



NAVAJO NATION DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

ETHEL BRANCH
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Fiscal Year 2023, Second Quarter

Report of the Attorney General

The Office of the Attorney General (OAG) is led by the Attorney General (AG), Ethel B. Branch, and the Deputy Attorney General (DAG), Heather Clah. OAG oversees and works in collaboration with the Office of the Prosecutor (OTP), the 7 Units of the Department of Justice (DOJ), and the Navajo-Hopi Legal Services Program (NHLSP). Collectively, these Offices, Units, and Program include 122 budgeted positions; 89 of these positions are filled and 33 are vacant at this time (amounting to a vacancy rate of approximately 30 percent).

This Quarter was very productive for OAG and the Office, Units, and Program we lead. Together, our key accomplishments this Quarter include:

- Successful briefing and oral arguments in the United States Supreme Court case of Arizona v. Navajo Nation,
- Development of a plan how to strengthen the Nation's public safety system and response (including through Title 17 amendments),
- Development of shared recommendations with the Navajo Nation Division of Social Services on how to strengthen the Nation's ICWA Program,
- Preparation for Arizona water rights settlement negotiations,
- Efforts to re-establish a Navajo Nation Task Force that will improve the Nation's response to fraud and corruption and prevent the loss of the Nation's assets and the Navajo People's money to fraud and corruption
- Development of comprehensive DOJ comments on a revised executive branch review system advanced by the Office of the President and Vice-President (OPVP),
- Recruitment efforts at the Native American Law Student Career Fair at the University of Utah S.J. Quinney College of Law and UNM Law School,
- Participation in strategic planning with OPVP,
- Development of DOJ priorities presented to the Law & Order Committee,
- Development of focused goals for OAG, OTP, DOJ, and NHLSP that center on improving productivity and client satisfaction, as well as work that will move the mark in improving efficiency and effectiveness in Navajo Nation government and have a meaningful impact on our Navajo People at the hogan level

Specific additional accomplishments by OTP, the DOJ Units, and NHLSP follow below.

OAG will prioritize the following work in the Third Quarter of FY2023:

- Moving Arizona water rights settlement efforts forward in collaboration with the President and Council
- Assisting the President in fully rolling back Covid-related barriers to Chapters being open and available to the Navajo People
- Increasing the housing supply on Navajo Nation in collaboration with the President's 1000 Homes Initiative
- Developing a comprehensive growth and development plan for the Nation to complement the Nation's housing development efforts and ongoing infrastructure development
- Filling staff vacancies and assisting with rapid hiring all across Navajo Nation government
- Assisting with rapid expenditure of ARPA and other federal and state dollars and minimizing losses of those dollars
- Speeding up the pace at which documents and assignments move through DOJ
- Re-establishing a Task Force focused on preventing fraud and corruption in Navajo government
- Resuming Public Safety Summits to identify and pursue immediate measures by public safety partners in a shared and collaborative Navajo Nation response to violent crime, substance abuse, and suicide
- Amending Title 17 to better protect victims and eliminate inefficiencies in our public safety system
- Strengthening the Nation's ICWA program so the Nation can minimize loss of our children to non-Navajo homes

Office of the Prosecutor

The Office of the Prosecutor (OTP), led by Chief Prosecutor Vernon Jackson, continues to improve efforts to make Navajo Nation communities safer. This Quarter, OTP moved further into the domain of obtaining federal investigative materials from the Federal Bureau of Investigation. This information sharing mandate is specified in 25 U.S.C. § 2809(a)(1) & (a)(3) which supports that federal officials provide investigative material to the Navajo Nation to ensure these major crime cases are reviewed for prosecution in Navajo Nation courts. OTP also collaborated with the New Mexico U.S. Attorney's Office to develop a joint application for a federally-funded Special Assistant U.S. Attorney able to prosecute cases both in Navajo and federal courts with a special focus on violent crimes against women. OTP continues to prioritize victim services and will soon share its recommendations on how to make Navajo communities safer with Navajo Nation leadership.

