

# NAVAJO NATION DEPARTMENT OF JUSTICE

**QUARTER 3**  
<APRIL TO JUNE 2022>

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

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<April to June 2022>

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STATUS OF THE DEPARTMENT

The express 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.

During the current Administration, 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, DOJ received 733 Requests for Legal Services (RFS) and completed 567. These requests do not include other work such as time spent in meetings, on calls, court appearances, preparing for litigation, and responding to work/client email.

COVID-19 MATTERS

Since March 2020 and during this 2nd quarter of FY2022, DOJ has continued to be deeply involved in all legal aspects of assisting the Navajo Nation government in responding to the myriad of ongoing challenges presented by the COVID-19 pandemic. Throughout the past two years and during the Navajo Nation government closures, DOJ's attorneys, advocates, prosecutors, and staff worked tirelessly to meet the legal demands of the government. OAG prioritized employee safety and adherence to safety protocols when working on site. Approximately 90% of DOJ's employees have been fully vaccinated and have received a booster shot to help prevent the spread of COVID-19.

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 provides \$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 Navajo Nation under the Fiscal Recovery Funds (FRF) provisions of ARPA. On August 16, 2021, the Navajo 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, CJY-41-21 was signed into law, establishing the Navajo Nation's Fiscal Recovery Fund and the Expenditure Authorization Process, among other things. Section 7 of CJY-41-21 also allocated ten percent of FRF dollars for central support and/or regulatory services. Programs receiving such funds are required to use such funding to develop the legal, financial, organizational, managerial, administrative, regulatory, and reporting framework necessary to support the expeditious completion of projects and services funded with the Nation's FRF or otherwise be necessary administrative costs due to the COVID-19 public health emergency and its negative economic impacts. Such funding cannot be used for

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direct services or other programmatic expenses. DOJ received \$25,446,993.00 of FRF for a five-year budget beginning October 1, 2021 to December 31, 2026. OMB issued the budget transmission and set up the budget in the FMIS on December 16, 2021. The major expense categories for DOJ include Contractual Services (outside counsel fees & expenses) budgeted at \$18,581,467 and Personnel Expenses (salary/fringe/adjustments for 6 new positions and 9 cost-shared positions) budgeted at \$6,243,410.

Following the passage of CJY-41-21, the Budget and Finance Committee approved the FRF procedures and forms for initial eligibility determination reviews of proposed FRF expenditure plans through the passage of resolution BFS-31-21. DOJ attended and presented at several leadership meetings and Naabik'iyáti work sessions regarding proposed FRF expenditure plans and legislation 0257-21. DOJ participated in the Naabik'iyáti and Council meetings on legislation 0257-21. On April 4, 2022, legislation 0257-21 failed at Council with a vote of 15 to 8. DOJ participated in drafting legislation 0086-22, and suggested amendments to legislation 0087-22. DOJ again attended advisory meetings, work sessions, and Naabik'iyáti and Council meetings on legislations 0086-22 and 0087-22. On June 13, 2022, legislation 0087-22 failed at Council with a vote of 13 to 9. On June 30, 2022, Council passed legislation 0086-22 with a vote of 20 to 2. The legislation appropriates funding to mitigate the COVID-19 pandemic as well as to respond to the health, social and economic impacts of the pandemic by appropriating funding for basic infrastructure including water lines and wastewater systems, bathroom additions, electric capacity and connections, broadband, new housing, hardship assistance, and critical COVID services under public safety and health. Legislation 0086-22 is currently under consideration by the President, but once it is reviewed and signed into law, DOJ will assist clients with implementing the provisions of this important legislation.

To date, DOJ has completed 251 FRF initial eligibility determination reviews for proposed expenditure plans seeking to utilize FRF; 39 of those reviews were completed during this quarter.

LITIGATION. This quarter featured some important litigation activity, including the following:

1. **The Navajo Nation settles with the U.S. Environmental Protection Agency (USEPA) in the Gold King Mine case.** On June 16, 2022, the Navajo Nation Department of Justice announced a settlement with the USEPA, resolving the Nation's claims against the federal agency for triggering the August 2015 Gold King Mine spill. This disaster released millions of gallons of toxic acid mine waste into the waters upstream of the Nation, which then coursed downstream in a yellow plume through 200 miles of the Navajo Nation's San Juan River. Under the terms of the settlement, the USEPA will pay the Navajo Nation a total of thirty-one (31) million dollars. Last year, the Nation recovered 10 million dollars recovered from the Mining Company defendants. To date, the Navajo Nation has recovered forty-one (41) million dollars from the responsible parties. Trial is also set for November 2022 against the remaining defendants, 2 of USEPA's contractors. The Hueston Hennigan law firm assists DOJ in representing the Nation in this matter.

2. **Navajo Nation leaders finalize the Navajo Utah Water Rights Settlement Act with the United States and Utah.** On May 27, 2022, Navajo Nation leadership, U.S. Secretary of the Interior Deb Haaland, Senator Mitt Romney, Governor Spencer Cox, and Lt. Gov. Deidre Henderson signed the Navajo Utah Water Rights Settlement Act at a ceremony in Monument Valley, Utah. The signing of the conformed agreement is consistent with the provisions approved by Congress in 2020. The Act 1) settles all current and future claims by the Navajo Nation for water rights within Utah; 2) ratifies the proposed water rights settlement between the Navajo Nation and the State of Utah, confirming the Navajo Nation's right to deplete 81,500

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acre-feet of water per year from Utah's Colorado River Basin apportionment; and 3) authorizes approximately \$220 million for water infrastructure to provide water infrastructure, which will provide clean drinking water, to Navajo communities in Utah. Assistant Attorney General Michelle Brown-Yazzie emceed the historic signing ceremony and has handled this matter.

**3. Oklahoma v. Castro-Huerta: US Supreme Court Decision.** On June 29, 2022, the United States Supreme Court decided the *Oklahoma v. Castro-Huerta* case, which deals with state criminal jurisdiction for crimes committed by non-Indians against Indians in Indian Country. The Court held in a 5-4 vote that Oklahoma and all other states possess concurrent jurisdiction with the federal government over such crimes. As a result of this decision, states can now prosecute non-Indians for crimes against Indians committed on tribal lands unless Congress acts to limit such state jurisdiction in some future legislation. Justice Kavanaugh's majority opinion concluded that states have inherent jurisdiction to prosecute non-Indians for crimes against Indians within Indian Country and that states have authority over tribal lands within state borders unless: (1) Congress takes away that power through legislation, or (2) tribal and federal interests outweigh state interests, then states may assert their governmental authority over tribal lands, regardless of tribal sovereignty. The opinion concludes that there is no congressional statute taking away state authority, and state interests outweigh tribal and federal interests. On behalf of the Navajo Nation, DOJ's Litigation Unit filed an amicus brief in the case, along with several other tribes that have treaties with the U.S. The treaty tribes argued that the "Bad Men" Clause in the treaties prohibited state criminal jurisdiction over non-Indians who commit crimes against Indians. DOJ will continue to review the case, and at this time, do not anticipate any immediate changes to the current relationships and practices with state, county and city/town police departments or prosecutors. The Navajo Nation Division of Public Safety has Intergovernmental Agreements, Memorandums of Understanding, and Mutual Aid Agreements with outside agencies that describe how cases involving non-Indians committing crimes within the Navajo Nation are processed.

#### ADMINISTRATION

This quarter DOJ filled two (2) critical vacancies this quarter, including the appointment of a Chief Prosecutor and the hiring of a Senior Programmer Analyst. Both of these new hires are Navajo members. Hiring a Chief Prosecutor is particularly notable because this position has been filled on an acting basis since April 2019, and many months passed without any applicants. After legislation to amend the 2 N.N.C. §1973 lapsed, DOJ revised the Chief Prosecutor Job Vacancy Announcement (JVA) and Position Classification Questionnaire (PCQ), to amend the education and professional experience requirements. The domicile and tribal membership statutory requirements remained. Subsequently, several individuals applied, interviews were conducted, and Attorney General McPaul and Deputy Attorney General Dutcher appointed Mr. Vernon Jackson, Sr. to serve as Navajo Nation Chief Prosecutor. Chief Prosecutor Jackson is an enrolled member of the Navajo Nation from Chinle. Jackson's experience includes over 20 years of federal law enforcement service as a special agent, including serving as the Assistant Director of the U.S. Environmental Protection Agency's Criminal Investigation Division, as well as over 10 years of law enforcement experience with the Navajo Nation Division of Public Safety. Jackson has worked as a Navajo Nation prosecutor for several years, including serving as the Acting Chief Prosecutor for 11 months prior to his appointment.

This quarter, DOJ also promoted two (2) Attorneys to Senior Attorney positions and a Senior Attorney to a Principal Attorney position. DOJ also advertised and interviewed candidates for three (3) summer law clerk positions, and made hiring decisions for two (2) of these positions. DOJ also advertised three (3) of its FRF-funded positions, the remaining three (3) positions will be advertised next quarter.

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Many DOJ attorneys attended and presented at the Navajo Nation Bar Conference in June. In addition, several of DOJ's legal staff members were sworn into the Navajo Nation Bar after successfully passing the Navajo Nation bar examination in March. DOJ's new NNBA members include: Annette Brown (HSGU), Navalyn Platero, (HSGU) Frances Sjoberg (ECDU), and Cora Tso (WRU).

All DOJ attorneys completed continuing legal education for the Navajo Nation and state bar associations to fulfill licensure requirements for 2022. DOJ arranged for voluntary in-house continuing legal education courses for attorneys and staff with the webcast of the following online seminars: 1) *McGirt – The Aftermath*; 2) *Indian Child Welfare Act (ICWA) Update 2022*; 3) *Help! My Inbox is Exploding: Email Management*; and 4) *Mindfulness: Retrain the Brain*.

In addition, building upon the training that was provided to DOJ staff for the past two years, DOJ staff received additional communication styles training using the DiSC system, a personal assessment tool to help improve teamwork, communication, and productivity in the workplace. Four (4) different training sessions were provided for 1) new employees; 2) employees who had prior DiSC training; 3) supervisors; and 4) debriefing session for OAG and supervisors.

The current vacancies in DOJ include:

- Principal Attorney (WRU) - Position vacated on 3/12/21; position being advertised
- Attorney (HSGU) – New position after Senior Attorney position was filled by NRU promotion; will be advertised
- Attorney Candidate (HSGU) – Position vacated on 4/2/22; position being advertised
- Principal Tribal Court Advocate (HSGU) – Position vacated on 3/12/21; position being advertised
- Principal Attorney (OAG/FRF funded) – New position being advertised
- Senior Attorney (TFU/FRF funded) – New position to be advertised next quarter
- Attorney (CU/HSGU/NRU/FRF funded – Three (3) new positions to be advertised next quarter
- Senior Programs & Projects Specialist (OAG/FRF funded) – Applicants referred on 6/21; interview scheduled on 7/15

UNIT REPORTS. 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.

**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, 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. The Chief Prosecutor is the head of the OTP and is appointed by the

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Attorney General (AG) and he/she serves at the pleasure of the AG. Moreover, all the prosecutors, within OTP, serve 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. After serving as the Acting Chief Prosecutor for 11 months, Vernon L. Jackson, Sr. was appointed as the Navajo Nation Chief Prosecutor on June 6, 2022.

**TRENDS WITHIN THE PROGRAM**

The recent Supreme Court decision involving *Oklahoma v. Castro-Huerta* that was decided on June 29, 2022 will require some thoughtful considerations by OTP prosecutors. As mentioned above, this case deals with state criminal jurisdiction over crimes committed by non-Indians in Indian Country. As a result of this decision, states may now prosecute non-Indians for crimes against Indians on tribal lands unless Congress acts to limit such state jurisdiction in some future legislation. The Navajo Nation filed an amicus brief in this case which centers on the “Bad Men” Clause found in the Navajo Nation’s Treaty with the United States. This clause prohibits state criminal jurisdiction over non-Indians who commit crimes against Indians. OTP will continue to review the case carefully and we already staffed several potential issues internally with OAG, and will continue these discussions.

**FEDERAL DECLINATIONS**

Each quarter OCP receives written notifications of federal declinations of major crimes from United States Attorneys Offices in Utah, Arizona and New Mexico. These notifications inform the Navajo Nation that the U.S. government will not be prosecuting a particular case for a variety of reasons. Each of the cases involves an alleged major crime such as homicide, sexual abuse of a minor, assault with a deadly weapon or aggravated battery. If the declination is made within the statute of limitations prescribed by Navajo law, the Navajo Nation may prosecute these cases in the courts of the Navajo Nation. The successful prosecution of these cases depends heavily on the Navajo Nation’s ability to obtain the investigative material generated by the federal government. Although the Tribal Law and Order Act of 2010 prescribes that release of federal investigative material is required in order facilitate prosecution in the Navajo Nation courts, the transfer is less than perfect. OCP is in the midst of conducting a detailed study of federal declinations received by the Navajo Nation for the years, 2019 2022. The results of that study is expected to be released next quarter.

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The following declinations were received by OTP for the 3<sup>rd</sup> quarter of FY-2022:

**FEDERAL DECLINATIONS - THIRD QUARTER FY 2022**

DISTRICT OF ARIZONA - U.S. ATTORNEYS OFFICE		
Date Received	Name	Alleged Offense
5/5/2022	O. Franklin	Aggravated Battery
5/5/2022	H. Kiefert	Aggravated Battery
5/10/2022	H. Billy	Child Sexual Assault/Abuse
5/10/2022	M. Reed	Assault of a Federal Officer
5/10/2022	B. Levi	Assault with a Deadly Weapon
5/19/2022	W. Charlie	Battery of a Family Member
5/20/2022	B. Williams	Child Sexual Assault/Abuse
5/24/2022	J. Wheeler	Sexual Abuse of a Minor
5/25/2022	T. Begay	Alleged Sexual Assault
6/1/2022	J. Towne	Alleged Sexual Assault
6/1/2022	R. Thomas, Jr.	Felon in Possession of Firearms
6/1/2022	R. Thomas, Jr.	Assault on Correction Officers
6/1/2022	R. Thomas, Jr.	Criminal Damage
6/3/2022	Unknown	Death
6/23/2022	C. Bitsuie	Child Sexual Assault/Abuse
6/23/2022	L. Williams	Child Sexual Assault/Abuse
6/27/2022	J. Saltwater	Child Sexual Assault/Abuse

NEW MEXICO OF NEW MEXICO - U.S. ATTORNEYS OFFICE		
Date Received	Name	Alleged Offense
5/5/2022	K. Biggs	Assault with a Deadly Weapon
5/5/2022	K. Vigil	Assault with a Deadly Weapon

DISTRICT OF UTAH - U.S. ATTORNEYS OFFICE		
Date Received	Name	Alleged Offense
none	none	none

### **DEPARTMENT OF PERSONNEL MANAGEMENT (DPM) DELAYS**

OTP is experiencing process related delays with DPM pertaining to human resource actions that were submitted for their review and approval. For example, fully executed Personnel Action Forms for the newly hired Senior Prosecutor in Shiprock and Chief Prosecutor for Window Rock have not been received from DPM although the effective dates were June 9, 2022. It also took three (3) months for DPM to review and finalize PCQs for four (4) new OTP positions. A PCQ for a Principal Victim Witness Advocate is also pending at DPM. These delays hinder OTP's ability to effectively prosecute crime and to provide services to victims of crime.

OTP is now advertising two attorney-prosecutor positions. The individuals hired will manage and litigate cases that have been declined by the United States Attorney's Offices. OTP also has hired a law clerk to assist with the analysis for the years mentioned above. OTP plans to hire an additional law clerk soon to assist in composing legal memorandums for federally declined cases that are within the statute of limitations. These legal memorandums will serve as referrals for prosecution to a local prosecutor or one of the newly hired attorney-prosecutors. By taking these steps, OTP strives to ensure justice for victims of major crimes and to affirm that the Navajo Nation does not become a haven for criminals.

### **OTP DISTRICT OFFICE SUMMARIES**

#### **DILKON OTP:**

- Newly hired Legal Secretary successfully completed 90-day probationary period and Navajo Nation Driving Course.
- Dilkon Senior Prosecutor provided instruction to law enforcement officers seeking cross-commission as Navajo Nation law enforcement officers. Instruction was held in Gallup, New Mexico from April 11-April 13, 2022.
- OTP staff in Dilkon continue to not have permanently assigned office space and use space in the NPD, Dilkon District Administration building.
- OTP staff in Dilkon continue to experience problems with their fax line and they are working with NTUA to solve the problem.

#### **KAYENTA OTP:**

- The Prosecutor has been receiving an increase in child abuse and neglect cases. Some of these cases involve newborn babies testing positive for illegal substances. The Prosecutor continues to work with Kayenta Department of Family Services, NPD and the Federal Bureau of Investigation concerning these high priority cases.
- The Prosecutor is involved in capacity-building with the court, police, social services, corrections and criminal investigations.
- The VWA is attending hearings and providing services to crime victims.
- Involuntary commitment requests continue to increase.

#### **SHIPROCK OTP:**

Notable Accomplishments: This quarter, Presenting Officer Davena Noble-Sam was promoted to the Senior Prosecutor for the Shiprock/Aneth District. OAG supports this office with contract prosecutors. Ms. Noble-Sam is shadowing the contract prosecutors at hearings and is meeting with them via Zoom to transition the adult criminal caseload. The transition will continue into the beginning of the next quarter. The contract prosecutors will assume children's court hearings until a new Presenting Officer is hired.

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This quarter the Shiprock/Aneth District has kept pace with the criminal complaints reviewed and hopes to have 100% completion police report review and recommendations for prosecution or declination by 6/30/22. They have also provided coverage assistance to Dilkon for pre-trials and provided consultation on a Dilkon case.

Contract prosecutors continue to work with Navajo Police Department criminal investigators on federal issues including warrants and detainers.

The contract prosecutors continued to work on a training manual for the Shiprock/Aneth District that will be provided to new prosecutors and which will serve as a guide for complaint review and hearings.

The contract prosecutors attended the Navajo Nation Bar Association Annual Conference and were able to meet with the other Prosecutors.

The contract prosecutors also attended an all-prosecutors meeting to discuss 36-hour holds. Regular group discussions regarding this and other pending matters/topics will follow.

