. The Judge granted Navajo Nation's request, and in December the Defendant was charged with a federal crime.

**DILKON OTP**  
Noteworthy Accomplishments

Brenna Hanley is the Senior Prosecutor overseeing prosecutions in Dilkon. Ms. Hanley scheduled interviews and made a selection of an applicant for the Legal Secretary position in Dilkon and assisted with children's cases in Ramah District Court to ensure coverage after the passing of former prosecutor Cathy Begay. Ms. Hanley also assisted with adult criminal cases and children's cases in Window Rock District Court this quarter. Brenna helpfully assisted with cases in Tohajiilee/Alamo District Courts at the beginning of the quarter. While Brenna was assisting in other court districts, she was also handling all adult criminal and children's cases in Dilkon District Court.

Problems/Challenges

OTP's office in Dilkon is in desperate need of office space. Brenna is currently working out of the Dilkon Police Department's mobile administrative building. The Dilkon District Court is hearing cases that have been identified as Priority 1 (children's cases, bench warrants) and Dilkon OTP is also facing challenges with the untimely issuance of court orders and miscommunication related to the schedule of hearings. Brenna has a critical need for legal support services and requests that the selection she has made a Legal Secretary in Dilkon be expedited.

Education/Training Outreaches

Brenna attended quarterly MDT meeting to establish collaboration with Navajo Nation departments and the Federal Bureau of Investigation. She also completed training to allow her access to the National Crime Information Center criminal justice information.

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<October to December 2021>

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**TOHAJIILEE/ALAMO/RAMAH OTP**  
Noteworthy Accomplishments

Since the passing of former senior prosecutor Cathy Begay, the Tohajiilee/Alamo OTP offices have been managed by Navajo prosecutors Vernon L. Jackson, Sr., Tyson Yazzie, Brenna Hanley and Michael Platero.

This team of prosecutors managed to appear for scheduled hearings for adult and children's cases since the former prosecutor's tragic passing. Moving forward, a plan has been put into place to delegate Crownpoint Prosecutor Michael Platero to temporarily supervise the Tohajiilee/Alamo/Ramah offices. Michael would also continue overseeing Crownpoint OTP. Michael would handle adult and children's cases in Tohajiilee/Alamo/Ramah/Crownpoint while a Shiprock prosecutor would handle both Shiprock and Crownpoint children's cases. These are temporary measures to ensure coverage for all the areas vacated by the passing of Cathy Begay. A Crownpoint prosecutor position, overseeing children's cases, is now on Navajo Department of Personnel Management's website and soon a Senior Prosecutor position will be advertised for the Tohajiilee/Alamo/Ramah OTP offices.

Problems/Challenges

A chronic challenge exists in the processing of police reports and criminal complaints from the Crownpoint Police Department to the Tohajiilee/Alamo OTP office. Review of statistics shows that defendants who have been charged with offenses in Tohajiilee/Alamo reveals that only one police report was received by Tohajiilee OTP this quarter. There is a need to institute a process to ensure that police reports from the Crownpoint police department are sent to the Tohajiilee/Alamo OTP office.

**WHITE COLLAR CRIME UNIT**  
Noteworthy Accomplishments

The supervisory prosecuting attorney position for the White-Collar Crime Unit (WCCU) is currently vacant and will soon be advertised on the Navajo Department of Personnel Management website.

Stanley Milford, Jr. is a Senior Investigator assigned to the WCCU. He recently transferred from the Navajo Department of Resource Enforcement. He holds an Associate of Arts degree (with honors) in Liberal Studies from Haskell Indian Junior College. Stanley possesses over twenty (20) years of law enforcement experience which includes employment with the Navajo Parks and Recreation and Navajo Department of Resource Enforcement as a certified law enforcement officer. He held the job as acting Director of the Resource Enforcement program for nearly two years. With this knowledge and experience Stanley takes on the job as Senior Investigator with the WCCU.

Rhonda Tracey-LaFontaine is an investigator assigned to the WCCU. She has worked for the Navajo Nation for the past twenty (20) years. Rhonda recently transferred from the Navajo Gaming Regulatory Office as an investigator which she held for ten (10) years. She holds an Associate of

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Applied Science degree in the Administration of Justice from Mesa Community College. In her job as an investigator with the Navajo Gaming Office she was responsible for conducting moderate to complex sensitive investigations that involved the preparation of investigative reports related to personnel background investigations, violations of casino policies, gaming compact and gaming ordinance. Rhonda brings this wealth of experience and education to the WWCU as she begins her career investigating allegations of white-collar crime offenders

During this quarter Stanley and Rhonda accomplished the following in the furtherance of white-collar crime cases:

They met with U.S. Department of Interior, Office of Inspector General, regarding an effort to start collaborative efforts to investigate allegations against chapter officials in one of the Navajo Nation government chapters. They also discussed another case with DOI/OIG agents involving Fred Jumbo when Rhonda and Stanley were informed, DOI/OIG were declining to investigate the case because of a negligible chance of any restitution. Mr. Jumbo is now serving a long prison sentence for a separate case. Rhonda also is assisting Special Prosecutor Charlie Galbraith in an upcoming trial involving the former Navajo Nation Controller. She also reviewed several requests from the Navajo Nation Auditor General's Office concerning audits of chapter governments about possible open white-collar criminal investigations. Rhonda assisted Stanley in writing formal responses to these requests that were processed through the Chief Prosecutor's Office. Rhonda is also assisting DOI/OIG – Denver, Colorado with a case involving U.S. Bureau of Indian Education employees who were alleged to have made unlawful purchases with a government-issued purchase card in the amount of \$300,000. Rhonda is helping in the translation of a conversation caught on video surveillance footage.

Education/Training Outreach

Rhonda and Stanley attended *JustWare* training to assist them in accessing investigative reports, court pleadings and other document associated with on-going white collar crime investigation.

Requests/Wants

The investigators assigned to the WCCU need a permanently assigned government vehicle to assist in the conduct of investigations. Similarly, the investigators are in need of official credentials to confirm and identify their authority as Navajo Nation WCCU investigators.

**FEDERAL DECLINATIONS DURING 1ST QUARTER FY 2022**

**DISTRICT OF NEW MEXICO**

- Clifford Trujillo
  - Case Number: 198L-AQ-3437533
  - Assigned Assistant United States Attorney: Kyle T. Nayback
  - Assigned FBI Agent: Lorraine Hardy
  - Assigned Navajo Nation Criminal Investigator: Robert James

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- Earl Eriacho, Jr.
  - Case Number: KLM-21R-1076
  - Assigned Assistant United States Attorney: Kyle T. Nayback
  - Assigned FBI Agent:
  - Assigned Navajo Nation Criminal Investigator: Steven Eldridge
  
- Samuel Littleman
  - Case Number: KLM-20R-1343
  - Assigned Assistant United States Attorney: Kyle T. Nayback
  - Assigned FBI Agent:
  - Assigned Navajo Nation Criminal Investigator: Steven Eldridge
  
- Larry Littlehat
  - Case Number: 198F-AQ-3064526
  - Assigned Assistant United States Attorney: Kyle T. Nayback
  - Assigned FBI Agent: Lance Roundy
  - Assigned Navajo Nation Criminal Investigator: Jefferson Joe
  
- Harold Tsosie
  - Case Number: 198F-AQ-3118055
  - Assigned Assistant United States Attorney: Kyle T. Nayback
  - Assigned FBI Agent: Matthew Roe
  - Assigned Navajo Nation Criminal Investigator:
  
- Nicole Pino
  - Case Number: 03-17-00628
  - Assigned Assistant United States Attorney: Kyle T. Nayback
  - Assigned FBI Agent: Kaye Hughesman
  - Assigned Navajo Nation Criminal Investigator: Custer Bryant/ CI Captain Malcolm Leslie
  
- Patrick Tsosie
  - Case Number: 198A-AQ-2207273
  - Assigned Assistant United States Attorney: Kyle T. Nayback

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- Assigned FBI Agent: Clay Huesman
- Assigned Navajo Nation Criminal Investigator: Larry Etsitty

**DISTRICT OF ARIZONA**

- NBK
  - Case Number: 2021R00356 (juvenile case)
  - Assigned Assistant United States Attorney: Christina Covault
  - Assigned FBI Agent: Jenifer Mulhollen
  - Assigned Navajo Nation Criminal Investigator: Donald Seimy
  
- Larry Yazzie
  - Case Number: 198F-PX-2117556
  - Assigned Assistant United States Attorney: Sharon K. Sexton
  - Assigned FBI Agent: Jenifer Mulhollen
  - Assigned Navajo Nation Criminal Investigator: No Navajo Criminal Investigator assigned.
  
- Jerry Begay
  - Case Number: 2021R03213
  - Assigned Assistant United States Attorney: Kiyoko Patterson
  - Assigned FBI Agent: Michael Carter
  - Assigned Navajo Nation Criminal Investigator:
  
- Hugh Smith
  - Case Number: 198F-PX-316472
  - Assigned Assistant United States Attorney: Jason Crowley
  - Assigned FBI Agent: Michael Carter
  - Assigned Navajo Nation Criminal Investigator:
  
- Ryan Johnson
  - Case Number: 198L-PX-309871
  - Assigned Assistant United States Attorney: Jillian Besancon
  - Assigned FBI Agent: Dustin Drace
  - Assigned Navajo Nation Criminal Investigator: Unknown

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<October to December 2021>

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- Lancesen Johnson
  - Case Number: 198L-PX-3364576
  - Assigned Assistant United States Attorney: Kiyoko Patterson
  - Assigned FBI Agent: Dustin Drace
  - Assigned Navajo Nation Criminal Investigator: Bennie Jim
  
- Aaron Stutterer
  - Case Number: 198H-PX-323588
  - Assigned Assistant United States Attorney: Ryan Powell
  - Assigned FBI Agent: Brian McGrew
  - Assigned Navajo Nation Criminal Investigator:
  
- Triston Goldtooth
  - Case Number: 198H-PX-3252343
  - Assigned Assistant United States Attorney: Ryan Powell
  - Assigned FBI Agent: Brian McGrew
  - Assigned Navajo Nation Criminal Investigator:

**DISTRICT OF UTAH**

- Sam Antez
  - Case Number: 198L-Su-3231476
  - Assigned Assistant United States Attorney: Thaddeus J. May
  - Assigned FBI Agent: Rachel Butler
  - Assigned Navajo Nation Criminal Investigator:

**QUARTER 1**  
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**SUMMARIZED OTP FINANCIAL REPORT**  
**Sources of Funding Highlights**



**49.16%**  
**FY BUDGET**



**30.52%**  
**DOJ - TRIBAL VICTIM SERVICES**



**15.44%**  
**BIA - TRIBAL COURTS COOP AGREEMENT**



**4.88%**  
**NAVAJO NATION OMB-FY 21 CARRY OVER**

<b>OFFICE OF THE PROSECUTOR SOURCES OF FUNDING</b>	
FY 22 NAVAJO NATION COUNCIL ALLOCATION	\$3,192,199
U.S. DEPARTMENT OF JUSTICE FUNDING	\$1,981,346
BUREAU OF INDIAN AFFAIRS FUNDING	\$1,002,291
GENERAL FUND FY 21 CARRY OVER	\$317,149.68
	<b>\$6,492,986</b>

**Budget Status by Source**

**Fiscal Year 2022 Navajo Nation Council Comprehensive  
 Budget Allocation to the Office of the Prosecutor**

**QUARTER 1**  
 <October to December 2021>

OCP has expended 14% (\$446,331) of the initial 2022 budget allocation (\$3,192,199) from the Navajo Nation Council. The largest expenditure to date has been in personnel salaries (\$404,867) with office supplies (\$10,706) as the next largest expenditure during this quarter. The current burn rate (\$446,331) is slightly slower than expected (~ \$798,049 per quarter).

**OFFICE OF THE PROSECUTOR**  
**FY 2022 1ST QUARTER FINANCIAL REPORT - COMPREHENSIVE BUDGET**

<b>Object Code:</b>	<b>Line Item:</b>	<b>Original Amount:</b>	<b>Expended Amount:</b>	<b>% Expended:</b>
2001	Personnel Expenses	\$ 2,862,643	404,867.37	14.14%
3110	Fleet	\$ 33,225	3,828.40	11.52%
3220	Personal Travel	\$ 37,000	783.14	2.82%
4120	Office Supplies	\$ 56,000	10,706.71	19.12%
4200	Non Capital Assests	\$ 14,000	872.34	2.62%
4410	Operating Supplies	\$ 65,540	3,767.26	6.91%
5110	Building <i>(Ramah Office Lease)</i>	\$ 5,088	0.00	0.00%
5360	Equipment/Supplies	\$ 8,548	1,645.97	19.26%
5520	Telephone <i>(Direct Charge)</i>	\$ 4,500	828.84	18.42%
5610	Wireless <i>(Direct Charge)</i>	\$ 36,000	424.30	1.18%
5750	Services for Water/Sewage	\$ 1,140	82.68	7.25%
5570	Internet	\$ 2,280	331.95	35.08%
5710	Energy for Electricity	\$ 6,100	768.78	12.60%
6020	Supplies for Building Repairs & Maintenance	\$ 5,099	0.00	0.00%
6130	Services	\$ 8,014	1,602.72	20.00%
7410	Media	\$ 10,200	2,438.52	23.91%
7600	Employment Related Expenses	\$ 1,000	0.00	0.00%
7510	Training and Professional Dues	\$ 11,300	3,200.00	28.32%
7710	Insurance Premiums <i>(Direct Charge)</i>	\$ 24,522	10,182.98	41.53%
		<b>\$ 3,192,199</b>	<b>446,331.96</b>	<b>14.11%</b>

**Fiscal Year 2022 U.S. Department of Justice Grant**  
**for**  
**Crime Victim Services**

Office of the Chief Prosecutor (OCP) has expended 16% (\$326,177) of the initial allocation (\$1,981,346) from the Department of Justice for crime victim services. The largest expenditures to date has been in personnel salaries (\$248,323) and 60% of this budget has been expended for operating expenses. Expenses related to leasing of GSA vehicles has been stalled due to a grant award modification request that now awaits U.S. Department of Justice review. The end date of this grant is April 15, 2023.

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<October to December 2021>

**OFFICE OF THE PROSECUTOR**

**FY 2022 1ST QUARTER FINANCIAL REPORT - DEPARTMENT OF JUSTICE (VICTIM SERVICES) BUDGET**

Object Code:	Line Item:	Original Amount:	Expended Amount:	% Expended:
2001	Personnel Expenses	\$ 1,140,734	248,323.51	22%
3110	Fleet	\$ 207,518	0.00	
3220	Personal Travel	\$ 124,183	0.00	
4120	Office Supplies	\$ 29,104	10,030.95	34%
4200	Non Capital Assests	\$ 25,593	19,386.65	76%
4410	Operating Supplies			
5110	Building	\$ 11,520		0%
5360	Equipment/Supplies			
5520	Telephone	\$ 47,132		0%
5610	Wireless	\$ 18,480		0%
5750	Services	\$ 8,280		0%
5570	Internet			
5710	Energy	\$ 19,440		0%
6020	Supplies			
6130	Services			
7410	Media			
7600	Employment Related Expenses			
7510	Training and Professional Dues	\$ 1,090	0.00	0%
7710	Insurance Premiums	\$ 11,580	1,434.01	12%
9710	IDC	\$ 336,692	46,941.93	14%
		<b>\$ 1,981,346</b>	<b>326,117.05</b>	<b>16%</b>

**Fiscal Year 2022 Bureau of Indian Affairs  
for  
Juvenile Prosecutorial Services**

The status of funding assistance related to the prosecution of cases involving children is presented below in two charts.

The first year funding source is identified as K1900770 – BIA. This grant serves as the first year allocation for prosecutorial services related to children’s cases. At the time this grant was initiated there was not a clear indication that In-direct Costs (IDC) would be waived for this allocation from the BIA. Nevertheless, \$74,382.41 was removed by the Navajo Nation to cover IDC when the BIA claims this grant cannot cover IDC. This has caused an impasse in how to close out this grant because a second allocation has already been recieved from the BIA to cover prosecution of

**QUARTER 1**  
 <October to December 2021>

cases related to children. OCP is currently using a portion of the remaining amount in this allocation to cover travel, office supplies and operating supplies for the program. Approximately \$65,283 (22%) remains in this allocation. Transfer of funds into negative line item account are pending due to the impasse related to the IDC.

The second year funding source is identified as K2007106 – BIA. This grant serves as the second year allocation for the prosecutorial services related to children’s cases. The Navajo Office of the Controller has placed a limited-restriction on the use of this account until IDC issues have been resolved. Only personnel costs are being expended from this allocation at this time. The BIA has approved supplemental funding to cover the IDC costs associated with this funding award. Despite this approval, OCP is now receiving communication from BIA that it is backpedaling about its decision to award the Navajo Nation additional IDC funding. Approximately 27% (\$129,994) has been expended from this allocation.