Water Rights Unit

This Quarter, the Water Rights Unit (WRU) made it a priority to provide water rights orientations and updates to the incoming President, Vice-President, Speaker and the Navajo Nation Council. WRU has been especially busy this Quarter with litigation at the federal and state levels. On Monday, March 20, 2023, the United States Supreme Court heard oral arguments in the consolidated cases of Department of the Interior v. Navajo Nation (Docket No. 22-51) and State of Arizona v. Navajo Nation (Docket No. 21-1484). WRU worked with outside counsel, the Native American Rights Fund's Tribal Supreme Court Project and the Georgetown Supreme Court Institute, to ensure that the Nation's Supreme Court Counsel was adequately prepared. In addition, the Nation's Phase I Trial in the Little Colorado River Litigation begins on April 24, 2023. WRU is working closely with outside counsel on pre-trial preparation. The trial is expected to last three months and will be held in Phoenix. WRU requests a strong Navajo Nation presence during the first week of the trial. In addition, WRU represents the Nation in water rights settlement negotiations in Arizona and also in the Rio San Jose and Zuni River Basins in New Mexico. An in-person Leadership Meeting was held on April 15, 2023 at Twin Arrows Casino Resort to discuss resumption of Arizona settlement negotiations. WRU works closely with the Water Management Branch and has drafted proposed settlement agreements that will be submitted to the Navajo Nation Council for consideration and approval. Once approved, the settlements will be submitted to the Nation's Congressional Delegation for introduction and approval by Congress. The goal of these settlements is for the development of water rights infrastructure development to serve Navajo Nation community needs.

Litigation Unit

The Litigation Unit participated in a number of federal and Navajo Nation court proceedings involving significant legal issues for the Nation. The Unit is directly representing the Nation in the Clark v. Haaland litigation pending in the 10th Circuit, which challenges the Nation's water rights settlement for San Juan River water in New Mexico. The Unit also is directly representing the Nation in the Bears Ears litigation pending in the Federal District Court of Utah against the State of Utah, two counties, and several individuals, who are represented by some of the largest law firms in the United States. The Unit actively assisted in preparation for the Nation's breach of trust case in the U.S. Supreme Court, Arizona v. California. The Unit also took the lead in filing an amicus brief on behalf of the Nation and a number of other Indian tribes and tribal organizations in the Lac De Flambeau v. Coughlin case. The Unit continues to work with other counsel in the San Juan County, New Mexico redistricting case, as well as the Nation and the Gaming Enterprise's challenge to the Bureau of Indian Affairs' taking of land into trust for the Hopi Tribe under the Twin Arrows road. In the Navajo Nation courts, the Unit continues to defend the Nation from Ervin Chavez's attack on the

regional school boards and Plan 6 A approved by HEHSC for community school board apportionment. The Unit also continues to defend the 2017 At-Will legislation from a number of challenges in the Window Rock District Court. At the same time, the Unit continues to respond to a high volume of employment-related requests for review of proposed disciplinary actions and related review of proposed policies and procedures. The Unit is actively involved in proposed amendments to the Personnel Policies Manual. The Unit is also directly representing and advising OPVP in renewed discussions with the United Mine Workers Union. Finally, the Unit is actively litigating employment grievances in the Office of Hearings and Appeals.

