

# NAVAJO NATION DEPARTMENT OF JUSTICE

## QUARTER 2

<JANUARY TO MARCH 2022>

Attorney General: Doreen N. McPaul

Deputy Attorney General: Kimberly A. Dutcher

## STATUS OF THE DEPARTMENT

This quarter, the Navajo Nation Department of Justice (DOJ) turned 40 years old! The Navajo Nation Council created the DOJ by Resolution No. CF-8-82 dated February 5, 1982. The Resolution provided that DOJ would become operational on March 1, 1982 and the Nation's legal matters would transition from outside legal counsel to the DOJ. The goal was for DOJ to assume 90% of the Nation's legal work by fiscal year 1987. The Resolution No. CF-8-82 further approved DOJ's Plan of Operation and also dissolved the Division of Legal Services, which was DOJ's predecessor. DOJ's first Attorney General was James Abourezk and the first Deputy Attorney General was Lawrence Ashenbrenner. In 1982, DOJ's office was located in what is currently the Office of the President and Vice President and DOJ had approximately thirty (30) employees.

Creating DOJ was largely a result of the work of the Navajo Nation Council's Select Committee for Design of a Department of Justice, which was established through Resolution No. CN-67-80. In its report to the Navajo Nation Council, the Committee described three (3) organizational models, and the Council selected the model which structured DOJ based on subject matters critical to the Navajo Nation. DOJ therefore was organized by subject matter units, including the Office of the Attorney General, Administration, Economic Development, Human Services, Labor Relation, Legislative, Natural Resources, Tax and Tribal Government units. Today, DOJ retains this structure, but has expanded to include other areas including Litigation, Water Rights, and Chapter Units.

In a letter to the Navajo Nation Council, which accompanied the Committee's Report, former Chairman Peter MacDonald wrote, "Today we have a new opportunity to reach yet another milestone in our quest for full sovereignty and complete self-reliance . . . If the Tribal Council is prepared to act boldly and to move forward to create a Department of Justice for the Navajo Nation, I believe that we will be putting into motion a plan and a strategy to build a new Navajo institution that will in the years to come provide for Navajo self-reliance in the legal arena." Forty years later, DOJ is one of the largest and oldest in-house tribal attorney offices serving a tribal government.

The establishment of DOJ is codified in the Navajo Nation Code. 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.

## QUARTER 2

<January to March 2022>

---

This quarter, DOJ received 665 Requests for Legal Services (RFS) and completed 539. 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. As of March 2022, 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 will provide \$362 billion dollars for state, local and tribal governments, including \$20 billion for tribal governments. As of May 29, 2021, the United States Department of Treasury allocated \$1.8 billion to the 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. The enactment of the legislation provides the Navajo Nation an unprecedented opportunity for it to mitigate and contain the COVID-19 pandemic as well as to respond to the health, social and economic impacts of the COVID-19 pandemic. Using these resources to construct water lines and wastewater systems, install power lines, expand internet capacity to Navajo families and communities, and provide tribal members with much needed financial assistance are some of the Navajo Nation leaders' expressed priorities for these funds.

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 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'íyátí work sessions regarding proposed FRF expenditure plans and legislation 0257-21. To date, DOJ has completed 207 FRF initial eligibility determination reviews for proposed expenditure plans seeking to utilize FRF; 43 of those reviews were completed during this quarter.

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

1. **Victory in Water Rights case.** On February 17, 2022, the United States Ninth Circuit Court of Appeals denied Petitions for Rehearing En Banc in *the Navajo Nation v. Department of Interior* breach of trust case against the federal government. This means that a prior April 28, 2021 decision in the Navajo Nation's favor stands, and the breach of trust claims related to the Navajo Nation's water rights and DOI's management of the Colorado River can proceed. The Navajo Nation will file an Amended Complaint and the opposing parties will file Answers. This will set the stage for a trial on the Navajo Nation's breach of trust claims. DOJ's Water Rights Unit and Litigation Unit are jointly handling this matter.

3. **Complaint filed in the San Juan County, New Mexico redistricting case.** On February 10, 2022, the Navajo Nation, working with the American Civil Liberties Union (ACLU) of New Mexico, the Lawyer's Committee for Civil Rights, and DLA Piper, filed a complaint in the U.S District Court for the District of New Mexico against San Juan County and its Board of Commissioners. The complaint alleges that the County's December 2021 Redistricting Plan violates Section 2 of the Voting Rights Act by denying Navajo Nation citizens and other Indigenous voters the opportunity to equally participate in the County's political process and to elect representatives of their choice. The complaint requests declaratory and injunctive relief. DOJ is co-counsel in this case, representing the Navajo Nation and the Navajo Nation Human Rights Commission. DOJ's Economic and Community Development Unit and Litigation Unit are jointly handling this matter.

4. **The U.S. Supreme Court accepts the *Brackeen v. Haaland* case.** On February 28, 2022, the U.S. Supreme Court granted cert on all issues in *Brackeen v. Haaland*. The Brackeens seek to adopt two Navajo children, even though there is an on-reservation Navajo placement with the children's Great-Aunt/Grandmother. The Brackeens filed an action in the Federal District Court of the Northern District of Texas along with several other non-Indian families and the States of Texas, Indiana, and Louisiana, seeking to have all of the Indian Child Welfare Act (ICWA) declared unconstitutional. The district court ruled in their favor and declared all of ICWA unconstitutional. On appeal, a three judge panel of the Fifth Circuit Court of Appeals reversed, and held ICWA was constitutional. But then, the Fifth Circuit *en banc* ruled some parts of ICWA were unconstitutional and some were constitutional. The Brackeens, Texas, the U.S, and the Cherokee Nation (and three other tribes) all sought review by the Supreme Court. The Navajo Nation, though a party, did not support any of the petitions, and took the position that this case should not go to the Supreme Court at all. However, the Supreme Court accepted all four petitions. The case will be briefed and oral argument may occur in October 2022 with a ruling expected by June 2023. As the Navajo Nation is a party to the case, DOJ will file briefs and argue in support of ICWA. DOJ's Human Services and Government Unit and Litigation Unit are jointly handling this matter.

5. **Tentative Settlement in Opioids case.** This quarter, counsel for the tribal plaintiffs, including the Navajo Nation, presented a tentative settlement proposal that has been reached with a few opioid distributors (McKesson, Cardinal, and Amerisource Bergen) as well as manufacturer Johnson & Johnson, which owns Janssen Pharmaceutical Company. This tentative settlement proposal was presented to the court overseeing the multi-district litigation in Cleveland, Ohio. In order for the settlement to proceed, at least 95% of the litigating tribes (including the Navajo Nation) and 14 of the 17 non-litigating tribes with populations exceeding 5,000 members must sign participation agreements. The settlements would go into effect 60 days after those benchmarks are achieved. The Navajo Nation will be required to spend any opioid settlement dollars received on drug treatment and abatement programs, and use of the funds will be overseen by a committee of Trust Directors under the supervision of Trust Administrator and

## QUARTER 2

<January to March 2022>

---

Special Master DOJ's Litigation Unit and Office of the Attorney General represent the Nation in this matter with the assistance of Sonosky, Chambers, Sachse, Miller & Monkman.

**6. Victory in Judicial Services matter.** On March 21, 2022, the Navajo Nation received a favorable judgment totaling more than \$31M for the Judicial Services annual funding claims for 2015 and 2016. The court also dismissed repeated attempts by the Bureau of Indian Affairs to unilaterally change language in the Nation's Annual Funding Agreements, which is a win for the Navajo Nation. The judge, however, denied the Nation's claims for 2017, 2018, 2019, and 2020 funding owed to the Nation. All of these decisions are subject to appeal by the parties. DOJ's Human Services and Government Unit represents the Nation in this matter with the assistance of Holland & Knight.

### ADMINISTRATION

This quarter DOJ filled four (4) vacancies, hiring two (2) Attorney Candidates (for WRU and HSGU), and two (2) Legal Secretaries (for WRU and LU). All four (4) of these new hires are Navajo. This quarter, DOJ advertised and interviewed candidates for three (3) summer law clerk positions, and will hire interns during the next quarter.

Attorney Candidate Krista Thompson passed the New Mexico bar exam this quarter. Three (3) attorneys also took the Navajo Nation bar exam this quarter, and results are expected next quarter. This quarter, all DOJ attorneys completed continuing legal education for the Navajo Nation and state bar associations to fulfil licensure requirements for 2021.

The current vacancies in DOJ include:

- Chief Prosecutor<sup>1</sup> (OTP) – Position advertised since 6/2020; filled on an acting basis; position advertised from 2/14-3/30; applicants have been referred to DOJ and interviews will be scheduled next quarter
- Principal Attorney (WRU) - Position vacated on 3/12/21; position being advertised
- Senior Attorney (HSGU)- Position vacated on 9/30/21; position being advertised; 1 application received; interview scheduled next quarter
- Principal Tribal Court Advocate (HSGU) – Position vacated on 3/12/21; candidates interviewed; position will be re-advertised
- Senior Programmer Analyst (OAG) – Position vacated on 8/27/21; position being advertised; 1 application received

---

<sup>1</sup> Last year, DOJ initiated legislation 0108-21 to amend 2 N.N.C § 1973 to remove the domicile and tribal membership requirements for the Chief Prosecutor position. On July 12, the Law & Order Committee discussed 0108-21 and voted 3-0 to refer it to the Naabik'íyátí Committee. On July 15, the Naabik'íyátí Committee voted 14-2 to table legislation 0108-21 for no more than 30 days and to have a work session with DOJ. The work session did not occur, and the legislation expired on August 30. DOJ has since revised the Chief Prosecutor Job Vacancy Announcement (JVA) and Position Classification Questionnaire (PCQ), amending some of the education and professional experience requirements while keeping the domicile and tribal membership requirements consistent with 2 N.N.C § 1973.

**QUARTER 2**  
**<January to March 2022>**

---

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 cases involving alleged violations of the Navajo Nation Code, to conduct investigations and other activities necessary, and to assume certain responsibilities with respect to civil matters, including extradition and exclusion proceedings. The Chief Prosecutor leads the OTP and is appointed by the Attorney General and serves at the pleasure of the AG. Prosecutors 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. Mr. Vernon L. Jackson, Sr., has been delegated as the Acting Chief Prosecutor since July 30, 2021. The most recent job vacancy announcement for the Chief Prosecutor's position closed on March 30, 2022.