**OFFICE OF THE PROSECUTOR**  
**FY 2022 1ST QUARTER FINANCIAL REPORT - BUREAU OF INDIAN AFFAIRS BUDGET**  
**ALLOCATION #1 - K190770**

<b>Object Code:</b>	<b>Line Item:</b>	<b>Original Amount:</b>	<b>Expended Amount:</b>	<b>% Expended:</b>
2001	Personnel Expenses	\$ 441,753	388,583.10	88%
3110	Fleet			
3220	Personal Travel	\$ 9,880	32.00	0%
4120	Office Supplies	\$ 4,843		0%
4200	Non Capital Assests			
4410	Operating Supplies	\$ 2,500	4,842.98	-23%
5110	Building			
5360	Equipment/Supplies			
5520	Telephone			
5610	Wireless			
5750	Services			
5570	Internet			
5710	Energy			
6020	Supplies			
6130	Services			
7410	Media			
7600	Employment Related Expenses			
7510	Training and Professional Dues	\$ 1,525	1,850.00	-12%
7710	Insurance Premiums	\$ 4,204	2,458.97	58%
9710	IDC	\$ 72,727	74,382.41	-16%
		\$ 537,432	472,149.46	88%

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 <October to December 2021>

**OFFICE OF THE PROSECUTOR**  
**FY 2022 1ST QUARTER FINANCIAL REPORT - BUREAU OF INDIAN AFFAIRS BUDGET**  
**ALLOCATION #2 - K2007106**

<b>Object Code:</b>	<b>Line Item:</b>	<b>Original Amount:</b>	<b>Expended Amount:</b>	<b>% Expended:</b>
2001	Personnel Expenses	\$ 369,718	110,429.22	29.87%
3110	Fleet			
3220	Personal Travel	\$ 9,880		0.00%
4120	Office Supplies	\$ 4,343		0.00%
4200	Non Capital Assests			
4410	Operating Supplies	\$ 3,000		0.00%
5110	Building			
5360	Equipment/Supplies			
5520	Telephone			
5610	Wireless			
5750	Services			
5570	Internet			
5710	Energy			
6020	Supplies			
6130	Services			
7410	Media			
7600	Employment Related Expenses			
7510	Training and Professional Dues	\$ 1,226		0.00%
7710	Insurance Premiums	\$ 3,458	631.10	18.25%
9710	IDC	\$ 73,234	18,934.66	25.86%
		\$ 464,859	129,994.98	27.96%

**OMB - PERFORMANCE SCORES FOR 1<sup>ST</sup> QUARTER FY 2022 BY OTP DISTRICTS**

Despite the restrictions and constraints the pandemic has had upon OTP, as a whole, the program was able to exceed the OMB program performance requirements for this quarter (see chart below).

**QUARTER 1**  
 <October to December 2021>

<b>FINAL PROGRAM PERFORMANCE SCORES FOR FY - 2022 FIRST QUARTER</b>						
<b>OFFICE OF THE CHIEF PROSECUTOR</b>						
<b>GOAL STATEMENT</b>						
	Prosecution of Adult Criminal Cases	Resolution of Children's Cases per ABBA	Prosecution and/or investigation of white collar and government corruption offenses properly made to White Collar Crime Unit (WCCU) via any source	Public Education and Collobration Aimed at Prevention and Intervention	Administrative and Support Services Performance	
	<b>PROGRAM PERFORMANCE MEASURE</b>					
	File/Decline 80% of every 100 adult criminal cases presented to OTP by law enforcement	File/Decline 95% of every 100 juvenile referrals made to OTP by DFS or law enforcement	Initiate investigation/prosecution or decline 95% or every 100 referrals properly made to White Collar Crime Unit (WCCU) via any source	# of public education presentations provided to public safety partners and community members	Upload 90% of every 100 reports and Juvenile referrals into <i>JustWare</i>	
<b>SCORES BY EACH OFFICE FOR EACH CATEGORY</b>						
Window Rock	100%	100%	N/A	9	100%	
Dilkon	93%	100%	N/A	1	93%	
Shiprock	71%	100%	N/A	0	71%	
Aneth	73%	100%	N/A	0	73%	
Crownpoint	100%	100%	N/A	7	100%	
Pueblo Pintado	100%	100%	N/A	0	100%	
Tuba City	98%	73%	N/A	0	98%	
Chinle	87%	100%	N/A	1	87%	
Dzil Yjijin	100%	100%	N/A	0	100%	
Kayenta	100%	100%	N/A	1	100%	
Tohajilee	100%	100%	N/A	0	100%	
Alamo	100%	100%	N/A	0	100%	
Ramah	98%	100%	N/A	0	98%	
White Collar Crime Unit	N/A	N/A	100%	3	N/A	
<b>AVERAGE SCORES:</b>	<b>94%</b>	<b>97%</b>	<b>100%</b>	<b>22</b>	<b>94%</b>	

**B. DOJ Units**

**Chapter Unit (CU)**

The Chapter Unit (CU) is led by Assistant Attorney General Rodgerick Begay who oversees two (2) Attorneys and one (1) Legal Secretary. The primary CU clients are the Administrative Service Centers (ASC) of the Division of Community Development (DCD) and the 110 Political Subdivisions, which are generally referred to as Chapters. The CU also receives work from any Navajo Nation governmental client that has a Chapter related issue or question(s) regarding the Local Governance Act (LGA). CU continues to participate in the weekly ASC calls every Tuesday afternoon and all Agency Council Meetings by phone. When available and there is a Chapter matter on an agenda, CU listens to NN Council Meetings, Committee meetings, and Sub-committee meetings. This quarter, CU concentrated on the backlog of requests for legal services (RFS) submitted by Chapters. As such, CU was able to complete fifty-two (52) RFS this quarter. CU participated in the following notable projects this quarter:

1. Chapter Quorum: On October 15, 2021, Navajo Nation Council Resolution CS-50-21 became effective which extended the 3-quorum rule to January 02, 2022. CU participated in a week-long Chapter Orientation & Training hosted by the ASC from October 25<sup>th</sup> to October 29<sup>th</sup>. CU created a PowerPoint to help clarify the legal effects of CJN-36-21 and CS-50-21. These trainings were in addition to the DOJ guidance provided to all 110 Chapters on May 26, 2020, January 14, 2021, March 19, 2021, and July 12, 2021. Yet, there continued to be questions and misunderstandings by Chapters on how the 3-quorum rule was to operate. In December, CU was informed that legislation 0268-21 was being drafted to extend the 3-quorum for an additional 180 days. As such, CU suggested additional language to the legislation in order to help address recent reports about Chapter abuse of the 3-quorum rule. Whether the 3-quorum rule will be extended will likely be decided in the next quarter.
2. Chapter Official Stipends: This quarter and the prior quarter, CU spent a considerable amount of time on the stipend shortfall issue. On November 29, 2021, CU attended the Resources and Development work session at Twin Arrows to provide guidance regarding the Local Governance Act and its applicability to Chapter Official Stipends. CU also answered questions regarding Chapter Official authorities and the history of stipend amounts.
3. ARPA Fiscal Recover Funds (FRF): CU continued to participate in various meetings and discussions regarding the FRF and the plan for projects at the Chapter level.
4. ASC Plan of Operation Amendments and the Solid Waste Management Program: CU drafted major revisions to the ASC Plan of Operation and participated in several meetings with the ASC Staff to discuss those revisions. One of the more significant changes to the plan is to take away direct local supervision from the Chapter Officials over the Chapter Community Service Coordinator until the Official obtains training on personnel matters. If the amendments are approved, this may help reduce the workload that CU and the DOJ Litigation Unit receives regarding personnel matters. In addition, CU has also been assisting DCD with plans to revamp the Navajo Nation Solid Waste Management Program which was abolished in 2018.

**Economic / Community Development Unit (ECDU)**

The Economic/Community Development Unit (ECDU) is led by Principal Attorney/*Acting* Assistant Attorney General Katherine Belzowski who oversees two (2) Attorneys, one (1) Principal Attorney and one (1) Legal Secretary. ECDU assists the Division of Economic Development (DED), the Division of Community Development (DCD), the Navajo Gaming Regulatory Office, and monitors State and Federal election issues that affect the Nation. Below is a summary of ECDU's notable work this quarter:

1. Census/ Redistricting/Voting:

a. Redistricting – ECDU monitored redistricting in New Mexico from the stage of formation of the Citizen Redistricting Committee (CRC) enacted through the 2021 Redistricting Act, to submission of maps to the State Legislature, with final approval by the Governor. ECDU monitored county redistricting developments separate from the CRC process. ECDU attended update calls hosted by the Navajo Nation Human Rights Commission to inform OPVP of redistricting developments. It also attended Tribal Leadership meetings between the Nation, the All Pueblo Council of Governors, and the Jicarilla Apache Nation to discuss redistricting priorities and to reach consensus on Tribal Maps for submission to the CRC. During the legislative session, ECDU attended two leadership meetings between Tribes and New Mexico House Speaker to reach consensus on Tribal maps. ECDU also attended Intertribal Council of Arizona meetings to receive updates on Arizona redistricting. During the redistricting process ECDU provided comments to OPVP on leadership letters and position statements regarding various proposed districts.

b. Voting – ECDU continued its practice of attending meetings and calls related to Native voting issues at both the national and state levels. ECDU attended Native American Right Fund (NARF) meetings related to Native voting rights, such as a Voting Rights Roundtable between Senator Ben Ray Lujan, Senator Tester, and additional Representatives. ECDU attended the monthly Native American Voting Rights Coalition meetings hosted by NARF and additional voting meetings to continue to monitor developments and legislation that affect Navajo members' voting rights such as Arizona Native Vote Strategy meetings and the Arizona Voting Rights Defense Coalition call.

ECDU monitored updates to Section 203 language coverage under the Voting Rights Act (VRA). Navajo continues to be a protected language for the purpose of language assistance with voting under the VRA in 11 political subdivisions, consistent with 2006 determinations. The political subdivisions include 3 counties in Arizona, San Juan County in Utah, and 7 counties in New Mexico.

ECDU held meetings with Chapters in Crownpoint, Baca-Gallup, Chinle, Tuba City, and Shiprock ASC to receive feedback on 2020 elections and coordination with Counties and to inform chapters of the deadline for requests for early voting locations under New Mexico law. ECDU coordinated voting location issues with DCD and McKinley County prior to the New Mexico November 2021 Local Election. After consulting with DCD and NEA, ECDU submitted requests for early voting locations to six New Mexico Counties. As of December 2021 receptive responses have been received from McKinley, Socorro, and Sandoval County.

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ECDU drafted testimony for President Nez in collaboration with the Navajo Nation Washington Office. President Nez presented the testimony before the Senate Judiciary Committee which held a hearing on Native American Voting Rights.

2. Capital Projects Management Department (CPMD): ECDU completed reviews of 2020 Capital Outlay IGAs that were submitted by CPMD. ECDU continues to work with CPMD on how to make the Capital Outlay process more streamlined. ECDU also continues to advise and draft contracts, subrecipient agreements, and other legal documents needed for the expenditure of federal, state, and tribal monies.

3. Division of Economic Development (DED): ECDU is currently working with DED to review and revise the Business Site Leasing Administrative and Management Plan and the Navajo Business and Opportunity Act. DED has completed its initial review of these laws and has made suggested amendments. ECDU is currently reviewing DED's proposed edits. ECDU is meeting with DED on a regular basis on the proposed edits.

ECDU is assisting DED in establishing the Navajo State Small Business Credit Initiative (SSBCI) programs. ECDU completed a legal survey on applicable Navajo law with outside counsel in anticipation of the SSBCI application submission on February 11, 2022. ECDU has been attending presentations on SSBCI as it relates to Tribes, such as the NAFOA Tribal SSBCI Overview and a roundtable discussion hosted by Native CDFI. ECDU has been providing regular updates to DED on SSBCI and Treasury developments, such as the total available funding to the Nation, program requirements, and deadlines. ECDU continues to assist DED in development of the proposed Navajo SSBCI programs. As of December 2021, the total potential SSBCI funding is approximately \$83 million with the expectation that this allocation will increase upwards to \$90 million.

ECDU is working on obtaining trademarks for Miss Navajo, Navajo Nation flag, and Navajo Nation seal. The United States Patent and Trademark Office responded with revisions to the application. ECDU is currently working with respective departments to make application revisions within the six-month due date, or request for an extension for a fee.

4. Gaming: ECDU attended Tribal Regulatory Subcommittee / Gaming Subcommittee calls regarding the pending Arizona Gaming Compact changes (Event Wagering Appendix K and Credit Appendix K.), impacts on Navajo Nation, and recommendations from legal.

There is a lack of consensus on the proposed compact changes. Navajo is supporting Yavapai-Apache (who has still not announced their answer). Event wagering for tribes in Arizona is currently delayed due to lack of unanimous consent that is required by the Indian Gaming Act. Unanimous consent is required by all tribes to amend the compact and allow event wagering amongst the Arizona tribal casinos. The issues causing delays is the number of years allowed before an additional facility can be built by a tribe; a dispute in the definition of event wagering; and where mobile event wagering can occur.

5. Other: Jordan attended the launch of the Tribal Law and Economics Program with Deputy Attorney General Dutcher, hosted by George Mason University Antonin Scalia Law School. Jordan and Katherine presented as speakers at the Navajo Nation Law Hybrid CLE Conference hosted by the ASU Indian Legal Program.

## **Human Services and Government Unit (HSGU)**

HSGU is DOJ's largest unit and is led by Assistant Attorney General LaTonia Johnson. Ms. Johnson manages three (3) Principal Attorneys, one (1) Attorney, two (2) Attorney Candidates, one (1) Principal Tribal Court Advocate, and two (2) Senior Legal Secretaries. HSGU assists eight (8) Divisions/Departments consisting of over 65 programs. This quarter, notable projects include:

### **I. NAVAJO DIVISION OF PUBLIC SAFETY (NDPS):**

1. Privacy Act Guidance Table and Frequently Ask Questions: This quarter, HSGU has made considerable progress in drafting and creating a Guidance Table and Frequently Asked Questions (FAQ) document to assist the NDPS respond to information disclosure requests pursuant to the Navajo Nation Privacy Act. HSGU has met with officials from the Navajo Police Department, Information Management System with Navajo Police Department (NPD), and Criminal Investigations to discuss details related to the relationship between NPD, Criminal Investigations, the Office of the Prosecutor, the Bureau of Indian Affairs (BIA), the United States Attorney's Office, and the P.L. 93-638 Annual Funding Agreement in order to accurately provide guidance to NDPS for Navajo Nation Privacy Act requests. The purpose of the Guidance Table and FAQ is to allow NDPS to review the aforementioned documents and make decisions on disclosure of documents based on who the requesting party is and for what purpose the information is sought. HSGU expects to have a final version available for testing by NDPS.

Complications/Concerns: DPS is a unique client as it has to also follow General Orders that were issued in the 70s (and poorly written) and its P.L. 93-638 contract requirement while ensuring compliance with the Privacy Act. All of these make the water very muddy.

2. Facility Usage Agreement with Window Rock Unified School District (WRUSD) #8: HSGU worked with NDPS on drafting a Facility Usage Agreement (Agreement) with the WRUSD for office space to accommodate both commissioned executive command management and civilian office staff and the public so as to provide essential emergency response services and community-based law enforcement services. The Agreement would be for the lease of up to ten (10) classrooms in the WRUSD Administration Building in Fort Defiance, Arizona. HSGU reviewed draft language proposed by WRUSD and recommended amendments consistent with Navajo Nation law WRUSD agreed to Draft No. 7 of the Agreement and DPS moved forward.

3. Navajo Police Department (NPD)/Arizona Grant Award for the Purchase of Safety Equipment: HSGU received notice of a grant award that NPD received from the Arizona Office of the Attorney General (AOAG) for the purchase of safety equipment. Through the review process, HSGU learned that the grant application and the grant agreement were not properly reviewed through the executive review process for grant applications and grant awards. HSGU reviewed the grant and funding award agreement and found contract language that is inconsistent with Navajo Nation law. At AOAG's request, HSGU drafted language that would be legally sufficient and the proposed language was submitted to AOAG. HSGU met with NPD who asked HSGU to request information from the AOAG on how NPD can request an extension on the grant.