Major or continuing problems encountered during the quarter and ideas for improving operation or process:

The contract prosecutors worked on a couple warrants this quarter and need to work with Navajo PD on streamlining this process. Prosecutors hope to set up monthly (or even quarterly) meetings with NPD to discuss ongoing cases and any concerns.

In addition, the Shiprock Aneth District (and possibly other districts) would benefit from having a Navajo Tribal Court Judge on duty after hours and during the weekends so that warrants can be issued immediately and/or motions to deny bail could be filed and ruled upon. It is imperative that some of these issues have immediate attention. For example, this quarter the Shiprock/Aneth District had at least two (2) cases where a homicide suspect, or evidence related to a homicide, was located on the Navajo Nation Reservation. Prosecutors must be able to address serious offenses and procedure related to such serious offenses immediately. OTP suggests that the Chief Prosecutor or Attorney General consider meeting with the Court to discuss having an on-call Judge after hours and weekends.

**Chinle OTP**

Senior Prosecutor completed training in digital evidence in sexual assault prosecutions and human trafficking. Senior Legal Secretary completed Navajo Nation sexual harassment training.

**Crownpoint OTP**

Notable Accomplishments: The Crownpoint, Pueblo Pintado, Tohajiilee, Ramah, and Alamo Districts continue to provide coverage and manage day-to-day operations with a very limited staff. Since January 2022, one prosecutor has managed the adult criminal and children's case dockets for Ramah, Tohajiilee, and Alamo, and also the adult criminal docket for Crownpoint and Pueblo Pintado districts. This level of coverage requires constant communication and collaboration between the different offices within the Judicial and Executive branches.

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Despite the lack of staff, OTP recently had a victory when the defendant in *Navajo Nation v. Vandell Billah*, a repeat domestic violence offender, was recently sentenced to incarceration for the remainder of 2022 and into 2023. The OTP and its partners will continue to collaborate concerning this defendant and other repeat offenders to ensure that justice is served.

The Office of the Prosecutor for the Crownpoint District and its partners initiated one additional extradition matter requested by the State of New Mexico, in *Navajo Nation v. Colbert Chischilly*. A final disposition of this matter is pending.

Major continuing problems encountered during the quarter:

Hearing time conflicts between Tohajiilee, Alamo, Ramah, Crownpoint, and Pueblo Pintado districts continues to be a problem. Although there has been an uptick of coordination between the various district courts, hearing time conflicts continue on a weekly basis.

Suggestions or Ideas for the Improvement in Operation or Process:

OTP suggests amendments to the Navajo Nation Rules of Criminal Procedure concerning personal service of process. At this time, service of process may only be completed by personal delivery of a summons and complaint. An expansion of service of process outside the Navajo Nation, to be carried out by Navajo Nation law enforcement and also state-commissioned law enforcement, would increase accountability for offenders who leave the Navajo Nation.

**Tuba City OTP**

Senior Prosecutor is continuing to draft minute entry orders for the court, a very time consuming task. The court refuses to provide their notetaking, which results in OTP having to submit written requests for CDs to get audio recordings.

A children's court prosecutor is desperately needed to handle family court cases.

**Window Rock OTP**

Noteworthy Accomplishments:

- 03/29/22 – 04/12/22, Legal Secretary Joni Pino-Begay was assigned to the OCP's office to conduct data collection and provide further assistance
- 04/06/22 – 04/08/22, staff participated at the annual Federal Bar Association conference held at the Sandia Resort to recruit attorneys/advocates for OTP's vacant positions
- 04/19/22 – staff attended the quarterly DFS MDT meeting virtually
- 05/09/22 – Ms. Marlinda Yazzie joined the White Collar Crime Unit (WCCU) as the legal secretary. Ms. Yazzie has been, and continues to be oriented on her duties and has shown motivation and dependability by accomplishing tasks and being a quick learner. Her accomplishments not only pertain to the WCCU duties; she also provides technical assistance to the Window Rock district office.
- 04/25/22 – an extension was granted for the OTP/WCCU to be totally vacated from its office space. All staff and office supplies and files are out of the building with the exception of office furniture. The OTP is currently attempting to rent storage space in Ft. Defiance but has had some obstacles. All staff are equipped and telecommuting from home. The extension was granted to 07/26/22.

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- 05/19/22, staff attended the first Violent Crime MDT hosted by the US Attorney's Office; this meeting is distinct from the MDT meeting usually hosted by the NN DFS.
- 05/26/22 – conducted employment interview for the Sr. Prosecutor vacant position in Tohajilee.
- 06/03/22 and 6/5/22 – attended meeting with the VWA program to discuss the US DOJ VWA Guidelines.
- 06/17/22 – attended a meeting with the Office of the Controller to discuss the status of the Credit Services Program.
- 06/21/22 – case staffing and prosecutorial review with the WCCU in the NN v. Dineh Benally hemp farm case.
- 06/24/22 – attended a virtual meeting with all NN prosecutors. Several legal scenarios related to arrest and 36 hour holds were discussed.
- 06/27/22 – attended a meeting with the VWA program to discuss the inception of policies and procedures, and developed a mission and vision statement along with goals and objectives.
- The WR OTP should have accomplished 100% of the pending cases.
- The OTP Victim/Witness Advocate has been diligently providing services and contacting victims.

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**OMB - PERFORMANCE SCORES  
 FOR 3RD QUARTER FY 2022 BY OTP DISTRICTS**

OTP exceeded OMB program performance requirements for the 3rd quarter across all program offices.

GOAL STATEMENT					
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 Perfomance	
PROGRAM PERFORMANCE MEASURE					
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/prosecuti on 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>	
SCORES BY EACH OFFICE FOR EACH CATEGORY					
Window Rock	100%	100%	N/A	0	100%
Dilkon	100%	100%	N/A	1	100%
Shiprock	99%	100%	N/A	1	100%
Aneth	100%	100%	N/A	1	100%
Crownpoint	100%	100%	N/A	0	100%
Pueblo Pintado	100%	100%	N/A	0	100%
Tuba City	99%	98%	N/A	0	98%
Chinle	87%	92%	N/A	0	92%
Dzil Yiljiin	100%	100%	N/A	0	100%
Kayenta	100%	100%	N/A	1	100%
Tohajiilee	100%	100%	N/A	0	100%
Alamo	100%	100%	N/A	0	100%
Ramah	100%	90%	N/A	0	90%
White Collar Crime Unit	0%	N/A	100%	1	N/A
<b>AVERAGE SCORES:</b>	<b>99%</b>	<b>91%</b>	<b>100%</b>	<b>5</b>	<b>98%</b>

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**SUMMARIZED OTP FINANCIAL REPORT**  
**FY 2022**  
**SOURCES OF FUNDING HIGHLIGHTS**

<b>OFFICE OF THE PROSECUTOR SOURCES OF FUNDING</b>	
FY 2022 COMPREHENSIVE NAVAJO NATION BUDGET ALLOCATION	\$3,191,199
U.S. DEPARTMENT OF JUSTICE FUNDING (VWA PROGRAM)	\$1,981,346
BUREAU OF INDIAN AFFAIRS FUNDING (PROSECUTOR - CHILDREN CASES)	\$1,002,291
GENERAL FUND CARRY OVER ALLOWANCE	\$317,149
<b>TOTAL:</b>	<b>\$6,491,985</b>

**BUDGET STATUS REPORT BY EACH SOURCE**

**FISCAL YEAR 2022 NAVAJO NATION COUNCIL COMPREHENSIVE  
BUDGET ALLOCATION TO THE OFFICE OF THE PROSECUTOR**

Office of the Chief Prosecutor (OCP) has expended 41% of the initial 2022 budget allocation plus the carryover award (Total allocation: \$3.5 million). To date, \$1.4 million has been expended from these allocations. The current burn rate of 41% is slower than expected. OCP spending should be at approximately \$2.6 million. Much of the lag rests with personnel and building lease costs. As in the past, the OTP has been experiencing difficulties filling prosecutor positions due to the low salary and the requirement to be licensed to practice law in the courts of the Navajo Nation. OCP has also been experiencing problems in finding suitable office buildings for the Ramah, Shiprock and Window Rock district offices. Consequently, the funds that were allocated for these purposes have not yet been spent.

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**OFFICE OF THE PROSECUTOR**  
**3rd QUARTER FINANCIAL REPORT**

Object Code:	Line Item:	Original Amount:	CarryOver Amount:	Created with BRR:	Expended Amount:	% Expended:
2001	Personnel Expenses	\$ 2,862,643	\$ 105,162.00		\$ 1,304,733.00	42.79%
3110	Fleet	\$ 33,225	\$ 5,978.00		\$ 15,589.85	39.77%
3220	Personal Travel	\$ 37,000			\$ 2,299.93	8.29%
4120	Office Supplies	\$ 56,000			\$ 27,629.43	49.34%
4200	Non Capital Assests	\$ 14,000	\$ 13,600.00		\$ 44,402.53	70.60%
4410	Operating Supplies	\$ 64,540	\$ 19,601.68		\$ 32,650.31	46.25%
5120	Building ( <i>Ramah Office Lease</i> )	\$ 5,088	\$ 171,720.00		\$ 3,816.00	3.12%
5360	Equipment/Supplies	\$ 8,548			\$ 1,645.97	19.26%
5520	Telephone ( <i>Direct Charge</i> )	\$ 4,500			\$ 2,586.47	57.48%
5570	Internet	\$ 2,280			\$ 1,003.84	57.47%
5610	Wireless ( <i>Direct Charge</i> )	\$ 36,000			\$ 4,641.79	12.89%
5710	Energy for Electricity	\$ 6,100			\$ 2,018.12	33.08%
5750	Services for Water/Sewage	\$ 1,140			\$ 292.81	25.69%
6030	Supplies for Building Repairs & Maintena	\$ 5,099			\$ -	0.00%
6140	Services	\$ 8,014			\$ 1,602.72	20.00%
6660	Attorneys ( <i>contract</i> )			\$ 53,000.00	\$ -	0.00%
7410	Media	\$ 10,200			\$ 4,460.28	43.73%
7510	Training and Professional Dues	\$ 11,300			\$ 7,250.00	64.16%
7600	Employment Related Expenses	\$ 1,000			\$ 63.00	6.30%
7710	Insurance Premiums ( <i>Direct Charge</i> )	\$ 24,522	\$ 1,088.00		\$ 14,525.75	56.72%
		\$ 3,191,199	\$ 317,149.68		\$ 1,471,211.80	

Operating Expended in the 1st Quarter:	\$ 3,191,199	\$ 317,149.68		\$ 1,427,393.12	41.01%
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Total Positions in BU #104005:	44
New Positions Classified BU #104005:	4
Total Vacancies:	14

**QUARTER 3**  
<April to June 2022>

**FISCAL YEAR 2022 U.S. DEPARTMENT OF JUSTICE GRANT FOR CRIME VICTIM SERVICES**  
**PROJECT TITLE: IMPROVING VICTIM SERVICES ON THE NAVAJO NATION**  
**GRANT AWARD NUMBER: 2018-VO-GX-0038**

OCP has expended 27% of the initial allocation (\$1.9 million) from the Department of Justice for crime victim services. The largest expenditures to date has been in personnel salaries (\$422,926). The end date of this grant is April 15, 2023.

**OFFICE OF THE PROSECUTOR**  
**FY 2022 3RD QUARTER FINANCIAL REPORT - DEPARTMENT OF JUSTICE (VICTIM SERVICES) BUDGET**

<b>Object Code:</b>	<b>Line Item:</b>	<b>Original Amount:</b>	<b>Expended Amount:</b>	<b>% Expended:</b>
2001	Personnel Expenses	\$ 1,140,734	422,926.46	37
3110	Fleet	\$ 207,518		
3220	Personal Travel	\$ 124,183	1,031.07	1
4120	Office Supplies	\$ 29,104	10,030.95	34
4200	Non Capital Assests	\$ 25,593	22,743.37	89
4410	Operating Supplies			
5110	Building	\$ 11,520		0
5360	Equipment/Supplies			
5520	Telephone	\$ 47,132		0
5610	Wireless	\$ 18,480	3,769.13	20
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	2,328.41	20
9710	IDC	\$ 336,692	78,254.75	23
		<b>\$ 1,981,346</b>	<b>541,084.14</b>	<b>27</b>

**HISTORICAL PERSPECTIVE**

This grant's initial start date is April 16, 2019 and end date is scheduled as April 15, 2023. The total allocation for this grant is \$1.9 million. It appears the first VWA was hired 19 months ago in November 2020; almost a year and half from the date the grant was approved. According to the time line established for this grant, the following should have been completed by October 2019: (1) selection of VWAs; (2) purchase of vehicles and equipment; (3) establishment of policies and procedures; (4) creation of a tracking system to collect statistical data. These related objectives have not been completed at the time of this writing. On the other hand, as of this report date, seven (7) VWAs have been hired, computer and cell phones

**QUARTER 3**  
<April to June 2022>

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have been acquired, and integration of VWAs into the OTP’s data storage system have been completed. Three (3) years and two months after the approval of this grant, VWAs still cannot provide transportation to victims because vehicles have not been acquired. More importantly, since November 2020, when the first VWA was hired data shows that victim services have been consistently rendered to victims of crime.

**CURRENT STATUS OF VICTIM – WITNESS PROGRAM**

As stated above, this grant has been active since April 2019 and there are nine (9) months left until it ends. Two factors contribute to the repeated set-backs associated with the victim service program. First, the lack of a permanent Chief Prosecutor to oversee the management of this grant has challenged the steadiness of the VWA program. On June 9, 2022, a permanent Chief Prosecutor was appointed by the Navajo Nation Attorney General, which will contribute to consistent grant management. Second, in March 2020, the Covid-19 pandemic virus hit the Navajo Nation. The VWAs were forced to work remotely which resulted in some disconnect with the local Senior Prosecutors. VWAs had to work proactively to ensure they were provided leads related to crime victims. Previously completed quarterly reports clearly showed data that VWAs consistently provided assistance to crime victims through the pandemic.

**CURRENT INTERNAL NATURE OF THE VWA PROGRAM**

There are seven (7) VWAs employed with OTP and working throughout the Navajo Nation. Their collective development as a cohesive functioning group is taking shape and form. However, as a group they should be further along in their maturity. Each VWA has a different hiring date which results in a fragmented presence when they are together (*See Chart A*). The VWA’s have differences that stifles the group’s progress at times. Each VWA wants to shine, and their communication needs improvement. These comments explain the structural environment as they strive to progress

**VICTIM-WITNESS PERSONNEL SENIORITY DATA (AS OF JUNE 30 2022)**

<b>HIRING LOCATION</b>	<b>DURATION OF TIME ON THE JOB</b>
Crownpoint VWA (1st hired)	19 months
Chinle VWA (2nd hired)	18 months
Shiprock VWA (2nd hired)	14 months
Kayenta VWA (4th hired)	14 months
Tohajiilee VWA (5th hired)	12 months
Window Rock VWA (6th hired)	11 months
Tuba City VWA (7th hired)	9 months

Chart A

together. For example, the VWAs use *Googletracker*, a spreadsheet that virtually connects the Senior Prosecutors, Legal Secretaries and the VWAs in each OTP office. The VWAs use data from the *Googletracker* spreadsheet to find police reports on the server so get crime victim contact information. This process is tedious, and some VWAs diligently follow this process while others are ambivalent towards it because it requires much effort.

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<April to June 2022>

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Additionally, the VWA program, as a whole, is a relatively new OTP program. Most Senior Prosecutors are using their VWAs in a manner that keeps them engaged providing victim services. However, other OTP offices struggle to keep their VWAs fully engaged. Senior Prosecutors are extremely busy preparing for hearings, reviewing criminal complaints, writing pleadings, appearing for pre-trials and arraignments, filing motions and handling trials. As a result, taking on an additional role of managing the work of VWAs is demanding.

OCP intends to change the VWA program in several ways. OCP will work to move the group from a storming stage of group development to a norming stage where there is a “we” feeling with high cohesion, group identity and camaraderie. OCP will emphasize the importance of the VWA’s goal and mission. OCP plans to extend the VWA grant to April 2024, and plans to acquire vehicles for the VWAs, which will facilitate their work. Last, OCP is organizing a task force comprised of one Senior Prosecutor and three (3) carefully selected VWAs to spearhead the effort of finalizing the group’s mission/vision statement and to develop policies for the program.

**OUTCOMES**

1. OCP has expended 27% of the initial allocation (\$1.9 million) from the Department of Justice for crime victim services. The largest expenditures to date has been in personnel salaries (\$422,926). The current end date of this grant is April 15, 2023.
2. On May 25, 2022 a meet and greet meeting was held in St. Michaels, Arizona with all the VWAs present. The newly appointed Chief Prosecutor and a Senior Prosecutor were also present for this meeting. Based on the introductions made by each of the VWAs it was apparent that the seven (7) VWAs bring to the table significant community-based and system-based victim services work experience. From this session, OCP directed that the next regularly scheduled virtual meetings would involve a step-by-step review of the *U.S. Attorney General’s Guidelines for Victim and Witness Assistance*. The Acting Principal Victim Witness Advocate and Senior Prosecutor will lead these sessions.
3. On May 27, 2022, OCP initiated a small-scale preliminary study in Tuba City, Arizona. Between October 1, 2021 to June 30, 2022, the Senior Prosecutor in this district received 615 criminal complaints. The majority of these cases were charged as Battery of a Family Member, Criminal Damage involving Family Violence, Criminal Entry Involving Family Violence and Threatening of a Family Member. The Senior Prosecutor in this district filed 517 criminal cases during the same review period. The goal of the study was to create a close working relationship between the Senior Prosecutor and the district VWA. The Senior Prosecutor began sending criminal case filings to the VWA to research for potential victim services opportunities, rather than using the *Googletracker* method described above. The early results have shown that many police reports did not contain victim contact information and many of the VWA contacts with victims occurred well after the date of the family violence incident. The VWA provided immediate feedback to the Senior Prosecutor concerning the types of services she provided in each case. The Senior Prosecutor then moved to send other sets of leads to the VWA earlier in the filing process to reduce the time between the offense and contact with the VWA.
4. On June 27, 2022, a second in-person VWA meeting was held. The group offered a version of the Isleta Pueblo’s VWA policies and procedures, rather than their own, and did not complete their review of the AG’s Guidelines, but the VWA’s completed draft mission and vision statements.