**Tribal Community Response Plan:** This quarter, OTP participated in the development of the Navajo Nation's Tribal Community Response Plan (TCRP). Two areas of OTP's contribution centers on the investigation and prosecution of major crimes related to cases involving Missing and Murdered Indigineous People (MMIP) and the services that can be offered by OTP's victim and witness advocate (VWA) program. OTP prosecutors participated in planning sessions with the Office of the President/Vice President, Navajo Division of Public Safety, Navajo Division of Social Services, United States Attorney offices in New Mexico, Arizona and Utah, Federal Bureau of Investigation and other state and county law enforcement agencies. Specifically, OTP assisted in developing a draft TCRP plan on March 25, 2022 at the Twin Arrows Conference Center in Flagstaff, Arizona. OTP helped to integrate its VWA program into the TCRP. The Navajo Nation's TCRP is composed of four different areas in response to MMIP cases: law enforcement, victim services, community outreach and media/public communication.

**Extraditions:** Fifteen (15) state extraditions were submitted to the Navajo Nation Office of the President during the 2<sup>nd</sup> Quarter of FY 2022. All fifteen (15) applications were approved.

**OTP OFFICE SPACE**

**Window Rock OTP:** In March 2022, NIOSHA and Risk Management determined that OTP's building was beyond repair/renovation due to environmental and structural issues. The determination to permanently close OTP's office in Window Rock effects the White-Collar Crime Unit (WCCU) investigators and support staff. The staff currently occupy space in the DOJ Butler Building on a temporary basis until new office space is secured.

**Shiprock OTP:** The office space used by OTP staff in Shiprock is plagued with environmental issues and inadequate office space for the number of staff working in the office. Attempts to acquire new space in Shiprock has been unsuccessful. The search effort continues.

**QUARTER 2**  
**<January to March 2022>**

---

**Crownpoint OTP:** The personnel assigned to the Crownpoint OTP office work out of the Crownpoint Justice Center. The space is adequate for the work performed by the legal and support staff.

**Tuba City OTP:** The personnel assigned to the Tuba City OTP office work out of the Tuba City Justice Center. The space is adequate for the work performed by the legal and support staff.

**Chinle OTP:** The personnel assigned to the Chinle OTP office work out of the Chinle Justice Center. The space is adequate for the work performed by the legal and support staff.

**Kayenta OTP:** The personnel work out of a manufactured office building. The space is currently adequate for the prosecution and legal support staff. In the future, Kayenta OTP should be moved into Justice Center Office Space.

**Dilkon OTP:** The personnel in Dilkon OTP utilize office space provided by the Navajo Police Department, which is adequate for now. Previously, personnel were housed in the Judicial Court building in Dilkon. Dilkon OTP office is in desperate need of permanent office space to work.

**Tohajiilee OTP:** The personnel in Tohajiilee utilize a manufactured office building. The plumbing in the building does not function well. Personnel working in this space must find other alternatives for facilities.

**Ramah OTP:** The personnel in Ramah utilize a manufactured office building. The lease will expire on this space in one year. Ramah Chapter has decided not to renew the lease.

**STAFFING AND ADMINISTRATIVE ISSUES**

**PERSONNEL CLASSIFICATION QUESTIONNAIRE (PCQ):**

Four (4) new PCQs have been submitted to DPM for review. These positions are:

- Prosecutor, Window Rock, AZ – for Special Prosecutor Federal Declinations Unit
- Senior Legal Secretary, Window Rock, AZ – for Special Prosecutor Federal Declinations Unit
- Prosecutor, Chinle, AZ – for Chinle District
- Prosecutor, Ramah, NM – for Ramah District

These PCQ's are on hold pending budget revision approval

**BACKPAY DELAYS:** The delay in processing of backpay continues to discourage employees and affect employee morale. Repeated notices have been sent to General Accounting, Contract Accounting, and Payroll for backpays to be processed. OTP continues to resubmit documentation and verification for backpay processing. Backpay has been unpaid for more than 6 months.

### **SHIPROCK/ANETH OTP REPORTING**

Due to the high number of criminal cases in Shiprock and the lack of a permanent Senior Prosecutor in Shiprock, outside counsel has been contracted to assist in prosecuting cases within the district. The Senior Prosecutor position in Shiprock has been reposted on the DPM's job website.

Relationship Strengthening: This quarter, the contract prosecutors worked to increase their visibility with other departments and to coordinate efforts. The contract prosecutor met with the Navajo Police Department (NPD) and the Probation Department. The meeting with Probation was held on February 8, 2022 and included a comprehensive look into the relationship between Probation Services, the available services, and how Probation might work together with the Office to meet the mutual goal of ensuring that defendants complete probation successfully.

The contract prosecutor met with Captain Leonard Redhorse and others from the NPD on February 16, 2022 to discuss concerns related to DUIs, civil complaints and motion hearings, feedback on police reports and criminal complaints. On February 17, 2022, the contract prosecutor met with several NPD supervisors for an introduction and to discuss ongoing concerns. The contract prosecutors will continue to coordinate with NPD, Probation, the victim's advocate, and others.

Building Capacity: The contract prosecutors recognize the important role support staff play in day-to-day activities. Contract prosecutors made efforts this quarter to provide guidance and opportunities to staff and attorneys regarding the legal process. This quarter, contract prosecutors focused on developing training and forms to assist with the discovery process. The prosecutor's presented a discovery training to staff. Through this training, we hope that support staff and attorneys were able to gain a better understanding of "why" certain tasks must be completed within a prescribed timeframe and why certain information must appear the way it does.

Contract prosecutors continue to host regularly scheduled attorney meetings on a bi-weekly basis to cover case load, examine individual cases, share legal insights and strategies, and orient the team to various case law or rules that may be significant to a case. These meetings have proven effective for case management and capacity building.

Criminal Complaint Review: This quarter the contract prosecutors have worked hard to stay up to date with complaint review and hope to be at 100% or close to it by the end of the quarter.

Major or continuing problems encountered during the quarter: The prosecutors continue to be challenged by remote working and the limitations that come with remote working (dropped calls, individuals out sick, unavailability of parties due to coverage). Other challenges include:

- Difficulty in locating witnesses due to old or incomplete contact information
- Lack of availability NPD officers as witnesses due to officers leaving the department
- Locating defendants to discuss pleas and timely discovery to defendants who are homeless or whose addresses are no longer current

Suggestions or ideas for improving in operation or process: The prosecutors hope to set up monthly meetings with NPD to discuss ongoing cases and any concerns. The prosecutors are also working on a guidebook and forms for the Shiprock Office that can be utilized by future prosecutors.



**QUARTER 2**  
**<January to March 2022>**

---

Additional training for staff and attorneys is also needed. Finally, the prosecutors would like to improve coordination with federal prosecutors and FBI on major crime cases.

**CHINLE OTP REPORTING**

Coordinated with NPD this quarter to investigate and prosecute vehicle thefts occurring in surrounding communities. The criminal cases are ongoing and could potentially be tied to violent crimes.

Resignation of a prosecutor candidate due to expiration of one-year period during which candidate must become a licensed member with the NNBA.

**DILKON OTP REPORTING**

Dilkon Prosecutor's office has a new legal secretary, Ms. Corina Nelson, who started at the end of March. Chinle OTP Senior legal secretary provided her with introductory training on case creation and case management.

Presentations/Training completed for all personnel: Senior Prosecutor Brenna Hanley assisted with the Navajo Nation Cross Commission Training for Arizona State agencies from March 21-22, 2022 at Twin Arrows, Arizona.

Major or continuing problems encountered during the quarter: Office space specifically designated for a full functioning prosecutor's office is needed.

**KAYENTA OTP REPORTING**

Kayenta OTP office recently filed a delinquency case regarding a minor child bringing a weapon on to school grounds. Once Prosecutor Charmaine James filed this case, the child was provided counsel through the Public Defender's office. Counsel has filed two motions to dismiss, and a motion to suppress most of the evidence and witness statements obtained by the police department. The Court denied the motion to dismiss and proceeded with a preliminary hearing. The Court also ruled that a probable cause hearing was required in this delinquency case. This ruling was highly unusual in a delinquency case. Nevertheless, Prosecutor James successfully gained a favorable ruling that probable cause was present in this case, and the case now moves into the adjudicatory phase.

Prosecutor Charmaine James filed a search warrant application that identified a local known bootlegger. The Officer assigned to the case and Prosecutor James spoke extensively about the activities that the Officer witnessed during security checks, and the Kayenta Judge ultimately granted the search warrant. The Officer executed the warrant two days later, and his team found a vast amount of alcohol in the home, drugs, and several weapons. This result was a significant example of the cooperation between OTP and NPD in Kayenta; not to mention the diligent work ethic of Prosecutor James.

## QUARTER 2

<January to March 2022>

---

Prosecutor James met with CI's and FBI agents on March 3, 2022, at the Kayenta CI office. An FBI agent provided a two-page summary of all the individuals that have been federally indicted within the Kayenta District. Prosecutor James learned that several recent violent offenders are awaiting sentencing. The communication is an outstanding example of the collaboration between federal partners and OTP in Kayenta. This exchange of information process contributes significantly to an outstanding relationship with the FBI.

On January 21, 2022, Prosecutor James met with CI's, the FBI, and Utah Sheriff. During the meeting, the various partners exchanged updates on various cases.

Major or continuing problems encountered during the quarter: Involuntary commitments seem to be in high demand in the Kayenta District. Most recently, members of the public have contacted OTP-Kayenta requesting the prosecutor file an involuntary commitment on a family member. Kayenta Health Clinic/ER has been informing family members that come to the ER for mental health services that the Prosecutor can file an involuntary commitment.

Kayenta DFS, Kayenta PD, and Kayenta OTP have noticed that crime has spiked during the issuances of the Navajo Nation ARPA checks. DFS has taken custody of nearly 15-18 children during March 2022 due to parents' drug use, alcohol use, domestic violence, and DUI incidents. The most-recent trend is that OTP-Kayenta has seen a significant increase in the filing of child abuse and neglect cases at a rate of 2-3 times a week.