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4. Navajo Police Department – Mutual Aid Agreements (MAA) with Counties and States: HSGU has been working with NPD on determining the current status of all the MAA or Memorandum of Agreements (MOA) with the counties and states on law enforcement services. HSGU met with NPD on the status of the MAA with the Utah Highway Patrol, and discussed options NPD can take to bring the Agreement in line with the definition of an MOA as opposed to an IGA, which is what HSGU previously had determined the MAA to be as written. NPD decided to retain all the language as written in the MAA with Utah Highway Patrol and decided to continue to seek Naabik'iyáti' Committee approval as an IGA. HSGU met with State of Utah on the decision and informed the Utah Attorney General's Office of NPD's decision and a brief outline on what is needed for the Agreement to move through the legislative process for Resolution by the Naabik'iyáti' Committee. As for an Agreement between Montezuma County and NPD, HSGU met with NPD on the matter and NPD did not provide any requests for services related to developing an agreement with Montezuma County. HSGU contacted Chief Legislative Counsel Dana Bobroff and recommended that she obtain the information needed. HSGU also reviewed the San Juan County MAA that was signed by Navajo Nation President Ben Shelly on December 17, 2012 to determine if the MAA is still current and active. After review of the Agreement, HSGU advised NPD that the MAA was still active and current.

5. Interagency Agreement between Division of Natural Resources (DNR) and NDPS: HSGU is reviewing an interagency Agreement between DNR and DPS which provides that DNR has the power to enforce Navajo Nation law as Navajo Nation law enforcement peace officers.

Complications/Concerns: NPD's P.L. 93-638 Scope of Work and Annual Funding Agreement with the Bureau of Indian Affairs needs to be reviewed to determine if the Statement of Work approved by the BIA would allow another Division or Department to perform the activities in the Statement of Work.

6. Title 17 amendments: Initially, HSGU was attending Title 17 amendment meetings spearheaded by Council Delegate Charles-Newton and participated by the NPD, Criminal Investigation, and Office of the Prosecutor. During the meetings, HSGU provided guidance on proposed language change and how it may impact the Navajo Nation, as a whole.

7. Puerco Valley Fire Department: Council Delegate Raymond Smith raised the issue that Navajo Nation members residing within the Puerco Valley Fire Department (PVFD) have been receiving bills for service calls. It was determined that the Apache County Attorney advised, in a memorandum, that the PVFD Fire Chief that 1) an Arizona statute indicates that a fire district *may* bill for services provided outside of its district; however 2) the PVFD should not be issuing bills for service calls to areas within its District. The PVFD Fire Chief disagreed with the Apache County Attorney, and continues to issue the bills for service calls based on the reasoning that responding to calls for service to non-property tax payers is a drain on its resources. In 2004, the Navajo Nation Council approved a Mutual Aid Agreement (MAA), which is still in effect. The MAA is important because it provides that no additional financing is required of the parties. The MAA, in combination with the Apache County Attorney's memorandum, indicate that the PVFD should not be issuing bills for service.

Complications/Concerns: HSGU will be reaching out to the Apache County Attorney to discuss this matter after obtaining examples of Navajo families who were charged by PVFD.

II. PUBLIC LAW 93-638:

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1. Exploring Self-Governance for the Nation's Current Title I Contracts with Navajo Area Indian Health Service: The legislation was approved by the appropriate standing committees with final approval from Naabik'iyáti' Committee on October 14, 2021. The IHS posted the application for the planning grant on November 12, 2021. NDOH (and/or EMS and NTCCTF) needs to submit the application for the planning grant by February 10, 2022.

Complications/Concerns: One of the eligibility requirements is that the tribe seeking entry into the self-governance program must show that it has no unresolved material audit findings for the three (3) years preceding the request for entry into the self-governance program. HSGU has raised this as issue as the Navajo Nation may not be able to meet this requirement.

2. P.L. 93-638 CY 2022 Successor AFA Proposals to IHS: HSGU worked with the OMB and contracted programs to complete review of the 2022 SAFA proposals and submission to IHS. There were no contract renewals. HSGU attended the negotiation meetings with NAIHS on December 6 and 7 through zoom meetings. There were discussions regarding the expansion of the Scope of work for EMS. It was determined that EMS would provide an expansion proposal to NAIHS in 2022 for CY 2023. There were no other issues regarding changes to SOW for the HMS or the NTCCTF contracts.

3. P.L. 93-638 CY 2022 Contract Renewals and Successor AFA Proposals to BIA: HSGU worked with OMB and contracted programs regarding the 2022 SAFAs for their programs. HSGU assisted OMB and programs in drafting responses to the BIA regarding the SAFA proposals. HSGU also participated in teleconferences with the BIA on issues of concern related to the SAFA proposals. There are six (6) contract renewals this year – Higher Education; Tribal Courts; Tribal Enrollment/Vital Records; Housing Improvement Plan; Archaeological Services; Safety of Dams. HSGU attended the standing committee meetings when the contract renewal legislations were on the meeting agenda to be available for questions from the delegates. All contract renewals completed the legislative process by November. BIA completed review of several proposals and awarded funds in early December. There are still some pending proposals that need to be awarded soon, hopefully before the end of 2021 so that programs are able to use funds to continue providing their PFSAs in 2022.

Complications/Concerns: The 90-day time period for BIA NRO to review the contract renewal proposals will go into January 2022. Those contracts may not be renewed before the new calendar year.

4. Johnson O'Malley (JOM) P.L. 93-638 contract: In early December, HSGU attended a meeting between JOM and the BIA regarding unresolved matters with a subcontract with Gallup McKinley County Schools (GMCS). The teleconference had been intended for JOM to seek technical assistance from BIA NRO on how to re-initiate communications with GMCS as a subcontract. However, during the call, BIA NRO notified JOM that GMCS had filed a lawsuit in federal district court against the BIA for not approving a direct contract for JOM services. BIA NRO had denied GMCS's direct application noting that all JOM funds were awarded to the Navajo Nation under a P.L. 93-638 contract. However, GMCS has been refusing any communications or contact with Navajo Nation JOM. During the teleconference, BIA asked how the Navajo Nation intended to provide direct services to GMCS students. HSGU noted that the SOW under the 638 contract only requires the Navajo Nation to subcontract with local schools to provide JOM services. There is no provision for the Navajo Nation to provide direct services. HSGU informed the Litigation Unit (LU)

of the litigation in case there are adverse consequences for the Navajo Nation's 638 contract for JOM services. The LU is monitoring the litigation. HSGU is working with JOM regarding proposals to provide JOM services to GMCS students without requiring amendment to the Navajo Nation's SOW under the JOM 638 contract.

### III. NAVAJO DEPARTMENT OF HEALTH (NDOH):

1. DBMHS Medicaid Provider Agreements with Arizona and New Mexico: DBMHS wants to enter into Medicaid Provider Agreements with Arizona and New Mexico in order to receive third party reimbursements for services provided to eligible Navajo members. DBMHS continues forward with the proposed legislation to authorize these Provider Agreements. HSGU provided information to the Office of Legislative Counsel regarding communications with New Mexico and Arizona as well as a preliminary draft of the proposed legislation. The two (2) legislations for limited waiver of sovereign immunity in order for DBMHS to enter into the Provider Agreements with New Mexico and AHCCCS are 241-21 and 244-21. HSGU will continue assisting DBMHS as the two (2) legislations move forward. The legislations completed action by Health, Education & Human Services Committee and the Budget & Finance Committee. The legislations are scheduled to go before Naabik'iyáti' Committee and the Navajo Nation Council for final approval.

Complications/Concerns: It's not clear if the Navajo Nation Council will approve the limited waivers given there have been few approvals made.

2. Transfer of Navajo Uranium Workers Program to NNEPA: There was a proposal made to transfer the Navajo Uranium Workers Program from NDOH to NNEPA in order to keep the uranium-related programs under one division. While HSGU worked with the NDOH and NUWP on the proposed amendments to the NDOH and NUWP Plan of Operation, there was no feedback from NNEPA and Natural Resource Unit (NRU) regarding where the NUWP would be placed nor regarding any proposed necessary Navajo Nation Code amendments. NRU also noted that NNEPA is an enforcement agency and the transfer of NUWP may lead to some conflicts.

Complications/Concerns: Without appropriate feedback or proposals from NNEPA, it will be difficult to determine whether NUWP will be transferred from NDOH.

3. Processing Contracts for Services Rendered by Contracts Beginning in March 2020. NDOH had several pending contracts with contractors providing services to the Navajo Nation, but the contracts were never fully processed and implemented. However, the Navajo Nation had still been receiving the benefit of the services. HSGU met with TFU regarding options to fully process and pay out the pending contracts. NDOH was able to identify funds and receive prior authorization from federal funding agencies to fund those contracts.

4. NWIC Vendor Manual and Agreements: HSGU reviewed the proposed updated Vendor Manual from NWIC and the associated updated Vendor Agreements for use by vendors within the Navajo Nation. HSGU also participated in a teleconference with NWIC to discuss the transfer of ownership of Bashas stores in Arizona and how that would affect the current vendor agreements in place. The new owner would need to provide new agreements to NWIC once ownership is transferred.

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5. DBMHS TOR sub-recipient Agreements: Under the TOR Grant, DBMHS intends to enter into sub-recipient agreements with 638 health organizations to provide some of the required activities under the grant. DBMHS submitted proposed sub-recipient agreements with Tuba City Regional Health Care Corp, Native Americans for Community Action and Utah Navajo Health Systems. HSGU reviewed and provided recommendations and questions for further clarification.

Complications/Concerns: It's unclear if DBMHS will be able to meet the end date and provide any services under the grant as the grant ends in September 2022. This grant has not had much work done as it was previously assigned to a different program under NDOH, but no work was completed due to the COVID-19 pandemic.

IV. DIVISION OF SOCIAL SERVICES (DSS):

1. Indian Child Welfare Act (ICWA) Program: ICWA cases - HSGU continues to work with the ICWA Program (ICWAP) to conduct case staffing of cases that are in state court and require a request for legal intervention, and other related matters. This quarter, HSGU conducted five (5) case staffing. HSGU will continue to staff cases and answer related legal questions.

2. Kevin S. Settlement/ New Mexico State ICWA Bill: New Mexico State Representative Georgene Louis, sponsor of the New Mexico ICWA bill, hosted one (1) virtual meeting to update the tribes, pueblos and other stakeholders on the status of the New Mexico State ICWA bill. At this meeting the Navajo Nation requested an updated draft bill that was shared with the New Mexico Legislative Counsel (LC) for drafting. Once HSGU received a copy of the bill that was drafted by LC, HSGU found that many of the amendments that were accepted by the tribal stakeholder group and CYFD were not reflected in the final draft bill. In response, HSGU contacted Representative Louis to provide information on the aforementioned. In response, she noted that LC would make those changes. Representative Louis provided an update bill for review. HSGU found it acceptable and sent the updated bill to the ICWA Program for review and comment. HSGU also attended an introduction meeting between President Jonathan Nez and new CYFD Secretary Barbara J. Vigil and two (2) meetings between Bold Futures, a Judges Advocacy Group, and some members of the tribes where the draft State ICWA bill was discussed. HSGU will continue to work with the ICWA Program on advocacy efforts with the New Mexico State ICWA bill.

3. Department of Family Services (DFS) Bill of Collection: In FY'19 Single Annual Audit, the external auditors identified a number of issues. In particular, the auditors noted that DFS did not pay its foster parents. On November 17, 2021, HSGU met with BIA, OPVP, and OMB to discuss the matter. DFS provided additional information to BIA and BIA requested that the verbal statements be provided in writing. HSGU reviewed DFS' written response, which required a number of edits.

V. BOARD OF EDUCATION (BOE):

1. HEHSC Condition of Appropriation: HEHSC recently issued a Condition of Appropriation to DODE's funding for the upcoming budget year requiring the Department of Dine Education (DODE), through the Superintendent and the BOE, to resume all efforts of the Navajo Nation in implementing all 638 contracting activities for the purposes of assuming complete control over Bureau of Indian Education (BIE) administrative

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duties and responsibilities over the education of Navajo children within the Navajo Nation. While the day-to-day efforts will be the responsibility of the DODE and the Superintendent, the BOE will be overseeing this effort to ensure that this directive is carried out. BOE has begun a several days (carried out over several weekends) work session to discuss the details of the 638 application goals, process, and model. HSGU prepared a one pager for the Board members during their first set of discussions outlining the remaining pieces needing to be addressed before the application is ready for submittal, however HSGU was ultimately unable to present during the conference due to other speakers and limited time.

**Complications/Concerns:** The decision to implement 638 contracting activities in order to assume complete control over BIE administrative duties and responsibilities related to the education of children on the Navajo Nation is fraught with political considerations not necessarily tied to achievable outcomes, and the condition of appropriation itself, on its face, fails to take into account the nuances of actually taking over a 638 contract with the BIE, which is limited in many ways. The BOE members have also expressed a lack of understanding around the actual process involved in entering into a 638 contract with the BIE. Further discussion between HSGU and BOE will assist in clarifying the potential possibilities for sovereignty in education through the 638 model.

2. HEHSC Legislative Concern: BOE issued two (2) resolutions this quarter: 1) to rescind the prior resolution that recommended Dr. Harold Begay as the Superintendent of Schools, and 2) recommending Dr. Harold Begay and declaring that the background check and reference check were sufficient.

**VI. DEPARTMENT OF DINE OF EDUCATION (DODE):**

1. Navajo Nation's Plan to re-open schools: Last summer, DODE updated its School Reopening Plan and School Readiness Assessment based on NDOH's new Framework for schools: a document created by local healthcare practitioners in partnership with NDOH. The updated Plan removes a required phased re-opening, and instead allows the opening of schools under any status level, except for purple, which is the most severe. Parental choice remains in place for any parents who do not want to send their children back to in-person learning. The BOE affirmed this updated plan in Resolution NNBEJA-727-2021 as described above. Of note, the Plan requires students and school employees to wear masks.

**Complications/Concerns:** As acknowledged above, the State of Arizona has issued several new laws that prohibit mask and vaccination mandates in schools. This conflict between Arizona and Navajo Nation directives will likely result in many schools being unsure about what guidelines to follow and will potentially result in unsafe learning environments for students in schools operated by the State of Arizona.

2. Educational Sovereignty Efforts: DODE is working to establish a path forward for Navajo Nation Education Sovereignty. In so doing, considerations as to how best to achieve this remain unclear. HSGU is providing research support to look into several options, such as establishing a 638 contract for BIE functions over schools, (which as described above, is now concretely established as a path forward for the Navajo Nation), establishing the Dine School Accountability Plan to govern all schools on the Navajo Nation, as well as looking at more direct ways to work with the federal government to assume education functions across all schools on the Navajo Nation. HSGU prepared a one-pager for the BOE evaluating the current items still needing to be addressed in DODE's 638 proposal.

Complications/Concerns: This research assignment is a substantial undertaking that requires creative thinking for how to forge a path forward that has not been taken before. There remains division within DODE, and among BOE members, of how best to do this. The research conducted so far by the TED Grant consultants has been one sided (promoting the 638 path) without much direction from DODE staff, who do not have the time to be intimately involved in the research or planning. DODE needs to designate an official position to take on this project. Given these challenges, HSGU is working closely with DODE to begin comprehensive documentation of the different options and the pros and cons of each.

3. ERATE: The Navajo Nation successfully received its ERATE award, which will provide extensive support for internet technology, infrastructure, and service for Navajo Nation Head Start centers. HSGU is working to ensure that Head Start is complying with the corresponding requirements regarding internet safety. HSGU has also been assisting DODE administration to ensure the library Plan of Operation accurately captures the new structure which allows for the Chapter libraries to benefit from ERATE funding. One aspect of the ERATE funding also relates to the designation of Chapter Houses across the Nation as libraries, as they will be supplying public access to the internet for research purposes. The FCC has recently proposed amending the ERATE rules to include Tribal libraries in the definition of libraries eligible for state funding, a requirement for eligibility in the ERATE program. This would have the effect of allowing Tribes to designate their own libraries, and remove Tribal libraries from under the authority of State library agencies for eligibility determinations. In November, the NNTRC filed comments with the FCC in support of this proposed change to the ERATE rules, recommending streamlining the ERATE rules to encourage greater Tribal participation, and recommending a statute of limitations be placed on the Universal Service Administration Company's recoupment of ERATE funds process.

Complications/Concerns: HSGU issued a memorandum to DODE and provided notice of USAC's tactics to recoup money from recipients many years later. The Navajo Nation is already engaged in litigation against USAC to appeal USAC findings against the Navajo Nation. Further, a recent court case (*Bianca v. FCC*) ruled that there is no statute of limitations for the FCC to recoup funding. This creates a risk that USAC may try to recoup the funding recently awarded to the Navajo Nation in future years, as they do not do their due diligence on eligibility prior to issuing awards, but instead usually scrutinize awards years later. HSGU is doing its best to ensure Head Start is fully informed throughout the process. HEHSC issued a legislative concern that the ERATE project is not being properly planned for on the part of the Navajo Nation. Specifically, the concern requires the Attorney General to report, verbally and in writing, to the Navajo Nation Council, in Executive Session if necessary, on (1) the status on any appeals or litigation, past or present, concerning E Rate funding or eligibility funding; (2) what Navajo Nation government entities, specifically Chapters, are eligible to apply for E Rate funding; and (3) the result or status of any litigation related to OnSat by no later than the end of the 1st Quarter of FY 2022. This directive provided HSGU an opportunity to fully explain to HEHSC the following: 1) the Navajo Nation's appeals of ERATE Commitment Adjustment Letters are pending at the FCC; 2) that the Chapter Houses, with assistance of ERATE consultants and State Library Agencies, will appropriately qualify for ERATE funding; and 3) that to the best of HSGU's knowledge and research, there have not been any indictments connected with OnSat matters by the Navajo Special Prosecutor. Indeed, OnSat no longer appears to exist.