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<April to June 2022>

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5. OCP had a virtual meeting with its U.S. DOJ Grants Manager, and was informed that DOJ’s recommendation for the acquisition of vehicles have not changed over the last year and half—lease or purchase vehicles. The Tribal Victim Services Set-Aside (TVSSA) program currently has a Navajo Nation population formula certification that allows a \$2.7 million allocation through the Utah Navajo Health System (UNHS) via a community-based victim services program. OCP did not apply for any of the TVSSA funds after 2019. The UNHS applied for TVSSA funds for FY 2021 and FY 2022. USDOJ verbally authorized the extension of this grant and asked the OTP to submit a (1) Request/Justification for the Extension; (2) Time-Line and (3) a Budget Modification. USDOJ wanted the first and second submissions should be done immediately and that the Budget Modification can be done thereafter.

6. Navajo Department of Personnel Management (DPM) has not yet approved the position classification of the Principal VWA. This position is crucial to establishing permanent VWA program leadership. In March 2022, DPM approved the temporary appointment of Alexandria Duane as the Acting Principal VWA while the permanent position is undergoing classification. This temporary appointment may be withdrawn or extended if needed. This appointment is now scheduled to terminate on September 10, 2022. OTP will then advertise, interview and select a candidate.

**QUARTERLY SUMMARY**

Contract Number K190800

The Office of the Prosecutor had no expenditures in this grant and was carried over into Business Unit # K200801 which is being utilized for FY21 budget.

Contract Number K200801

The Office of the Prosecutor has full allocation of the Grant Award with the total being the entirety of the award \$1,981,346. The current amount of the grant is \$1,440,261.86 as of June 30, 2022.

Current Grant Amounts:

OVC Grant #2018-VO-GX-0038- K200801 \$1,440,261.86 with 27% overall expended (Carryover from K190800 included in amount.)

<b>Funding Source</b>	<b># of Staffing</b>	<b># of Vacancies</b>	<b>FY2022 Personnel Allocated</b>	<b>% of Personnel Expended</b>	<b>FY2022 Operating Allocated</b>	<b>% of Operating Expended</b>
BU #K200801 OVC	7	0	\$717,807.54	37%	\$21,922.68	60%

**QUARTER 3**  
<April to June 2022>

**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 (*See Chart B*). This grant serves as the first year allocation for prosecutorial services for children’s cases. At the time this grant was initiated, there was not a clear indication from the BIA that a portion of this funding could be used for IDC. The Navajo Nation took \$74,382.41 to cover IDC, resulting in an impasse in how to close out this grant because a second allocation has already been received from the BIA. Fortunately, this quarter OCP received the supplemental IDC of \$74,332.00 from the BIA that was approved in November, 2021 and OCP received the official award notification. On May 5, 2022, OCP received OMB’s approval for the Summary of Changes to increase the budget with the IDC that was awarded. OCP now has full access to funds and no longer in a restricted budget. Approximately \$65,283 (22%) in unspent, and there were no expenditures this quarter.

**OFFICE OF THE PROSECUTOR**  
**FY 2022 3RD QUARTER FINANCIAL REPORT - BUREAU OF INDIAN AFFAIRS BUDGET (K1900770)**

Object Code:	Line Item:	Original Amount:	Expended Amount:	% Expended:
2001	Personnel Expenses	\$ 441,753	388,583.10	86
3110	Fleet			
3220	Personal Travel	\$ 9,880	32.00	0.04
4120	Office Supplies	\$ 4,843		0
4200	Non Capital Assests			
4410	Operating Supplies	\$ 2,500	4,842.98	100
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	100
7710	Insurance Premiums	\$ 4,204	2,458.97	62
9710	IDC	\$ 72,727	74,382.41	102
		\$ 537,432	472,149.46	88

**Chart B**

The second year funding source is identified as K2007106 – BIA (*See Chart C*). This grant serves as the second year allocation for the prosecutorial services for children’s cases. The Navajo Office of the Controller placed a limited-restriction on the use of this account until the IDC issues described above were resolved. Consequently, OTP paid for personnel costs only with this grant. The BIA has now approved supplemental funding to cover the IDC costs associated with this funding award, and OCP now has full access to funds and are no longer in a restricted budget. Approximately 37% (\$204,913) has been expended from this allocation. On June 9, 2022, a Prosecutor funded under this grant was promoted to Senior Prosecutor and is no longer using funds from this allocation.

**B. DOJ Units**

**Chapter Unit (CU)**

The Chapter Unit (CU) is led by Assistant Attorney General Rodgerick Begay who oversees one (1) Attorney, one (1) Attorney Candidate and one (1) Legal Secretary. The primary CU clients are the 110 Chapters and the Administrative Service Centers (ASC) of the Division of Community Development (DCD). 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 completed sixty (60) requests for legal services (RFS). Questions from Chapter Officials and/or Chapter Staff continue to be the focus of our workload. CU continues to deal with a significant backlog and an increasingly amount of work. CU participated in the following notable projects this quarter:

1. Cemetery and Burial Title 13 Amendments and Draft Regulations: CU presented the draft Burial and Cemetery Regulations at two Resources and Development Committee Leadership Meetings held on May 5th, May 19th and May 20th. The draft had largely been completed since November 2000. However, based on numerous comments received, CU created two drafts: 1) One draft still allows roadside memorials and family plots; 2) the other prohibits roadside memorials and family plots. The original draft allowed roadside memorials but regulated the practice similar to the States of Arizona, New Mexico, Colorado, and Utah. However, some attendees believed that roadside memorials should not be allowed because it is inconsistent with traditional views on death. Also, the original draft imposed regulations for family plots but many attendees expressed opposition to the practice. Accordingly, the second draft prohibits it. It is up to Navajo Leadership, not CU, to determine whether to allow or prohibit those practices. As such, two drafts have been developed for further consideration by RDC. In addition, the NN law on cemeteries and burials that begins at section 1901 of Title 13 of the Navajo Nation Code is also planned to be amended as well. CU worked with the Office of Legislative Counsel to draft several amendments. We anticipate legislation to be submitted through the legislative process in the next quarter.
2. Chapter Policy Reviews: CU continues to review various Chapter Policies such as PEP, Heavy Equipment, Housing Discretionary, Chapter Scholarship, Summer Employment, and Rules of Order. There were at least twenty-three (23) separate policies reviewed this quarter. Additionally, CU continues to review amendments to plans of operation for various Community Land Use Planning Committees and Veterans Committees. At times, CU visited with the Chapter in-person or telephonically to discuss their proposed amendments. Typically, there are several meetings held before the policies are deemed legally sufficient. In fact, any single policy has the potential to create a separate project. For example, some PEP amendments submitted by Chapters wanted to terminate employees without just cause but working with the DOJ Litigation Unit, the just cause requirement was advised to be reinstated. Another example is regards to Chapters wishing to create more defined categories for use of the housing discretionary funds. Yet another example is the Chapter's request to modify the template Heavy Equipment Policy created by the Division of Community Development. Basically, any policy review can generate time consuming work for CU.
3. Chapter Internal Conflicts: This quarter, three different Chapters requested CU involvement regarding internal conflicts. CU traveled to all three Chapters and CU expects at least one of these matters to continue into the next quarter.

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<April to June 2022>

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4. Wastewater Treatment Facility at Coalmine Canyon Chapter: CU met with NTUA and separately with the Chapter Officials regarding the opposition to the project by the local Farm Board and others. A combined meeting is scheduled in July. More details can be provided in a confidential setting.
5. Helium, Hydroplants, and Solar: Last quarter, CU recommended to Navajo Leadership to create policies to define Chapter involvement in these types of projects. This quarter, CU participated in numerous meetings regarding helium that affected three Chapters, for a pumped hydroelectric storage project for one Chapter, and Solar for one Chapter. More details can be provided in a private setting.
6. Memorandum of Understanding between the Navajo-Hopi Land Commission Office, Chapters, and Choice Humanitarian: As previously reported, a MOU was being developed in order to effectuate the use of the Former Bennett Freeze Area Escrow Funds. CU met in-person and virtually with various involved parties including the DOJ Navajo-Hopi Legal Services Program. CU finalized two MOUs whereby one will be used by LGA Certified Chapters and the other for Non-LGA Certified Chapters. After the MOUs were finalized, the Navajo-Hopi Land Commission passed a resolution seeking to give funds directly to Chapters. Additional discussions were held to explain why the Local Governance Act would prevent it.
7. Non-Navajo Grants and Donations to Chapters: At Two Grey Hills, there are efforts to bring volunteers and non-Navajo funds to build a skatepark which presents some issues. At Chinle, there was a federal grant agreement that was not reviewed by DOJ prior to it being executed which has some issues. At Cove, there's a District 12 watershed project administered by the U.S. Army Corp of Engineers who is contributing funding and is requiring Cove to contribute pursuant to an agreement signed in 2019 (which presents ancillary issues such as chapter use of DUNS/EUI). CU has participated in numerous meetings for each one of these projects. More details can be provided in a confidential setting.
8. Accomplishments: A) CU helped finalize the Rules of Order for Chinle Chapter; B) Working with Contract Counsel, the Human Services & Government Unit, and DODE, the Intragovernmental Office Space Use Agreement was finalized this quarter; C) CU finalized an intragovernmental agreement for Tohajiilee Chapter and the local School Board for use of heavy equipment; and D) CU helped finalize a Memorandum of Understanding to be used by the Navajo-Hopi Land Commission Office, Choice Humanitarian, and both LGA and non-LGA Certified Chapters for the FBFA Escrow Funds

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

The Economic/Community Development Unit (ECDU) is led by Principal Attorney/*Acting* Assistant Attorney General Katherine Belzowski who oversees three (3) Attorneys, and a Senior Legal Secretary. ECDU assists the Division of Economic Development (DED), the Division of Community Development (DCD), 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. Voting: ECDU has been working to address postal service issues related to voting. A lot of time was spent this quarter communicating with United States Postal Service (USPS) representatives on the postal issues currently facing the Navajo Nation and the governmental structure of the

**QUARTER 3**  
<April to June 2022>

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Navajo Nation. ECDU is hoping to set up a meeting between Navajo Nation leadership and USPS in the next several months to allow Navajo leadership to express their concerns to USPS, to receive information from USPS on how to best resolve these concerns, and to establish a regular process moving forward for communication between the Nation and USPS. ECDU would like to work with leadership and DCD on centralizing communication between the Nation and USPS to address issues raised by Chapters and local communities. The hope is that this centralization will result in better postal services throughout the Navajo Nation. ECDU also met with Senator Ben Ray Lujan's Office to discuss the Nation's USPS and voting issues.

ECDU worked on various voting issues in New Mexico and Arizona. We collaborated with New Mexico Secretary of State office for New Mexico's 2022 primary elections voting plans and continuing to work with New Mexico for upcoming 2022 general elections. Attended meetings with: NM Native American Voting Rights Taskforce, NM Native Vote, McKinley County Elections Administration, and League of Women Voters to coordinate voting issues for the 2022 election. ECDU continues to work with the Arizona counties to prepare for the 2022 election, including having monthly meetings with the counties to address concerns and receive updates on their voting plans. ECDU is currently working with Delegate Kee Allen Begay, NTUAW, and Apache County to establish Vote Centers at five voting locations in Apache County for the general election. NTUAW has conducted an assessment and determined it can provide internet to all five locations on Election Day. The next step is to work with Apache County and Arizona Secretary of State to commit to having the Vote Centers in operation. ECDU also continues to monitor litigation in Arizona regarding problematic voting laws passed by the Arizona legislature. ECDU set a letter to US DOJ expressing the Nation's concerns on Arizona HB 2492 and its potential to greatly hinder Navajo voter's ability to register to vote.

ECDU is currently working with the Native American Rights Fund regarding the possibility of using 638 Hospitals as voter registration locations. The National Voters Registration Act allows federal agencies to accept designation to become a voter registration site. ECDU is exploring this option for the Navajo Nation to reach Native voters who may be getting left out.

ECDU is currently working with Navajo Election Administration to draft a PHEO or safety guide for safe voting on the Navajo Nation for the 2022 elections.

2. Gaming: ECDU participates in frequent calls with Arizona Tribes on the AZ Compact and its related appendices for a unified tribal approach. ECDU attended three-day work session hosted by Navajo Gaming Regulatory Office to begin revisions to the Navajo Gaming Regulations and reviewed and advised NNGRO on promulgated emergency gaming regulations regarding Gaming Support Employees. ECDU also advised NNGRO on presentations regarding small bingo and raffles in preparation for NNGRO reports before Resources and Development, Health, Education and Human Services, and Law and Order Committees.

ECDU worked with Navajo Gaming Enterprise to submit comments on the Department of Interior's proposed changes to 25 CFR Part 151, which governs fee-to-trust application procedures & 293 which governs regulation of gaming and procedures for compact amendment approvals and review of ancillary documents. ECDU coordinated review by Litigation Unit and Natural Resources Unit to prepare and finalize comments that are consistent with Navajo's claim and position in the Twin Arrows Road litigation.

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EDU coordinated submission of the First Amendment to 2021 Arizona Gaming Compact to DOI Office of Indian Gaming, which was approved by the Secretary and published in the Federal Register on June 14, 2022. ECDU continues work with the Tribal Regulatory Subcommittee, Navajo Nation Gaming Enterprise (NNGE), and Navajo Nation Gaming Regulatory Office to finalize appendices and coordinate new compact implementation among the Tribes and State. Oversight of implementation will continue as the Navajo Nation Gaming Regulatory Office and Arizona Department of Gaming update their respective regulatory requirements.

ECDU addressed Office of Navajo-Hopi Indian Relocation's (ONHIR) objection to technical changes to Memorandum of Agreement (MOA) between the Navajo Nation and , and coordinated with Office of Attorney General, Navajo Hopi Land Commission, Navajo Hopi Legal Services Program, Tax and Finance Unit, and NNGE to resolve ONHIR's concerns with amending the Dine Relocatee Fund Management Plan. ECDU coordinated with NHLC Chairman Otto Tso to seek ONHIR's acceptance of the MOA. ECDU also coordinated with Lewis Roca to complete draft fee-to-trust application for the Lower Highway fee to trust area.

3. Division of Economic Development (DED): ECDU worked on finalizing a number of settlement agreements for DED and reviewing new business site leases. ECDU continued its work on revising the Business Site Lease Administrative and Management Plan. ECDU worked to coordinate the transfer the of the Shiprock Hotel Project from Navajo Gaming Enterprise to the Navajo Hospitality Enterprise, providing a template grant agreement to Hospitality and scheduling meetings between Hospitality and DED to finalize the agreement.

ECDU continues to advise DED on intellectual property matters. ECDU sent cease and desist letters to several entities for trade mark infringement and Indian Arts and Crafts violations. Sotheby's confirmed it cleaned up its website of infringements or violations. ECDU has also communicated with Barber and Borg regarding Navajo Injury Law Center. In response to USPTO comments, revised trademark applications for the Navajo flag, seal, and Office of Miss Navajo Nation (OMNN) were submitted to USPTO. The OMNN trademark application has been accepted and will be entered into the federal register for several months. ECDU drafted legislation for the creation of an Intellectual Property Fund.

ECDU continues to work with the DED to develop a Navajo SSBCI Program Model. DED will be submitting their SSBCI application before the September 1, 2022 deadline. ECDU continues to work with DED on drafting the administration services agreements for providers. ECDU also continues to work on developing public private partnership agreements for the Crownpoint Hotel and C-Store.

4. Division of Community Development: ECDU continues to assist DCD in completing construction contract reviews on various projects. This quarter, ECDU has also taken a more active role in capital outlay projects by meeting with Secretary Trujillo and her staff regarding outstanding capital projects. ECDU is working to establish quarterly meetings between the New Mexico Indian Affairs Department (IAD) and the Navajo Nation on pending capital outlay projects. These meetings will allow the DCD and the New Mexico Chapters an opportunity to check in with the IAD on the status of capital outlay projects and determine if extensions or more financing are needed to complete the projects. ECDU worked with DCD on their procurement of the architect indefinite delivery indefinite quantity contract. ECDU provided weekly trainings to Capital Project Management Department staff on various construction contract issues.

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

HSGU is DOJ's largest unit and is led by Assistant Attorney General LaTonia Johnson. Ms. Johnson manages four (4) Attorneys, two (2) Attorney Candidates, one (1) Principal Tribal Court Advocate, two (2) Senior Legal Secretaries. HSGU assists eight (8) Divisions/Department consisting of over 65 programs. This quarter, notable projects include:

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

1. 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), and Navajo Nation Fire Chief Larry Chee, in discussion with PVFD Fire Chief, determined that the MAA expired on its own terms, and PVFD considers the MAA to be expired. Delegate Smith's Local District Assistant (LDA) provided invoices that were issued to enrolled member of the Navajo Nation by PVFD. However, there was no indication as to whether the individuals, who received the invoices, reside on Navajo Nation trust land. Delegate Smith's LDA is to clarify the aforementioned information.

Complications/Concerns: Once HSGU receives additional information from Delegate Smith's LDA, HSGU will be reaching out to the Apache County Attorney to discuss this matter after obtaining evidence of Navajo families who were charged by PVFD. HSGU also reached out to Navajo Hopi Legal Services to determine whether the Navajo Hopi Land Settlement Act allows payment for these services.

#### II. PUBLIC LAW 93-638:

1. Johnson O'Malley (JOM) P.L. 93-638 contract: The Navajo Nation received a written notice from BIA that there needed to be further meetings on the matter. However, the BIA has not provided notice of another meeting.

Complications/Concerns: HSGU has requested for updates from JOM on the proposed action on how to provide services to GMCS with the 2019-2020 funding that is still reserved, but JOM has not been forthcoming.

2. BIA's claim of "expired" P.L. 93-638 contracts: The Navajo Nation has not received further notice from BIA on this matter since the last discussion in March 28, 2022. BIA had indicated that it would provide a response to an October 2021 letter that the Navajo Nation sent to BIA on the matter.

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Complications/Concerns: HSGU disagrees with the BIA's concern as it seems to be contrary to the purpose of the Indian Self-Determination Act. BIA appears to be requesting additional documentation from the Navajo Nation to be able to carryover and use funds from "expired" P.L. 93-638 contracts.