### CROWNPOINT OTP REPORTING

The Office of the Prosecutor for the Crownpoint District and its partners successfully carried out two extradition requests. In *Navajo Nation v. Leland Tolth*, the defendant was extradited to McKinley County for offenses arising in the State of New Mexico. In *Navajo Nation v. Bryane Sandoval*, the defendant was extradited to Arizona on an underlying Class 4 Felony. In the case of *Navajo Nation v. Monte Montoya*, the defendant was transferred to federal custody. In any situation where a defendant is wanted by another state, tribe or the federal government, extraditing such individuals speaks to the significant role that cooperation, communication, and strategy plays by all involved parties in carrying out the extradition process.

Prosecutor for Crownpoint District provided one training to the Navajo Nation Police Academy January 2022. Approximately two dozen new law enforcement officer recruits were present. The subject matter presented covered Title 9 of the Navajo Nation Code, also referred to as the *Álchíní Bì Beehaz'áannii* Act of 2012, which covers domestic relations. This subject covers dependency proceedings, child in need of supervision, delinquency, and termination of parental rights proceedings.

Beginning January 1, 2022, Prosecutor Michael Platero began providing coverage for Adult Criminal and Children's cases for the districts of Tohajiilee, Alamo, and Ramah. Prosecutor Platero continues to provide coverage of Adult Criminal matters for the Crownpoint and Pueblo Pintado districts. Under typical circumstances, one prosecutor would be charged with covering Ramah district, while another would provide coverage for Tohajiilee/Alamo districts separately. Prosecutor Davena Sam-Noble has provided coverage of all Children's cases for the Crownpoint District Family Court while also providing coverage for the Shiprock District. Each member of OTP for these districts have shown strong initiative and dedication.

**QUARTER 2**  
**<January to March 2022>**

---

Major continuing problems encountered during the quarter: Service of process for defendants who no longer reside on the Navajo Nation continues to be an issue. In the absence of a warrant, NPD is required to serve a defendant with a summons and complaint in order to have the defendant brought before the court to answer to the charge(s). This issue will continue to be addressed.

Prosecutor was requested to carry out a matter for the exclusion of a non-Indian residing on the Navajo Nation. These situations are very rare on the Navajo Nation and OTP is proceeding with this matter carefully and a final disposition is expected in the coming months.

Presentations/Training Completed for all personnel: Victim/Witness Advocates for Crownpoint and Tohajiilee/Alamo District participated in bi-weekly VWA meeting sand other required meetings/training. Many staff also completed NDOT's Defensive Driving Course.

**OTP TUBA CITY REPORTING**

Reviewed and processed all Navajo/AZDPS police reports and Department of Family Services reports that came in this quarter.

Suggestions or ideas for improving in operation or process: More legal issues staffing for prosecutors, better services coordination between OCP/NPD/DOC regarding victim contact information sharing and responses and police report acquisition for holds requested a more efficient process to get timely reports for holds to be placed on serious offender.

**WINDOW ROCK OTP REPORTING**

On January 3, 2022, Senior Prosecutor Troy Cook was delegated as the *Acting* Supervisor for the White-Collar Crime Unit. This delegation will continue until a prosecuting attorney is selected to lead up the WCCU.

Numerous cases, police reports, and criminal complaints including Abuse and Neglect (Children's cases) have been filed with the Court. The Sr. Prosecutor is tasked with handling all of the adult criminal matters while Prosecutor Yazzie is handling the children's matters.

Interviews for the WCCU Legal Secretary position occurred this quarter. Selection made and awaiting fingerprint clearance.

March 17 – 18, 2022, the OTP and WCCU had over 220 boxes of old records picked up by Navajo Nation Property Management, with the concurrence of Records Manager. These records have been identified for destruction (shred); and these boxes were occupying much needed space in the OTP and Conex box.

In early March 2022, a meeting was held with NOSHA and Risk Management where it was determined that the OTP office was beyond repair/renovations and provided a deadline of March 25, 2022, to be totally vacated. This date was extended to April 25, 2022, and OTP/WCCU staff are currently packing and identifying furniture and office items to be stored until a new office space is located.

**QUARTER 2**  
**<January to March 2022>**

---

In March 2022, Ms. Alexandria Duane was delegated as Supervisor to oversee the VWAs.

Prosecutor participated in the TCRP multiple agency planning meeting and met with multiple federal, state, county, and Navajo Nation colleagues.

The OTP Victim/Witness Advocate has been diligently providing services and contacting victims along with collaborating with the NNDFS Victim/Witness provider.

**Problems/Challenges:**

1. Lack of a permanent Chief Prosecutor which allows for the lack of leadership and direction in achieving the Mission, Goals, and Objectives of the Organization.
2. Lack of additional prosecutors and or juvenile presenting officers for the WR OTP. Creating and filling these positions timely will be most beneficial and reduce the case load of the current individual prosecutors/JPOs allowing time to study, manage, and prep for cases and hearings.
3. A major challenge is the vast amount of technicalities of police report writing, criminal complaint writing by police officers. The critical areas are that police reports do not support the criminal complaint and complaints lack facts to support the elements of the offense (statutory language).
4. Police investigations are lacking evidence and photo logs. In certain cases, photos are provided to the prosecutor's office although they are black and white, and not in color. The lack of this material adds to timely discovery being provided to defense counsel. In drug cases, drugs are not field tested and identifying the specific field test kit used, i.e., NARK II or NIK. Police reports lack articulation of officers training and knowledge, simply foundation of their actions.
5. It has been observed that the police are not communicating with the criminal investigator and or CID.
6. The prosecutor's office is not receiving case reports from the CID that have been declined by the US Attorney's office advising they require authorization from the Supervisory CI.
7. Recruiting of prosecutor candidates is ongoing.
8. Lack of consistency in receiving the up-to-date docket from the Court but has improved some. This leads to a lack of communication.
9. Legal clerks not well-versed or experienced drafting/writing pleadings, which is a part of their job descriptions/responsibilities. One brief training was held but others are needed.
10. It was determined that the Legal Secretaries have never been formally trained, particularly in the Navajo Nation Rules of Criminal and Civil Procedure. A date is going to be identified to conduct this in-service training. Sr. Prosecutor Cook will meet with Chief Jackson to provide an invitation not only to the OTP staff, but also to NPD, CID, and the Court Clerks.
11. Potential de-centralization of the OCP directly to the district offices would be most beneficial in allowing individual offices to take on their own tasks, particularly in the areas of purchasing/procurement and property management. Obviously, this would allow for the creation of additional support staff, those that are FMIS certified and handle the budgeting process.
12. Lack of PCard issuance to the prosecutors. This would enhance and centrally bill travel related expenses. The Sr. Prosecutor has applied for a PCard and is pending approval.

**QUARTER 2**  
**<January to March 2022>**

---

13. Lack of a tribal vehicle for the Victim/Witness Advocate which causes a hindrance in response and providing services to victims.
14. A continued critical challenge is the current C-19 Pandemic and the internal number of exposures and infections within Navajo Government departments as the virus takes on new significant mutations.
15. Since the Window Rock OTP is being closed permanently, there has been no new office space located. OTP staff are continuing to telecommute but are lacking some IT hardware, i.e., printers. Sr. Prosecutor Cook has been collaborating with Kyle King and having these items provided to the legal secretaries. Without an office, it is imperative that all support staff be provided a laptop computer as on certain days, they report to the Sr. Prosecutor's office to work. They have their desktops at home and this causes an obstacle and time when these desktops have to be dismantled and transported. Printers are another equipment legal secretaries need to do their jobs. Many are using their home printers that are not capable of handling major print jobs. Legal secretaries often purchase ink cartridges.

Education/Training Outreaches:

- Jan. 5, 2022, Sr. Prosecutor conducted training at the Navajo Police Academy.
- Jan. 27, 2022, Sr. Prosecutor completed JWIN, NCIC Operator Certification.
- Feb. 4, 2022, Sr. Legal Secretary, Rebecca Gene, conducted a JustWare in-service training that was attended by all staff.
- Feb. 9, 2022, Sr. Prosecutor Cook conducted Interviewing in-service training with the WCCU investigators.
- Feb. 9, 2022, Sr. Legal Sec. Pino-Begay completed IPM Covid Prevention Training.
- Feb. 10, 2022, Sr. Prosecutor completed the Defensive Driving Course and driving permit was reinstated.
- Mar. 4, 2022, Sr. Prosecutor conducted an Intro to Pleading Training that was attended by all OTP/WCCU staff.
  
- Mar. 25, 2022, Sr. Prosecutor, Chief Prosecutor, and VWA Supervisor attended the TCRP meeting held at Twin Arrows.

**WHITE COLLAR CRIME UNIT REPORTING**

The White-Collar Crime Unit (WCCU) is working on several aspects of becoming a full-fledged investigative program. First, the investigators are organizing and categorizing case files that allows for easy review and analysis by prosecutors. Second, investigators are working on the acquisition of credentials to support their authority as white-collar crime investigators. Third, their request for the assignment of a government-owned vehicle to assist in conducting their investigations has been approved and that request is now proceeding to the Motor Vehicle Review Board for final approval. Fourth, they are looking to obtain basic investigative training and advance white-collar investigation training to assist in the conduct of their investigations.

**QUARTER 2**  
<January to March 2022>

---

**FEDERAL DECLINATIONS\* - 2ND QUARTER FY 2022**

<b>DISTRICT OF ARIZONA - UNITED STATES ATTORNEYS OFFICE</b>
---

Date Received	Allegation:
1/3/2022	Alleged Sexual Assault
1/3/2022	Alleged Sexual Assault
1/4/2022	Investigation
1/6/2022	Unknown
1/6/2022	Unknown
1/7/2022	Investigation
1/10/2022	Investigation
1/10/2022	Sexual Assault
1/10/2022	Sexual Assault
1/17/2022	Unknown
1/19/2022	Unknown
1/21/2022	Alleged Shooting
1/24/2022	Homicide
1/26/2022	Homicide
1/27/2022	Sexual Abuse
2/1/2022	Child Sexual Abuse
2/22/2022	Alleged Assault
3/11/2022	Death Investigation
3/14/2022	Assault
3/22/2022	Alleged Sexual Assault
3/22/2022	Alleged Sexual Assault

Total: 21 cases declined for AZ federal prosecution

**QUARTER 2**  
<January to March 2022>

---

**DISTRICT OF NEW MEXICO - UNITED STATES ATTORNEYS OFFICE**

<b>Date Received</b>	<b>Allegation</b>
1/10/2022	Assault with deadly weapon
1/10/2022	Assault with deadly weapon
1/10/2022	Sexual Abuse of Minor
1/10/2022	Murder
1/13/2022	Abusive Sexual Contact of Minor
1/13/2022	Murder
1/13/2022	Murder
1/14/2022	Vehicular Homicide
1/18/2022	Sexual Abuse of Minor Under 16
1/18/2022	Murder
3/4/2022	Felon in Possession of Firearm
3/7/2022	Alleged Assault

Total: 12 cases declined for NM federal prosecution

**DISTRICT OF UTAH - UNITED STATES ATTORNEYS OFFICE**

<b>Date Received</b>	<b>Allegation</b>
1/24/2022	Unknown
Total:	1 case declined for UT federal prosecution

\* Each quarter the Navajo Nation receives formal notifications from U.S. Attorneys Offices in Arizona, New Mexico and Utah of cases that have been declined for prosecution and some of these notifications do not indicate specifications of the allegation. Hence, the designation “unknown” and “investigation” are shown here as reported by the respective U.S. Attorneys’ Office.