4. Head Start Audits: This past September, DOJ received notice of an unpaid debt to the Department of Health and Human Services from a Disallowed Costs letter sent to Head Start on October 14, 2020, that has accrued to a debt of \$1,913,006.18. The debt is a result of audit findings with questioned costs against Navajo Head Start in the Navajo Nation's 2018 audit that led ACF to disallow costs on an ACF grant to Head Start. The options were: (1) Head Start can do nothing and Treasury will offset the next award of federal funding to any NN program, not necessarily Head Start funding; (2) Head Start can ask Council to appropriate UUFB to pay the debt; or (3) DOJ can ask OOC to allow use of other funds. This debt

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was paid. Head Start also received a disallowed costs letter on August 26, 2021, citing noncompliance due to improper monitoring of cost allocations and internal charges related to the Health Benefits internal service fund during the fiscal year. HSGU, through outside counsel, filed a Notice of Appeal of this finding on September 27, 2021, given the Navajo Nation's compelling evidence that it followed proper protocols regarding Employee Health Benefit revenues, but that the impact of COVID-19 affected the ability of employees to seek health care support, thus affecting revenue rates. On November 4, Tilden & Toelupe filed the Navajo Nation's appeal brief. On December 21, Tilden & Toelupe filed a sur-reply brief.

VII. DIVISION OF GENERAL SERVICES (DGS):

1. Insurance Services Department (ISD):

a. Navajo Nation Insurance Commission (NNIC): Not only is legal assistance provided to ISD and its insurance programs Risk Management (RMP), Workers Compensation(WCP), and Employee Benefits (EBP), HSGU provides legal assistance to NNIC, and in this respect, ISD is responsible for providing administrative assistance to NNIC. This quarter, NNIC met on five (5) occasions and in addition to receiving insurance programs (RMP, WCP and EBP) reports on programmatic issues and activities, the NNIC accepted other reports and took actions as follows:

- Received an updated statistical counts on COVID-related death and medical benefits paid to date by the Employee Health Group Benefits Funds for medical and death benefits;
- Received and accepted a proposed stop loss re-insurance and life insurance premium rates for CY 2022;
- Authorized RMP to bind the Master Property, Fidelity Bond, and other stand-alone policies for FY 2022;
- Approved a 0% premium rate assessment for CY 2022 for employee health benefits; and
- Approved employee health benefits modifications (increased health benefits, etc.).

b. COVID Related Issues Related to Employee Exposures: HSGU continues with its assistance to ISD and its insurance programs to ensure workers compensation or employee health benefits claims related to insured members who may have been exposed to the virus and/or self-quarantining are not unnecessarily delayed or denied should such claims be filed. Assessing the compensability of a COVID-related claim generally becomes an issue due to lack of medical records needed to determine an exposure date.

2. Risk Management Program: A total of seventy (70) litigation cases (federal, state, and tribal courts) continued this quarter as highlighted below:

a. Tribal Cases: Sixty (60) cases pending with both the Navajo Supreme Court and Navajo District Courts as follows:

- Eleven (11) appeals pending with the Navajo Nation Supreme Court: Although all the cases have been fully briefed, oral arguments have yet to be scheduled.
- Forty-Nine (49) District Court cases continued, one (1) of which was served within this quarter, two (2) were settled, and one (1) was dismissed in favor of the defense's motion for dismissal. Two (2) bench trials, as previously reported, were held in January and October 2017, respectively, but rulings/judgments have yet to be issued. Arita Yazzie of HSGU assists with the defense of these cases, including

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but not limited to discovery and motion practices and trial preparations. Within this quarter, she participated in four (4) motion hearings and two (2) pretrial conferences. In addition to the foregoing, Arita also assists with assessing the degree of liability exposures on other cases for settlement purposes.

b. State Court (Arizona and New Mexico): Three (3) cases continued, one (1) of which was served within this quarter; and in two of the cases, Navajo Nation employees were sued in their individual capacities. While there were concerns with the Navajo Nation sovereign immunity defense in light of the United States Supreme Court ruling in *Lewis v. Clarke*, the Navajo Nation prevailed with its motion arguments which resulted in a voluntary dismissal of one case; and the Court's dismissal of the second case after oral arguments were presented on a Motion for Summary Judgment.

c. FTCA Cases (AZ and NM District Courts): Seven (7) cases continued, one of which was dismissed within this quarter. As the assigned Navajo Nation FTCA Liaison, Arita Yazzie of HSGU assists the United States with preparations of (1) responses to extensive written discovery (Interrogatories and Requests for Production) which also entails the identification, compilation, and production of relevant tribal/program documentation; and (2) Motions, some with attachments of Declarations or Affidavits for the Navajo Nation clients. Within this quarter, Arita assisted with the preparations of responses to written discovery in two (2) cases and finalization of motions and exhibits in three (3) other cases; she also coordinated and participated in a series of introductory interviews (Navajo Nation employees) conducted by the assigned AUSA in preparation for anticipated depositions in another case. In addition to these federal cases, there are several FTCA administrative claims which are pending and included within the pre-litigation count below.

d. Pre-litigation Claims: Approximately thirty-five (35) pre-litigation claims are pending, twenty-five (25) of which represents FTCA administrative claims. HSGU assists both the U.S. Department of the Interior/Regional Solicitor's Office staff attorney and the U.S. Department of Health & Human Services Branch Claims attorney in assessing the FTCA administrative claims, some of which are now moving toward potential litigation.

Complications/Concerns: Issues that arise in both the litigation and pre-litigation cases/claims are voluminous, i.e., sovereign immunity jurisdictional issues (both tribal and federal), statute of limitations, causations, insurance policy coverages and exclusions, P.L. 93-638 contract requirements/scope of work mandates, failure to exhaust other administrative remedies, etc.

e. Quarterly Cases/Claims Reviews: One (1) quarterly cases/claims reserve meeting was held within this quarter. The attendees include NNDOJ, Navajo Nation insurance defense counsel, RMP staff, Navajo Nation insurance investigator/adjustor, and insurance broker of record, and case/claim reviews include defense strategy discussions and assessment of liability exposures to ensure sufficient reserves are in place and reported to the Office of the Controller.

3. Workers Compensation Program (WCP):

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a. COVID Related Claims: In coordination with ISD, HSGU continues to closely monitor claims that may be filed and pass information back to WCP with any information or issues that HSGU believes may have issues. As such, WCP is aware of the many challenges the Navajo Departments of Police (NPD) and Corrections (NDOC) officers and other front-line responders deal with daily while attending to arrestees who are COVID positive.

b. General Workers Compensation Claims: The Navajo Nation Workers Compensation Program is fully self-funded and governed by the Navajo Workers Compensation Act. Accordingly, HSGU is responsible for assisting with any and all issues that arise in the administration and adjudication of worker's compensation claims, including interpretation and analysis of the statutory mandates. Within this quarter, HSGU assisted with the disposition and closure of five (5) claims, three (3) of which resulted in final settlements. In addition to the foregoing, HSGU continues to monitor and assist with two (2) pending appeals. Some issues HSGU provided advice on within this quarter relate to (i) course and scope of employment (burden of proof issues); (ii) settlement calculations provided for in the Schedule of Benefits; (iii) maximum medical improvement assessments; (iv) medical impairment rating issues and (v) requests for records that requires compliance with the Navajo Nation Privacy and Access to Information Act.

4. Employee Benefits Program (EBP):

a. Subrogation Liens and Life Insurance Distributions: HSGU continues to assist with subrogation lien recoveries/waiver issues and distribution of life insurance proceeds. Within this quarter, two (2) subrogation lien recoveries were effectuated.

b. Employee Health Benefits Changes/Modifications and Health Benefit Plan Document Amendments: HSGU assisted with the finalization of the employee health benefit changes with an effective date of January 1, 2022, and these changes were approved by the Navajo Nation Insurance Commission. The changes/modifications include decreases in the annual medical deductibles and out-of-pocket expenses, including co-pays for emergency room and hospital stay co-pays; decreases in pharmacy co-pays; increases in medical hearing loss and sleep disorder lifetime benefits; and expansion of Dental Class IV orthodontic benefits to allow all enrolled plan members to be eligible with no age limitation. The changes included NNIC's acceptance of the annual costs and impacts. In line with the benefit changes/modifications, HSGU is assisting with the Health Benefit Plan Document amendments to include the benefit modifications and applicable updated federal notifications and required COVID-related medical treatment/services.

c. Head Start Audit Findings Appeal: Head Start was sanctioned with an audit finding relating to an alleged group health benefits "overcharged premiums." HSGU is continuing to assist EBP with responses and compilation of all relevant documentation in response to an appeal that was filed by the Navajo Nation.

VIII. DIVISION OF HUMAN RESOURCES:

1. Department of Child Support Services (DCSS): Since the last quarter, there has not been much change on the Full Faith and Credit for Child Support for Child Support Orders to bring the Navajo Nation into compliance with the Full Faith and Credit for Child Support Act. HSGU continues

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to work on this issue without Office of Hearing and Appeal's assistance. HSGU plans to enlist the assistance of DCSS, however, there have been some complications in that COVID has prevented meetings that would involve all of the agency offices and all of the Child Support Enforcement Officers. While meetings could be set-up with the four agency offices individually, it would be more efficient to meet with all of the aforementioned simultaneously.

Complications/concerns: This process is ongoing. Due to work on other matters, there has been little progress made this quarter. HSGU's goal is to have a workable process for DCSS by the end of quarter 2.

2. Navajo Nation Department of Child Support Enforcement Administrative Process: HSGU previously created a manual on the administrative process for DCSS. The manual contains the Navajo Child Support Enforcement Act, the Child Support Guidelines, some important decisional law from the Navajo Supreme Court on child support matters, and some rudimentary direction through the child support administrative process. However, since the Child Support Enforcement Act has been amended, the Child Support Guidelines are about to be amended, and DCSS is adding policies like the Full Faith and Credit Policy, the manual is out of date. HSGU has begun updating the manual. In addition to the amended child support act and guidelines, HSGU sees this as an opportunity to incorporate attorney/advocate instructions and advice. The vision is to make the manual a complete bench book for DCSS and HSGU/DOJ. This is a long range goal, but HSGU began work on this project this quarter.

Complications/Concerns: This project continues moving forward, however progress is slow. HSGU does not have a timeline for completion at this time.

3. Department of Child Support Services: Policies and Procedures Manual Update: HSGU was asked to assist in updating the DCSS Policies and Procedures Manual (Manual). The last time the Manual was updated was in 2002. There have been amendments made to the Child Support Enforcement Act since the last update as draft changes being made to the Navajo Nation Child Support Guidelines. Therefore, the updates are warranted. The manner in which the project is being processed by DCSS is that a portion of the current Manual is being given to each of the five (5) agency offices for draft updates. Once completed, the draft updates will be compiled and reviewed by DCSS – Administration and by HSGU. DCSS has set a completion date for this project as the end of the second quarter. HSGU does not agree with that timeframe. There is still a transition being made by DCSS due to the high number of retirements at the end of FY'2021. Four (4) of the five (5) agency offices are without a Regional Manager. Once those positions are filled, there will be an adjustment period. Therefore, DCSS's timeline for completion is unrealistic, but HSGU will attempt to keep the project moving forward as best as it can.

Complications/Concerns: Other than the unrealistic timeframe proposed by DCSS – Administration, there are no current complications or concerns.

4. DCSS – Crownpoint: DCSS's Crownpoint Agency Office has been nearly completely shut down since prior to the COVID closure in 2020. The staff of DCSS – Crownpoint continued working in a difficult situation in which the office was closed and they moved to a much smaller space while the Navajo Nation Shopping Center, Inc. (NNSCI) remodelled its original office space. NNSCI had originally indicated that DCSS – Crownpoint would be out of its office for a period of two (2) weeks while a divider was put into place. That was a gross miscalculation. Due to COVID and various other issues, DCSS – Crownpoint has been closed for nearly two (2) years. DCSS – Crownpoint continued to provide limited services,

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however, most of its files were packed into shipping containers to keep them secure during the remodel. The office reopened in December 2021 but, due to the inaccessibility of its files, there was a backlog of missing orders. That office was missing 117 orders. On December 7, 2021, OHA and HSGU went to DCSS – Crownpoint and 86 orders were drafted, reviewed, revised, and finalized. It did not completely clear the backlog of orders, but much progress was made. The Regional Manager stated that her staff’s morale had been at a low point due to having been displaced and unable to access files and that after the OHA/HSGU visit and the efforts made to catch their orders up, the staff’s mood and motivation have improved.

5. Navajo Nation Office of Occupational Safety and Health (NNOSHA): HSGU reviewed amendments to the Navajo Occupational Health and Safety Act of 2000 (the Act), its plan of operations, its organizational chart, and a fund management plan. While HSGU initially provided edits to the aforementioned, NNOSHA recently submitted the document for an additional review. HSGU review is ongoing.

Complications/Concerns: This process is ongoing. HSGU will conclude its review of the most recent changes by the end of the second quarter of FY2022.

**Litigation Unit (LU)**

LU is led by Assistant Attorney General Paul Spruhan who manages three (3) Attorneys, one (1) Attorney Candidate and one (1) Legal Secretary. LU handles many of the Nation’s internal and external litigation matters. This quarter’s notable projects include:

1. Brackeen/YRJ ICWA Litigation: The litigation concerning the validity of the Indian Child Welfare Act, *Brackeen v. Haaland*, is currently pending before the U.S. Supreme Court on four separate petitions for certiorari. The Nation, though a party to the case, did not file a petition or join the ones filed by the United States and the other four tribes, as the Nation’s official position is that the case should not go to the Supreme Court. The Nation did file a Brief in Opposition, with the assistance of the Stanford Supreme Court Clinic, arguing the Brackeen and State of Texas petitions should be denied. The Nation waived a response to the U.S. and other tribal nations’ petitions. The Supreme Court is considering the petitions on January 7, and might issue an order on Monday, January 10, indicating whether it accept any of the four petitions, and, if so, what legal issues it will review.

In the meantime, the underlying child custody case involving the Brackeens and the Navajo child YRJ was recently remanded from the Texas Supreme Court back to the Texas Family Court for further proceedings. The Texas Supreme Court denied review of all three petitions, including one filed by the Nation. It is unclear what this means for the current joint conservatorship between the Brackeens and the Nation’s ICWA placement, a maternal great aunt to YRJ, who lives on the Nation. The Texas Court of Appeals ruled the joint conservatorship violated Texas state law, but both the Brackeens and the Nation’s placement have been following it pending the Texas Supreme Court’s consideration of the petitions. With the remand back to the Texas Family Court, the judge there will have to decide custody issues between the Brackeens and the great-aunt. The Nation continues to participate through outside contract counsel, as DOJ has no attorneys licensed in Texas state courts.

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2. Bears Ears Monument: President Joe Biden signed a new proclamation this Quarter setting aside the original Obama boundaries, plus an additional amount of land that had been added by the Trump proclamation. The State of Utah has threatened litigation, and recently hired a law firm to look into potential litigation, presumably to be filed in the Federal District of Utah. The Nation will almost certainly intervene in any such case.

It is currently unclear what effect a new proclamation changing the boundaries of the current monument would have on the litigation challenging the revocation of the Obama monument by President Trump. That litigation is still pending before the D.C. District Court. Judge Chutkan issued a stay in the case, and denied without prejudice the cross-motions for summary judgment that had been pending for some time. The parties have submitted several joint status reports, repeating that Biden has yet to issue a proclamation. It is unclear whether the U.S. or intervenors from Utah will seek to dismiss the case on mootness, but we continue to discuss with US DOJ and the affiliated plaintiffs' counsel how to proceed.

**Navajo-Hopi Legal Services Program (NHLSP)**

NHLSP is located in Tuba City, Arizona and is charged with representing relocate applicants before the Office of Navajo-Hopi Relocation (ONHIR). We are pleased to report that NHLSP is fully staffed and has been since November 2019. NHLSP is overseen by Principal Attorney and Director Susan Eastman and she supervises one (1) Attorney Candidate and one (1) Legal Secretary. This quarter's notable projects include:

1. Federal appeals of ONHIR relocation benefit denial determinations: NHLSP has four (4) cases pending in FDC-AZ and one in the 9<sup>th</sup> Circuit. As cases are filed pursuant to the federal Administrative Procedure Act, NHLSP cases are decided for our clients or ONHIR through the Motion for Summary Judgment. For the 9<sup>th</sup> Circuit case, the Notice of Appeal was filed on August 16, 2021 and Plaintiff's Opening Brief was filed on November 15, 2021; appellee ONHIR's Answering Brief is due on March 15, 2022. For the Complaint filed on March 10, 2021, Plaintiff's Motion for Summary Judgment was filed on October 4, 2021; ONHIR's Response and Cross-Motion for Summary Judgment was filed on November 3, 2021; and Plaintiff's Reply and Response was filed on December 3, 2021. ONHIR's Reply is currently due on January 19, 2022 and will conclude briefing for that case.