3. Review of NDOC's proposed changes to SOW: NDOC has pending contract renewals for Adult and Juvenile Detention contracts this year as their current contracts expire on December 31, 2022. NDOC proposed some revisions to the SOW for both programs. HSGU met with NDOC to discuss some of the changes. HSGU provided two (2) reviews of the changes with questions and recommendations to the program. NDOC has indicated that these changes needed to be completed so they can begin the processing of the contract renewals for 164(A) review.

Complications/Concerns: One of the proposed changes related to the required background checks for NDOC employees. HSGU noted that this will probably require further discussion with BIA.

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

1. NDOH Plan of Operation revision: NDOH provided a draft of revisions to its Plan of Operation. Major changes include transfer of Emergency Medical Services into the Division of Public Health Services and transfer of Navajo Treatment Center for Children and Their Families (NTCCTF) into the Division of Behavioral and Mental Health Services. The Health Education and Human Services Committee held a work session and it was interested in how the transfer would affect the Navajo Nation's P.L. 93-638 funding. HSGU attended the work session and responded to questions from the Committee related to the 638 funding of NTCCTF. There were also questions related to the practical issues related to the transfer about office space, etc.

Complications/Concerns: HEHSC wants more information from NDOH regarding whether the employees have been notified about the changes and if the employees agree with the changes.

2. DBMHS Tribal Opioid Response (TOR) Grant: The Task Force is working on an opioid overdose and naloxone policy for the NDOH. HSGU started review on the proposed policy for legal sufficiency, but had to return to NDOH because Dr. Jim had not yet reviewed the proposed policy. The Task Force is also looking to work on opioid-related legislation in the future. HSGU will continue to provide appropriate legal assistance with DBMHS on this matter. HSGU also attends the monthly meetings. DBMHS indicated that it is working on the continuing grant application and this will likely be provided to HSGU for legal review.

3. Division of Aging and Long Term Care Services (DALTCS): Older Americans Act Title III Funding From Surrounding States. NDOH has started meeting with Administration for Community Living (ACL), AZ, NM and UT regarding Title III funds to be given to the Navajo Nation. According to a 1979 letter issued by ACL, the three states had agreed that Title III funding from UT and NM would be transferred to AZ for benefit of NN. However, it was unclear whether the transfers had been occurring. Also, if AZ is the one to be administering the funds, it's unclear why the Navajo Nation has to report to the other two states as well. This has been a big administrative burden on the NN DALTCS. ACL has noted that it cannot direct the states regarding the Title III funds, but can support the Navajo Nation in this matter. HSGU started participating in the biweekly meetings

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between NDOH, ACL and the states. NDOH intends to request for tribal consultation to determine if the funding can be increased and reporting requirements be simplified and continue conversations in the biweekly meetings with ACL and the states.

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 nine (9) case staffing and filed a Petition for Transfer of Jurisdiction from the State of Texas to the Navajo Nation. HSGU will continue to staff cases and answer related legal questions.
2. DSS Purchase of Vehicles for TAOS: The Navajo Nation Council directed DSS to purchase eight (8) vehicles on behalf of TAOS. HSGU, in coordination with the Tax and Finance Unit (TFU), assisted DSS with obtaining a written exception from Property Management to the Property Management Policies Manual given that DSS was required to purchase vehicles for a private entity. Further, HSGU provided guidance to DSS on obtaining approval from the Motor Vehicle Review Board for the purchase. While guidance was provided, DSS has informed HSGU that there is not enough funds nor is there the exact type of vehicles that is required to purchase eight (8) vehicles as noted in the Council resolution. In the last quarter, HSGU provided several recommendations on how to address a challenge that is out of the control of DSS. Initially, DSS had a plan, but after proceeding with the DSS, DSS had to move forward with procuring in a public format.
3. Title IV(E): DSS was in the process of amending several documents that were previously approved by HEHSC. HSGU reviewed those documents in September 2021. To date, HSGU has not received the updated documents for review. The Administration of Child and Families (ACF) issued a memorandum to the Navajo Nation that expressed concern with the Navajo Nation administering the Title IVE grant in terms of not providing updated documents and also the inability for the Navajo Nation to timely drawdown funds to the Navajo Nation. In addition, the Navajo Nation Council, in a legislative concern, required that DSS develop a fund management plan to manage the reimbursement from ACF and to allow DSS to use such funds for Title IV(E) purposes. OOC and TFU recommended to DSS that before a FMP is processed, that the Title IV(E) funds need to be approved by the Navajo Nation Council to recognize the source of funding and thereafter a FMP can implement the statutory funding source.
4. ARPA Funds to NTCCTF: NTCCTF received funds from IHS. In reviewing the statute and regulations, the purpose of the funding was overly broad. There were also no rules from IHS, similar to the Department of Treasury Rules for FRF, that provided additional assistance. To ensure the Navajo Nation would spend the funds appropriately, the Navajo Nation requested technical assistance from IHS. DSS, DOJ, OMB, and OOC met with IHS to go over the requirements and obtain assistance. IHS was able to provide assistance during the meeting.
5. ARPA funds to Department of Child Care and Development (DCCD): In April 2021, BIA provided ARPA funds to DCCD. The ARPA funds would allow DCCD to disburse funds to child care providers and others to address the effects of the COVID-19 pandemic. DCCD requested that HSGU draft a sub-recipient agreement. HSGU has been amending the sub-recipient agreement in line with the current ARPA requirements for DCCD.

V. BOARD OF EDUCATION (BOE):

1. Background Checks of School Board Members: HSGU conducted research on whether federal law requires the Navajo Nation to require background checks on school board members at Bureau of Indian Education (BIE)-operated schools and tribally controlled schools. The BIE issued a Dear Tribal Leader Letter dated March 08, 2022, which provided that the BIE will no longer mandate background investigations for all individuals appointed to school boards at BIE-operated school and tribally controlled schools, but will instead monitor the Tribe's compliance with the Indian Child Protection and Family Violence Prevention Act (ICPFVPA) and its regulations with respect to school board positions on a case-by-case basis. The ICPFVPA and its regulations provide that a school board member is required to pass a background check if the member has regular contact with, or control over, Indian children

VI. DIVISION OF DINE EDUCATION (DODE):

1. Johnson O'Malley GMCS matter: Since the last quarter, the Navajo Nation has met with BIA on this matter, but it has yet to reach out on this matter. As previously indicated, GMCS 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. Based on communication from the Litigation Unit, the District Court gave an extension to GMCS to file an amended complaint and for the U.S. to submit an answer by June 27, 2022. LU has already prepared the Navajo Nation's motions to intervene and dismiss, but will not file until after they review the new filings. HSGU reached out to Ms. Haskie, JOM Program Manager, to obtain an update on JOM activities. Since then, JOM has requested that HSGU look into the BIA Reorganization Act of 1995 and Method B student count. JOM noted that that they would provide documents concerning these topics and that the student count for GMCS is based on the 1995 student count and has been frozen since 1995. HSGU recommended JOM request for technical assistance from BIA/BIE regarding how to determine the eligible students at GMCS and how to provide services to them.

2. Educational Sovereignty Efforts: DODE is working to establish a path forward for the Education Sovereignty of the Navajo Nation. In doing so, 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 Bureau of Indian Education 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 overtake education functions across all schools on the Navajo Nation.

3. 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 the CMF. This debt was paid. Head Start also received a disallowed costs letter on August 26, 2021, citing noncompliance due to improper monitoring of cost allocations

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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 did indeed follow proper protocols regarding Employee Health Benefit revenues. On November 4, 2021, the Navajo Nation's appeal brief was filed and on December 21, 2021, a sur-reply brief was filed. This quarter, NHS is waiting for the Departmental Appeals Board (DAB) to schedule a hearing on the merits of the briefs or for an order.

Complications/Concerns: If the disallowance is sustained by the DAB, interest and penalties will be charged from the date of the disallowance letter on funds determined as properly disallowed.

4. Navajo Head Start – FY 2022 Annual Grant Application, Agreement and Award: HSGU worked with NHS in the review of NHS's annual grant application and award. NHS submitted its FY 22 Grant Application to DOJ after it had already been submitted, revised and resubmitted to the United States Office of Head Start (OHS). HSGU reviewed the grant application and found it to be legally sufficient. Additionally, HSGU discussed with NHS the importance of initiating the Executive Official Review process for grant applications prior to submission to the federal agency with adequate time for all reviewers to analyze and comment on the document prior to the federal funding agency receiving. HSGU worked with NHS in the review of the FY 2022 Grant Award and found the grant award sufficient. In regards to FY 22 Grant Award, after careful review of the information provided, and a prior discussion between NHS, HSGU, OOC and OMB, HSGU found the document legally sufficient subject to NHS implementing the revisions requested by OOC in a memorandum dated March 4, 2022 and revisions requested by OMB in a memorandum dated March 9, 2022. These revisions include revising the federal/non-federal share, ensuring the correct IDC rate is utilized, and adjusting personnel hours. The 164 Review process is ongoing for the NHS Grant Award as the requested revisions by OOC and OMB have not yet been resolved.

5. Annual Monitoring Review by the ACF: ACF selected NHS for a financial monitoring review, to be performed in Federal Fiscal Year 2022 (March 2022 – February 2023), as part of post-award monitoring activities. ACF provided an explanation that the purpose of the review is to gather documentation that NHS is in compliance with applicable ACF grant requirements and identify any areas where NHS may benefit from additional Training and/or Technical Assistance from ACF. HSGU is working with NHS on completing this ACF monitoring review.

Complications/Concerns: This process is ongoing. Due to difficulty in obtaining the documentation requested by ACF for the monitoring review, the monitoring review meeting with ACF has been delayed. HSGU's goal is to assist with pulling together the Navajo Nation policies and procedures that are applicable to the NHS's implementation of its annual grant to ensure these documents are readily available when needed in the future.

6. IGA between NHS and Chapters for use of space: HSGU worked with NHS and Chapter Unit attorneys to draft an Intragovernmental Office Space Use Agreement (IOSUA). The IOSUA will be utilized to memorialize agreements between the NHS and a Chapter where the Chapter provides a space for NHS to utilize to provide comprehensive Head Start and Early Childhood Development services and programs for a Chapter's community. The IOSUA has been finalized and is being implemented by the NHS.

Complications/Concerns: Prior to use of the newly drafted IOSUA, NHS utilized an Intergovernmental Agreement (IPA) to memorialize agreements between NHS and Chapters for space usage even for those Chapters without LGA Certification. NHS, HSGU and Chapter Unit attorneys met

regarding usage of the IPA and agreed the IPA's were not the appropriate manner of memorializing an agreement with the Chapters and contributed to agreements taking more time to negotiate and finalize. It is intended that the IOSUA's will contribute to a more efficient process.

7. Dream Dine: Council Delegate Eugenia Charles-Newton inquired as to who has legal authority to approve a school on the Navajo Nation. HSGU met with Office of Legislative Counsel (OLC) to discuss this authority given that there is no plain language authority. Pursuant to the BOE's plan of operation, BOE has the authority to enter into an IGA that would provide such approval. During the meeting with OLC, there was a discussion about a long-term plan of amending Navajo Nation law that would provide plain language authority over an entity (BOE, DODE, etc) to have direct oversight over schools. After further discussion at HSGU, HSGU came to the conclusion not to propose the amendment to Navajo Nation law. Currently, New Mexico Statutes provide power to the New Mexico Secretary of Education and New Mexico Public Education Department to have direct oversight through school districts and boards to approve and operate Dream Dine. HSGU has again reached out to OLC to meet about how to proceed with this issue. HSGU has prepared a memo about this issue for Delegate Eugenia Charles-Newton, but to date, OLC has not responded.

8. NABI Directive for Resolution 0004-22: At the April 22, 2022 NABI meeting, NABI gave a directive to OLC and DOJ to meet with NNC to discuss whether to pursue legal intervention or actions related to underfunding of Minor Improvement and Repair, Facilities Improvement and Repair, and Operations and Maintenance line items for BIE-funded schools and to specifically discuss legal intervention in the Ramah High Voltage matter. Federal case law holds that unless there is a statute or regulation that provides a specific responsibility or obligation to a tribe, then the federal trust responsibility can be fulfilled by general compliance with federal statutes and regulations. There is not a specific federal statute or regulation that provides a federal trust responsibility to the Navajo Nation in regards to Minor Improvement and Repair, Facilities Improvement and Repair, and Operations and Maintenance. There are federal programs that provide funding for Facilities Improvement and Repair that would qualify as general federal trust compliance to the Navajo Nation.

9. Office of Navajo Nation Scholarship & Financial Assistance (ONNSFA): Working on renewing agreements with Arizona State University College of Law and the University of Arizona School of Medicine for matching scholarship funds to cover eligible Navajo students' tuition and fees. A new proposed agreement with the University of Arizona School of Veterinary Science is in review. An amendment to the UA School of Medicine agreement has been proposed by UA which extends the term of the original agreement and updates points of contact. This approach may be the best option for renewal.

Complications/Concerns: The School of Medicine agreement expired prior to this past school year that caused Navajo students to not receive half of their tuition and fees paid. ONNSFA is working to have the renewed agreement be retroactive to bring the affected students current on tuition and fees.

## VII. DIVISION OF GENERAL SERVICES (DGS):

### 1. Insurance Services Department (ISD):

- a. 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

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assistance to NNIC. Within this quarter, NNIC met on two (2) 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 and accepted the Employee Benefits Plan Financial Report for February and March 2022, ending dates;
- Received and accepted the Employee Benefits Program Third-Party Administrator’s Performance Guaranty for Calendar Years 2020 and 2021;
- Received and accepted a report from the Employee Benefits Program’s new Pharmacy Benefit Management Company;
- Approved a three-year premium rate guarantee for life insurance coverage renewal effective January 1, 2022 to December 31, 2024; and
- Approved a three-year Professional Services Contract for actuarial consultant services for the Employee Benefits Program effective January 1, 2022 to December 31, 2024.

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-two (72) litigation cases (federal, state, and tribal courts) continued within this quarter as highlighted below:

- a. Tribal Cases: Sixty-three (63) 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.
  - Fifty-two (52) District Court cases continued, three (3) of which were served within this quarter. Out of the total fifty-two (52) cases, four (4) were settled but still pending with issuance of dismissal orders; and three (3) were dismissed in favor of the defence’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 defence of these cases, including but not limited to discovery and motion practices and trial preparations. Within this quarter, eleven (11) motion hearings and five (5) pretrial conferences were held. 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, two (2) of which was dismissed in favor of the Navajo Nation and the issuance of a dismissal order is pending in one of the cases.

c. FTCA Cases (AZ and NM District Courts): Six (6) cases continued 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

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to written discovery and motion reviews in two (2) cases and coordinated several depositions which took place in mid-April 2022. 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-seven (37) pre-litigation claims are pending, twenty-nine (29) 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 defence counsel, RMP staff, Navajo Nation insurance investigator/adjustor, and insurance broker of record, and case/claim reviews include defence 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):

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 analyzation of the statutory mandates. Within this quarter, HSGU assisted with the disposition and closure of four (4) claims, three (3) of which resulted in final settlements closures. In addition to the foregoing, HSGU continues to 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) maximum medical improvement assessments; (iii) medical impairment rating issues; (iv) pre-existing coverage issues; and (v) records retention issue.

4. Employee Benefits Program (EBP):

a. Actuarial Consultant Professional Services Contract Modification: HSGU assisted with the review of a professional services contract modification which resulted from extra services provided on an audit issue relating to the Head Start program.

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b. Employee Health Benefits Changes/Modifications and Health Benefit Plan Document Amendments: HSGU assisted with the finalization of the employee health benefit changes, which included the inclusion of updated federal notifications and required COVID-related medical treatment /services.

5. Employee Housing Program/Committee: HSGU has been asked to assist the Employee Housing Program and Committee to assist in editing the Navajo Nation Employee Housing Rules and Regulations (Rules and Regulations). The edits and update to the Rules and Regulation are necessary to provide a sufficient process for the maintenance of employee housing units and assignments. The update is necessary due to issues with ambiguous provisions and unclear processes. Since the last quarter and during work-sessions, HSGU has requested for direction from the Committee to address issues that came up in the past and currently, and potential future issues.

VIII. DIVISION OF HUMAN RESOURCES:

1. Department of Child Support Services (DCSS): HSGU has continued its efforts to bring the Nation into compliance with the Full Faith and Credit for Child Support Orders Act. HSGU began working again with the Office of Hearings and Appeals to develop procedures for processing child support orders coming to the Nation from other jurisdictions. HSGU hopes to complete and finalize forms for these new procedures and to be able to provide information and instruction to DCSS Administration before end of FY 2022.

2. Navajo Nation Department of Child Support Enforcement Administrative Process: In the second quarter, HSGU began working on updating a manual that it had created previously. That manual includes the amended Navajo Nation Child Support Enforcement Act, the Navajo Nation Child Support Guidelines, child support decisional law, as well as a practitioner's guide for practicing before the Office of Hearings and Appeals in child support matters. HSGU has drafted the practitioner's guide, included a copy of the amended Child Support Act without the strikethroughs and underlining and including the amended definition of "Child," as passed by the Navajo Nation Council (CJY-44-21).

3. Department of Child Support Services – Policies and Procedures Manual Update: As previously reported, HSGU was asked to assist in updating the DCSS Policies and Procedures Manual (Manual). Also previously reported, DCSS – Administration had set a goal of updating the Manual by the end of quarter 2 of fiscal year 2022. Unfortunately, that goal was unmet. DCSS – Shiprock met with HSGU. That office asked if HSGU was updating the Manual. It was informed that DOJ had agreed to review and to have input into the Manual but had not been requested to do anything further than that and HSGU informed that office that it had not been provided anything to review. DCSS – Shiprock believes that the Manual will not be produced without DOJ's assistance and has requested that we play a more active role along with the Shiprock staff. DCSS – Administration agreed. Therefore, HSGU has begun gathering the current Manual along with previous Manuals to begin that process. It is hoped that with HSGU leading the project in drafting, and DCSS – Shiprock providing direction as well as practical knowledge, that this project can be completed by the end of the calendar year. HSGU has begun the project.