Tax & Finance Unit

The Tax & Finance Unit (TFU), led by AAG Mel Rodis, advises the Fiscal Recovery Fund Office (FRFO), the Office of the Controller (OOC); the Office of Management and Budget (OMB); the Budget and Finance Committee (BFC); the Investment Committee (IC); the Navajo Tax Commission (NTC); the Office of Navajo Tax Commission (ONTC); the Navajo 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). TFU's notable projects this Quarter include completion of 11 Executive Official and 164 Reviews, completion of 24 Requests for Services, and responses to approximately 65 requests for assistance that were not submitted as RFSs. DOJ as a whole issued 90 initial eligibility determinations of proposed Fiscal Recovery Funds (FRF) expenditure plans in the Second Quarter, and most of those reviews were completed by TFU attorneys. TFU drafted an FRF subrecipient risk assessment form to be used by the FRFO. TFU advised OOC regarding the U.S. Department of Treasury's Office of the Inspector General desk review of the Navajo Nation's use of its allocated Coronavirus Relief Funds (CRF) under the CARES Act, and the use of CRF-eligible UUFB and Síhasin-funded project costs to replace CRF-ineligible costs and to address unexpended CRF. TFU also assisted in drafting a fourth NNGE extended forbearance letter for the Acting Controller's review and action. TFU and outside counsel advised the OOC and IC on the NNGE loan restructuring, reviewed and commented on draft terms sheets, and drafted an IC resolution to reject NNGE's proposed term sheet and to approve a new term sheet. TFU and outside tax counsel assisted the OOC to dispute and resolve an IRS penalty for over \$243,000 related to payroll taxes for the period January through March 2022. TFU collaborated with HSGU and the former Executive Director of the Navajo Nation Veterans Administration on drafting and editing proposed amendments to the Veterans Trust Fund statute. TFU drafted proposed amendments to the Procurement Rules and Regulations and to OOC's P-Card policies to allow use of the operations P-Card for services up to \$10,000.

Economic & Community Development Unit

The Economic and Community Development Unit (ECDU) is led by Acting AAG Katherine Belzowski. ECDU assists the Division of Economic Development (DED), the Division of Community Development (DCD), and Navajo Gaming Regulatory Office. ECDU also monitors State and Federal election issues that affect the Nation. A majority of ECDU's work this Quarter focused on ARPA projects. Specifically, ECDU worked with DCD to finalize the subrecipient agreement for the CJY-22-29 Electrical Homes Connection project; assisted DCD in finalizing the Chapter's subrecipient template with CU; and assisted DCD in drafting DCD's first work order under its Indefinite Delivery Indefinite Quantity (IDIQ) contract for Chapter FRF project scoping support. ECDU also continued to provide subordinate project management to the DED Support Service Department for the U.S. Treasury's State Small Business Credit Initiative (SSBCI) program. This involved coordinating meetings and overseeing the Technical Assistance (TA) application development among DED and Dineh Chamber of Commerce (DCC), which will serve as DED's administering entity for the TA program. Getting to this point required coordination with various tribal and federal entities on the Nation's proposed programs under its pending SSBCI application. In addition to its work on ARPA projects, ECDU worked to streamline the capital outlay process for power line projects to provide capital outlay money to utility providers in a faster and more efficient manner. ECDU also spent a considerable amount of time in its support of DED's Real Estate Department in its negotiations with Antelope Point Holding to resolve their long-standing leasing issues. Once these issues are resolved DED will be able to work with National Park Service and APH on how to best move economic development in the region forward.

Human Services & Government Unit

This Quarter, the Human Services and Government Unit (HSGU) addressed and advocated for the needs of the Navajo Nation through representation at the tribal, state and federal level. HSGU, in coordination with the ICWA Program, advocated the Navajo Nation's position and best interest at the Utah State legislature for a Utah State ICWA bill. Additionally, HSGU has provided guidance to Navajo Nation departments on their P.L. 93-638 contracts to ensure Navajo Nation departments are fully funded and actively spending down funds while also informing BIA of the Navajo Nation's position regarding BIA's mischaracterization of how the Navajo Nation is expending funds. To protect the best interest of the Nation, HSGU is also working with the Risk Management Program and other Navajo Nation departments on the defense of Federal Tort Claims Act (FTCA) claims in federal and tribal court. To improve services, HSGU has been working with the Department of Child Support Services on various issues related to child support matters that will help custodial parents timely receive child support payments and ensure that non-custodial parents make child support payments. To facilitate economic growth on the Navajo Nation and provide services, HSGU has also been providing guidance on

ARPRA related questions and reviewing, editing, or negotiating contracts that would allow services to be carried out for our Navajo People. In addition to the above-mentioned, HSGU has been providing guidance to assist with the overall operation of the Navajo Nation government.