NHLSP filed two new Complaints this quarter, one on October 25, 2021 and the other on December 17, 2021. Service of the Summons and Complaint on ONHIR, the Arizona U.S. Attorney, and the U.S. Attorney General will occur the week of January 3, 2022, and for the second Complaint in mid-February 2022.

Including the appeals, there are currently 11 cases pending in FDC-AZ for individual relocation benefits applicants and the Complaint for Declaratory and Injunctive Relief filed against ONHIR and the U.S. Department of the Interior filed on August 25, 2021, for a total of 12 cases pending in the FDC-AZ and four (4) cases pending in the 9<sup>th</sup> Circuit.

In addition, this quarter NHLSP reviewed cases for possible federal appeal for three (3) other NHLSP clients who have statutes of limitations that expire in June and July 2022. Outside consultant Betsy Lynn Snow is also reviewing these cases. For one of these cases, Susan and Betsy agreed

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that it lacked sufficient merit to appeal to federal court, and Betsy has notified the client in writing of the recommendation against federal appeal. The other cases are still being reviewed.

The NHLSP team met, to discuss strategy for our pending and planned federal appeals on December 10, 2021. We updated our master list of cases that are currently pending and those that require review with FAA statutes of limitations that expire in late 2021 and 2022, and eliminated the cases from our master list that have been either decided on the merits in federal court or cases with expired statutes of limitations that we recommended against appeal.

Thirty-three (33) cases on the master list have statutes of limitations that expire in 2022. The team is reviewing these 33 cases now to determine which cases to recommend for and against appeal.

2. Remands from federal court: The case that was remanded from the FDC by Judge Humetewa in July 2019 regarding a NHLSP's client's claim for legal residency was scheduled for a hearing in January 2020 still has not had the hearing. The Hearing Officer tried to re-schedule the hearing for June 2020, but NHLSP was unable to reach the client since March 2020. The client called us on December 13, 2021 to report that she has had COVID-19 since August 2020, and can participate only via video phone once her remand hearing is re-scheduled.

The case of a NHLSP client remanded by the 9<sup>th</sup> Circuit back to ONHIR is still pending. The 9<sup>th</sup> Circuit remand was actually back to the District Court to provide an order with instructions to ONHIR on what the remand proceedings should be. NHLSP has requested an in-person supplemental evidentiary hearing and has rejected ONHIR's offer to have a Zoom hearing for our client because of our client's limited access to the Internet, and NHLSP wants a clear hearing record for the remand. A hearing will not likely be scheduled until it is feasible to schedule an in-person hearing at ONHIR in Flagstaff for the Hearing Officer, NHLSP and our client, and ONHIR counsel and staff.

3. Assistance to Certified Applicants: The AG retained outside counsel to assist and advise a NHLSP client who was certified eligible for relocation benefits in summer 2019 after a successful 9<sup>th</sup> Circuit Appeal. The client is now willing to seek divorce from her husband to ensure that her relocation benefits remain her sole and separate property, which she was previously unwilling to do. ONHIR had requested her to initiate divorce proceedings in order to move her relocation benefits case forward toward completion. Counsel will meet the client in person to have her fill out paperwork to initiate the divorce from her husband, and will schedule an appointment with her to follow up and move her case forward.

4. Advice and Assistance to the Navajo-Hopi Land Commission and NHLCO by NHLSP: This quarter, NHLSP staff called into five regular and three special meetings of the Navajo-Hopi Land Commission ("NHLC") in October, November, and December 2021. NHLSP also attended the two-day NHLCO work session at Twin Arrows on November 9 and 10, 2021. This work session was an opportunity for FBFA Chapters to learn about non-profit organization Choice Humanitarian ("Choice") and the role this organization could play in providing technical assistance, using its own federal grant funds, to FBFA Chapters to expend the funds allocated to each chapter from the FBFA Escrow Fund in 2013. NHLCO has asked NHLSP to draft Memoranda of Agreement ("MOA") and the Chapter Unit to review the MOA's between NHLCO and the 9 FBFA chapters for Choice to provide technical assistance to the Chapters for each of the chapters to expend FBFA Escrow funds allocated to each chapter for housing

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repair and rehabilitation (including new housing if recommended). Chapters that are not-LGA certified will have MOA's between NHLCO and Choice Humanitarian to benefit the Chapter. LGA-certified Chapters are given the option to enter into a MOA with NHLCO only or with Choice Humanitarian. To'Nanees'Dizi (fka Tuba City) Chapter has elected to use its own resources instead of Choice. Choice has its own funding through federal grants and will not receive any FBFA Escrow or Navajo Nation funds. The new MOA's would give each chapter 6 months to expend the FBFA Escrow funds allocated to each chapter for housing, or unexpended funds would revert back to the FBFA Escrow Fund.

On the second day of the NHLCO work session, NextEra Energy gave a presentation on the status of the development of the Bitsi Solar Project near Farmington, NM and for NHLCO staff to discuss the Legislative Concerns raised for NHLCO as part of the FY 2022 budget process. The Bitsi Solar Project eventually will be developed on Paragon Ranch, which is located on the New Mexico New Lands, and is intended to generate revenue through economic development to benefit Navajos impacted by relocation.

With the assistance from the DOJ Tax and Finance Unit, NHLSP drafted enabling legislation in October 2021 to set up the Dine' Relocatee Fund ("DRF") and Fund Management Plan ("FMP"). NHLSP explained this legislation to the NHLC at their regular meeting on November 18, 2021. NHLC Chairman Otto Tso has expressed his support for the legislation and has submitted a request to OLC to prepare it for introduction to the Navajo Nation Council. The purpose of the DRF enabling legislation and Fund Management Plan is to set up a separate fund to receive payments, income, and/or revenues generated from the Arizona New Lands selected by the Navajo Nation pursuant to the 1980 amendments to the 1974 Navajo-Hopi Relocation Act (including Twin Arrows). Per the federal statute, these funds must be kept separate from the Navajo Rehabilitation Trust Fund ("NRTF") which was set up and accepted by the Navajo Nation to accept revenues generated from lands selected in New Mexico. The NHLC and NHLCO would manage and administer the DRF FMP once the legislation becomes Navajo Nation law and the FMP is approved by the Budget and Finance Committee.

5. Federal Legislative Policy and Advocacy for Navajo Relocates by the NHLC and outside counsel Hobbs Straus Dean & Walker: Broadly, Hobbs Straus Dean & Walker sought to coordinate and support a strategy to elevate Navajo-Hopi and construction freeze issues through legislative, executive and judicial (of course, handled by NNDOJ) efforts. During this quarter, it worked with Rep. O'Halleran's office to resolve House Legislative Counsel's concerns regarding provisions in the technical amendments. Upon introduction, outside counsel also provided quotes and a floor statement for the Congressman's use upon introduction of the Navajo technical amendments (H.R. 6141), as well as drafted press release materials for President Nez's use. The technical amendments were introduced in the House in early December 2021 and have been referred to the House Committee on Natural Resources. In anticipation of introduction on the House-side, outside counsel continued outreach to Senate offices about introduction of a companion bill in the Senate, and communicated with Chairwoman Leger de Fernandez, House Subcommittee on Indigenous Peoples, and her staff regarding a hearing on the legislation in early 2022. During this period outside counsel had in-person meetings and calls with ASIA and with White House staff about advancing on consultation discussions and also about the Nation's request for appointment of an ONHIR commissioner. As noted below, Interior requested that consultation take place within the context of litigation settlement discussions, which is being coordinated by NNDOJ.

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The litigation strengthens the Nation's hand with regard to the legislative and executive branch activities. During this quarter, Legislative and Executive officials were updated on the status of the litigation, and conversations regarding undertaking a consultation in coordination with litigation settlement discussions took place.

6. Litigation against ONHIR, the Department of Interior, and the United States: Over the last quarter, NHLSP worked with Rey-Bear McLaughlin to address certain non-litigation matters concerning ONHIR and continued initial litigation work regarding ONHIR. The former included work on ONHIR-related "technical" legislation that has now been introduced in Congress, as well as work with the Nation and other counsel for the Nation regarding proposed federal consultations regarding that legislation, additional ONHIR-related advocacy, and potential litigation settlement discussions. This also included follow up on efforts to establish the Diné Relocatee Fund ("DRF").

For the two lawsuits that were filed in the prior quarter, outside counsel have coordinated with NNDOJ and co-counsel regarding numerous issues regarding initial litigation matters. This included work on service issues; record preservation, access, custodian interviews, collections, confidentiality, and scanning; database coding, issues, and administration; background research; and discovery planning and orders. They also had initial appearances by and evaluated opposing counsel, addressed their answer extensions, and reviewed and obtained extensions for Plaintiffs' responses to their motions to dismiss. Outside counsel also followed up regarding reporting to the Nation's elected leaders as well as communications with representatives of the Relocation Beneficiaries for the CFC case and named affected Navajos for the DAZ case. Also for the DAZ case, they also continued obtaining information regarding and addressing community facilities needs. For the CFC case, outside counsel also addressed New Lands payment and leasing issues and obtained more information about our presiding judge.

**Natural Resources Unit (NRU)**

NRU is led by Assistant Attorney General Veronica Blackhat who manages four (4) Attorneys, one (1) Attorney Candidate, one (1) Tribal Court Advocate and two (2) Legal Secretaries. Primarily, NRU provides legal assistance to Division of Natural Resources and the Navajo Environmental Protection Agency. However, NRU is also involved in many other matters affecting the Nation's natural resources and environment. In this quarter, notable projects include:

1. Department of Forestry's Carbon Sequestration Project: Legislation No. 0208-21, which includes the Carbon Development and Marketing Agreement (CDMA) and limited waiver of sovereign immunity to participate in the California Air and Resources Board (CARB) Cap-and-Trade Program, passed all committees and is awaiting final approval from the Navajo Nation Council before the CDMA is executed by the President. It is anticipated that the Project will generate substantial revenue for the Nation. The Department was advised that all proceeds will be deposited into the General Fund absent additional action. The Department will develop a Fund Management Plan, or other appropriate financial mechanism, to ensure that a percentage of the proceeds are allocated for ongoing project management. At the request of the Office of the Speaker, the Department is coordinating public information sessions for the carbon sequestration project and associated legislation.

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2. Department of Water Resources: Work related to large-scale water infrastructure projects continued, and is anticipated to increase as multiple funding sources become available through the passing of the American Rescue Plan Act of 2021 (ARPA) and the Bipartisan Infrastructure Law (BIL).

- Pandemic Related Federal Funds and Associated Water Infrastructure Projects. As indicated in prior reports, the budgetary limitations faced by projects that could not meet the Nation’s reversion deadlines for CARES Act Funds were bridged with SÍhasin Funds through Resolution CJA-01-21. Additional water infrastructure projects not subject to Resolution CJA-01-21 but affected by the reversion deadlines received immediate appropriations of Navajo Nation Fiscal Recovery Funds (NNFRF) pursuant to Resolution CJY-41-21 (Defunded CARES Act Projects). The Department of Justice (DOJ) and the Navajo Tribal Utility Authority (NTUA) developed Subrecipient Agreements for the Defunded CARES Act Projects. For DWR, these projects include the following FRF Expenditure Categories: 5.2 Clean Water: Centralized Wastewater Collection and Conveyance; 5.3 Clean Water: Decentralized Wastewater; 5.11 Drinking Water: Transmission & Distribution; 5.14 Drinking Water: Storage; and 5.15 Drinking Water: Other Water Infrastructure. Projects under Expenditure Categories 5.3 and 5.15 are joint projects for off-grid water (solar powered cistern) and wastewater (septic tank) systems. The final and complete Subrecipient Agreements should be introduced for Section 164 Review early next quarter, though the effective date of the Agreements is March 1, 2021 in accordance with U.S. Treasury guidance and the planned use of NNFRF Funds for these particular projects.
- Navajo Gallup Water Supply Project. Work on this essential project continued. In accordance with Pub. L. 111-11, the anticipated completion date for construction is December 31, 2024; however, additional appropriations are required and will be requested. Negotiations also continued for the Cutter Lateral Operation, Maintenance and Repair (OM&R) Contract between the Nation, NTUA, and the Bureau of Reclamation. A recently issued Executive Order regarding sustainability and federal contract requirements may need to be incorporated into the Contract, but the Contract is nearing completion and water is being delivered.
- To’hajiilee Water Project. The project remained a top priority to bring safe and clean drinking water to the community. Significant progress was made with respect to securing additional funding for construction of the pipeline to be operated and maintained by the Albuquerque and Bernalillo County Water Utility Authority (ABCWUA), which would consist of approximately seven (7) miles of pipeline up to the chapter boundary. Planning, design, and construction of the required facilities within the chapter boundary, approximately two (2) miles of pipeline and associated features, are conducted separately but in coordination with the Nation’s engineer Souder Miller and Associates for the entire project. Additionally, the Water Lease Agreement between the Jicarilla Apache Nation and the Navajo Nation for project water may need to be amended to better reflect construction timelines and anticipated water delivery dates.

3. Navajo Parks and Recreation Department’s Reopening Tribal Parks: All Tribal Parks reopened in accordance with Resolution CJN-33-21 and the Public Health Emergency Orders. In light of the ongoing pandemic and the significant financial impact to existing tour operators due to the closure of Tribal Parks for two (2) seasons, NPRD determined no new tour operator permits will be issued for 2022.

- Colorado River Boat Dock and Shoreline Patrols. In accordance with the United States Army Corps of Engineers permit, NPRD will construct a boat dock along the Colorado River, generally described as adjacent to Lee’s Ferry, by October 2022. The boat dock will be

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located within the Navajo Nation boundary. NPRD would like to patrol the shoreline for resource management and protection purposes, which is part of the NPRD's efforts to control access and improve Tribal Park amenities. NPRD was advised that activities in the region may renew scrutiny of the Navajo Nation's boundary or raise objections to NPRD accessing the River for resource enforcement purposes, and other issues should be resolved before initiating boat patrols. Ultimately, NPRD would like to patrol and protect those resources within the Lake Powell, Marble Canyon, and Little Colorado River Tribal Parks, which presently make up the Navajo Nation boundary along the Colorado River.

4. Chaco Canyon: On January 6, 2022, the Bureau of Land Management formally proposed to withdraw approximately 351,479.97 acres of public lands surrounding Chaco Culture National Historical Park for a 20-year term by filing a petition/application to the Secretary of the Interior. This action, published in the Federal Register, follows President Biden's announcement on November 15 of the Department's new efforts to protect the Chaco Canyon and the greater connected landscape, and to ensure that public land management better reflects the sacred sites, stories, and cultural resources in the region. The proposed withdrawal of federal lands within a 10-mile radius around Chaco Culture National Historical Park would bar new federal oil and gas leasing on those lands. According to the Interior, the potential withdrawal would not affect existing valid leases or rights and would not apply to minerals owned by private, state, or Tribal entities. The BLM is initiating a 90-day public comment period and will be hosting several public meetings as well as undertaking formal Tribal consultation. The public may submit comments on the proposed withdrawal until April 6, 2022. There will be two in-person meetings scheduled on February 23 and a virtual meeting on February 24.

5. Bears Ears: (Non-litigation matters will be handled by NRU)

- Bears Ears Commission Project – This project started with tele-meetings and conversations with LU. Since then, 3-4 tele meetings have occurred with LU and Heritage and Historic Preservation Department (HHPD). NRU attended an information meeting hosted by the Bureau of Land Management. Another meeting was held on January 6, was primarily focused on the land plan review. Each of the tribes described where they are in the review/sign-off phase. Several are either through reviewing or nearly done but no one had a definitive date for sign-off. In terms of scheduling the next in-person meeting, the group suggested it wait until the 2nd half of February to convene and also agreed that Albuquerque is the best option for this meeting. Richard Begay with HHPD has completed a significant amount of review and feedback on behalf of the Navajo Nation.
- Bears Ears Museum Project – This project started with notice from LU and getting NRU in connection with Molly Sjoberg of the Los Angeles County Museum. Molly is interested in collaborating with Tribes involved in the protection of Bears Ears through a MOA which involves a Museum exhibit in Los Angeles and in each of the tribal nations. With the Nation's support, the plan is to open Bears Ears: Living Land as the first exhibition in Summer 2023 or possibly Spring 2024. NRU met with HHPD, and it will be the Point of Contact working with Molly & the NN Museum on the project. The draft MOA has not yet been submitted to NRU for review.