**OMB - PERFORMANCE SCORES**  
**FOR 2nd QUARTER FY 2022 BY OTP DISTRICTS**

OTP exceeded OMB program performance requirements for the 2<sup>nd</sup> quarter with the exception of WWCU.

**QUARTER 2**  
**<January to March 2022>**

	<b>GOAL STATEMENT</b>				
	Prosecution of Adult Criminal Cases	Resolution of Children's Cases per ABBA	Prosecution and/or investigation of white collar and government corruption offenses properly made to White Collar Crime Unit (WCCU) via any source	Public Education and Collaboration Aimed at Prevention and Intervention	Administrative and Support Services Performance
	<b>PROGRAM PERFORMANCE MEASURE</b>				
	File/Decline 80% of every 100 adult criminal cases presented to OTP by law enforcement	File/Decline 95% of every 100 juvenile referrals made to OTP by DFS or law enforcement	Initiate investigation/prosecution or decline 95% or every 100 referrals properly made to White Collar Crime Unit (WCCU) via any source	# of public education presentations provided to public safety partners and community members	Upload 90% of every 100 reports and Juvenile referrals into <i>JustWare</i>
<b>SCORES BY EACH OFFICE FOR EACH CATEGORY</b>					
Window Rock	98%	92%	N/A	3	98%
Dilkon	100%	100%	N/A	1	100%
Shiprock	97%	96%	N/A	2	97%
Aneth	93%	100%	N/A	2	93%
Crownpoint	100%	100%	N/A	1	100%
Pueblo Pintado	100%	100%	N/A	1	100%
Tuba City	100%	100%	N/A	0	100%
Chinle	87%	97%	N/A	1	87%
Dzil Yiljiin	76%	90%	N/A	0	76%
Kayenta	100%	100%	N/A	1	100%
Tohajiilee	100%	100%	N/A	0	100%
Alamo	100%	100%	N/A	0	100%
Ramah	100%	60%	N/A	0	100%
White Collar Crime Unit	N/A	N/A	60%	2	N/A
<b>AVERAGE SCORES:</b>	<b>96%</b>	<b>95%</b>	<b>60%</b>	<b>14</b>	<b>96%</b>

**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>



**QUARTER 2**  
**<January to March 2022>**

**BUDGET STATUS REPORT BY EACH SOURCE**

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

OCP has expended 27.64% of the initial 2022 budget allocation plus the carryover award (\$3,508,348.68). To date, \$971,061.14 has been expended from these allocations.

**FISCAL YEAR 2022 U.S. DEPARTMENT OF JUSTICE**

**OFFICE OF THE PROSECUTOR  
2nd QUARTER FINANCIAL REPORT**

Object Code:	Line Item:	Original Amount:	CarryOver Amount:	Expended Amount:	% Expended:
2001	Personnel Expenses	\$ 2,862,643	\$ 105,162.00	\$ 850,762.93	28.67%
3110	Fleet	\$ 33,225	\$ 5,978.00	\$ 9,508.94	24.26%
3220	Personal Travel	\$ 37,000		\$ 1,017.84	3.67%
4120	Office Supplies	\$ 56,000		\$ 16,902.58	30.18%
4200	Non Capital Assests	\$ 14,000	\$ 13,600.00	\$ 44,986.38	96.02%
4410	Operating Supplies	\$ 64,540	\$ 19,601.68	\$ 11,700.70	15.78%
5120	Building <i>(Ramah Office Lease)</i>	\$ 5,088	\$ 171,720.00	\$ 3,816.00	2.11%
5360	Equipment/Supplies	\$ 8,548		\$ 1,645.97	19.26%
5520	Telephone <i>(Direct Charge)</i>	\$ 4,500		\$ 2,310.19	51.34%
5570	Internet	\$ 2,280		\$ 1,294.95	43.15%
5610	Wireless <i>(Direct Charge)</i>	\$ 36,000		\$ 4,641.79	12.89%
5710	Energy for Electricity	\$ 6,100		\$ 1,486.57	24.37%
5750	Services for Water/Sewage	\$ 1,140		\$ 209.43	18.37%
6030	Supplies for Building Repairs & Maintenance	\$ 5,099		\$ -	0.00%
6140	Services	\$ 8,014		\$ 1,602.72	20.00%
7410	Media	\$ 10,200		\$ 2,438.52	23.91%
7510	Training and Professional Dues	\$ 11,300		\$ 4,400.00	38.94%
7600	Employment Related Expenses	\$ 1,000		\$ 31.50	3.15%
7710	Insurance Premiums <i>(Direct Charge)</i>	\$ 24,522	\$ 1,088.00	\$ 12,304.13	48.04%
		\$ 3,191,199	\$ 317,149.68	\$ 971,061.14	

Operating Expended in the 1st Quarter:	\$ 3,191,199	\$ 317,149.68	\$ 971,061.14	27.64%
--	--------------	---------------	---------------	--------

Total Positions in BU #104005:	42
New Positions in PCQ status BU #104005:	4
Total Vacancies:	11

**QUARTER 2**  
**<January to March 2022>**

**GRANT FOR CRIME VICTIM SERVICES**

Office of the Chief Prosecutor (OCP) has expended 23% (\$453,381) of the initial allocation (\$1,981,346) from the Department of Justice for crime victim services. The largest expenditures to date has been in personnel salaries (\$350,401). The end date of this grant is April 15, 2023. A detailed report of the Crime Victim Services program with OTP is provided below.

<b>OFFICE OF THE PROSECUTOR</b>				
<b>FY 2022 2ND QUARTER FINANCIAL REPORT - DEPARTMENT OF JUSTICE (VICTIM SERVICES) BUDGET</b>				
<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	350,401.51	31%
3110	Fleet	\$ 207,518		
3220	Personal Travel	\$ 124,183	344.56	1%
4120	Office Supplies	\$ 29,104	10,030.95	34%
4200	Non Capital Assests	\$ 25,593	19,386.65	90%
4410	Operating Supplies			0
5110	Building	\$ 11,520		
5360	Equipment/Supplies			
5520	Telephone	\$ 47,132		0
5610	Wireless	\$ 18,480	2,708.83	15%
5750	Services	\$ 8,280		0
5570	Internet			
5710	Energy	\$ 19,440		0
6020	Supplies			
6130	Services			
7410	Media			
7600	Employment Related Expenses			
7510	Training and Professional Dues	\$ 1,090	0.00	0
7710	Insurance Premiums	\$ 11,580	1,953.44	17%
9710	IDC	\$ 336,692	68,555.62	20%
		\$ 1,981,346	453,381.56	23%

The objective of OTP's VWA program to provide victims and witnesses involved in the prosecution of cases through the Navajo Nation criminal justice system.

During this quarter OTP's VWA program accomplished the following:

1. All seven (7) VWA positions in Window Rock, Shiprock, Crownpoint, Tuba City, Chinle, Kayenta and Tohajiilee are now filled.
2. All VWAs have started a close collaboration effort to develop various forms to document their interactions with crime victims.
3. Policies and procedures related to discovery and confidentiality issues involving the work of the VWAs are under review and consideration.
4. VWAs are scheduling and planning certification training venues to effectively perform their victim-witness duties and responsibilities within Navajo Nation communities.

**QUARTER 2**  
**<January to March 2022>**

---

5. The VWA program is becoming more integrated into the Navajo Nation's TCRP development efforts. The delegated supervisor for the VWA program and OTP management are assisting with the Navajo Nation's TCRP.
6. As a result of the TCRP discussions, OTP's VWA program is becoming more integrated with the DPS's law enforcement program to ensure victim services are effectively provided to victims of crime.
7. Cellular phones have been distributed and assigned to VWAs to improve communication between their clients and service providers.

The In-direct Cost (IDC) Negotiation Agreement approved by Navajo Nation Council in November 2021 and signed by President Nez in December 2021 was provided to the U.S. Department of Justice through a Grant Award Modification (GAM). This GAM is expected to authorize OTP to make proper adjustments to the budget to facilitate the expending of funds.

A particular area of inefficiency in the execution of the grant centers on the leasing of General Services Administration (GSA) vehicles to be used by the VWAs. A review of the legal authority of OTP to lease GSA vehicles by USDOJ revealed that this grant is not a contract, grant or cooperative agreement under the Indian Self-Determination and Educational Assistance Act (ISDEAA).<sup>2</sup> This determination is a considerable set-back for the Navajo Nation's VWA program in that success of the program depends largely on the ability of the VWA to perform their crime victim services responsibilities. OTP is looking at other alternatives to acquiring GSA-leased vehicles.

**FISCAL YEAR 2022 BUREAU OF INDIAN AFFAIRS**  
**GRANT FOR JUVENILE PROSECUTORIAL SERVICES**

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

The first year funding source is identified as K1900770 – BIA. This grant serves as the first year allocation for prosecutorial services related to children's cases. At the time this grant was initiated there was not a clear indication from the BIA that a portion of this funding could be used for IDC. Nevertheless, \$74,382.41 was removed by the Navajo Nation to cover IDC and now the BIA asserts that no portion of this funding can be used to pay for IDC. This has caused an impasse in how to close out this grant because a second allocation has already been received from the BIA to cover prosecution of cases related to children. OCP is currently using a portion of the remaining amount in this allocation to cover travel, office supplies and operating supplies for the program. Approximately \$65,283 (22%) remains in this allocation.