4. Navajo Nation Office of Occupational Safety and Health (NNOSHA): HSGU continued reviewing amendments to the Navajo Occupational Health and Safety Act of 2000, NNOSHA's plan of operation, its organizational chart and fund management plan. Apparently, it was brought to HSGU for review in 2017. Cherie Espinosa reviewed the documents and made suggestions and then it remained dormant until 2021. It was

submitted for review in June. HSGU made comments and NNOSHA made suggested changes and returned the documents. Again, HSGU reviewed the documents and returned them to NNOSHA. Walter Hudson, Program Supervisor for NNOSHA retired. Recently, Austin Yazzie, the new Program Supervisor has returned to this project. The documents were again submitted to HSGU for review and comment. The documents were reviewed and comments were made and then returned to NNOSHA. HSGU met with NNOSHA and Division of Human Resource Director, Dr. Perphelia Fowler on January 19, 2022, in order to get this effort started again. HSGU met with NNOSHA again on March 24, 2022, to discuss questions that that HSGU had posed regarding the most recent draft of the amendments. NNOSHA is currently working to combine two (2) documents in which comments and corrections were made so that there is a single working document. Once that has been completed, it will be resubmitted to HSGU for review. HSGU has continued meeting with NNOSHA on these amendments in the third quarter. HSGU met with NNOSHA on April 25, 2022 and workshopped the amendments. Additionally, NNOSHA requested a meeting with HSGU during the week of June 26, 2022 to provide HSGU with the updates on the amendments and is requesting HSGU review.

#### IX. NAVAJO NATION VETERANS ADMINISTRATION (NNVA):

1. Veterans Trust Fund Distribution/expenditure: On March 1, 2022, Director Zwierlein contacted HSGU regarding Veterans Trust Fund (VTF) distribution. Zwierlein informed HSGU that the OOC staff, who previously worked on the trust fund, was no longer working for OOC. NNVA had met with OOC and they had some questions regarding distribution. In 2018, the Navajo Nation Council amended the VTF and the expenditure of the funds. (CJA-02-18). In October 2018, HSGU was asked to provide its interpretation of CJA-02-18. In 2018, several HSGU attorneys worked on the interpretation. On June 21, 2022, HSGU met with TFU, OOC, and NNVA to prepare the report for the legal interpretation that would be presented to HESHC. On June 22, 2022, HSGU attended the HEHSC meeting to discuss DOJ's legal interpretation. At that time, it was discovered that due to the amendments to the VTF in 2021, the distribution formula was going to result in more than a 3-million-dollar short fall. DOJ provided recommendations on how to address this matter. During the time of the meeting, it was recommended that the amendments are conducted to an existing legislation that was already in the legislative pool. However, following the meeting, NNVA preferred that there be a standalone legislation to address the short fall by amending the VTF, and not add it to the current legislation

#### **Litigation Unit (LU)**

LU is led by Assistant Attorney General Paul Spruhan who manages three (3) Attorneys, one (1) Attorney Candidate, one (1) Senior Legal Secretary, 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 now before the U.S. Supreme Court. The other parties to the litigation, though not the Navajo Nation, filed cert. petitions asking the Court to review the en banc decision of the Fifth Circuit Court of Appeals. The Supreme Court has granted all four petitions, and will take up all the issues presented by the parties: 1) whether the plaintiffs have standing to bring the case; 2) whether Congress has the constitutional authority to pass ICWA; 3) whether ICWA violates the equal protection guarantee of the Constitution; 4) whether ICWA violates the "anti-commandeering" doctrine arising out of the Tenth Amendment of the Constitution; and 5) whether ICWA violates the non-delegation doctrine. The Nation is a full party to the case, and therefore can file its own freestanding brief, or file jointly with the other parties aligned with it, the United States and the four tribal intervenors. We

have discussed the strategic advantages of filing separately or jointly, and have advised leadership that a joint brief with the other tribes is preferable. Our brief, whether freestanding or joint, is due August 5. Oral argument will be scheduled in most probably November, 2022, with a decision expected by June, 2023.

The separate YRJ case involving the Brackeens' attempt to adopt a second Navajo child continues in the Texas district court. After the Texas Supreme Court denied review of all petitions seeking a review of the Texas Court of Appeals decision in the case, it was remanded back to the Texas District Court. Pursuant to the Texas Court of Appeals' opinion, the Texas District Court was to hold a new trial on the custody issues, whether or not the Brackeens or the Navajo family placement would be the custodian of the child. However, the judge decided to issue a new custody order without a trial awarding permanent conservator status to the Brackeens. Our Texas counsel filed a motion for new trial along with several other motions to try to get that defective order vacated. Those motions remain pending.

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. There are ongoing settlement discussions with US DOJ towards resolving and dismissing the case. US DOJ sent a settlement offer, and the plaintiffs, including the tribal plaintiffs, sent back a counter-offer. US DOJ is to respond soon on the counter-offer.

### **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 staff and has been since November 2019. NHLSP is overseen by Principal Attorney and Director Susan Eastman and she supervises one (1) Principal Tribal Court Advocate and one (1) Legal Secretary. The NHLSP office has remained open this quarter. Legal Secretary Brela Multine has continued to staff the office while Principal Tribal Court Advocate Chris Benally and Principal Attorney Susan Eastman alternate between working remotely from home and working at the NHLSP office to ensure NHLSP office coverage. NHLSP continued to assist the Tuba City Child Support Services Office by attending staffing meetings and representing DOJ before OHA at the monthly child support hearings in April, May, and June 2022. Chris and Susan also edited and finalized administrative child support orders after the hearings and submitted final orders to OHA. NHLSP also served on a panel presentation on child support procedures at the annual Navajo Nation Bar Conference held June 9-10, 2022.

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NHLSP staff also continue to assist and advise the Navajo-Hopi Land Commission Office (“NHLCO”) by participating in Navajo Hopi-Land Commission’s (NHLC) regular and special meetings. After passage of the Dine’ Relocatee Fund (“DRF”) enabling legislation, signed into law by President Nez on February 13, 2022, and the NHLC’s recommendation of approval of the Fund Management Plan (“FMP”) by the Budget and Finance Committee, the next step was to present the DRF FMP for approval by BFC. DOJ met with ONHIR on May 11, 2022 regarding this concern. Susan attended the BFC meeting on June 7, 2022 to explain the need for the FMP and answer BFC members’ questions. BFC approved the FMP by resolution.

At its May 5, 2022 regular meeting, the NHLC passed a resolution amending a prior 2013 resolution to remove the MOU as the method of distribution of FBFA Escrow Funds allocated to each of the nine (9) FBFA Chapters. NHLSP and the Chapter Unit were advising NHLCO on the MOU’s at the time the NHLC passed this resolution. Since the NHLC passed this resolution, Susan has had meetings with Chair Tso, the Speaker’s office, NHLCO, DCD and OOC as well as the Chapter Unit to discuss what the next steps are given that the non-LGA Chapters cannot directly receive the funds, and that Naabiki’yati Committee approval is required for both the May 5, 2022 NHLC Resolution and for the MOA’s and/or MOU’s which can still be used, based on analysis and advice from Chapter Unit, which is discussed further below.

The NHLC and NHLCO were also updated on the status of the Technical Amendments to the 1974 Relocation Act, which were formally introduced by Rep. O’Halloran in early December 2021. Mr. Greg Smith has appeared regularly at NHLC meetings to advise on the progress of the Technical Amendments. Included in these discussions was Hopi opposition to the Navajo Technical Amendments, as well as presentations to NHLC and NHLCO by groups representing Second Generation Relocates and NPL residents impacted by relocation who would like to see the Technical Amendments changed to add their requests as specific or “stand-alone” provisions which address these groups’ specific issues.

1. Federal appeals of ONHIR relocation benefit denial determinations: As mentioned above, there are a total of (13) cases pending in the federal District Court of Arizona for relocation benefit appeals. Of these, NHLSP has five (5) individual relocation benefit appeals cases for nine (9) Plaintiffs pending in the federal District Court of Arizona and one case pending in the Ninth Circuit Court of Appeals. An opening brief was filed in the Ninth Circuit on November 15, 2021, and Appellee’s Answering Brief was filed on March 15, 2022 (after the U.S. requested two extensions). Our Reply Brief was due and filed on April 4, 2022. The 9th Circuit panel has not been selected yet, and we will request oral argument if allowed once the 9th Circuit panel is selected.

On June 2, 2022, NHLSP filed a Complaint for four (4) siblings who had a consolidated administrative appeal before ONHIR and the Hearing Officer in February 2016, and whose FAA statute of limitations was to expire on June 3, 2022. Another Complaint filed on June 2, 2022 for a NHLSP relocation client whose FAA Statute of Limitation expires on July 11, 2022.

For other pending FDC-AZ cases, briefing is complete in two cases where ONHIR filed its Reply briefs on January 19 and May 26, 2022, and we now await decisions from Judge Humetewa and Judge Steve Logan. For another relocation benefits appeal, NHLSP filed Plaintiff’s Motion for Summary Judgment on May 9, 2022; ONHIR filed its Response and Cross-Motion for Summary Judgment on June 7, 2022; Plaintiff’s reply and response brief is now due on July 22, 2022 after NHLSP requested an extension, which was granted. For the other pending FDC-AZ case, NHLSP filed Plaintiff’s Motion for Summary Judgment on June 22, 2022. ONHIR’s response is due on July 22, 2022.

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In addition, this quarter NHLSP reviewed five (5) cases for possible federal appeal for other NHLSP clients who have statutes of limitations that expire in June and July 2022. NHLSP reviewed the cases for NHLSP clients and agreed with the recommendations that most of these cases should not be appealed to FDC-AZ. NHLSP notified each client by letter of the recommendation.

For the eight (8) other federal appeals pending in the District of Arizona (“FDC-AZ”), one case appealed by ONHIR to the 9th Circuit, and one case by Bob Malone in the 9th Circuit Court of Appeals. For Bob’s pending case in the 9th Circuit, he filed Plaintiff/Appellant’s Opening Brief on April 25, 2022, and ONHIR’s reply brief is due on July 19, 2022. For one of Lee’s cases in which the FDC-AZ had granted his client’s MSJ, ONHIR filed a Notice of Appeal to the 9th Circuit, and ONHIR’s opening brief is due on August 1, 2022. Bob received an unfavorable ruling for one of his clients on June 3, 2022 from Judge Rayes, and Lee received a denial decision from Judge Liburdi for one of his cases on the same date. Bob and Lee intend to appeal both denial rulings to the 9th Circuit. Four of Lee and Bob’s pending FDC-AZ cases are fully-briefed and are waiting rulings from the judges. Lee has Motions for Summary Judgment due for two of his cases on August 2, 2022. Bob has two relatively new cases, one for which the Defendants were served on May 9, 2022 and ONHIR’s Answer and Certified Administrative Record are due on July 8, 2022. He filed a new Complaint for a group of five (5) Plaintiffs on June 2, 2022, and has not yet served ONHIR.

For the cases Lee and Bob’s clients prevailed in the FDC-AZ, they each filed Equal Access to Justice Act (EAJA) fee petitions. ONHIR has filed responses in opposition to the EAJA fee petitions and has sought discovery to support its argument that the Navajo Nation, rather than the individual relocation clients, is the “real” client and “Real Party in Interest”. Outside counsel Barry Paisner has encountered similar opposition from ONHIR in response to the EAJA petitions he has filed where the NHLSP client was the prevailing party. Judge Rayes denied Barry’s EAJA petition finding that ONHIR’s position was “substantially justified”, and did not address the “real party in interest” issue, even though Judge Rayes’ ruling in that case was overturned by the 9th Circuit. Barry is evaluating his EAJA petition ruling to decide whether to appeal to the 9th Circuit.

For the case in which Barry Paisner is lead counsel and with a statute that expires on July 11, 2022: At issue is ONHIR and the Hearing Officer’s refusal to accept the Decree of Validation of Marriage validating as a common law marriage between the client when she was only 13 years old and her husband was 16 years old. NHLSP represented the client and her former husband in a marriage validation proceeding in the Window Rock District Court in 2014, and the late Judge Carole Perry issued a decree validating our client and her former husband’s marriage even though she was underage, pursuant to Navajo fundamental law. Judge Perry found that because the client had had her puberty ceremony prior to her marriage, making her eligible for marriage under Navajo fundamental and traditional law; that common law marriage was valid at the time of the client’s traditional ceremony in spring 1974, allowed Judge Perry to recognize the marriage as a valid common law marriage under Navajo Nation law.

ONHIR and Hearing Officer refused to recognize the Marriage Validation Decree as against “public policy”, and the Hearing Officer went so far as to say that the Window Rock District Court had “exceeded its jurisdiction”, acted “ultra vires”, and that Judge Perry had “invented” fundamental law and ignored the Navajo Nation statute that mandated a minimum age for a female to be married. Since marriage is one of the three ways an applicant for relocation benefits can qualify as a “head-of-household”, the validity of our client’s marriage is essential to her eligibility for relocation benefits. Our client’s legal residence on the HPL as of December 22, 1974 was stipulated to by ONHIR and NHLSP at the time of our client’s hearing in April 2016 as our client’s mother was found to be a legal resident and eligible for benefits from the same HPL homesite.

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2. Remands from federal court: A 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, and has not yet been rescheduled. The Hearing Officer tried to re-schedule the hearing for June 2020, but NHLSP has been 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.

A NHLSP case remanded by the 9th Circuit back to ONHIR is still pending. Outside counsel has accepted transfer of this case, and a remand/supplementary evidentiary hearing has not yet been scheduled.

Four cases from the same sibling/family group have been remanded back to ONHIR by the federal court which granted the clients' motions for summary judgment and denied ONHIR's. NHLSP has requested supplementary evidentiary hearings on remand, and is waiting for decisions from the Hearing Officer whether the requests will be granted or if the Hearing Officer will write new decisions based on the present administrative record and without a new evidentiary hearing.

3. Assistance to Certified Applicants: NHLSP assisted and advised a client who was certified eligible for relocation benefits in summer 2019 after a successful 9th Circuit Appeal. Since last quarter, there has been progress. The client affirmed that she wanted to move forward with the divorce, and ONHIR was holding up completion of her relocation benefits because it wanted to ensure that the relocation home would remain the client's sole and separate property. The petition will be filed after the client's approval is granted.

4. Advice and Assistance to the Navajo-Hopi Land Commission and NHLCO by NHLSP: This quarter, NHLSP staff called into four (4) regular and one (1) leadership NHLC meetings. At a special leadership meeting held on April 9, 2022, NHLC Commissioners heard from advocates from the Second Generation Relocatee group which would like to add language to the Navajo Technical Amendments introduced by Rep. O'Halloran in December 2021 to more specifically address their request for children of certified relocatees to receive their own relocation assistance benefits.

NHLSP staff and OAG also covered the Naa'bik'iyati' Committee and Budget and Finance Committee meetings at which the Fund Management Plan for the Dine' Relocatee Fund was approved on June 7, 2022. NHLSP participated in the June 7 BFC meeting and answered questions from BFC members regarding the need for the FMP for the DRF.

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 oversee, manage and administer the DRF FMP. Now that the FMP was approved by the Budget and Finance Committee, the next step is for the account(s) to be set up with the Office of the Controller. The NHLC will also have to amend its January 2019 Dine' Relocatee Policy to be consistent with the DRF enabling legislation and FMP, and NHLSP can assist NHLCO with developing the Administration Manual to govern administration, management, and eligibility requirements for relocatees to receive DRF monies.

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As mentioned above, at the NHLC's regular May 5, 2022 meeting, NHLC Chair Otto Tso sponsored a resolution that removed the MOU as the method of distribution of FBFA Escrow Funds allocated to each of the nine (9) FBFA Chapters by NHLC resolution in 2013. DOJ's Chapter Unit has analyzed the issue, and the LGA-certified chapters may enter into non-binding agreements such as MOU's and the NHLCO would continue to administer the FBFA Escrow Funds. Alternatively, expenditure of Escrow Funds directly to LGA certified Chapters is possible with approval by the Naabikiyati Committee which is required under the LGA. Plus, the LGA certified Chapters would need to enter into a binding agreement, such as a MOA or sub-recipient agreement with the NHLCO. Otherwise, use of the MOU can continue. Leupp Chapter has already executed an agreement.

On May 11, 2022, OAG, NHLSP, NHLCO Executive Director Robert Black, and NHLC Chair Otto Tso met with ONHIR Executive Director Christopher Bavasi and counsel Lawrence Ruzow at ONHIR's request on a few issues. NHLSP worked with TFU to add the ONHIR concurrence language to the FMP before introduction to the BFC.

5. Federal Legislative Policy and Advocacy for Navajo Relocates by the NHLC and outside counsel Hobbs Straus Dean & Walker: Hobbs Straus Dean & Walker ("Hobbs Straus") continues to coordinate and support a strategy to elevate Navajo-Hopi and construction freeze issues through legislative, executive and judicial efforts. This quarter, several lengthy calls with the NHLC regarding overall strategy, weekly calls with the NNWO and regular detailed email updates were provided to Navajo leadership, including OPVP, NNDOJ, NNWO and NHLC. The AG and DAG also met with Hobbs Straus in DC on various matters.

Hobbs Straus continued to review and work on proposed amendments from the NPL chapters and from Second Generation representatives and participated in several calls where these representatives presented on their proposals. Hobbs Straus also worked on legislative language and researched infrastructure promises in 1990 Relocation plan in relation to these additional requests.

Hobbs Straus engaged in several follow up calls with Hopi and San Juan Southern Paiute representatives regarding their issues, including most especially Hopi opposition to the technical amendments, and engaged in research and related calls regarding Hopi claims that the Navajo Nation has hindered Hopi land acquisitions promised them in 1996 as part of agreeing to the Accommodation Agreements.

Hobbs Straus followed up on meetings held by President Nez and Robert Black the week of March 27, 2022, regarding securing a hearing as well as appointment of an ONHIR Commissioner. Hobbs Straus reported on FY 2023 House Appropriations for ONHIR and continued discussions with Executive Branch officials regarding appointment of an ONHIR commissioner. Hobbs Straus continued to follow closely and report on various funding sources, as well as proposals for a major national infrastructure initiative, and how these opportunities could benefit relocation and freeze-impacted communities.

6. Litigation against ONHIR, the Department of Interior, and the United States: Outside counsel Dan Rey-Bear and Tim McLaughlin (Rey-Bear-McLaughlin) are the lead attorneys representing the Navajo Nation and Relocation Beneficiaries (defined as Navajo citizens who resided on the HPL on December 22, 1974, the date of passage of the original Relocation Act) in two (2) lawsuits filed in the Court of Federal Claims in Washington, D.C. and the District Court of Arizona on August 23 and 24, 2021 respectively. The CFC case seeks monetary damages in the amount of \$40 million

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from the U.S. in its mishandling and maladministration of New Lands revenues and trust assets by ONHIR and DOI, as well as a remand to these agencies to ensure they properly manage, administer, and deposit revenues and income for the benefit of the Relocation Beneficiaries. The District Court of Arizona (“DAZ”) lawsuit seeks declaratory and injunctive relief (no money damages) seeking to require ONHIR to carry out and complete its relocation functions and not prematurely close with DOI’s assistance.