6. Navajo Land Department:

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- Allotment Appeals – NRU coordinates with the Litigation Unit on the filing of Notices of Appeal for several allotments. Navajo Nation filed its Notice of Appeal from the Decision of Acting Regional Director rejecting the proposed sale of several allotments. The owners of the allotments submitted to BIA applications to sell their interests to the Nation between the years 1991 and 2000, no apparent action was taken on the applications until BIA sought confirmation from the landowners of their consent to sell in 2003, the Nation authorized the purchases by tribal resolution in 2003, the lands were appraised in 2004, the Nation tendered payments for the allotments to BIA in 2004, and no apparent action was taken until BIA sought meetings with the Nation about the proposed sales in 2017. In eight of the nine decisions, the Regional Director rejected the proposed sales for “lack of adequate evidence of the owner's consent to the sale.” In the ninth decision, the Regional Director rejected the proposed sale for “lack of evidence that fair market value was paid for the allotment.” NRU had reached out to the BIA about potential settlement of the nine allotment-sale-decision appeals, unfortunately, they declined and wanted to proceed with the scheduled briefings. After further discussion with the Navajo Land Department, they determined that it was no longer in their best interest to proceed with the Appeal and requested dismissal of the Appeal. One major factor in the dismissal was that the appraisals were old and needed to be updated. Regional Director Mehojah asked the Region's Acting Realty Officer to coordinate with the Navajo Land Department on the matter going forward, including returning the funds, getting appraisals conducted, and identifying the current landowners.

7. General Land Development Department (GLDD):

- Church Land Use Regulations. NRU first reviewed these regulations in 2018; however, they were never approved by the Resources & Development Committee (RDC). GLDD has reinitiated attempts to get these regulations approved. The goal of the regulations is to simplify and expedite the permitting process for mission site permit applications; eliminate costly aspects of the mission site permitting process; give local churches more possessory interest over the land and to double the term of the permit to 10 years. On December 21, GLDD had a work session with RDC to discuss the Church Land Use Regulations and proposed amendments; however, RDC wanted regulations that would address how the churches operate or disputes between the churches and residents residing near the churches. Although GLDD spoke of proposed amendments, NRU has not been provided any copies of such amendments. We will be reaching out of GLDD for the amendments they are seeking.
- Cemetery Lease. NRU reviewed the lease and suggested edits (took out provisions that were not applicable) and condensed the lease as much as possible. It was also recommended to GLDD that the lease should reference the burial regulations once they are approved. We also had additional questions such as whether GLDD will be charging a fee, term of the lease, etc. GLDD decided to process cemetery leases with the understanding that after the regulations have been approved, the lease will require additional amendments referencing relevant sections of the proposed regulations. To date the regulations have not been approved by RDC.
- One Stop Shop Plan of Operation. NRU reviewed and provided comments to the draft Plan of Operation for the Navajo Nation “One-Stop Shop”. The Plan of Operation still needs a lot of work. The purpose of the One Stop Shop is to provide regulatory review of American Recovery Plan Act (ARPA) funded projects; however, the Plan had also listed reviews for projects that would not fall under ARPA. Some of the what was being proposed under the Plan would require delegations from the Navajo Nation Council and RDC. NRU met with the work group on November 10 to go over comments and edits the Plan. The work group agreed to take out problematic provisions and would

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make additional amendments/edits and resubmit the Plan of Operation for review. To date, NRU has not received the revised Plan of Operation. NRU attended a RDC Work Session on November 30 with the Division of Natural Resources (“DNR”) programs and Navajo Environmental Protection Agency (“EPA”) for the One Stop Shop. NLD and GLDD provided presentations to RDC about the current process and discussed ways to streamline the current process. They did touch on the proposed Plan of Operation but did not go into detail. RDC is proposing to have another work session on this issue.

8. Navajo Nation Department of Agriculture (NNDA):

- Update of District Grazing Committee’s (GGC) Operating Manual. (On-going) NRU is assisting NNDA in the update of their DGC Operating Manual. NRU has researched Navajo Nation Supreme Court case laws to come up with a definition of the term “beneficial use” for the NNDA to be used in the updated DGC operating manual. The NNDA is seeking guidance from NNDOJ on defining beneficial use in reference to agricultural permits in the definition section of the Manual. In the Estate of Benally, 1987 Supreme Court case law, the Navajo Nation Supreme Court stated that Title 3 of the Navajo Tribal Code give Courts discretion in the division of estates so that tracts of land are kept intact and so that the most beneficial use of the land is encouraged. NRU is finalizing a memo to define beneficial use. The memo is broken down into two sections. The first is a short answer section which includes a sentence by sentence break-down of the definition and the second is an analysis of why the definition is appropriate for the District Grazing Committee Manual and its relevance to Agricultural Land Use Permits.
- San Juan River Farm Board. NRU had monthly meetings with the Farm Board to work through legal issues that stem from the previous Farm Board’s unlawful hemp business venture. The Farm Board passed a Resolution to recommend cancelation of Agricultural Land Use Permits (ALUP), and NRU has determined there are limitations with respect to Farm Board authority to issue an administrative decision. Further planning meetings with BIA and DOA will take place to determine the best approach to administering ALUPs. The Farm Board must also meet with the Navajo Nation Department of Agriculture to determine if the District Grazing Committee is in a better position to take the lead issuing an administrative decision with respect to ALUPs with Farm Board support.
- Reissuance of Grazing Permits on NPL. NRU received a request from Delegate Kee Allen Begay regarding the final authority to issue or re-issue grazing permits with sheep units within NPL. The BIA with the concurrence of the Navajo Nation will reissue grazing permits only to individuals that meet the eligibility criteria in 25 CFR §§ 161.400. The criteria include: 1) those who had permits grazing permits on NPL and whose permits were cancelled on October 14, 1973; 2) those who are listed in the 1974 and 1975 Former Joint Use Area enumeration; 3) those who are current residents on NPL; and 4) those who have customary use area on NPL. Permits reissued to applicants under 161.400 may also be granted by BIA based on priority criteria. 25 CFR 161.400 (b). Permits reissued to applicants under the eligibility criteria above may be granted by the BIA based on the following priority criteria. First priority will go to individuals currently the age of 65 or older and second priority will go to individuals under the age of 65. 25 CFR 161.400(c).

Under 25 CFR §161.402, the BIA will develop a complete list consisting of all former permittees whose permits were cancelled and the number of animal units previously authorized in prior grazing permits. The list will be provided to NPL DGC and RDC for their review

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and recommendation. The BIA will also provide the DGC and RDC with the current carrying capacity and stocking rate for each range units within NPL as determined under §§ 161.204. Within 90 days of receipt of the listing from BIA, the DGC will review the list developed under 161.402(a), and make recommendations to DGC for the granting of grazing permits according to the eligibility and priority criteria in 161.400. If the DGC fails to make its recommendation to RDC within 90 days after receiving the list of potential permittees, the BIA will submit its recommendations to RDC. RDC will review and concur with the list of proposed permit grantees, then forward the final list to BIA for the reissuance of grazing permits. If RDC does not concur, the procedures outlined in 25 CFR §161.800 will govern. The final determination list of eligible permittees will be published by the BIA.

- James v. DGC12. (On-going). NRU entered a combined motion of appearance before the Office of Hearings and Appeals on behalf of the District 12 Grazing Committee (“DGC”). The case was dismissed for ripeness concerns, and due to a lack of a record on the matter. NRU will now work with the DGC to establish a record that supports that Due Process (notice and opportunity to be heard) was afforded. New resolutions will need to be drafted, and the DGC will need to conduct additional arbitrations on each legal issue. The District 12 DGC is in the process of refileing the land, grazing and fencing complaint against Ms. James hopefully sometime soon.

9. Navajo Division of Transportation (NDOT): NRU reviewed various agreements, grant applications and agreements with the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and the New Mexico Department of Transportation (NMDOT), contracts and professional service contracts on behalf of NDOT.

- NMDOT Funding Agreements. There were ten (10) new agreements processed this quarter. The agreements will provide funds to the Navajo Nation for the design, pavement rehabilitation/improvements, drainage improvements, and blading and shaping of various roads within the Navajo Nation. There were two amendments processed; one was for a term extension and the second was to include additional locations.
- NMDOT IGA. The purpose of the proposed IGA between NDOT and NMDOT is so that the parties can work together and contribute funds for the planning, design, and construction, purchase and installation of a traffic signal and related work, including widening at the intersection of New Mexico Highway 371 and Navajo Route 36 in San Juan County. Also related to this project, is a proposed Memorandum of Agreement between NDOT, Navajo Agricultural Products Industry, Navajo Transitional Energy Company, LLC and the Navajo Nation Gaming Enterprise which identifies the responsibilities of each Party to ensure that the project moves forward.
- Sandoval County, New Mexico – IGA. The purpose of the IGA between NDOT and Sandoval County, New Mexico is for the County to provide routine maintenance activities of various Tribal, BIA and County routes located in the Eastern Agency within the Counselor, Ojo Encino and Torreon chapters of the Navajo Nation. Road maintenance services include blading, snow/ice removal, reconditioning roadway surface, clearing ditch lines, culvert replacements and other needed maintenance activities.
- Proposed Amendments to NDOT’s Master Plan of Operation. The transfer of the NN Transit System from General Services to NDOT was approved by the Resources and Development Committee on October 20, 2021. Last quarter, NDOT submitted amendments to their Master

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Plan of Operation to add the Transit System within NDOT and create a Sand and Gravel Program. What they did not include was a proposed Plan of Operation for the Sand and Gravel Program. To date, we have not received the proposed Plan of Operation for the Sand and Gravel Program for review.

10. Navajo Area Uranium Mines (AUM) Work:

- Navajo Uranium Workers Program. NNEPA is proposing a restructuring of their organization to include the NUWP. NUWP was originally part of the Navajo Department of Health. NRU assisted NNEPA draft amendments to the Plan of Operation and the Navajo Nation Code that could potentially be in conflict with the new Plan of Operation if not amended.
- Access Issues. NNEPA and DOJ are developing a more comprehensive and cohesive approach to addressing access to all AUM sites. We determined three thresholds to obtain consent: notice, acknowledgement, or consent, which are primarily determined by the type of interest in the site or surrounding area. The standard forms were completed and were reviewed by USEPA. The forms are being implemented for the Phase 2 Trust sites and will eventually be used for all sites.
- Diné Uranium Remediation Advisory Commission (DURAC). Per their Plan of Operation (CJA-14-17) the commissioners' terms expired as of September 30, 2021. However, the Navajo Nation Council may, by majority vote, renew the Commission for a second five-year term or for such period as the Council may chose. Because the commissioners' terms have expired, meetings and other DURAC functions have been discontinued. It is our understanding that NNEPA is proposing to reorganize the concept of DURAC into an entity that would be called the "Dine Environmental Advisory Commission". At this point, it's not clear what direction DURAC will go and if Council will extend their terms.
- Draft Policy on the Sharing of Tribal Abandoned Uranium Mine (AUM) Information. This project, initiated by former NNEPA Executive Director Oliver Whaley, has evolved since its inception. The goal is to now encapsulate the relative protections for the sharing of sensitive information pursuant to applicable laws. NRU drafted a Policy pursuant to the Navajo Nation Privacy Act and NNEPA's authorities under NNCERCLA. The final version of the policy was submitted to USEPA for final review. USEPA Region 9 then intends to issue a letter emphasizing the agencies' commitments to adhere to their respective information protections during all AUM work, and the respective privacy policies and protections will be attached for reference. These documents may be subject to modification as the work progresses, and will be available on a shared site for USEPA and NNEPA. The agencies anticipate finalizing their respective policies and the accompanying letter by January 31, 2022.

11. Northeast Church Rock Mine:

- Northeast Church Rock Mine Site (NECR) Cleanup. (On-going) For historical context, the United States Environmental Protection Agency (USEPA) issued the Action Memorandum for the Non-Time-Critical Removal Action (selected removal action) on September 29, 2011, in accordance with its authorities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.

§ 9601 et seq. and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR § 300.415. The selected removal action was contingent upon two additional approvals: an USEPA Record of Decision for the United Nuclear Corporation (UNC) Mill Site to accept the NECR Mine Site waste, issued March 29, 2013; and an amendment to the Nuclear Regulatory Commission (NRC) license of the UNC Mill Site, which UNC requested in September 2018 upon completion of the NECR Mine Site waste repository design.

At the request of the Navajo Superfund Program, NRU completed a historical timeline of OCRM, also referred to as Sections 8 and 17, to identify the current status and possible cleanup actions. The historical timeline was supplemented with a memorandum that included general legal analysis and discussion questions to address contamination at the former mining site. The biggest challenge to any cleanup action is the fact that little to no action has been taken on behalf of the Nation since 2015, and the latest data set and technical characterization of the site is from 2009. A joint meeting between DOJ and NNEPA/NSP is scheduled for January 14, 2022 to begin addressing possible cleanup actions as NNEPA was previously identified as the lead agency for cleanup actions at the site.

- Public comments on the Draft Environmental Impact Statement (DEIS). (On-going) For context, the selected cleanup action for NECR is to move the mine site waste on top of the existing UNC mill site waste. In order for USEPA to perform this action, the NRC license must be amended to allow for the additional waste. The license amendment process requires public comment period for the DEIS. NRC held virtual public comment hearings on December 2 and 9, 2020. As evidenced throughout the COVID-19 pandemic, the significant lack of telecommunication services and broadband access for many communities across the Nation adversely impacted the public's ability to participate in these virtual hearings. Related concerns were raised at both hearings. Furthermore, the virtual hearings were not designed to be conversational; rather, the comments made during the hearings would be compiled with those received in writing and NRC would issue summary responses. This raised cultural concerns regarding respectful engagement of the public and those who would be most affected by NRC's decision. The comment period for the Draft EIS closed on November 1, 2021. The comment period was originally set to close on December 28, 2020; however, due to a request by President Jonathan Nez, dated December 21, 2020, the comment period was extended to May 27, 2021. On May 26, 2021, the NRC received another request from the Navajo Nation to extend the comment period until October 31, 2021. The NRC therefore re-opened and extended the comment period until November 1, 2021. Due to the extension of the public comment period, the issuance of the Final EIS was moved from December 2021 to May 2022. The Diné Uranium Remediation Advisory Commission (DURAC) submitted comments on the DEIS. NNEPA submitted comments within the prior deadline of May 27, 2021. NNEPA indicated they would provide supplemental comments; however, we did not receive any other requests related to NECR/DEIS.

12. Fort Wingate NRC Settlement: The settlement covers natural resource damages (NRD) claims held by the State of New Mexico, through the Office of Natural Resources Trustee (ONRT), the Pueblo of Zuni, and the Navajo Nation, against the U.S. and the U.S. Army for injuries to natural resources caused by releases of hazardous substances at or from the Fort Wingate Depot Activity (Depot). The Depot, in McKinley County near Gallup, was used for storage and disposal of explosives and munitions, and ceased operations in 1993. Environmental remediation of the Depot is on-going under the authority of the New Mexico Environment Department Hazardous Waste Bureau. The Zuni Pueblo and Navajo Nation have longstanding historical interests in the area occupied by and surrounding the Depot. Separately and apart from this agreement, certain portions of

the Depot will be transferred to the Bureau of Indian Affairs to be held in trust for the Zuni Pueblo and Navajo Nation. New Mexico also has trustee interests in natural resources injured by Depot activities, including groundwater. The parties have agreed, subject to final approval by their decision makers, to the terms of the settlement as memorialized in a proposed consent decree.

The proposed consent decree (CD) for the Ft. Wingate NRD Settlement was approved by the Naa'bik'iyati' Committee, Resolution NABID-55-21, and will be circulated to the parties for signature. For the Navajo Nation, the Attorney General and the President are the identified signators. A draft complaint is also circulating for review and the parties anticipate lodging the complaint and proposed CD in the U.S. District Court for the District of New Mexico once all signatures are obtained, hopefully by February 2022.

13. Phase Two Trust: (On-going). The Phase Two Removal Site Evaluation (RSE) trust continues its work toward issuance of removal site evaluation (RSE) reports for multiple mine sites, as well as performing risk assessments. We continue to participate in regular conference calls regarding work being done by the Phase Two Trust for investigation and remediation of these uranium mines. The Phase Two Trust is being amended and expanded to include cleanup of Priority Orphan Mines, as contemplated under the Phase Two Trust settlement agreement. We received the finalized documents for the Expanded Trust agreement, and a memo addressed to the Attorney General that explains all the changes and the new Addendum 3 along with a summary of the changes. We reviewed the memo and made some suggestions about the use of “we” throughout the document that wasn’t clear who that was referring to. We are currently working on the finalization of the memo to the Attorney General for her signature on the Expanded Trust agreement and associated documents.