---

<sup>2</sup> Email from Deserea Jackson regarding determination that the Navajo Nation's OVC grant is not under the ISDEAA

**QUARTER 2**  
**<January to March 2022>**

---

**OFFICE OF THE PROSECUTOR**  
**FY 2022 2ND 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%

The second year funding source is identified as K2007106 – BIA. This grant serves as the second year allocation for the prosecutorial services related to children’s cases. The Navajo Office of the Controller has placed a limited-restriction on the use of this account until IDC issues have been resolved. Only personnel costs are being expended from this allocation at this time. The BIA approved supplemental funding to cover the IDC costs associated with this funding award. However, OCP is now receiving communication from BIA that they are reconsidering its decision to award the Navajo Nation additional IDC funding. Approximately 37% (\$173,057) has been expended from this allocation.

**QUARTER 2**  
<January to March 2022>

---

**OFFICE OF THE PROSECUTOR**  
**FY 2022 2ND QUARTER FINANCIAL REPORT - BUREAU OF INDIAN AFFAIRS BUDGET (K2007106)**

<b>Object Code:</b>	<b>Line Item:</b>	<b>Original Amount:</b>	<b>Expended Amount:</b>	<b>% Expended:</b>
2001	Personnel Expenses	\$ 369,718	147,625.38	40%
3110	Fleet			
3220	Personal Travel	\$ 9,880		0
4120	Office Supplies	\$ 4,343		0
4200	Non Capital Assests			
4410	Operating Supplies	\$ 3,000		0
5110	Building			
5360	Equipment/Supplies			
5520	Telephone			
5610	Wireless			
5750	Services			
5570	Internet			
5710	Energy			
6020	Supplies			
6130	Services			
7410	Media			
7600	Employment Related Expenses			
7510	Training and Professional Dues	\$ 1,226		0
7710	Insurance Premiums	\$ 3,458	825.98	24%
9710	IDC	\$ 73,234	24,606.05	66%
		\$ 464,859	173,057.41	37%

**B. DOJ Units**

**Chapter Unit (CU)**

The Chapter Unit (CU) is led by Assistant Attorney General Rodgerick Begay who oversees two (2) Attorneys and one (1) Legal Secretary. The primary CU clients are the 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. Chapter Quorum: The “old” three quorum chapter meeting rule ended on January 2, 2022 which prompted leadership to renew it with some changes. CU attended the January 7<sup>th</sup> Special Session and answered questions. President Nez signed CJA-01-22 into law on January 18, 2022. On January 20, 2022, CU issued a memorandum to all 110 Chapters to explain the new changes. Throughout the quarter, CU continued to answer various questions regarding CJA-0-22. Such included discussions with the Navajo Board of Election Supervisors with regards to the quorum rule’s application on the Chapter ordinance and referendum processes.
2. Solar, Helium and Hydroplants: Navajo leadership needs to create a process that prescribes how Chapters, either governance certified or not, can participate in these types of projects. Currently, there is no process and developers are approaching Chapters directly. DOJ is also not informed about various issues arising from these projects until much later. During the quarter, CU participated in numerous meetings affecting a few Chapters that have a solar, helium, or hydroplant project contemplated for their communities. Absent clear laws, regulations, and policies, there is an unrealistic expectation from leadership that CU and DOJ can provide sound legal advice in order to make these projects viable. Nevertheless, CU continues to participate in calls and meetings regarding these projects.
3. MOU Between NHLCO, Chapter, and Choice Humanitarian (RFS# 21-2405): This project has changed course a few times. The Navajo-Hopi Land Commission Office (NHLCO) has funding that it awards for various housing projects. Choice Humanitarian is a 501(c)(3) organization from West Jordan, Utah with prior working relationships with the Navajo Nation to combat various issues including housing. Initially, an MOA was drafted to be signed by all three parties, but it couldn’t work because some chapters were non-governance certified and could not be a signatory to a binding agreement. The next effort consisted of eliminating the Chapter as a signatory but this eventually became unsuitable because the Chapter was a key participant in the projects. Next, a non-binding Memorandum of Understanding was drafted by CU to include all three parties. The draft has been submitted to the NHLCO for consideration.
4. Intragovernmental Agreement Between Chapters and Navajo Headstart: There’s a lot of history here. For many years, Navajo Headstart (NHS) has been using an Intragovernmental Partnership Agreement (IPA) template agreement for chapters that memorializes the use of a building within a Chapter. Also for many years, DOJ has been advising Chapters to use the Intragovernmental Office Space Use Agreement (IOSUA) template for

**QUARTER 2**  
**<January to March 2022>**

---

all Navajo Nation programs including NHS. During the quarter, CU met with several representatives of NHS and the consensus was to amend the IOSUA. A task group was formed in order to finalize the new template which will hopefully be completed in the next quarter.

5. To'Hajiilee Chapter Motor Grader and Backhoe (RFS# 21-2762): In 2008, the To'Hajiilee School Board was awarded funding from the State of New Mexico to purchase the equipment but it was eventually listed as Chapter property. Over the years, the equipment has been used exclusively by the School Board which has its own operator and insurance. CU discovered numerous other issues in the process. For instance, the Chapter is unable to pay/find their own Operator for the equipment they received through Sihasin Funds. The Chapter was using the School Board's operator but the School Board will not allow it until there's an agreement in place. This project should be completed before the end of the 3rd Quarter.

**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 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. Division of Economic Development (DED):

a. *Business Site Lease Settlement Agreements*: Advised Real Estate Department (RED) and other DED stakeholders re negotiation strategy and procedures for loan workouts and settlement agreements to bring lessees into lease compliance. RED implemented a procedure to coordinate internal stakeholder meetings among DED Departments and Office of the Controller to gather facts, understand various perspectives, and develop a strategy intended to both protect the Navajo Nation's interest as lessor and enable lessees to rehabilitate their leases and continue their business development/operations.

b. *Crownpoint Hotel*: Conducted a thorough review of the history and challenges relating to this project authorized under Navajo Nation Council Resolution CAP-19-16. ECDU worked with the RED and consulted with DOJ's Tax and Finance Unit to support a coordinated effort among DED, Office of the Controller, and CSB Enterprises (the prospective hotel operator) to resolve outstanding legal and financial concerns and develop an agreed upon strategy to complete the public private partnership development and bring this delayed project to fruition.

c. *Business Site Leasing Management Plan*: Researched, reviewed, and drafted revisions of the Navajo Nation Business Site Leasing Management Plan to improve leasing process, clarify grey areas, and resolve lapses in protection of Navajo assets. EDCU conducted meetings with DED to discuss proposed revisions and prepare the document for presentation to Resource Development Committee.

d. *Navajo Business Opportunity Act (NBOA)*: ECDU worked with Business Regulatory Department (BRD) to begin the process of revising the NBOA to provide clarity and greater protection to Navajo priority vendors.

**QUARTER 2**  
**<January to March 2022>**

---

e. *Intellectual Property*: ECDU continues to assist DED in monitoring the Nation's intellectual property while the Intellectual Property Department is being created. ECDU continued to pursue the trademark applications with United States Patent and Trademark Office for the Navajo Nation flag, seal, and Office of Miss Navajo Nation. ECDU researched several claims of infringement of Navajo intellectual property, resulting in the issuance of 4 cease-and-desist letters for entities misusing Navajo terms in their products and services.

f. *State Small Business Credit Initiative (SSBCI)*: DED is tasked with creating a SSBCI program for the Nation to provide additional financial resources to Navajo small businesses who suffer from a lack of access to capital. EDCU is working closely with DED to coordinate weekly calls with Program Partners to develop the Navajo SSBCI Program and steps necessary to submit application by May 11, 2022. ECDU continues to answer questions raised by Program Partners, including creating a FAQ to assist them in understanding SSBCI program requirement, and attending calls with Treasury to address clarification questions raised by Program Partners. ECDU reviews draft application form and agreements in preparation for initiation of Navajo SSBCI Program, and is in the process of initiating Navajo legislative action required to submit the application. While ECDU is closely advising DED on SSBCI program requirements, the final program design will be determined by DED.

g. *Navajo Manufactured Housing Act*: ECDU attended a meeting between the State of New Mexico and BRD on how to provide better regulation oversight of vendors who are selling and installing manufactured homes on the Navajo Nation. BRD is tasked by the Act to oversee its implementation. BRD hopes to establish relationships with regulatory state entities to assist with its oversight duties. ECDU will advise BRD on its roles and responsibilities and draft any necessary agreements to implement a more formal relationship with state entities.

h. *Forcible Entry and Detainer Cases*: ECDU continues to represent and advise various Navajo Nation entities on the application of the Forcible Entry and Detainer Act to individuals occupying expired business site leases. ECDU represented DED in Tuba City District Court on an action against an individual who has resided on an expired business site lease for over 20 years without authorization. The District Court ruled in DED's favor and found the individual did not have the right to reside on land withdrawn by the local community for economic development purposes.

2. Gaming:

a. 2021 Arizona Tribal-State Gaming Compact: ECDU continued to work with the Naabik'íyátí Gaming Subcommittee, Navajo Nation Gaming Enterprise (NNGE), and Navajo Nation Gaming Regulatory Office to protect and implement the 2021 Arizona Compact. This involved negotiation of amendments to clarify the parties' intent regarding event wagering and settle a legal challenge involving an Arizona Tribe against the Arizona Governor and Arizona Department of Gaming. Oversight of implementation will continue as the Department of Gaming and Navajo Nation Gaming Regulatory Office update their respective regulatory requirements.

b. Litigation re Twin Arrows Road Dispute: ECDU continued to work with NNGE's outside counsel to pursue judicial enforcement of the Department of the Interior's responsibility to protect the Nation's interests.

c. Navajo Gaming Regulatory Office (NNGRO): EDCU attended National Indian Gaming Commission (NIGC)– Listening Session regarding regulations for technology and NIGC processes to protect tribal assets. ECDU researched and met regarding NNGRO's employee participation



**QUARTER 2**  
**<January to March 2022>**

---

in online wagering and had bi-weekly meetings with NNGRO to discuss timely issues including the revisions to the Navajo Nation Gaming Regulations to reflect the changes to gaming and gaming regulation in the Arizona 2021 Compact.