Last quarter, Rey-Bear McLaughlin addressed the continuing litigation regarding ONHIR and related non-litigation matters, including discovery-related work by co-counsel. For the two lawsuits that were filed in August 2021, federal attorneys filed their replies and NNDOJ reviewed and assessed and conferred about those. Rey-Bear McLaughlin also followed up with NNDOJ regarding implementation of a litigation record hold to avoid spoliation, and with various Navajo offices and a former NHLCO official on record access, review, and collection. They also supervised consultants regarding database coding, issues, and administration and prepared reports to the Nation regarding the litigation. For the CFC case, and with NNDOU, Rey-Bear McLaughlin also addressed New Lands leasing issues, reviewed relevant recent decisions in other cases, and followed up regarding communications with designated representatives for the plaintiff identifiable group of relocation beneficiaries. For the DAZ case, they also assessed issues, conferred with co-counsel, and reviewed legal developments relevant to our case.

Related non-litigation work included follow up regarding the so-called Navajo Relocation Technical Amendments, H.R. 6141, as well as regarding ONHIR consultation and leadership. Rey-Bear McLaughlin and NNDOJ also worked on issues regarding the Nahata Dziil Chapter, HPL rent, and Navajo legislation to establish and manage the Diné Relocatee Fund. They also assessed issues regarding deposits and investments in and use of that Fund and ONHIR concerns regarding the Fund legislation and administration.

7. HPL Rent: The Navajo Nation and outside counsel on HPL rent issues, Meyer Walker & Walker (“MWW”), continue to wait for decisions from the IBIA on the Hopi Tribe’s appeal of the 2000 to 2009 HPL rents and for the Hopi Agency Superintendent’s re-computation of the 2010 to 2014 HPL rents based on remand instructions from the Regional Director in April 2020. On March 30, 2022, NNDOJ requested MWW to initiate efforts with the Assistant Secretary of Indian Affairs, Bryan Newland, to discuss the extraordinary delays by the ASIA office and the BIA in acting on the pending HPL rent matters. To our knowledge, Assistant Secretary Newland has not yet responded, but outside counsel is available to assist the Navajo Nation in the event such a meeting occurs.

8. Navajo HPL Residents/AA Signers: The recently-enacted Dine’ Relocatee Fund (“DRF”) enabling legislation and approved Fund Management Plan can also benefit Navajo HPL AA signers. Navajo HPL AA Signers and resisters to relocation are included in the group of “Relocation Beneficiaries” represented in the pending litigation against the U.S., ONHIR, and DOI, and are defined in Section 11(h) of the Relocation Act as Navajo citizens who resided on the HPL as of December 22, 1974, the date the original Relocation Act was enacted. However, it is doubtful that relocation resisters who continue to live on the HPL and have not signed AA leases with the Hopi Tribe could receive benefits from the DRF as they are considered trespassers by the Hopi Tribe and have no legal claim to the HPL sites they continue to occupy and from which they could be evicted at any time.

### **Natural Resources Unit (NRU)**

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

1. Department of Forestry’s Carbon Sequestration Project: 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 was approved at Spring Council Session and signed into law, CAP-17-22. A project kickoff meeting is anticipated next quarter.
2. Department of Water Resources: Work related to large-scale water infrastructure projects continued, and is anticipated to increase as funding remains available through the passing of the American Rescue Plan Act of 2021 (ARPA), including the establishment of the Navajo Nation Fiscal Recovery Fund (NNFRF) and Office, and the Infrastructure Investment and Jobs Act (IIJA), also referred to as the Bipartisan Infrastructure Law (BIL).
  - a. Navajo Gallup Water Supply Project: Work on this essential project continued. As previously indicated, additional congressional appropriations are necessary to complete the project and lobbying efforts are underway. The Cutter Lateral Operation, Maintenance and Repair (OM&R) Contract between the Nation, NTUA, and Reclamation was executed by the respective parties and a commemorative ceremony was held on June 9.
  - b. To’hajiilee Water Project: Work on this essential project continued, which includes on and off-reservation construction of the water pipeline and associated upgrades to the chapter’s distribution system. Negotiations are underway for the rate agreement for the treatment and delivery of water by the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA). Treated water will be delivered to a bulk meter at or near the chapter boundary, then distributed to the To’hajiilee community through the existing and upgraded system within the chapter boundary.
  - c. Westwater Community Water Project: The availability of federal funds for water infrastructure projects, including ARPA and the BIL, has made connecting the Westwater Community to water infrastructure in and around Blanding, UT a reality. A memorandum of understanding between the Nation, the State of Utah, and the affected municipalities is under development with the goal of identifying the parties’ respective commitments to a water infrastructure project that will benefit this uniquely situated Navajo community.
  - d. Feasibility Studies and Other Agreements with the United States Army Corps of Engineers (USACE): The USACE is an integral participant in water infrastructure and water-related projects on the Nation. However, its ability to partner with the lowest level of government has raised significant questions regarding Navajo Chapter authority pursuant to the Navajo Nation Local Governance Act, 26 N.N.C. §§ 1 *et seq.*, as well as coordination challenges with DWR oversight. Prior to the Public Health Emergency, USACE representatives from the Albuquerque District wanted to formalize coordination and project management efforts across the Nation and between the three districts that comprise the South

Pacific Division. It is presumed that these efforts may be reinitiated as the pandemic becomes endemic, but the significant questions regarding Chapter authority remain.

3. Navajo Parks and Recreation Department:

a. Tour Operator Permits: As previously indicated, NPRD did not issue new tour operator permits for 2022. This self-imposed moratorium maintained the pre-pandemic status quo for the benefit of existing tour operators due to the closure of Tribal Parks for two (2) seasons.

b. NPRD's Plan of Operation: The Navajo Nation Museum was reorganized under NPRD pursuant to amendments to the NPRD Plan of Operation, RDCAP-05-22. NRU had reviewed the proposed amendments to the NPRD Plan of Operation that reflected this reorganization in July 2021, and issued a memorandum and a revised version of the amendments that incorporated prior amendments pursuant to RDCO-79-16 and RDCJY-031-19, neither of which was included in the legislation. It is also unclear if the NPRD Expenditure Plan will also be revised according to the reorganization, which was also noted in the memorandum as there was no reference to the Expenditure Plan in the final resolution.

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 initiated a 90-day public comment period and hosted several public meetings as well as undertaking formal Tribal consultation. The public comment period was extended an additional 30 days and concluded on May 6. Additional public meetings were scheduled at San Juan College on April 27th, Nageezi Chapter House on April 28th and at the Nation Indian Programs Training Center on April 29th. NRU attended the April 29th and 29th meetings. NRU and LU coordinated with HHPD, NLD and the Minerals Department on drafting talking points for the President and submitting comments on behalf of the Navajo Nation on May 6.

5. Horseshoe Bend Holdings Project: NRU reviewed a request regarding the Horseshoe Bend Holdings (HBH) project that was submitted by the Department of Fish & Wildlife-Natural Heritage Program. Natural Heritage Program (NHP) sought a review of several documents and whether they were ready to be included in the final biological resource clearance form determination letter for HBH. The documents consisted of 1) a draft golden eagle mitigation plan, 2) a hotel occupancy tax, and 3) a legislative amendment proposal. There are concerns regarding the funding amounts listed in the mitigation plan, specifically the initial funding amount and the projected amounts to be paid annually for the golden eagle species. The current plan does not satisfy the best interest of the protected species and NHP's mission. Paulene met with the Economic & Community Development Unit (ECDU) in March to discuss the previous ECDU legal review and findings for the project including the hotel occupancy tax proposal. ECDU's position is that they are not able to make a determination until HBH secures a biological clearance from the NHP. Paulene met with Mr. Deschenee and the NHP on June 30, 2022 to discuss concerns regarding the project.

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6. Utah Hunting Agreement: NRU updated the Navajo Utah Commission (NUC) about the Hunting Agreement with the state of Utah twice this quarter. Utah representatives have met with DOJ and are open to receiving proposed amendments. DOJ recently received confirmation from OPVP of its support of the NUC's position on the agreement. During the last update, Brian requested the NUC meet with the Office of the President and Vice President and full Council to get a better sense of what the Navajo Nation's position is on bolstering Navajo treaty hunting rights. Brian reached out to OPVP legal counsel regarding the NUC resolution requesting OPVP and DOJ amend the hunting agreement. Meetings going forward will be confidential – but Brian will meet with the NUC to finalize asking points before reaching out to Utah. A potential template for an amended agreement has been identified by DOJ.

7. Heritage & Historic Preservation Department (HHPD):

a. Bears Ears Inter-Tribal Coalition/Commission (BEITC): (Non-litigation matters will be handled by NRU) Paulene is the assigned Point of Contact (POC) for the BEITC project and continues to attend weekly Zoom meetings along with Commission Representative Hank Stevens and HHPD Department Manager Richard Begay. Mr. Begay also serves as the BEITC Tribal Historical Preservation Officer (TPO). A tribal leaders meeting was held in Durango, CO on April 13 & 14, 2022. TPO's and POC's were invited to participate in discussions, work timelines, and to discuss pending issues with BLM & USFS officials. In May 2022, the BEITC met again in Durango, CO to finalize the Land Management Plan and solidify arrangements for the June meeting and events in Bluff, UT. The Navajo Nation has been ahead of schedule or on schedule with tasks for the commission; however, we are currently one of the tribes that have not yet submitted a tribal resolution in support of the Land Management Plan.

BEITC met in Bluff, UT on June 17 & 18, 2022. Day 1 was regular business and presentations for the commissioners, POCs, and THPOs. The Executive Director announced his resignation because he will be taking a faculty position at Yale in the fall. This resignation was one of 3 recent changes with the coalition staff. Good news is there are new hires/members on the team and positions have been filled. On Day 2, the commission met in White Mesa, Utah with USDOJ, USBLM, USDA, USFS Officials to sign the historic cooperative agreement to co-manage the Bears Ears National Monument area. At the completion of the signing, the group traveled south to the entrance of Gooseneck Canyon State Park (between Bluff & Mexican Hat) to unveil the new signs of the Bears Ears National Monument which indicate co-management between the USDOJ/USBLM, USDA/USFS and the five tribes; Hopi, Navajo Nation, Ute Mountain Ute, Ute Tribe, and Zuni Pueblo, whose logos have been added to the sign, to display partnership.

b. Bears Ears Museum Project: The Los Angeles County Museum (LACM) is interested in collaborating with Tribes involved in the protection of Bears Ears through a MOA which would involve a Museum exhibit in Los Angeles and 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. A meeting with the staff of the LANH-Museum was held in June to discuss a proposed representation for Navajo and to create a timeline for other contractual obligations under the grant. Due to the land management plan draft, cooperative agreement signing, and new sign unveiling, HHPD requested that the follow up meeting take place sometime in July 2022.

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c. San Francisco Peaks: NRU attended three monthly meetings for the San Francisco Peaks this quarter. The group is comprised of various professionals representing 11 tribes, grassroots organizers, and NGO's from the area. The group is currently in a structuring and strategic phase. The group is organizing to respond to USFS Section 106 re-initiation on the expired 2005 MOA. The group has taken the position that the Forest Service lacks justification for not requiring Snowbowl to complete additional National Environmental Policy Act analysis and has asked for a response to this prior to discussing a new MOA. In a recent response letter dated, June 29, 2022 from Steve Hattenbach, Consulting Official, Forest Service Southwestern Region, states that the Section 106 Reinitiation must legally include parties beyond the Tribes and Forest Service (e.g. Arizona Snowbowl Resort, Advisory Council on Historic Preservation, and Arizona State Historic Preservation Office). The future Government to Government consultation which would only be between the Forest Service and Tribes could discuss a much wider range of topics beyond Section 106, such as NEPA, potential management plans, etc. The expired MOA and Section 106 issues will be discussed at the June 30, 2022 meeting from 1pm – 4pm via zoom.

8. Navajo Land Department:

a. Legislation delegating Navajo Land Department the authority to approve rights-of-way (ROW): Reviewed proposed legislation for Resources & Development Committee (RDC) that would grant the Land Department Manager the authority to approve ROWs that was drafted by the Office of Legislative Counsel (OLC). It is my understanding that the proposed legislation has not been shared with the NLD yet but NLD is aware that this is something RDC was looking into. The delegation would be fashioned in the same manner as the delegation for approval to ROWs under RDCJN-17-20. RDC would also approve rules and regulations as well as terms and conditions that govern the approvals. It should be noted that approval for commercial ROWs would remain with RDC. This was discussed at the June 29 RDC meeting and RDC voted in favor of issuing a directive to DNR and NLD to begin the executive official review process for the delegation, rules and regulations and terms and conditions.

b. Telecommunication Siting Regulations: The purpose of the regulations is to streamline policies and procedures for the issuance of telecommunication tower lease and permits as they relate to surface land use for telecommunications, as well as collocations on non-tower structures. NRU and HSGU provided comments regarding the proposed telecommunication regulations and leases submitted by NNTRC. The first version of the regulations had been submitted over a year ago by GLDD and a memo was issued regarding concerns and recommended changes; GLDD did not resubmit the regulations for review. However, there was a second version submitted by NNTRC. Again, NRU and HSGU provided comments and recommendations on the proposed regulations. Unfortunately, the concerns raised in the first draft still were not addressed. We will be meeting with NNTRC and NLD to go over our comments and recommendations.

9. General Land Development Department (GLDD):

a. Mission Site Permit Regulations: (On-going) NRU first reviewed these regulations in 2018; however, they were not approved by the RDC at that time. GLDD reinitiated attempts to get the 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. There were two RDC work sessions held on December 21, 2021 and

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March 15, 2022, with GLDD and the NLD to further discuss the regulations and proposed amendments. RDC scheduled a Leadership meeting for April 23 to get input from church leaders; however, the meeting was cancelled and has not been rescheduled to date.

b. Cemetery Lease/Regulations: NRU reviewed the lease and suggested edits (took out provisions that were not applicable) and condensed the lease as much as possible. NRU also had additional questions such as whether GLDD will be charging a fee, term of the lease, etc. NRU had recommended to GLDD that the lease should reference the burial regulations once they are approved and they should hold off on processing them. GLDD decided to move forward processing 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. There have been two leases that have been reviewed but have not been approved by RDC. The problem is the language contained in Title 13 (Cemeteries) is unclear and needs to be amended to reflect the current needs of the Nation. RDC held a leadership meeting on May 5<sup>th</sup> with DOJ, DNR, NLD, and Navajo Land and Farm Boards to discuss and address private family cemeteries. RDC conducted a two-day work session on May 19-20 with the OLC, Human Rights Commission, DOJ, DNR, NLD, GLDD, HHPD, NNDA, Farm and Land Boards and Grazing Officials, and the BIA to discuss the draft Navajo Nation Burial and Cemetery Regulations as well as possible amendments to Title 13.

c. One Stop Shop Plan of Operation: Reviewed and provided comments to the draft Plan of Operation for the Navajo Nation “One-Stop Shop”. The initial purpose of the One Stop Shop is to provide regulatory review of American Recovery Plan Act (ARPA) funded projects; however, at some point, GLDD would like to include all projects that are processed through GLDD. Some of the approvals sought under the Plan would require delegations from the Navajo Nation Council and RDC. We are coordinating with OLC on the legislation for the delegations. We have had several calls with GLDD to discuss the Plan of Operation and they have made edits based on our recommendations. The Plan of Operation is currently with OLC for legislation.

d. Dilkon Medical Center: Winslow Indian Health Care Center (WIHCC) has been working with Delegate Walker on the transfer of ownership of the Dilkon Medical Center (DMC) from IHS to WIHCC. WIHCC entered into a Title V Construction Project Agreement with IHS for the DMC and housing units (south portion) and construction is complete; however, construction with the north portion is still on-going. IHS has two leases for: 1- the DMC and the housing units (RDCMY-013-19 for 43.13 acres) and 2-staff quarters (RDCF-06-21 for 32.27 acres). WIHCC had tried to fast track everything at once by dropping off all the documents at GLDD for processing. But GLDD was not sure how this was supposed to be processed as they had not handled requests like this before. They reached out to NRU for assistance and we had several calls with IHS so they could explain their transfer process and clarify what documentation was needed to achieve this.

Based on the information provided, there would be two separate legislations for each lease. One for the transfer of ownership for IHS purposes. Per NAIHS’s Title V Construction Project Agreement with WIHCC, the Nation needs to approve the transfer of ownership, operation and maintenance of the facility to WIHCC. The legislation was drafted in coordination with OLC, DOJ and WIHCC’s legal counsel to approve the transfer, operation and maintenance and to clarify the two leases that NAIHS has will not be affected by the resolution. Once NAIHS receives the resolution from the Nation approving the transfer of ownership, operation and maintenance of the facility, NAIHS will send written

notification to the Nation requesting to terminate their leases. Then WIHCC will apply for new leases for the locations under separate legislation. Naa'bik'iyati' approved (NABIJN-19-22) the transfer on June 9, 2022.

10. Navajo Nation Department of Agriculture (NND A):

a. San Juan River Farm Board: Brian has monthly meetings with the Farm Board to work through legal issues that stem from the previous Farm Board's unlawful hemp business venture. It was recommended that additional meetings with the BIA and NND A take place to determine the best approach to effectively administer Agriculture Land Use Permits (ALUPs). Brian also advised the Farm Board many of its issues are administrative, not legal, so the Farm Board must seek technical support from NND A. Many of the day-to-day functions of a Farm Board involve making administrative decisions, permittee disputes, participating in ongoing litigation as a governmental entity, Fee Assessments, and issuing Notices to ALUP holders. Lastly, Brian has participated in a planning summit coordinated by the Farm Board to develop a comprehensive action plan for the SJRFB irrigation system issues.

b. James v. DGC12: (On-going). Brian and Irvin 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. The District 12 Grazing Committee will need to revise its Resolution to BIA and serve it if they wish to obtain a court order for compliance. The DGC will need to coordinate additional arbitrations on each legal issue for which OHA deemed to have lacked adequate record on appeal. As of the date of this report, we have not received any further communications from NND A and the District 12 Grazing Committee as to whether any additional action has been taken on this.

c. Tsaile-Wheatfields Grant Agreement: Brian is handling a Directive from the Budget and Finance Committee (BFC) to assist DNR with bolstering a grant agreement for the Tsaile-Wheatfields Agriculture Project. Brian has given two updates to the BFC, reached out to the new project assignee within DNR, met with the Tsaile-Wheatfields Farm Board president, and provided the standard legal template to the individuals overseeing the project's success. The Navajo Nation is waiting for an updated Scope of Work and Proposed Budget from the Water User's Association, a non-profit organization.