14. Tronox Settlement: (On-going)

- ARAR. NRU continues working on completing a comprehensive list of Navajo Nation ARARs to be used for uranium mine clean-ups. The draft ARARs table will be used as a template for incorporation in cleanup decisions. The table is all-inclusive, and is intended to be tailored to the circumstances of each individual mine site. It is most likely to be used to develop Action Memoranda for several Tronox mine clean-ups in the Eastern Agency in the next few months. The challenge we faced in the ARAR effort was determining ways Navajo fundamental law can be couched as an ARAR by providing specifics on how it applies to uranium mine cleanups. Our current plan is to incorporate fundamental law concepts by including a *hataa[ii, or traditional practitioner*, in the cultural resources survey that is required for each site prior to any invasive site investigation or cleanup activities. This approach will allow consideration of site-specific conditions and concerns in formulating any cleanup plans. USEPA asked the Nation to develop Navajo-specific ARARs that include Navajo Fundamental Law considerations. We submitted a table of laws and regulations proposing those as ARARs. That table is still a work in progress and NNDOJ is continually compiling the promulgated laws and regulations. Those laws will be incorporated into the Engineering Evaluation and Construction Costs (EE/CAs). NNDOJ will need to request assistance from outside counsel due to the large scope and complexity of this project. We continue to have recurring monthly calls on this issue.
- Tronox Settlement Funding Allocation Strategy: The settlement covers 54 AUM sites, both on and of the Nation, within Regions 6 and 9 of USEPA. USEPA proposed a prioritization list for sites based on factors mostly associated with risk to human health. Anecdotally, NNEPA

is not pleased with the prioritization list because it is their opinion that all sites on the Nation should be prioritized above those off the Nation (in NM). The settlement will not fund the complete cleanup of all the sites. In light of the budgetary shortfall, USEPA is proposing equal allocation for all of the sites. The United States Environmental Protection Agency (USEPA) held stakeholder meetings on the proposed allocation strategy for the remaining Tronox settlement funds because the remaining settlement balance is insufficient to address all fifty-four (54) sites. USEPA proposed proportional allocation for all sites with the assumption that financially viable parties are available to address the funding shortfall. NRU drafted and/or reviewed the comments Navajo Superfund Program and the Office of the President and Vice President submitted on the proposed allocation strategy. The primary concern is the proportional allocation requires future negotiations with parties, including federal agencies, and the risk that full funding may not be achieved in light of historical injustices and the legacy of uranium mining across the Navajo Nation; however, an allocation strategy is required by the Office of the Inspector General, and a necessary step for cleanup to progress.

15. Cree Administrative Settlement Agreement: (On-going) We have been negotiating with USEPA on the terms of a new settlement agreement for investigation of contamination at two former uranium mines near Teec Nos Pos in northeastern Arizona. The responsible party, Cree Production Company, formerly operated Tsoie No. 1 and Richard King No. 1 mines. The new draft settlement agreement will be presented to Cree Production Company for signature after we reach agreement with USEPA on draft language. The draft is intended to greatly enhance NNEPA's role in the oversight of clean-up investigations. Moreover, NNEPA will be a formal signatory to the settlement agreement for the first time. Substantial revisions are being made to the settlement agreement (called an Administrative Settlement Agreement and Order on Consent for Removal Actions, or "AOC") and to the Statement of Work. This quarter, we continued working with USEPA on revisions to the draft settlement and Statement of Work for investigation of uranium mines by Cree Production Company and have come up with a final draft that everyone is comfortable with. One area we were getting a lot of push back on pertains to coordination of oversight of work performed. USEPA would not agree to mandatory Consultation with NNEPA. The recent draft that the parties agreed to does not purport to create a new mandatory consultation requirement, but references the need to confer consistent with USEPA's 1984 Indian Policy.

16. Arizona Corporation Commission Rate Cases:

- APS Rate Case. DOJ intervened in the Arizona Public Service Company (APS)'s ongoing rate case being heard by the Arizona Corporation Commission (ACC). Representatives from Arizona State University (ASU) are assisting the Nation with these efforts, along with outside counsel. This quarter, NRU's April Quinn provided assistance to RDC Chair Rick Nez on his public comments he made during the ACC's "opening meeting" regarding the case on October 4<sup>th</sup>. She also listened to the ACC's "open meeting", which took place over several days in late October and early November. The ACC ultimately issued an order granting the Nation \$10 million in assistance related to the "just energy transition" or "coal community transition" (CCT), rather than the \$100 million that the Nation and APS were advocating for. The ACC also said that additional information could be presented to demonstrate that the Nation should receive more money for CCT assistance. The other issue we're concerned about is APS's cost recovery for the SCRs installed at the Four Corners Power Plant. The ACC denied APS's full cost recovery for the SCRs. We are currently discussing next steps with outside counsel.

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- ACC Generic Docket. The ACC is having upcoming workshops related to their Generic Docket which the ACC opened to gain more information on the “coal community transition” (CCT) issue. The first workshop will be held on January 6<sup>th</sup>. We have been reviewing information in preparation for the workshops and will discuss the same with outside counsel to determine how the Nation should participate in the workshops.

17. PNM Rate Case: Per the request of President Nez, NRU drafted comments to be submitted in Public Service Company of New Mexico (PNM)’s ongoing rate case with the New Mexico Public Regulation Commission (PRC). PNM’s case focuses on PNM selling their interest in the Four Corners to the Navajo Transitional Energy Company (NTEC). The comments focused on President Nez’s support for the transaction and the ongoing operations of Four Corners and NTEC’s Navajo Mine. The comments also note that the continued operations of the power plant and mine are a key component of the Nation’s “glidepath” away from coal and into other forms of revenue generation, including renewable energy development. The PRC ended up denying the PNM/NTEC deal and discussions are on-going internally at the Nation regarding the same and what next steps the Nation should take, if any.

18. Proposed Legislation:

- The coal legislation is Delegate Yellowhair’s legislation wanting any changes to Peabody’s permit to be treated as a “significant permit revision”, which was initiated by Nicole Horseherder. April participated in an in-person meeting with Delegate Yellowhair, Minerals Department and Mariana Kahn to discuss the draft legislation regarding reclamation at the Peabody Mine. They discussed the requirements and restrictions of SMCRA and the fact that DOJ and Minerals are strongly advising against the “significant permit revision” request. We also discussed the reclamation activities going on at the mine and the public input that’s occurred to date. After all of that, it sounds like Delegate Yellowhair still wants to drop some sort of legislation. Hopefully he will continue discussing things with DOJ and Minerals prior to moving forward with legislation.
- The other legislation is proposing to give NNOGC a monopoly on helium development on the Nation. Mariana Kahn reached out to NRU for comments regarding the proposed legislation and comments were provided. To date, we have not heard back from Mariana Kahn, but we don’t believe the issue is going away. Among other things, NNOGC has a meeting with RDC and they will probably try to make their case at the meeting that they should be given a monopoly. If there’s a call-in number for that meeting, April plans on listening in.

19. Navajo Generating Station: There were two issues regarding the Navajo Generating Station (NGS) that came up this quarter. First, the Nation’s Division of Economic Development (DED) interest in keeping additional NGS assets (the Service Building and Chemical Warehouse Storage building). The Nation found out from SRP that the Service Building has foundation damage and SRP is recommending that it not be kept. The end result was DED decided to keep one additional asset and we assisted with drafting a letter regarding the retention of the asset. The second issue was brought to our attention by SRP. The Bureau of Indian Affairs (BIA) denied one of our requests for a waiver related to the NGS rights-of-way that SRP applied for a couple years ago. This is problematic. It would mean that the NGS lease terms and rights-of-way terms and conditions won’t be consistent with one another, which was the intent of the Nation. We received notification from the BIA this week of their denial and will need to look into the issue further.

### **Tax and Finance Unit (TFU)**

The Tax and Finance Unit is headed by Assistant Attorney General Mel Rodis who supervises one Principal Attorney, one (1) Attorney, one (1) Attorney Candidate, and one (1) Legal Secretary. TFU is assigned to advise the Budget and Finance Committee (BFC); the Office of the Controller (OOC); the Office of Management and Budget (OMB); the Investment Committee (IC); the Navajo Tax Commission (NTC); the Office of Navajo Tax Commission (ONTC); the Department of Retirement Services (NDRS); and the Administration Committees for the Retirement Plan (RPAC), the 401(k) Savings Plan (RSPAC), and the Deferred Compensation Plan (DCPAC). Below are some of TFU's noted projects this quarter:

1. American Rescue Plan Act: The American Rescue Plan Act (ARPA), included \$20 billion of the Coronavirus State Fiscal Recovery Fund for Tribal Governments (Fiscal Recovery Fund or FRF). The U.S. Department of Treasury (Treasury) divided the first \$1 billion equally among all federally recognized tribes. Treasury allocated 65% of the remaining \$19 billion (\$12.35 billion) based on self-certified tribal enrolment data, and 35% of the \$19 billion (\$6.65 billion) was allocated based on employment numbers of tribal governments and tribally-owned entities for 2019. As of August 16, 2021, the United States Department of Treasury had allocated a total of \$2,079,461,464.93 to the Navajo Nation. In the first disbursement of FRF on May 29, 2021, Treasury allocated \$1,861,554,458.43 to the Navajo Nation. In the second disbursement of FRF on August 16, 2021, Treasury allocated an additional \$217,907,006.50 to the Nation. Pursuant to the ARPA and Treasury's Final Rules and other guidance in the form of Frequently Asked Questions detailing allowable expenditures of the FRF, Tribes may use the FRF to respond to the public health emergency with respect to COVID-19 or its negative economic impacts; to respond to workers performing essential work; for the provision of government services to the extent of reduction in revenue of the tribal government due to COVID-19; and to make necessary investments in water, sewer, or broadband infrastructure.

Following the passage of Council resolution CJY-41-21 establishing the Navajo Nation Fiscal Recovery Fund and creating the framework and process for approval of future FRF expenditure plans, the BFC approved the FRF procedures and forms for initial eligibility determination reviews of proposed FRF expenditure plans through passage of resolution BFS-31-21. Since TFU helped to draft the FRF procedures, TFU gave several presentations and reports to BFC, Council Delegates, and other leadership on the implementation of these procedures. TFU met individually with several Council Delegates to provide guidance on the FRF procedures for chapters. TFU maintained regular communication with OPVP and its consultants on FRF matters and participated in OPVP's weekly ARPA Support Work Group calls. TFU participated in a series of meetings with the Office of the Speaker (OoS), Office of Legislative Counsel (OLC), Office of Legislative Services (OLS), Office of the President and Vice President (OPVP), FRF Office, Division of Community Development (DCD), and DOJ regarding drafting FRF legislations. TFU reviewed and provided substantive edits and comments to OLC's draft legislation to approve FRF expenditure plans for infrastructure projects and the FRF Hardship Assistance Program, which became legislation 0257-21. TFU attended and presented at several leadership meetings and Naabik'íyáti work sessions regarding proposed FRF expenditure plans and legislation 0257-21. TFU participated in the Council meeting during which Council deliberated upon and passed resolution CD-62-21 approving the FRF Hardship Assistance expenditure plan. TFU reviewed and advised OPVP about the eligibility of proposed FRF administrative cost budgets for central support and regulatory offices, and issued memos to OPVP on the same subject. TFU attended Treasury tribal consultations on FRF and other programs under ARPA such as the Homeowner Assistance Fund and the State Small Business Credit Initiative for tribal governments. TFU drafted an IC resolution and BFC legislation approving a new investment manager for the Nation's FRF investments. TFU, in collaboration with other units of DOJ, reviewed and edited multiple drafts of the Nation's FRF Subrecipient

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Agreement with NTUA for defunded CARES projects and participated in several meetings with NTUA, OOC, OPVP, DCD, DWR, DGS, and other DOJ attorneys. To date, TFU, in consultation with outside counsel, has completed a total of 165 FRF initial eligibility determination reviews for proposed expenditure plans seeking to utilize FRF, and 143 of those reviews were completed during the first quarter of FY2022. Although the FRF Procedures approved through BFS-31-21 allow DOJ five (5) working days to respond to requests for initial eligibility determination reviews, TFU's average response time is only four (4) working days or fewer.

2. Office of the Controller (OOC): TFU advised OOC with respect to ongoing issues involving the Hardship Assistance Program funded with CARES funds. TFU reviewed for legal sufficiency a proposed Services Contract between OOC and Twin Arrows, and reviewed and edited OOC's draft sole source procurement memoranda for procurements of American Business Solutions and for Pitney Bowes Postage Meter. At the request of OPVP, TFU communicated with OOC regarding the propriety and lawfulness of OOC's proposed modification and extension of an expired services contract with Luberta Corporation. TFU also advised the Purchasing Section of OOC with regard to various procurement issues, and assisted OOC in determining the sufficiency of procurement processes used by other Navajo Nation programs. TFU advised OOC regarding possible duplicative payments of Special Duty Pay for particular employees and discussed the option of offsetting future payments of Hazard Duty Pay for such employees. TFU met with OOC, Minerals Department, and the Natural Resources Unit of DOJ regarding the possibility of the Nation hedging oil. TFU responded to a request from OOC's Investment Section related to the Navajo Nation's dealings with the Department of the Interior's Bureau of Trust Funds Administration. TFU communicated with OOC, its consultants, and the external auditor, Moss Adams, regarding audit-related issues. TFU assisted the Attorney General in drafting and issuing the attorney audit letter for FY2021. TFU assisted the Credit Services Department of OOC with a leasehold mortgage document, and advised regarding the write-off of a delinquent home loan. TFU researched an issue for the Property Management Department of OOC regarding disposal of office trailers. TFU communicated with and advised OOC regarding the NTUA FRF subrecipient agreements and disbursement schedules. TFU worked with the Investment Section of OOC to fill out forms needed to receive funds from investment accounts bequeathed to the Nation from a deceased donor. TFU conducted a pre-review of OOC's proposed contract with external auditors KPMG, and met with KPMG regarding its risk assessment and client acceptance process. TFU provided OOC with all of TFU's files on the Navajo Nation Banking Initiative. TFU advised OOC that Accounts Payable is not required to have Hardship Assistance recipients fill out a W-9 form. TFU advised OOC on the applicability of the Navajo Nation Privacy Act to Council Delegates' requests for protected records including names of CARES Hardship Assistance recipients with uncashed checks. TFU reviewed several of OOC's proposed expenditure plans for FRF Hardship Assistance. TFU advised OOC and Navajo Nation Leadership regarding the option of utilizing unexpended CARES Funds to reimburse the Síhasin Fund, General Fund, and Donation Fund for CARES-eligible expenditures and assisted the Acting Controller and the Attorney General in drafting a memorandum to leadership on that topic. Following the passage and signing of Council resolution CD-61-21 approving CARES funding for hardship assistance for elders, TFU advised OOC on encumbrance of funds and creating a legal obligation by the CARES deadline of December 31, 2021 for payments to be made prior to September 30, 2022.

3. Investment Committee (IC): TFU drafted multiple resolutions for the IC and attended all IC meetings. TFU attended the annual IC meeting. TFU participated in meetings between OOC and NNGE and advised OOC and the IC regarding approval of a forbearance letter agreement between the Nation and NNGE and the Nation's consent to NNGE's restructuring of its NTUA loan.

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4. Office of Management and Budget (OMB): TFU advised the Contracts and Grants Section of OMB that approval of the Naabik'iyáti Committee is required prior to the President executing the IDC Negotiation Agreement with DOI/IBC. TFU participated in multiple calls with Head Start, OMB, and OOC regarding NHS' debt to the U.S. Department of Health and Human Services of \$1.9 million related to disallowed costs for an audit finding and advised on identifying a funding source to pay the debt. TFU advised OMB on multiple issues involving indirect costs, and reviewed the proposed FY21 and FY22 Indirect Cost Rate Proposals (ICRP) from the Department of Interior, Interior Business Center and determined it was legally sufficient. TFU reviewed and proposed substantive edits to several proposed grant agreements. TFU researched the effect of the President's line item veto on a budget resolution allocating Permanent Fund Income. TFU provided guidance to the Contracts and Grants Section of OMB regarding OMB's authority to establish budget requirements and regarding the approval of FRF for defunded CARES projects. TFU assisted OMB and OOC in providing a written response to the Bureau of Indian Affairs in order to prevent the issuance of a bill of collection related to disallowed costs for audit finding 2019-006 regarding rates charged for group insurance policies. TFU responded to OMB's request to review and propose edits to tribal grant policies in the Budget Instructions Manual.