3. Voting:

a. Arizona County Consultations: ECDU worked with Apache, Navajo, and Coconino Counties to protect the interests of voters on the Navajo Nation and participated in separate meetings with Apache County to resolve ongoing challenges relating to precinct voting, training of poll workers on the Navajo language, and providing adequate information to voters in a timely manner.

b. Arizona Litigation: ECDU drafted and filed an amicus brief in the Arizona Supreme Court re *Arizona Republican Party v. Hobbs*. The Navajo Nation's amicus brief opposed the Arizona Republican Party's request to invalidate early voting in Arizona and provided factual background on the critical importance of early voting, mail-in voting, and drop boxes to ensure votes cast on the Navajo Nation (AZ) count in Arizona elections.

c. Arizona Legislation: ECDU monitored Arizona state legislation that threatens to circumscribe voting rights and provided updates to leadership as requested on legislation and drafted letters for leadership expressing their concerns on the legislation.

d. New Mexico: ECDU reviewed New Mexico's proposed revisions to the Voters' Rights Provisions (SB8) for provisions that may impact Navajos and provided recommendations to leadership. ECDU drafted emails to New Mexico county clerks regarding early voting locations. ECDU participates in group calls on redistricting litigation in *Navajo Nation v. San Juan County, New Mexico* which focuses on Section 2 violation of the Voting Rights Act.

e. Native American Voting Rights Act: ECDU attended meetings with Senator Lujan's office to discuss edits the Frank Harrison, Elizabeth Peratrovich, and Miguel Trujillo Native American Voting Rights Act of 2021 and provided Navajo specific examples to be used as rationale for federal jurisdiction over Indian voters in participating in state elections.

4. Division of Community Development (DCD): ECDU continues to advise Construction Project Management Department (CPMD) on various project related issues, including reviewing contracts, subgrant agreements, intergovernmental agreements for legal sufficiency. ECDU attends weekly meetings with CPMD to coordinate reviews, discuss legal issues, and provide staff trainings. ECDU also attends monthly Sihasin funded projects meetings. ECDU is working with CPMD on addressing New Mexico Indian Affairs Department funding 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:

**QUARTER 2**  
**<January to March 2022>**

---

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

1. Navajo Police Department (NPD) Agreement with Utah Department of Public Safety Bureau of Criminal Identification: This quarter, HSGU worked with the NPD and the Utah Department of Public Safety, Bureau of Criminal Identification for the execution of the 2021-2022 Criminal Justice Agency Agreement, which is an agreement with the State of Utah that allows NPD personnel and officers access to the National Crime Information Center (NCIC) database by using the State of Utah's credentials. HSGU was alerted by the Information Management Section Manager that Utah's Bureau of Criminal Identification requires the signatory of the agreement to be the "Agency Administrator" and that the NPD's Agency Administrator must undergo federal fingerprint background clearance and FBI background checks. HSGU reviewed the applicable Utah laws, policies, and manuals related to the Utah's Bureau of Criminal Identification and Criminal Justice Agency and was not able to identify the specific rule or law providing this direction or guidance. HSGU along with NPD met with Utah DPS and Utah's Bureau of Criminal Identification to discuss the lack of written guidance on this matter and to educate Utah on the laws of the Navajo Nation that provide that the President of the Navajo Nation enters into agreements on behalf of the Navajo Nation. Utah DPS agreed to provide written direction to the Nation that outlines the role of an agency administrator and the requirements. HSGU worked with NPD in drafting a memo on behalf of the Navajo Nation President delegating authority to the Chief of Police to serve as the NPD's Agency Administrator in the agreements with the Utah Bureau of Criminal Identification and the operations with the Utah Criminal Justice Information System for access to the NCIC databases.

2. Privacy Act Guidance Table and Frequently Ask Questions: This quarter, HSGU has made considerable progress in drafting and creating a Guidance Table and Frequently Asked Questions (FAQ) document to assist the NDPS to respond to information disclosure requests pursuant to the Navajo Nation Privacy Act. The purpose of the Guidance Table and FAQ is to allow NDPS to review documents and make a disclosure decision based on who the requesting party is and the purpose of the request. HSGU expects to have a final version available for testing by NDPS.

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

3. Navajo Police Department – Mutual Aid Agreements (MAA) with Counties and States: HSGU continues to work with NPD on determining the current status of all the MAA or Memorandum of Agreements (MOA) with the counties and states on law enforcement services. This quarter, HSGU has worked with NPD on the drafting and review of agreements with several entities. HSGU worked with NPD on the drafting of a Memorandum of Understanding with Navajo Technical University for the establishment of a Police Academy. HSGU reviewed the annual sub-grant agreement between the NPD and McKinley County for the DWI Task Force Enforcement Services. HSGU is in the process of working with NPD leadership on the MAA with the City of Page. HSGU requested additional guidance from NPD on how NPD would like to amend or modify the MAA with City of Page. HSGU was informed that NPD leadership is in the process of meeting with the City of Page on this matter. Due to this, HSGU is waiting for additional information and client direction on the City of Page MAA. Chief of Police informed HSGU that the City of Page MAA is still active but that the Cross-Commission Cards held by the City of Page have expired and require renewal.

4. Interagency Agreement between Division of Natural Resources (DNR) and NDPS: This quarter, HSGU has worked with DPS, and DNR on legal concerns related to which entity has statutory authority under Navajo law to enter into an Interagency Agreement between DPS and DNR that gives

**QUARTER 2**  
**<January to March 2022>**

---

DNR officers legal authority to enforce Title 14 and 17. HSGU, along with Natural Resource Unit, outlined concerns with the authority of DNR to carry out Title 14 and 17 authorities and how that may impact FTCA and liabilities issues. DNR's Attorney agreed to further amend the Interagency Agreement.

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

5. 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. The Apache County Attorney advised by memorandum 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. It is recommended that the MAA be renegotiated between NNFD and PVFD.

Complications/Concerns: HSGU will be reaching out to the Apache County Attorney to discuss this matter after obtaining examples of Navajo families who were charged by PVFD. 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. Exploring Self-Governance for the Nation's Current Title I Contracts with Navajo Area Indian Health Service: NDOH, in coordination with EMS and NTCCTF, submitted the application for the planning grant by February 10, 2022.

2. Johnson O'Malley (JOM) P.L. 93-638 contract: On February 17, the BIA sent a letter to the Navajo Nation stating that the Navajo Nation had not responded to concerns previously identified by BIA and BIE related to the Navajo Nation's P.L. 93-638 JOM contract. The concerns were related to high carryover funds (unexpended funds for subcontractors) and whether the Nation was appropriately overseeing the subcontractors to ensure services are being provided to Indian students. BIA was most concerned with the GMCS subcontract. The BIA requested a meeting with the Nation to discuss the concerns and noted if the Nation is unwilling to engage in such discussion, the BIA may consider re-assumption of the contract. HSGU worked with JOM to prepare for the meeting with BIA on February 25, 2022 and subsequently to provide a written response to BIA/BIE's concerns which was submitted on March 11, 2022. HSGU participated in a follow-up meeting with Navajo JOM and BIA on March 28, 2022. BIA agreed to provide a written response to the Nation and to cooperate in further meetings to assist the Nation in addressing the concerns. HSGU will continue to work with JOM in responding to BIA's and BIE's concerns. (This is further discussed in the DODE section.)

3. BIA's claim of "expired" P.L. 93-638 contracts: On March 23, 2022, HSGU participated in a meeting between the Navajo Nation and the BIA Navajo Regional Office regarding the outstanding matter of high carryover of funds under "expired" P.L. 93-638 contracts. This is a recurring issue as there has been high turnover of the BIA NRO Regional Director in recent years. The BIA's position is that the Nation cannot lawfully extend P.L. 93-638 contracts internally when the funds under the contract have not been fully expended even beyond the term of the contract and that there needs to be some administrative process (rather BIA approval of extension) in place to ensure that the funds tied to "expired" contracts can continue to be expended by the Nation. BIA NRO also contends that the Nation may be exposed to liability due to continuing to expend funds and provide services under "expired" contracts. HSGU and OMB met with BIA staff on March 28, 2022 to discuss the matter further. BIA intends to provide recommendations to address the matter and possibly resolve the matter. HSGU will continue to work with OMB and OPVP on addressing this matter.

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 Nation to be able to carryover and use funds from "expired" P.L. 93-638 contracts.

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

1. DBMHS Medicaid Provider Agreements with Arizona and New Mexico: The Navajo Nation Council approved the limited waivers of sovereign immunity (CJA-06-22 and CJA-05-22) during the Navajo Nation Council's Winter Session for DBMHS's applications for Medicaid Provider Agreements with Arizona and New Mexico in order to receive third party reimbursements for services provided to eligible Navajo members. DBMHS submitted the approved applications to New Mexico in February and they are being reviewed by the New Mexico Human Services Department. DBMHS submitted the provider applications to Arizona Health Care Cost Containment System (AHCCCS) as well for review and approval.

Complications/Concerns: AHCCCS has requested that elected officials provide personal information on the applications in order for DBMHS applications to move forward. DBMHS requested for clarification from AHCCCS regarding whether redacted personal information would suffice for the applications to be processed. AHCCCS has not yet responded.

2. DBMHS Tribal Opioid Response (TOR) Grant: DBMHS has implemented sub-recipient agreements with Tuba City Regional Health Care Corp. and Utah Navajo Health Systems to assist in carrying out the purposes of the grant. HSGU participates in the monthly TOR Task Force Meetings. The Task Force is working on an opioid overdose and naloxone policy for the NDOH. HSGU will likely review the policy for legal sufficiency once completed. 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.

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

**QUARTER 2**  
**<January to March 2022>**

---

3. DALTCS Legislative Concern: DALTCS contacted HSGU regarding a legislative concern related to DALTCS budget. HSGU assisted DALTCS by providing a written memorandum on “fixed costs” as defined under the FY 2022 Budget Instruction Manual.
4. Draft Revised Public Health Emergency Orders (PHEO) for HCOC. HSGU has been working with NDOH to draft updated PHEOs for the Navajo Nation to advise the general public on public health orders/mandates during the COVID-19 pandemic. The PHEOS address various items, including masking mandate, gathering limits, specifics related to businesses and schools.