11. Minerals Department:

a. NTEC Land Relinquishment: NTEC is applying to the Nation and BIA to have a portion of the Navajo Mine site relinquished back to the Nation. Minerals wrote a letter for the President to sign accepting the relinquishment, but noting there should be land use restrictions on the land going forward. The land to be relinquished contains coal ash and we believe there needs to be some sort of agreement among the Nation, NTEC and the Four Corners Power Plant owners about who will be responsible for the coal ash going forward. NRU will continue to provide legal assistance related to NTEC's application for the relinquishment of certain lands at the Navajo Mine. We remain concerned that the land contains coal ash and there is no agreement about who will be responsible for the coal ash after the land is relinquished. April participated in a discussion on this issue during an RDC meeting at the Nenahnezad Chapter on April 29<sup>th</sup>. One chapter official noted DOJ's concerns, but stated that they

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want to move forward with relinquishment of the land and redevelopment of the land despite DOJ's concern. We continue to advise that there needs to be an agreement in place prior to relinquishment.

b. Minerals Department Primacy Application: The Navajo Nation Minerals Department is going to seek primacy approval under the federal Surface Mining Control and Reclamation Act (SMCRA), to essentially take over regulatory responsibilities for the coal mines located on the Navajo Nation. The draft regulations and other documentation related to primacy issue are currently with DOJ for review. After this review, DOJ, will be able to provide legal guidance to the Navajo Nation Council on the legal aspects of the primacy issue, including the waiver of sovereign immunity that will be required.

12. Navajo Nation Oil and Gas Company: NRU continues to provide legal assistance on Legislation No. 0232-21, which is for three helium operating agreements with the Navajo Nation Oil and Gas Company (NNOGC). DOJ was directed by the Navajo Nation Council to assist with the negotiation of chapter agreements on behalf of the Sanostee Chapter and Teec Nos Pos Chapter and have them ready by Council's Spring Session. Negotiations were still ongoing at the time of Council's Spring Session, so the legislation was sent back to Naa'biik'iyati' Committee for further consideration. A draft Memorandum of Agreement was negotiated for the benefit of the Sanostee Chapter and the negotiations for Tees Nos Pos Chapter did begin. However, there has been no movement on these agreements since both chapters voted to rescind their support for NNOGC's operating agreements.

13. 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), construction contracts and professional service contracts on behalf of NDOT.

a. NMDOT Funding Agreements: There were two agreements processed this quarter for the Beclabito Helipad construction and the access road. The first agreement awarded the Nation \$100,000.00 and will be used to plan, design, and construct a helipad in Beclabito Chapter. The second agreement awarded the Nation \$100,000.00 and will be used to plan, design and improve the helipad access road in Beclabito Chapter.

b. ADOT Funding Agreement: The agreement will provide \$200,608.00 for the maintenance of the Tuba City airport runway. ADOT will contribute 90% and the Nation will be contributing 10% of the cost. ADOT will be responsible for design, engineering, construction administration, grant administration.

c. Intergovernmental Agreement (IGA) - Coconino County: The IGA added the N16 Inscription House Road Improvement Project to complete the subgrade preparation, road reconditioning, chip seal, permanent signage, drainage improvements, and culvert replacements. The costs for the Project would be shared between NDOT and Coconino County.

d. Intergovernmental Agreement (IGA) - Apache County: The IGA added the N136 Lukachukai Road Improvement Project to address drainage, subgrade preparation, applying gravel and soil stabilization for up to 2.8 miles. complete the subgrade preparation, road reconditioning, chip

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seal, permanent signage, drainage improvements, and culvert replacements. Under the IGA, the Nation will provide funding for the Project and upon completion, the County and the BIA will maintain the routes.

14. Navajo Nation Environmental Protection Agency (NNEPA): Work this quarter involved reviewing documents, grant applications, contracts, legal and historical research, gathering of pertinent information, working with outside counsel, reviewing legal documents including Administrative Settlements, and other documents regarding the various Navajo Abandoned Uranium Mines (NAUM) as well as attending weekly, bi-weekly, and monthly meetings regarding NAUMs.

a. 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 met with NNEPA to discuss the Navajo Nation Code provision for power and authority of NNEPA is geared toward regulatory and enforcement authority. NRU identified NNEPA's code provisions that will likely need to be amended as well. Brian assisted NNEPA with 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. As of the date of this report, we have not heard from NNEPA in terms of next steps and whether they will forward the Plan of Operation to Legislative for legislation. The Office of Legislative Counsel had been following up on the change, however, the work is ongoing.

b. RECA Reauthorization (US Congress): NRU occasionally attends meetings that the Navajo Nation Washington Office (NNWO) coordinates. The meetings are to update the Nation about the lobbying of Congress to reauthorize and expand the Radiation Exposure Compensation Act (RECA). Brian reviewed proposed language to place the Navajo Uranium Mine Workers program within NNEPA, that is relevant because RECA reauthorization would impact NNEPA's possible future responsibility. As of June 7, 2022, the President of the United States signed the RECA Extension Act of 2022. This will extend the program deadline for an additional two years. The NNWO and others are advocating for Congress to expand the program to include individuals that don't currently qualify, including those exposed after 1971, whom are currently not covered under the statute.

c. Draft Policy on the Sharing of Tribal Abandoned Uranium Mine (AUM) Information: The goal of the policy was to 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 will 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 policy was finalized this quarter and was presented at the weekly June 7 Weekly AUM call between NNEPA and USEPA Region IX.

15. 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. A second memorandum was issued that addressed the available enforcement actions with a more detailed analysis of the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act (NNCERCLA), 4 N.N.C. §§ 2101 *et seq.* It is clear that there are two available options regarding the cleanup of hazardous waste from past mining activities: (1) an action pursuant to federal CERCLA or (2) an action pursuant to NNCERCLA. The first option would be similar to other efforts to address NAUMs, where the USEPA, Region IX serves as the lead agency, while the second option would be the Nation's first attempt to use its own laws (outside of NNEPA's general authorities for USEPA-led actions).

During a reconnaissance visit for an ablation pilot study, USEPA learned that radiation levels at the site are much higher than previously believed, which has yet to undergo any remediation efforts beyond fencing the former operation area. USEPA and NNEPA have begun discussing time-critical response actions as it is likely needed due to the current risk to human health and the environment. We had internal discussions regarding NNEPA's decision to potentially proceed with an NNCERCLA action, though the urgency of the matter may be a significant factor in the decision-making. USEPA, under current contracts and funding mechanisms, could deploy personnel in a matter of weeks. After internal discussions, NNEPA determined that it was best to proceed with a USEPA-led action, and the agencies will meet with one of the former operators, UNC/GE, next week to discuss next steps. USEPA initiated discussions with the PRP, UNC/GE, to discuss their responsibilities and capacity to address the significant amount of what is thus far known as surface contamination.

16. 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. NRU continues 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 was amended and expanded to include clean-up of Priority Orphan Mines, as contemplated under the Phase Two Trust settlement agreement. This quarter, drafted and finalized a letter granting the Trustee access to two addition NAUM sites.

17. Tronox Settlement – ARAR: (On-going) NRU continues working on completing a comprehensive list of Navajo Nation ARARs to be used for uranium mine clean-up. 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 *hataafii, 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. This quarter,

DOJ, with the assistance of outside counsel, submitted a table of laws and regulations as proposed ARARs. That table has been finalized. The table will undergo one final review from USEPA's managers, and approved laws and regulations will be incorporated into the Engineering Evaluation and Construction Costs (EE/CAs). Brian and outside counsel have also finalized a guidance document on Fundamental Law.

18. Cree Administrative Settlement Agreement: (On-going) NRU has 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 draft settlement agreement 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 finalized a proposed AOC and that was given that to Cree to review. Cree are still exploring their options with USEPA, including a Cashout settlement instead of an AOC. A cashout would allow them to pay one lump sum, but the Nation and USEPA would need to agree to the extent Cree would be let off the hook for any further present and future liabilities. Due to the small nature of the company, its reasonable that they are asking for a lower payment upfront, otherwise they will opt out and file for lack of Financial Ability to pay. We have been gearing up to have a call with Cree regarding their decision to try and appeal to USEPA for a "Cashout" which will result in USEPA doing the removal action work and Cree paying an agreed to sum to cover that cost. Any unknown costs are still at USEPA's discretion to go after under the agreement. NRU had a call with outside counsel to discuss the amounts that the Nation might be willing to accept as part of the Cashout, and have also asked NNEPA input regarding amounts that they would require for any work.

19. Natural Resource Damages (NRD): Pursuant to the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act (NNCERCLA), 4 N.N.C. §§ 2101 *et seq.*, the President of the Navajo Nation serves as the Natural Resource Trustee. In accordance with this authority and responsibility, former President Russell Begay designated the Department Managers for the Departments of Water, Land, Fish and Wildlife, and Historic Preservation as the "Resource Trustee Committee" and this designation continues to serve as the model for Natural Resource Trustee decision-making.

a. Fort Wingate Depot Activity (FWDA) Consent Decree: The proposed consent decree for the FWDA was lodged with the District Court of New Mexico and proceedings stayed pending a thirty (30) day public comment period. The sole public comment received did not address the settlement itself; rather, it indicated concern for the history of atomic energy, its use for defense-related purposes, and the long-term impacts of radiation in the State of New Mexico. It is important to distinguish that some parcels of the former Army Depot will remain under U.S. Army or Missile Defense Agency control for continued defense-related operations and those parcels are not subject to the NRD settlement and consent decree. Furthermore, the known contamination is contained to the former TNT leach beds, groundwater monitoring is ongoing and managed by State, and there was no evidence in the historical record of atomic energy or radiation at the site that is subject to the settlement. The parties anticipate a formal resolution via court approval of the proposed consent decree next quarter.

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The Office of the Natural Resource Trustee (ONRT) for the State of New Mexico is leading and coordinating the Co-Trustees' efforts to begin restoration planning. An initial meeting was held on May 23 to provide background information on the site and the settlement itself, and smaller technical group meetings are scheduled next quarter.

b. Trust Orphan Sites Pre-Assessment Screening (PAS): As previously reported, the PAS for potential NRD claims is under development for identified orphan sites under the Phase 1 and 2 Removal Site Evaluation (RSE) Trust Settlements and related Addenda with the United States. A complete draft of the PAS was circulated for comment and a meeting on the draft and next steps was held June 28. Representatives from the Nation's Resource Trustee Committee were also invited to participate in sub-working groups to provide relevant data and review technical information, and are also expected to participate in the upcoming meetings along with Navajo Superfund Program personnel.

c. Rio Algom Mining, LLC (RAML) Mill and Mine Sites Tolling Agreement: The President signed another tolling agreement to extend the tolling period for potential NRD claims at the RAML sites, generally located in the Grants Mining District, another two years to July 1, 2024. Previous tolling agreements extended the tolling period from 2014 to 2020, then to 2022, respectively. The Public Health Emergency significantly impacted fieldwork and the predicted timelines for assessments and other information that would inform a potential NRD claim. An update meeting for the Co-Trustees is scheduled for July 13.

20. APS Rate Case/ ACC Generic Docket: 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. Late last year, the ACC 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 agreed to and are seeking ACC approval for. The ACC also said that additional information could be presented to demonstrate that the Nation should receive more money for CCT assistance. The ACC referred the CCT issue to a "Generic Docket" where additional information can be submitted. This quarter, the ACC staff continued to host their subgroup meetings to discuss the CCT issue. Outside counsel and April have participated in the subgroup meetings. Was also participate in monthly calls with APS to discuss all things related to their rate case and the Generic Docket. We are also in discussion about whether to file an amicus brief in APS's appeal of the ACC's denial of APS's costs associated with the emission control technology at the Four Corners Power Plant.

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

TFU is headed by Assistant Attorney General Mel Rodis who supervises two (2) Attorneys, one (1) Attorney Candidate, and one (1) Senior 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

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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 FRF disbursement 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 Navajo Nation. Pursuant to the ARPA and Treasury's Final Rule and other guidance in the form of Frequently Asked Questions detailing allowable expenditures of the FRF, Tribes may use the FRF 1) to respond to the public health emergency with respect to COVID-19 or its negative economic impacts; 2) to respond to workers performing essential work; 3) for the provision of government services to the extent of reduction in revenue of the tribal government due to COVID-19; and 4) 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 (NNFRF) and creating the framework and process for approval of future FRF expenditure plans, the BFC passed resolution BFS-31-21 approving FRF procedures and forms for initial eligibility determination reviews of proposed FRF expenditure plans. TFU participated in the Naabik'íyáti and Council meetings on legislation 0257-21. On April 4, 2022, legislation 0257-21 failed at Council with a vote of 15 to 8. TFU participated in drafting legislation 0086-22, and TFU suggested amendments to legislation 0087-22. TFU participated in the advisory meetings, work sessions, and Naabik'íyáti and Council meetings on legislations 0086-22 and 0087-22. On June 13, 2022, legislation 0087-22 failed at Council with a vote of 13 to 9. On June 30, 2022, Council passed legislation 0086-22 with a vote of 20 to 2.

TFU communicated with several Council Delegates to provide guidance on the FRF procedures and to provide updates on FRF eligibility reviews of proposed expenditure plans for possible amendments to legislations 0086-22 and 0087-22. TFU maintained regular communication with Office of the President and Vice President (OPVP), the Navajo Nation Fiscal Recovery Fund Office (NNFRFO), and their consultants, on FRF matters. TFU advised the Office of the Speaker, OPVP, and the NNFRFO about the eligibility of proposed FRF administrative cost budgets and budget revision requests for central support and regulatory offices. TFU advised OOC, OPVP, and BFC with respect to issues involving the NNFRF Hardship Assistance Program. TFU met with OOC and OMB to discuss the process to reimburse the UUFB and Síhasin Fund using NNFRF allocated under section 5 of CJY-41-21. TFU communicated with the FRFO, OMB, and OOC regarding tracking and reporting changes in Treasury's FRF expenditure categories, and regarding processes for transferring FRF into and out of the proposed construction contingencies expenditure plan. TFU attended federal-tribal consultations, listening sessions, trainings, and other external meetings on ARPA. To date, TFU, in consultation with outside counsel, has completed a total of **251 FRF initial eligibility determination reviews** for **200** proposed expenditure plans seeking to utilize NNFRF, and **39** of those reviews were completed during the third quarter of FY2022. Although the NNFRF 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 **four** (4) working days or fewer, while still responding to our assigned client needs. In addition to its work on NNFRF matters, TFU has also participated in several meetings with and advised OPVP, the Division of Social Services (DSS), and the Human Services and Government Unit of DOJ, with respect to the Homeowners Assistance Fund under ARPA.

2. Navajo Nation Comprehensive Budget Process: TFU attended meetings of the BFC and provided advice pertaining to budget matters. TFU attended budget planning meetings of the three Branch Chiefs. TFU proposed substantive edits to the Budget Instructions Manual (BIM), including,

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but not limited to, sections on Navajo Nation grants and treating chapter officials' stipends as fixed costs. TFU presented a report to the BFC on proposed BIM amendments. TFU will be engaged in the budget process during the next quarter and will continue to advise OMB, OOC, BFC, and Council on budgetary matters.

3. Office of the Controller (OOC): TFU advised OOC with respect to issues involving the NNFRF Hardship Assistance Program, such as returned and expiring checks, Privacy Act issues, and addressing check fraud. TFU reviewed for legal sufficiency proposed Services Contracts between OOC and: RapidScale, Inc.; Cogent Communications; Saintsbury Consulting; Jaeho Jang; Diné Protection Agency; Envisio Solutions; Ntersol, LLC; and Verity Management Consulting. TFU also reviewed OOC's corresponding sole source and emergency procurement memoranda. TFU communicated with OOC and external auditor KPMG regarding the single audit. TFU also advised OOC's Purchasing Section with regard to various procurement issues, and assisted OOC in determining the sufficiency of procurement processes used by other Navajo Nation programs. TFU assisted the Purchasing Section and P-Card Section of OOC with updates to P-Card documents, including the application, agreement, and training acknowledgement. TFU assisted OOC's Credit Services Department with lending documents, and advised on the collections and write-off of delinquent loans. TFU assisted the Credit Services Department with revisions to the templates for notice of acceleration and notice of intent to foreclose for home loan accounts in default. At the request of a Council Delegate and OOC, TFU drafted BFC legislation to amend OOC's Accounts Payable policies pertaining to the requirement for W-9s. TFU researched issues for OOC's Property Management Department regarding the ownership and disposal of office trailers. TFU advised the Property Management Department about department policies and forms. TFU drafted an acceptance agreement for the Property Management Department for the acceptance of donated assets. TFU provided edits to the Division of General Services proposed amendments to the Property Management Department's policies on the sale of surplus vehicles. TFU consulted with OOC on use of Permanent Fund Income for the Crownpoint Hotel project. TFU worked with the Investment Section regarding funds from investment accounts bequeathed to the Nation from a deceased donor. TFU advised OOC with respect to the Veterans Trust Fund. TFU worked with OOC to propose revisions to the Master Investment Policy and a subpolicy for the investment of the Nation's Fiscal Recovery Funds. TFU advised the Investment Section on the Nation's tax status and assisted in drafting a response to an investment manager's audit question. TFU responded to requests from the Investment Section related to the Navajo Nation's communications with the Department of the Interior's Bureau of Trust Funds Administration. TFU advised OOC regarding possible modifications to the Nation's agreements with an investment manager and its investment consultant to accommodate NNFRF related investment work. TFU reviewed the proposed Barrow Hanley contract amendment and advised Investment Section on termination documents related to investments held with UBS Trumbull. TFU drafted a solicitation for procurement of a financial services advisor for OOC. TFU worked on updating internal documents pertaining to various trust funds and accounts. TFU assisted OOC with a demand letter to a subrecipient of the Nation's Coronavirus Relief Funds. TFU advised OOC with respect to the U.S. Treasury - Office of the Inspector General's desk review of the Nation's Coronavirus Relief Funds to review for compliance with the CARES Act.