Natural Resources Unit

The Natural Resources Unit (NRU) is led by Assistant Attorney General (AAG) Veronica Blackhat. NRU handles all legal matters pertaining to the development and use of the Nation's land and natural resources and protection of the environment. Primarily, NRU provides legal assistance to Division of Natural Resources, the Navajo Nation Environment Protection Agency and the Navajo Division of Transportation. This Quarter NRU's work featured a steady amount of document review pertaining to rights-of-way, leases, contracts, memorandum of agreements, intergovernmental agreements, grant applications and agreements with various federal agencies, meetings, legal research, and other work for ongoing projects. NRU also participated in the Resources and Development Committee's regular meetings, leadership meetings and work sessions related to issues pertaining to natural resources and protection of the environment. Highlights include coordination among all attorneys assigned to abandoned uranium mine matters, a finalized Subrecipient Agreement template for water and wastewater projects, review of Initial Eligibility Determinations for Fiscal Recovery Fund projects, updated rules and regulations to support and improve tribal park operations, the development of Executive Order 02-2023 regarding the vetting of energy proposals (along with the vetting team's commencement of the vetting of energy proposals) and the drafting of a resolution for the Peabody Infrastructure Committee regarding the allocation of funds to various projects.

Chapter Unit

The Chapter Unit (CU), led by AAG Rodgerick Begay, responded to requests for legal guidance from 43 Chapters this Quarter and completed 51 requests for legal services. The CU also received additional work from other Navajo Nation governmental clients requiring assistance regarding Chapter-related matters. On February 28th, CU provided a training to the Legislative District Assistants on the History of Navajo Local Governance and the four models of possible amendments to the Local Governance Act (LGA). On March 29th, CU assisted in providing a training to Chapter Officials of non-governance certified Chapters regarding supervision of the Community Service Coordinator (CSC). There are plans to offer the training to governance certified Chapters including the CSC and Chapter Managers. The Navajo Nation Fiscal Recovery Fund Expenditure Plan also continued to generate some work such as FRF reviews. A couple of notable accomplishments were drafting a template Chapter Resolution to comply with BFS-31-21 to eliminate the amount of FRF applications being sent back to Chapters; CU also helped

finalize the template for Sub-Recipient Agreements to be used by governance certified Chapters seeking administration of FRF project funds. CU helped to create a template form for Chapters within Navajo County to be used to allow certified Heavy Equipment Operators from the County to operate Chapter Heavy Equipment during weather related emergencies. One of the more time-consuming aspects of the CU workload was trying to address the internal turmoil occurring at several Chapters. This Quarter, another court issued a temporary protection order involving two individuals within the same Chapter. CU received several reports of disorder occurring during Chapter meetings and reports from Chapter Officials and/or Staff being concerned about their safety. This may require a more comprehensive discussion among Navajo Leadership.

Navajo-Hopi Legal Services Program

Navajo-Hopi Legal Services Program (NHLSP) is led by Director Susan Eastman. NHLSP represents individual relocation benefit applicants in their federal appeals of denial determinations by the Office of Navajo and Hopi Indian Relocation (ONHIR). This Quarter, NHLSP has had 10 cases in the federal District Court, 6 in the 9th Circuit Court of Appeals, and 6 cases remanded back to ONHIR from federal court for those relocation clients who prevailed. NHLSP also assists with Navajo-English interpreting for NHLSP's relocation clients, and represents the Tuba City Child Support Services Office before OHA in monthly child support hearings. NHLSP attended 61 OHA hearings and reviewed and edited 25 child support orders this Quarter. NHLSP also advises the Navajo-Hopi Land Commission Office.

For additional detail on the work of OAG, OTP, DOJ, or NHLSP, please contact OAG at x6345.