**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 state court matters and require a request for legal intervention, and other related matters. For this quarter, HSGU conducted seven (7) case staffings. HSGU will continue to staff cases and answer related legal questions.
2. New Mexico State ICWA Bill: New Mexico State Representative Georgene Louis, sponsor of the New Mexico ICWA bill, hosted one (1) virtual meeting to update the tribes, pueblos and other stakeholders on the status of the New Mexico State ICWA bill. The New Mexico ICWA bill was introduced in the New Mexico Legislature as the Indian Family Protection Act on January 24, 2022. HSGU reviewed the introduced bill to ensure that the Navajo Nation’s amendments that were approved during last year’s tribal consultation sessions were reflected in the introduced version. HSGU identified two (2) issues with the introduced version which were later corrected when the bill was in the Senate. HSGU worked with the Division of Social Services in the drafting of a letter on behalf of the Navajo Nation President supporting HB 135, the Indian Family Protection Act. HSGU also drafted talking points regarding this bill. The Indian Family Protection Act passed the New Mexico State legislature on February 16, 2022. Governor Michelle Lujan Grisham signed the Act into law on March 3, 2022. The Indian Family Protection Act will go into effect on July 1, 2022. HSGU will work with the ICWA Program and New Mexico Children, Youth & Families Department in the drafting and promulgation of rules and regulations pertaining to the Indian Family Protection Act.
3. 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, 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. HSGU has been meeting with DSS to provide several recommendations on how to address a challenge that is out of DSS control.

Complications/Concerns: Giving funds to DSS to purchase on behalf of TAOS has presented some challenges. In the future, it may be less complicated to give funds directly to TAOS. At this point, DSS may not be able to fulfil the requirements of the Council resolution.

V. BOARD OF EDUCATION (BOE):

1. Superintendent of Schools Agreement: HSGU worked with the BOE in drafting and reviewing the contract and hiring of Dr. Harold Begay as the Superintendent of Schools. During a Special Meeting, BOE approved the Superintendent of Schools Agreement.

VI. DEPARTMENT OF DINE EDUCATION (DODE):

1. Johnson O'Malley GMCS matter: In the 1<sup>st</sup> quarter of FY2022, HSGU attended meetings between JOM and the BIA regarding unresolved matters with a subcontract with Gallup McKinley County Schools (GMCS). The meetings were for JOM to seek technical assistance from BIA NRO on how to re-initiate communications with GMCS as a subcontract. However, during the call, BIA NRO notified JOM that GMCS had filed a lawsuit in federal district court against the BIA for not approving a direct contract for JOM services. BIA NRO had denied GMCS's direct application noting that all JOM funds were awarded to the Navajo Nation under a P.L. 93-638 contract. However, GMCS has been refusing any communications or contact with Navajo Nation JOM. During the teleconference, BIA asked how the Nation intended to provide direct services to GMCS students. HSGU noted that the SOW under the 638 contract only requires the Nation to subcontract with local schools to provide JOM services. There is no provision for the Navajo Nation to provide direct services. HSGU informed LU of the litigation in case there would be adverse consequences for the Nation's 638 contract for JOM services. LU is preparing to intervene and file motions at the direction of the OPVP. HSGU is working with JOM regarding JOM subcontracts with willing subcontractors. On Feb 17, 2022, BIA sent a letter to JOM claiming that JOM is not fulfilling its 638 responsibilities. HSGU assisted JOM in writing and submitting a detailed response to BIA on March 11, 2022. On March 28, 2022, HSGU attended a meeting between JOM and BIA to review the JOM responses to BIA's concerns. At this meeting BIA took a more conciliatory tone and informed JOM that the real concern is the carryover funding from the GMCS 2019-2020 JOM subcontract. GMCS never submitted reimbursement from JOM for these funds. BIA provided options not presented to the Nation before and indicated they would be willing to provide technical assistance to ensure the 2019-2020 carryover funds are expended. BIA noted the upcoming program monitoring, and HSGU and JOM requested a follow up meeting that is not yet scheduled. The Navajo Nation requested that BIA memorialize their comments from the March 28 meeting in written form in reply to the Nation's response submitted on March 11, 2022.

Complications/Concerns: BIA has vacillated on their position that the JOM ought to provide direct services to GMCS students. HSGU has pointed out to BIA that providing direct services is not within the scope of work of the 638 contract, that GMCS has not been a subcontractor with the JOM since the 2019-2020 school year, and that GMCS has not submitted certified eligible student counts since 2019-2020. Although BIA seems confused about the JOM's responsibility to provide services to its subcontractors, JOM does not have a current obligation to provide funds for a school district unwilling to contract with JOM. BIA may continue to pressure JOM to provide services outside the scope of the current 638 contract, and BIA has discussed providing technical assistance to JOM in amending the scope of work to include direct services. HSGU has noted to BIA that the amending of the scope of work to include new work, unrelated to the current scope, would be a substantial change to the scope of work. That amendment would require a reauthorization by Navajo Nation Council and the appropriate Committees.

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 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.

Complications/Concerns: This research assignment is a substantial undertaking that requires creative thinking for how to forge a path ahead that has not been taken before. The research conducted so far by the TED Grant consultants has been primarily one sided (promoting the 638 path) without much direction from DODE staff, who do not have the time to be intimately involved in the research or planning. Client direction in the form of an official position is needed. Given these challenges, HSGU is working closely with DODE to begin comprehensive documentation of the different options and the pros and cons of each.

3. ERATE: The Navajo Nation successfully received its ERATE award, which will provide extensive support for internet technology, infrastructure, and service across Navajo Nation Head Start centers. HSGU worked to ensure that Head Start is in compliance with internet safety requirements. HSGU assisted DODE administration in ensuring the library Plan of Operation accurately captures the new structure which allows for the Chapter libraries to benefit from ERATE funding. One aspect of the ERATE funding also relates to the designation of Chapter Houses across the Nation as libraries, as they will be supplying public access to the internet for research purposes. The FCC has recently proposed amending the ERATE rules to include Tribal libraries in the definition of libraries eligible for state funding, a requirement for eligibility in the ERATE program. This would have the effect of allowing Tribes to designate their own libraries, and remove Tribal libraries from under the authority of State library agencies for determinations of eligibility. In November of 2021, the NNTRC filed comments with the FCC in support of this proposed change to the ERATE rules, recommending a streamlining of the ERATE rules to encourage greater Tribal participation, and recommending a statute of limitations be placed on the Universal Service Administration Company's recoupment of ERATE funds process. HSGU has worked on processing ERATE contracts to utilize the funding to ensure chapter house libraries achieve connectivity.

Complications/Concerns: HSGU issued a memorandum to DODE and provided notice of USAC's tactics to recoup money from recipients many years later. The Nation is already engaged in litigation against USAC trying to appeal USAC findings against the Nation. Further, a recent court case (Bianca v. FCC) ruled that there is no statute of limitations for the FCC to recoup funding. This creates a risk that USAC may try to recoup the funding recently awarded to the Nation in future years, as they do not do their due diligence on eligibility prior to issuing awards, but instead usually scrutinize awards years later. HSGU is doing its best to ensure Head Start is fully informed throughout the process.

4. Head Start Audits: In September 2021, DOJ received notice of an unpaid debt to the Department of Health and Human Services from a Disallowed Costs letter sent to Navajo Head Start (NHS) on October 14, 2020, that had accrued to a debt of \$1,913,006.18. The debt is a result of audit findings with questioned costs against NHS in the Navajo Nation's 2018 audit that led ACF to disallow costs on an ACF grant to NHS. DOJ presented several options and the debt was paid. NHS also received a disallowed costs letter on August 26, 2021, citing noncompliance due to improper monitoring of cost allocations and internal charges related to the Health Benefits internal service fund. HSGU filed a Notice of Appeal of this finding on September 27, 2021 based on the compelling evidence that the Nation followed proper protocols regarding Employee Health Benefit revenues. On

**QUARTER 2**  
**<January to March 2022>**

---

November 4, 2021, DOJ filed the Nation's appeal brief as well as a sur-reply brief in December. This quarter, NHS awaits the Departmental Appeals Board to schedule a hearing on the merits.

5. Navajo Head Start – FY 2022 Annual Grant Application, Agreement and Award: HSGU worked with NHS to review 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 determined that the grant application was 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 also reviewed the FY 2022 Grant Award and determined that the grant award was sufficient. Regarding the 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 have not yet been resolved.

6. Office of Dine' Youth – Crownpoint Youth Complex: ODY is currently involved in a construction project with Navajo Housing Authority (NHA) for the development of a youth complex in Crownpoint. According to the agreement between ODY and NHA, NHA is responsible for the construction, but must keep ODY in the loop throughout the process. The construction has started, but due to the continual inability of the hired contractor to meet design specifications, the project is behind schedule. This quarter, HSGU met with ODY on an issue with the contractor's Change Order Request "G", which was approved by NHA. After meeting with ODY at length on the Change Order Request "G", ODY informed HSGU that ODY will consider the options presented by HSGU on how to move forward in responding to the Change Order Request "G". HSGU has followed up with ODY for direction on this matter.