4. Investment Committee (IC): TFU drafted multiple resolutions for the IC related to the Navajo Nation's various investment matters, including resolutions regarding changes to the Finance and Accounting Scholarship Program, the Master Investment Policy, a contract with one of the Navajo Nation's investment managers, and adoption of a new sub-policy concerning NNFRF. TFU attended all IC meetings. TFU participated in meetings between OOC and NNGE and drafted an extended forbearance letter agreement between the Nation and NNGE. TFU advised the IC on the Navajo Nation process for engagement of a new investment manager and termination of other investment managers. TFU participated in meetings regarding

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a proposed bond issuance. TFU joined a discussion with the Navajo Nation's investment consultant on the rebalancing of the Navajo Nation's investment portfolio. TFU drafted an investment sub-policy for NNFRF funds.

5. Office of Management and Budget (OMB): TFU worked with OMB's Contracts and Grants Section on issues pertaining to the Nation's FY2023 Indirect Cost Rate Proposal (ICRP) to be submitted to the Department of Interior's Interior Business Center. TFU consulted with OMB regarding TFU's proposed substantive edits to the Budget Instructions Manual, including section X relating to Navajo Nation grants and treating chapter official stipends as fixed costs. TFU researched legal issues pertaining to the Phoenix Urban Navajo Trust Fund and the related grant to the Phoenix Indian Center. TFU worked with OMB on revisions to the multi-year grant agreement template. TFU communicated with OMB regarding updating Treasury's FRF expenditure categories for certain FRF business units in the FMIS.

6. Office of the Navajo Tax Commission (ONTC): TFU advised ONTC on the Navajo Nation Tax Code. TFU discussed proposed amendments to the Sales Tax with ONTC and OLC. TFU assisted ONTC on a procurement matter. TFU participated in multiple taxpayer conferences with ONTC and taxpayers and drafted conference decisions. TFU drafted memoranda and private rulings from ONTC to taxpayers on the applicability of Navajo Nation taxes to business activity within the Nation. TFU drafted a denial letter in response to a taxpayer's request for a refund. TFU successfully negotiated settlements of taxpayer appeals of ONTC tax assessments pending before the Navajo Office of Hearings and Appeals. TFU drafted tax closing agreements to settle tax disputes with taxpayers and assisted ONTC to collect settlement payments. TFU advised ONTC regarding its expenditure plan. TFU prepared a presentation regarding the Possessory Interest Tax for ONTC staff. TFU advised ONTC on draft responses to taxpayers' frequently asked questions. TFU advised ONTC on posting current and prior versions of the Navajo Nation Tax Code on the ONTC website. TFU advised ONTC regarding an electronic signature form and public notice requirements.

7. Department of Retirement Services (NDRS) and Retirement Committees: 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), Retirement Savings Plan Administrative Committee (RSPAC), and Deferred Compensation Plan Administration Committee (DCPAC). TFU drafted proposed resolutions for RPAC/RSPAC/DCPAC, and attended monthly Committee meetings. TFU participated in multiple meetings with NDRS, OOC, and Principal Financial Group to address needed updates to NDRS' files. TFU participated in discussions with NDRS and actuarial consultant Willis Towers Watson, on recommending discount rates, fringe rates, and amortization periods for FY2023; and TFU drafted a BFC resolution on adoption of the proposed FY2023 fringe rates. TFU assisted NDRS with revisions to Willis Towers Watson's proposed plan to locate terminated vested Retirement Plan participants. TFU advised NDRS on hardship withdrawal issues related to the 401(k) Plan. TFU researched and presented to the RSPAC on establishing an administrative process for 401(k) Plan participants to make Plan changes when they have a missing spouse and are unable to obtain spousal consent to the changes; and TFU drafted a spousal consent waiver template. TFU researched and presented reports to RPAC and DCPAC on proposed changes to final average earnings calculations for Navajo Nation delegates. TFU advised NDRS regarding LGA-certified chapters becoming participating affiliates in the Retirement Plan and the 401(k) Plan. TFU prepared a contract modification to amend the Nation's contract with Principal Financial Group. TFU edited a proposed 401(k) Plan Summary to be sent to all Plan participants. TFU provided trainings to NDRS staff. TFU advised NDRS on procurement matters and completed legal reviews of NDRS' proposed Services Contracts.

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8. 24th Navajo Nation Council and Committees: TFU regularly attended BFC meetings, held at least bimonthly, and attended Council and Naabik'iyáti Committee meetings as needed, particularly related to NNFRF matters. TFU attended several other Standing Committee meetings and work sessions. TFU met with OLC and ONTC regarding proposed amendments to the Tax Code. TFU responded to a request by OLC and a Council Delegate, to draft amendments to the Budget Instructions Manual in order to amend the definition of "fixed costs" for purposes of budgeting for chapter official stipends. At the request of a Council Delegate and OOC, TFU drafted BFC legislation to amend OOC's Accounts Payable policies pertaining to the requirement for W-9s. TFU responded to various questions by Council Delegates regarding NNFRF and related legislations. TFU advised a Council Delegate regarding the possibility of FEMA reimbursement for the summer youth employment program. TFU participated in a meeting on the Shiprock Hotel project. TFU consulted with OLC on various draft legislations and legislative amendments, provided feedback, and suggested edits. TFU drafted resolutions for BFC consideration related to investment and retirement matters, including regarding changes to the Finance and Accounting Scholarship Program, the Master Investment Policy, a contract with one of the Navajo Nation's investment managers, adoption of a new sub-policy concerning ARPA FRF funds, and adoption of FY2023 fringe rates. TFU provided a report to the Health, Education, and Human Services Committee regarding the Veterans Trust Fund. TFU provided a report to Council on FRF premium pay. TFU conducted eligibility reviews of Legislative Branch's submissions of proposed FRF administration budgets.

9. Miscellaneous Matters: TFU assisted and advised the Office of the Attorney General (OAG) on various NNFRF matters and procurement matters. TFU assisted the Attorney General in preparing an update to FY2021 the attorney audit letter. TFU frequently advised and assisted other units of DOJ with various requests for services for their respective clients, particularly with respect to questions on FRF and other funds, contracts and procurement, payments to vendors, matters involving OOC and/or OMB, and taxation. TFU researched the requirements of sole source procurement and the need for compliance with the NBOA. TFU provided a training to attorneys from other units of DOJ. TFU reviewed and proposed edits to a draft fund management plan for the Diné Relocatee Fund. TFU assisted LU on a P-card matter. TFU worked with LU and OOC on income tax withholding issues and opening an escrow account for the Gold King Mine spill settlement. TFU worked with HSGU and its clients on contract support cost and IDC issues. TFU met with HSGU, ONNSFA, and a donor regarding a planned bequest to ONNSFA for the purpose of funding a new scholarship program. TFU communicated with HSGU, outside counsel, OOC, and Navajo Nation programs regarding Treasury offsets. TFU advised HSGU regarding the 20% contract modification rule in the context of small purchases. TFU advised HSGU on a subrecipient agreement. TFU advised HSGU that FRF Hardship Assistance payments are not taxable income. TFU participated in a call with HSGU, OOC, OMB, and DSS regarding Title IV-E funds and advised HSGU on developing a fund management plan. TFU collaborated with HSGU in advising OPVP and DSS on DSS' Homeowners Assistance Fund program. TFU assisted HSGU with a request to OOC regarding Property Management Department policies. TFU advised HSGU on tax issues. TFU assisted HSGU in advising the NNVA on Veterans Trust Fund issues. TFU collaborated with ECDU regarding issues surrounding implementation of the Crownpoint Hotel project using Permanent Fund Income. TFU advised ECDU on a fund and fund management plan for a new Intellectual Property Department within DED. TFU assisted ECDU and CU in advising DCD regarding NNFRF matters. TFU assisted ECDU with contract issues involving ECDU's clients. At ECDU's request, TFU drafted a memo to the U.S. Department of the Interior regarding the applicability of Navajo Nation Sales Tax to gross receipts of a construction contractor for construction services performed within the Nation. TFU met with ECDU, BRD, and ONTC regarding improvements to the business registration process and collaboration between ONTC and BRD. TFU advised ECDU and CU on the requirements for a New Mexico Nontaxable Transaction Certificate. At NRU's request, TFU proposed amendments to the Acquisition of Lands Act and the Land Acquisition Trust Fund Statute. TFU assisted NRU with an RFS from DNR regarding the Nation's travel policies and the requirement for travel expense reports to be submitted timely. TFU collaborated with NRU to advise

NNEPA on NNFRF matters. A TFU attorney volunteered to participate in a drafting a response on religious freedom issues in answer to a request by the U.N. Special Rapporteur on Freedom of Religion. TFU attorneys attended continuing legal education webinars and conferences to satisfy licensure requirements.

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

WRU is led by Assistant Attorney General G. Michelle Brown-Yazzie. Ms. Brown-Yazzie supervises one (1) Attorney Candidate, one (1) Administrative Legal Secretary, and one (1) Legal Secretary. WRU works to secure the water rights of the Navajo Nation whether by litigation or negotiation. WRU works with the Water Rights Commission, Department of Water Resources-Water Management Branch. Below is a summary of WRU's work for this quarter:

1. Colorado River Basin (AZ). *Navajo Nation v. Department of the Interior*. As previously reported, the Department of Interior, the State of Arizona and other parties opposed the Navajo Nation's claims and the Ninth Circuit Court of Appeal's April 28, 2021 Opinion in this matter. A *Petition for Rehearing En Banc and to Correct Opinion* by Intervener-Appellees was filed on July 29, 2021. On February 17, 2022, the Ninth Circuit issued its denial of Intervenor-Appellees Petition for Rehearing En Banc. During this quarter, the State Parties filed a petition seeking certiorari to the U.S. Supreme Court and the U.S. filed two requests for extension that were granted. Due to the State Parties filed petition and the possible petition from the U.S., LU and WRU, on behalf of the Navajo Nation, filed a stipulated motion to vacate the scheduled status hearing in the AZ Federal District Court while the matter is pending in the Supreme Court. The Law Firm of Skadden Arps, who specialize in Supreme Court cases, is assisting the Nation in the Supreme Court matter.

2. Other Colorado River Matters/ Colorado River Tribes. On March 28, 2022, Interior Secretary Debra Haaland held a listening session in Albuquerque with all Colorado River Basin Tribes. The Navajo Nation was represented by President Nez, WRU and DWR/WMB. Assistant Secretary of Water and Science Tanya Trujillo, Commissioners and BOR management were also participants at the listening session. Updates were given from both sides. Secretary Haaland committed to working with the Colorado River Basin Tribes on water issues affecting the tribes. On June 27, the Ten Tribes Partnership issued a letter to Secretary Haaland inviting her to meet with the Colorado River Tribes on August 10 to build upon the topics discussed at the March meeting held in Albuquerque. WRU continues to attend meetings for Tribes on Drought Response Operations hosted by BOR.

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. The Special Master released her findings and Recommended Decree on May 25, 2022. WRU, WMB, and contract counsel have reviewed and analyzed the report. The Recommended Hopi Decree gives insight to the Navajo Nation of how the Special Master may make decisions in the Nation's case. All written objections must be filed by November 21, 2022. The State District Court shall hold hearings and may adopt, modify, or reject the Master's report in whole or in part

b. *In re Navajo Nation, 6417-300*. The Phase I trial is scheduled to begin in April of 2023. WRU and ST continue to work on pre-trial matters. Depositions of the Nation's witnesses are scheduled to be completed by July 29. As ordered, the Nation, the U.S. and SJSPT filed a joint report on the Navajo Nation – SJSPT Treaty on January 10, 2022. On March 25, the Navajo Nation filed a Motion for Protective Order. On April 28, the SJSPT filed a Response to the Navajo Nation's Motion for Protective Order. On June 16, WRU and ST attended an Oral Argument hearing set by the Special Master regarding this filing. WRU is still waiting for the Special Master's decision on the protective order to be released. WRU also joined ST in meeting with Navajo Nation Television and Film to discuss the development of a demonstrative video tour of the Little Colorado Basin for the Special Master's review. On July 1, WRU and AG McPaul attended a presentation given by ST regarding the DCMI issue for Phase I.

- Phase II and Phase III. The Trial date for Phase II and III is scheduled for September 20, 2027. There is a stipulated scheduling order for pre-trial deadlines and hearings.

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. ADWR filed another request for an extension. No activity this quarter.

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 as settlement proposals are discussed. WRU continues to work with WMB to obtain complete available data on water use and to update maps on the trust lands. 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. On June 1, WRU filed a Status Report due to the Court. On June 6, WRU and WMB met with the Pueblo of Zuni's representative to discuss case updates and establish a monthly meeting schedule. The Parties jointly agree that further work by the Technical Committee and the Settlement Teams is needed and that further time is necessary to determine whether a negotiated resolution of Subproceeding 2 is feasible.

6. San Juan River Basin (UT) Settlement Legislation, Funding and Implementation. WRU and DWR/WMB continue to participate in NUWRSA implementation efforts. The Navajo Nation Utah Water Rights Conformed Settlement Agreement was executed on May 27, 2022 at the Navajo Nation Welcome Center in Monument Valley, UT. Prior to the signing ceremony, the conformed agreement was approved by the Naabik'iyat'i Committee, as required by CJA-7-16 through Legislation 0094-22. In preparation for this signing ceremony, WRU prepared talking points for President Nez and coordinated logistics with UT representatives.

Westwater. WRU and WMB participate in meetings with the Utah State Engineer's office, City of Blanding, NTUA and others to address an electric and water project for the community. A continued concern for project participants is the Navajo Nation's contribution to funding the project and water rights for the Westwater community needs. The project is expected to cost \$8-10 million and the State of Utah has already committed \$3.5 million to the project from their ARPA funds. The project participants are seeking an award from the San Juan County Conservancy District of 50 afy of water rights to serve the area, including the Westwater community. Blanding passed an ordinance that would allow such service to Westwater. WRU facilitated the submission of a Letter of Support from the Navajo Nation for the water rights application, that was signed by President Nez. WRU awaits the presentation of this support letter to Blanding City Council and the San Juan County Conservancy District Board. Parties to the project are still working to allocate necessary project funding. WRU continues to work with the parties to finalize a MOU and awaits finality on project funding allocations.

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 denied objectors' motion to reconsider. The NM Supreme Court remanded the matter to the NM District Court to address any outstanding matters. Since the NM Supreme Court's ruling, WRU filed two Motions for Order to Show Cause against Victor Marshall, Intervener's Attorney, for failure to pay the Navajo Nation's court costs as ordered in this matter. To date, there has been no movement on the motions. As previously reported, Victor Marshall was indefinitely suspended from practicing law in the State of NM. On May 26, 2022, the NM Supreme Court held Victor Marshall in Contempt of Court for practicing law without a license.

b. Clark v. Haaland. This matter 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 of 2021 by objectors to the settlement who were represented by Victor Marshall. Victor Marshall is the suspended attorney, as mentioned above, that represented 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 Litigation Unit, filed a joint motion to dismiss with NAPI counsel on January 14, 2022. The San Juan Water Users Association were dismissed as a Plaintiff in the matter without prejudice due to not having new counsel to represent them. On April 18th, the Navajo Nation filed a reply to Plaintiff's April 4th Response to the Motion to Dismiss. No decisions have been made on the pleadings filed.

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.

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' proposed amendments to PL 111-11 is currently in the federal review process with Senator Ben Ray Lujan planning to be the sponsor of the legislation. 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 soon.
- 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 in New Mexico. The proposed PL 111-11 amendments contain language that would address this double taxation issue if they remain in the bill and are passed. NM is not supportive of the language in the bill addressing the double taxation matter. WRU recommends that this matter be addressed by the Office of the Navajo Tax Commission and/or TFU. The double taxation is an additional cost of \$50M to \$100M that is not budgeted for. If the matter remains unresolved, the completion date may be affected.
- Cutter Lateral Operations, Maintenance, and Replacement (OM&R) Contract: The Bureau of Reclamation declared the Cutter Lateral substantially 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. In the PL 111-11 proposed amendments, the Nation is seeking an extension of that waiver from ten years to fifteen years. WRU, DWR-WMB and NTUA, worked with BOR to finalize the contract. On June 9, 2022, WRU and WMB attended the Commemoration and OM&R Transfer Ceremony for the NGWSP's Cutter Lateral's completion.

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:

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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*. In March 2021, the NM District Court granted the U.S. motion to intervene in the matter. WRU represents the Navajo Nation. The matter is scheduled for trial in February 2023. WRU and LU are working on pre-trial matters in accordance with the scheduling order. On July 1, WRU and LU filed Expert Witness Disclosure Statement and Responses and Objections to Appellant City of Farmington’s First Set of Interrogatories and Request for Production.

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 and technical experts have been meeting with the applicant’s attorney and technical experts to find a solution and agreement. If agreement cannot be made between the parties, this matter may proceed to an administrative hearing in the next quarter.

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. On June 15, WRU presented its Monthly Report to WRC.

b. 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.

c. 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. No activity this quarter.

d. Recoup of NN-NM Settlement Fund Interest. WRU and NNWO continue to work with the U.S. House Committee on Natural Resources Subcommittee on Water, Oceans, and Wildlife on amendments to address the water settlement funds authorized for the NN-NM settlement of the SJR. The interest earned on the funds were mistakenly deposited into an interest earning Trust Fund in 2009 and then inadvertently reverted to the Treasury in 2019. The proposed amendments would authorize the earned interest to be restored to the Nation’s Trust Fund. Duck Valley and three other tribes are in a similar situation as the Nation. The proposed amendments are intended to be a “fix”. The amount expected to be returned to the NN Trust Fund is over \$6 million. Once the bill is introduced, a hearing on the matter will be scheduled. On June 13, 2022, WRU met with the Duck Valley legal representative to discuss recent actions on the proposed amendments. On June 16, WRU and NNWO met with Congressional staff on the matter on. NNWO will be reaching out to Senator Lujan’s office to update them on recent efforts.