5. Office of the Navajo Tax Commission (ONTC): TFU participated in multiple taxpayer conferences with ONTC and taxpayers and drafted conference decisions. TFU advised ONTC regarding the scope and extent of its investigative and subpoena authority under the Uniform Tax Administration Statute and other provisions of the Navajo Nation Tax Code. TFU advised ONTC regarding its collection powers and lien authority under 24 N.N.C. §§ 118, 119, and 120 of the Uniform Tax Administration Statute. TFU assisted ONTC to prepare for a BFC meeting regarding legislation 0112-21 approving amendments to the Uniform Tax Administration Statute and legislation 0111-21 approving amendments to the Sales Tax Statute. TFU advised ONTC regarding taxable transactions between hospitals and vendors that gross receipts from sales by hospitals are exempt but sales from vendors to hospitals are not exempt from the Navajo Nation Sales Tax. TFU advised ONTC that gross receipts from Bitcoin mining within the Nation is subject to the Navajo Nation Sales Tax. TFU discussed with ONTC the implementation of an online tax payment and filing system. TFU is researching whether ONTC's expenditure plan and plan of operation, and the Navajo Nation Tax Code allow ONTC to collect and use administrative and legal fees incurred from ONTC's tax collection efforts. TFU drafted an administrative subpoena for ONTC to issue to a taxpayer to begin the tax audit process. TFU drafted memos from ONTC to taxpayers on the applicability of Navajo Nation taxes. TFU drafted a private ruling for ONTC to issue to a taxpayer. TFU represented ONTC in hearings and conferences before the Navajo Office of Hearings and Appeals regarding taxpayer appeals of assessment issued by ONTC, met with opposing counsel for settlement negotiations, successfully negotiated settlements favourable to the Nation, and drafted tax closing agreements.

6. Department of Retirement Services (NDRS): TFU advised NDRS on 401(k) Plan, Retirement Plan, and Deferred Compensation Plan matters. TFU generally advised NDRS and the Retirement Plan Administrative Committee (RPAC), drafted proposed RPAC resolutions, and attended monthly RPAC meetings. TFU participated in multiple meetings with NDRS, the Division of Human Resources, and Principal Financial Group in an effort to resolve issues with the early implementation of the automatic enrollment and automatic escalation changes to the 401(k) Savings Plan. TFU advised NDRS on Navajo Nation Privacy Act matters. TFU advised RSPAC, NDRS, the Division of Human Resources, and OPVP regarding loan repayments of a particular 401(k) Plan participant. TFU has continued to help NDRS in the implementation phase of the Enhanced Retirement Program, which the BFC approved through passage of BFMY-13-21. TFU worked with Principal Financial to get the documents necessary to update the Navajo Nation 401(k) target date fund share class election. TFU presented a report to RPAC regarding requested amendments to the Retirement

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Plan and the Deferred Compensation Plan related to calculating benefits for Council Delegates. TFU attended the Annual RPAC meeting regarding the Nation's retirement investments.

7. 24th Navajo Nation Council and Committees: TFU regularly attended BFC meetings at least twice monthly and attended Council and Naabik'íyáti Committee meetings as needed, particularly related to FRF matters. TFU reported to BFC regarding FRF Procedures and the process for and status of DOJ's initial eligibility determination reviews of proposed FRF expenditure plans. TFU drafted BFC legislations for Chair Henio to sponsor for BFC to approve a new investment manager for FRF and related to sweep of Deferred Compensation Plan funds. TFU provided a report to BFC in executive session regarding a Treasury Department inquiry into a CARES Fund subaward to a subrecipient. TFU attended RDC and BFC work sessions on Navajo Nation taxation of solar projects. In response to a request by OLC and a Council Delegate, TFU is researching possible amendments to the Budget Instruction Manual and the Navajo Nation Code in order to amend the definition of "fixed costs" for purposes of budgeting for chapter officials' stipends. TFU responded to OLC's questions on Department of Natural Resources' enterprise funds. TFU reviewed and provided proposed edits to OLC's draft emergency legislation for Hardship Assistance to Navajo elders. TFU responded in writing and telephonically to various questions by Delegates regarding FRF and related legislations. TFU consulted with the OLC on various draft legislations and legislative amendments, provided feedback and suggested edits.

8. Miscellaneous Matters: TFU assisted the Office of the Attorney General (OAG) in preparing DOJ's proposed FRF central support services administration budgets. TFU advised and assisted the OAG on various procurement matters. TFU drafted the FY2021 Attorney Audit Letter at the direction of and with supervision from OAG, which was issued to external auditors, Moss Adams, and to OOC. TFU advised the Minerals Department on a proposed tax provision in a draft oil and gas operating agreement. TFU reviewed and proposed edits to draft legislation to establish the Diné Relocatee Fund and a draft fund management plan for the fund. TFU researched the history of Navajo Nation initiatives to establish a bank. TFU corresponded with OOC and Navajo Nation programs regarding Treasury offsets. TFU frequently advised and assisted other units of DOJ with various requests for services for their respective clients.

### **Water Rights Unit (WRU)**

The Water Rights Unit (WRU) is led by Assistant Attorney General Michelle Brown-Yazzie. Ms. Brown-Yazzie supervises an Administrative Legal Secretary. WRU is charged with securing and protecting the Nation's water rights. In doing so, WRU works closely with the Water Rights Commission and the Navajo Nation Water Management Branch. Below is a summary of WRU's work for this quarter:

1. Colorado River Basin (AZ):

a. Navajo Nation v. Department of the Interior. As previously reported, the WRU and the Litigation Unit (LU) are handling this matter currently before the Ninth Circuit Court of Appeals. After the Ninth Circuit's decision favourable to the Nation was issued on April 28, 2021, the Intervenor-Appellees filed a *Petition for Rehearing En Banc and to Correct Opinion* on July 29, 2021. The Navajo Nation filed an ordered response on September 30, 2021. The Ninth Circuit's April decision reversed the Arizona Federal District Court's dismissal, based on lack of jurisdiction, of the Nation's breach of trust claim alleging that the Federal Appellees failed to consider the Nation's as-yet-to-be determined

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water rights in managing the Colorado River. To date, parties are still waiting for the decision on Intervenor-Appellees Petition for Rehearing En Banc.

2. Other Colorado River Matters:

a. Ten Tribes Partnership. The TTP and other related tribal organizations met several times during the Colorado River Water Users Association (CRWUA) Conference held in person in December in Las Vegas, NV. Most of the tribal and non-tribal sessions held at the CRWUA Conference focused on the drought and operations management. The Navajo Nation representatives met privately with Assistant Secretary of Water and Science Tanya Trujillo, Commissioners and BOR management during the conference. Updates were given from both sides. Secretary Trujillo informed the Nation that she and Secretary Haaland are committed to working with the Nation on all water issues affecting the tribe. There will be a listening session the first quarter of 2022 that Secretary Haaland will attend to hear from tribal leaders directly.

3. Rio Grande Basin:

a. Augustin Plains Ranch. After having its revised permit application dismissed by the OSE hearing officer in August 2018, APR filed an appeal with the 7<sup>th</sup> Judicial District Court of New Mexico, case no. D-728-CV-2018-00026. On August 23, 2019, the Seventh Judicial District Court granted the summary judgment motion of the New Mexico Environmental Law Center, in which WRU had joined, and dismissed the Augustin Plains Ranch matter with prejudice. On September 23, 2019, an appeal was filed by APR. On Nov. 26, OSE filed a cross-appeal, which it subsequently dismissed. APR submitted its Brief-in Chief on October 26, 2020. On September 11, 2020, WRU filed a Notice of Appearance. WRU filed a Joinder in the Community Protestants' Answer Brief. No activity this quarter.

b. State Engineer v. Gray. WRU moved for the right to file an amicus curiae brief in May of 2019. The NM Court of Appeals granted the motion and accepted the brief on November 5, 2021. Oral argument occurred in the matter on April 1, 2021. WRU coordinated oral argument preparation with cross-appellant Turner Ranch LLC. The brief filed by WRU addressed abandonment issues after protracted non-use. WRU hopes that this tribunal's decision or after an appeal to the NM Supreme Court will clarify the legal standard for finding abandonment. No activity this quarter.

4. Little Colorado River Basin (AZ):

a. In re Hopi Reservation HSR, 6417-203. Hopi Future Claims. Closing arguments in the Hopi contested case occurred September 30-October 1, 2021. The Navajo Nation continues to be represented by Sacks Tierney in this matter. It will be several months before the Special Master hearing the matter will release her findings and any decisions in the matter,

b. In re Navajo Nation, 6417-300. Phase I. The Phase I trial is scheduled to begin on February 10, 2023. WRU and ST continue to work with the Nation's experts on their reports, including rebuttal reports, concerning the Nation's DCMI, stockpond, livestock and wildlife watering claims. The Nation has significant plans for future DCMI water development, much of it within the Sihasin funding plan that will support a claim based on a future population projection by the Nation's demographic expert. Depositions of the Nation's witnesses are scheduled to begin

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the week of January 17, 2022. WRU is working with Sacks Tierney with deposition preparations. As previously reported, the San Juan Southern Paiute Tribe (SJSPT) filed objections to the Navajo Nation HSR, wanting a separate resolution for its water rights claims in the LCR Adjudication. On November 1, 2021, the Special Master denied SJSPT's objections and proposal to the Court. The Special Master, however, ordered the United States, the Navajo Nation and SJSPT to file a status report to the Court regarding the Navajo Nation-SJSPT Treaty and the status of ratification by Congress. The joint report on the Navajo Nation – SJSPT Treaty was filed on January 10, 2022.

- Phase II and Phase III: No trial date is set for Phase II or Phase III claims.

c. In re Lower Little Colorado River Subwatershed, 6417-400. This proceeding has been focused on the preparation of the ADWR Technical Report on *de minimis* uses. The Nation objected to a number of matters addressed in the Report, but did not dispute that summary adjudication was appropriate for certain small uses. At a hearing on May 28, 2020, no party objected to the *de minimis* treatment of all stock and wildlife water claims and stock ponds with a capacity of less than 4 acre-feet as recommended by ADWR, and the Special Master entered her Report on October 30, 2020. Objections to the Report were filed on April 28. ADWR sought, and was granted, an extension to complete the preliminary watershed HSR to March 31, 2022.

5. Zuni River Basin: The parties continue to work on a consensus hydrologic model that will allow the parties to evaluate impacts of various claims and future pumping scenarios continues as the settlement proposals are discussed. WRU is working with WMB to obtain complete available data on water use and to update maps on the trust lands given substantial trust acquisitions since the U.S. prepared its claims. WRU and DWR-WMB continue to participate in settlement negotiation meetings and to establish a proposed settlement for consideration of claims for the Nation in the Zuni River Basin. The Pueblos' representatives have indicated that they are seeking a fund based settlement and are hoping to have it introduced by Congress in 2022. WRU will continue to participate and monitor this matter.

6. San Juan River Basin (UT):

a. Settlement Legislation, Funding and Implementation. NURWSA was included as Section 1102 of the Consolidated Appropriations Act, Public Law 116-94, approved by Congress December 21, 2020, and signed by the President on December 27, 2020. The Settlement was funded in the Bipartisan Infrastructure Bill. WRU participates with DWR-WMB in the implementation process. WRU is working with the U.S. Solicitor's Office and the Utah State Engineer's Office to finalize conformation of the settlement with the Congressional Act. A signing ceremony with the Secretary of Interior is being planned for April or May of this year.

7. San Juan River Basin (NM):

a. Adjudication (Main Case 75-184). On April 5, 2021, the New Mexico Supreme Court dismissed cert petitions challenging the New Mexico Court of Appeals decision, affirming the entry of the settlement decrees by the court in the San Juan River Basin Adjudication in 2013. A motion to reconsider was filed by objectors and on December 6, 2021, the Supreme Court issued denied the motion to reconsider. This matter should now be considered complete in the State Court process.

b. Clark v. Haaland. This is a new matter that was filed in the U.S. District Court for the State of New Mexico and is related to the Navajo Nation – New Mexico Water Rights Settlement regarding the San Juan River. The complaint was filed in early November by objectors to the settlement who are represented by Victor Marshall. Victor Marshall is the attorney who represents water user objectors in the cases filed in the State of New Mexico Court System. In this matter, Dr. Rudy Shebala in his official capacity as DNR Executive Director is named as a Defendant. Other Defendants include the Secretary of Interior, CEO of NAPI, and officials representing the State of New Mexico. The Navajo Nation, represented by WRU and the , will file the Nation’s response to the complaint filed by January 14, 2022.

c. Ute Mountain Ute Subproceeding. The litigation of the claims of the Ute Mountain Ute Tribe (UMUT) have been stayed while the Tribe is in negotiations with the State of New Mexico and the U.S.

d. Implementation of the Navajo Nation San Juan River Basin Settlement.

- Navajo-Gallup Water Supply Project (NGWSP). The Cutter Lateral is online and is delivering water to the Huerfano, Counselor, Ojo Encino, Nageezi, Torreon, and White Horse Lake Chapters through the Cutter Lateral system.
- Congressional Requests. As of April 8, 2021, the NGWSP has a cost shortfall of \$330M to more than \$500M. The Navajo Nation and other Project Participants submitted proposed amendments to PL 111-11 to the Nation’s Congressional Delegation requesting an increase in the project ceiling as well as a request for additional funding to cover the cost overrun of the project, to make the discretionary waiver of O&M payments mandatory, to extend the waiver from 10 years to 15 years, and provide the Jicarilla Apache Nation and the City of Gallup with similar O&M waivers. There is also a need to extend the deadline for the completion of the NGWSP from Dec. 31, 2024 to 2029. On behalf of the Navajo Nation and WRU, NNWO is taking the lead in working with the NM Delegation to move the proposed amendments through Congress. Senator Lujan’s Office hopes to introduce the proposed amendments by February 2022.
- Double Taxation Issue. The U.S. contractors are being taxed by the Navajo Nation and the State of New Mexico while constructing the project on Navajo Nation lands. WRU has met with Reclamation, the U.S. contractors, and the State of New Mexico to discuss the impact of the double taxation on the Project as well as how to remedy the issue. WRU researched this issue and found that the NM Supreme Court held that the State of New Mexico can impose gross receipts taxes on entities providing services on tribal land when the agreement is not with the tribe. The State of New Mexico has entered into agreements with a majority of tribes in New Mexico that authorizes the State to share GRT revenues; however, the Nation has not entered into such an agreement. WRU continues to address this matter to find a possible solution.
- Cutter Lateral Operations, Maintenance, and Replacement (OM&R) Contract. WRU continues to participate in Technical Meetings as well as Negotiation Meetings. Reclamation sent a letter to the Navajo Nation President informing the Navajo Nation that in accordance with Article 22 and Article 23 of the Settlement Contract, the Navajo Nation’s allocated Project water is available for beneficial use by the Navajo Nation. The date of the declaration of Substantial Completion is October 6, 2021. Reclamation transferred Operations,

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Maintenance & Repair expenses to the Nation (and NTUA) on October 6, 2021. Reclamation declared the Cutter Lateral substantially complete even though the OM&R contract is not in complete. The United States is waiving the Navajo Nation's proportionate share of OM&R costs for a period of three years. This three-year waiver will count towards the possible ten-year waiver of O&M costs that the Nation negotiated with the United States in its settlement agreement. (WRU is currently seeking an extension of that waiver from ten years to fifteen years.)

8. Rio San Jose Basin (NM), Settlement/Mediation: Settlement negotiations through mediation continue with meetings occurring on a weekly basis. Ramsey Kropf, former Deputy Solicitor at Interior and Special Master in the Wyoming general stream adjudication, serves as the mediator.

9. NMOSE Matters:

a. City of Farmington. As previously reported, the State Engineer through the assigned Hearing Examiner found the water rights intended for transfer under the City of Farmington's Application had been abandoned, resulting in the denial of the Application for a permit to change Place and Purpose of Use and Point of Diversion. The City of Farmington appealed the decision to the 11<sup>th</sup> Judicial District Court on August 27, 2021. The issues will be reviewed *de novo*. The U.S. is intervening in the matter. WRU represents the Navajo Nation. The first hearing was held in December and the matter is now scheduled for trial in February 2023 with pre-trial matters scheduled to occur prior to trial.

b. Diamond K. Bar Ranch L.L.C. and Kysar Living Trust. The Navajo Nation, represented by WRU continues to protest the application to change the diversion point of a multitude of water rights by this applicant. The U.S. also protests the application. WRU and the U.S. attorneys involved in this matter met with the applicant and provided the background, findings and analysis supporting the protest. To date, the applicant has not made any further efforts to gain approval of their application. WRU will continue to monitor the matter.

10. Other Activities:

a. NN Water Rights Commission. WRU participates in WRC regular and special meetings providing updates and overviews of settlement and litigation activities regarding the Nation's water rights in all three states. During this Quarter, WRU began providing written reports containing non-confidential information to the Commission for the purpose of providing information that Commissioners can use to update the communities they represent with public water rights efforts information.

b. CRWUA Conference. WRU attended the 2021 CRWUA Conference.

c. Resources and Development Committee. WRU participates in the RDC regular, leadership and work session meetings in order to provide litigation and settlement negotiation updates regarding the Nation's water rights in all three states.

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d. FERC Pump Storage Applications. Several applications to develop pumped hydro-storage facilities proposed to be located on the Nation have been filed with the Federal Energy Regulatory Commission (FERC). WRU will continue to monitor and respond to such applications. One application, pending review, was filed this Quarter.