## 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 assistance to NNIC. 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 a count on COVID-related medical benefits paid through December 31, 2021 by the Employee Health Group Benefits Funds in the cumulative amount of approximately \$2.9M for (1) COVID-related medical treatment; (2) COVID testing; and (3) COVID vaccinations;
- Received and accepted the Employee Benefits Plan Financial Report for January 31, 2022, ending date;
- Received and accepted the Risk Management and Workers Compensation Programs' Actuarial Analysis Report, which included recommended insurance premium rates for FY 2023;



**QUARTER 2**  
**<January to March 2022>**

---

- Approved the Workers' Compensation Program FY 2023 premium rates; and approved the Risk Management Program FY 2023 premium rates for the self-insured auto physical damage, auto liability, general liability, and property coverage; and
- Accepted and authorized the Employee Benefits Program to proceed with processing the renewal of a three-year premium rate guarantee for life insurance coverage.

b. COVID Related Issues and Employee Exposures: HSGU continues 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-Two (62) 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-One (51) District Court cases continued, three (3) of which were served within this quarter out of the total fifty-one (51) cases, three were settled, but are pending with dismissal order; and three (3) were dismissed in favor of the defense's motion for dismissal. Two (2) bench trials, as previously reported, were held in January and October 2017, respectively, but rulings/judgments have yet to be issued. HSGU's Arita Yazzie assists with the defense of these cases, including but not limited to discovery and motion practices and trial preparations. This quarter, she participated in eight (8) motion hearings and five (5) pretrial conferences. In addition to the foregoing, Ms. Yazzie also assists with assessing the degree of liability exposures on other cases for settlement purposes.

b. State Court (Arizona and New Mexico): Three (3) cases continued, one (1) of which was dismissed in favor of the Navajo Nation. The dismissal was appealed but immediately voluntarily withdrawn in lieu of a Stipulated Dismissal that is pending final Court approval.

c. FTCA Cases (AZ and NM District Courts): Six (6) cases continued within this quarter. As the assigned Navajo Nation FTCA Liaison, Ms. Yazzie 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. This quarter, Ms. Yazzie assisted with the preparations of responses to written discovery and motion reviews in four (4) cases and deposition scheduling for April 2022 in another case. In addition to these federal cases, there are several FTCA administrative claims which are pending and included within the pre-litigation count below.

d. Pre-litigation Claims: Approximately thirty-five (35) pre-litigation claims are pending, twenty-seven (27) 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

**QUARTER 2**  
**<January to March 2022>**

---

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 DOJ, Navajo Nation insurance defense counsel, RMP staff, Navajo Nation insurance investigator/adjustor, and insurance broker of record, and case/claim reviews include defense strategy discussions and assessment of liability exposures to ensure sufficient reserves are in place and reported to the Office of the Controller.

3. Workers Compensation Program (WCP):

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. This quarter, HSGU assisted with the disposition and closure of three (3) claims, two (2) of which resulted in final settlements, and the denial of workers' compensation benefits in the third claim. 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; medical impairment rating issues; (iv) request for worker's compensation claim file records that are maintained confidentially and require compliance with the Navajo Nation Privacy and Access to Information Act, and non-coverage based on substance abuse (alcohol).

4. Employee Benefits Program (EBP):

a. Actuarial Consultant Agreement: HSGU assisted with the finalization of a professional services agreement which will be presented to the Navajo Nation Insurance Commission for approval.

b. Employee Health Benefits Changes/Modifications and Health Benefit Plan Document Amendments: HSGU continues to assist with the finalization of the employee health benefit changes with an effective date of January 1, 2022, and these changes were approved by the Navajo Nation Insurance Commission. In line with the benefit changes/modifications, HSGU is assisting with the Health Benefit Plan Document

amendments which will include the benefit modifications and applicable updated federal notifications and required COVID-related medical treatment/services.

5. Motor Vehicle Review Board (MVRB): HSGU was asked to assist in updating the Navajo Nation Vehicle Operator's Policy Manual (Manual): (formerly Navajo Nation Vehicle Operator's Handbook). The MVRB had several versions of the Manual that were in the process of being amended but had not been completely adopted. The last version of the Manual the MVRB had adopted fully was a 2003 version. HSGU has been collaborating with the MVRB to amend the most current edited version of the Manual, from 2018, in work-sessions to review the provisions, discuss issues, and compile a draft that is suitable to MVRB's needs.

Complications/Concerns: The Handbook amendments are scheduled to be completed as timely as possible, however scheduling conflicts for work-sessions have created some delay.

6. 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. Several work-sessions have been conducted with the Employee Housing Program and Employee Housing Committee to discuss the necessary review provisions, and HSGU. The updated version of the Rules and Regulations are scheduled to be done as soon scheduling of work-sessions can be completed.

#### VIII. DIVISION OF HUMAN RESOURCES (DHR):

1. Department of Child Support Services (DCSS): Since the last quarter, there has not been much change on the Full Faith and Credit for Child Support for Child Support Orders to bring the Navajo Nation into compliance with the Full Faith and Credit for Child Support Act. HSGU continues to work on this issue without Office of Hearing and Appeal's assistance. HSGU plans to enlist the assistance of DCSS, however, there have been some complications in that COVID has prevented larger meetings that would involve all of the agency offices and all of the Child Support Enforcement Officers. While meetings could be set-up with the four agency offices individually, it would be more efficient to meet with all of them simultaneously.

Complications/concerns: Due largely to an increase in litigation of child support cases in which non-custodial parents have engaged legal counsel and therefore having to respond to a large number of pleadings, HSGU was unable to reach its goal of reaching a process for compliance with Full Faith and Credit for Child Support Act. HSGU has drafted a "Notice of Filing of Foreign Order" to be sent to custodial and non-custodial parents when a foreign order is submitted to DCSS for full faith and credit with the Office of Hearings and Appeals along with developing a tracking system. However, there was insufficient time to meet with the Office of Hearings and Appeals and DCSS Administration to discuss implementation.

2. Navajo Nation Department of Child Support Enforcement Administrative Process: HSGU previously created a manual on the administrative process for DCSS. The manual contains the Navajo Child Support Enforcement Act, the Child Support Guidelines, some important decisional law

**QUARTER 2**  
**<January to March 2022>**

---

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

Complications/Concerns: This project has moved slowly in the second quarter. There has been progress but, again, due to an increased amount of litigation against parties represented by counsel and having to respond to an increase in pleadings as well as oral argument, HSGU has not completed this long term project.

3. Department of Child Support Services – Policies and Procedures Manual Update: HSGU was asked to assist in updating the DCSS Policies and Procedures Manual (Manual). The last time the Manual was updated was in 2002. There have been amendments made to the Child Support Enforcement Act since the last update as draft changes being made to the Navajo Nation Child Support Guidelines. Therefore, the updates are warranted. DCSS's five (5) agency offices are tasked to provide their input for Manual updates. Once the agency offices input is complete, the updates will be compiled and reviewed by DCSS – Administration. The compilation will then be submitted to HSGU for legal review.

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. HSGU previously reviewed the documents and made suggestions and it has remained dormant until recently. This quarter, HSGU met with NNOSHA and Division of Human Resource Director, Dr. Perphelia Fowler, in January 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 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.

**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. HSGU was informed that the individual at the Office of the Controller (OOC) who 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 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. Several HSGU attorneys worked on the interpretation, the Deputy Attorney General, TFU and HSGU. HSGU reviewed files and emails from that time and sent Zwierlein the HSGU and OOC's interpretation.

### **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 Navajo 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. The Navajo Nation brief, whether freestanding or joint, is due August 5. Oral argument will be scheduled in October or November 2022, with a decision expected by June 2023. The Native American Rights Fund Supreme Court Project convened a meeting this week to discuss amicus strategy, and Navajo DOJ will be discussing how to proceed with briefing with the parties in the next few weeks.

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 Navajo 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.

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

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

**QUARTER 2**  
**<January to March 2022>**

---

1. Federal appeals of ONHIR relocation benefit denial determinations: There are thirteen (13) cases pending in the federal District Court of Arizona for relocation benefit appeals. Of these, Ms. Eastman has four (4) individual relocation benefit appeals cases pending before the federal District Court of Arizona and one case pending in the Ninth Circuit Court of Appeals. In one pending FDC-AZ case, briefing is complete as of January 19, 2022, and NHLSP now awaits a decision. In another case filed on June 30, 2021, NHLSP filed a Motion for Summary Judgment on February 25, 2022. A Response and Reply brief is due later this month (April 2022). Two Complaints were also filed during the first quarter and service is complete for both cases. ONHIR filed its Answer and Certified Administrative Record in one case on March 9, 2022 and NHLSP's Motion for Summary Judgment is due in May 2022. For the other Complaint, ONHIR's Answer is due later this month as well.

This quarter NHLSP reviewed cases for possible federal appeal for eight (8) other NHLSP clients who have statutes of limitations that expire in June and July 2022. Five (5) of these cases are a family sibling group who had a consolidated hearing in 2016. These cases are being reviewed as well as cases for two siblings who had a consolidated hearing before ONHIR with FAA statutes which expire in June 2022. Local outside counsels also represent relocation clients for nine (9) other federal appeals pending in the District and Ninth Circuit Court of Appeals.

One of the cases being reviewed and recommended for federal appeal has a FAA statute that expires in July 2022. This client was represented by NHLSP at the administrative appeal level. At issue is the validity of the client's traditional marriage when she was only 13 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.

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 the NHLSP client's marriage is essential to her eligibility for relocation benefits. NHLSP 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. NHLSP will file the Complaint for this client in the next quarter.

NHLSP met to discuss strategy for pending and planned federal appeals on March 24, 2022. We discussed strategy for the cases remanded back to ONHIR from federal court, and for ONHIR's motions for limited discovery on outside counsel's EAJA fee petitions, and updated the master list of cases that are currently pending and those that require review with FAA statutes of limitations that expire in 2022 and 2023. Thirty-three (33) cases on the master list have statutes of limitations that expire in 2022.

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 initially scheduled for a hearing in January 2020 still has not been heard. 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 and can participate via phone once her remand hearing is re-scheduled.

**QUARTER 2**  
**<January to March 2022>**

---

A case of a NHLSP client remanded by the Ninth Circuit back to ONHIR is still pending. Counsel has requested an in-person supplemental evidentiary hearing and has rejected ONHIR's offer to have a Zoom hearing for our client because of the client's limited access to the internet, and outside consultant wants a clear hearing record for the remand. A hearing will not likely be scheduled until it is feasible to schedule an in-person hearing at ONHIR in Flagstaff for the Hearing Officer, NHLSP and the client, and ONHIR counsel and staff.

3. Assistance to Certified Applicants: An NHLSP client who was certified eligible for relocation benefits during the summer of 2019 after a successful Ninth Circuit Appeal. ONHIR had requested her to initiate divorce proceedings in order to move her relocation benefits case forward toward completion. The client will do so to ensure that her relocation benefits remain her sole and separate property NHLSP will prepare the petition for divorce to file in court. The parties' homesite lease will need to be adjudicated as part of the proceedings.

4. Advice and Assistance to the Navajo-Hopi Land Commission and NHLCO by NHLSP: This quarter, NHLSP staff called into five (5) regular and two (2) special meetings of the Navajo-Hopi Land Commission ("NHLC") in January, February, and March 2022. NHLSP staff and OAG also covered the Naabik'iyáti Committee and Navajo Nation Council meetings at which the DRF enabling legislation was passed unanimously on January 27, 2022, and the special meeting on March 8, 2022 at which the NHLC unanimously passed a resolution recommending approval of the Fund Management Plan for the Dine' Relocatee Fund by the Budget & Finance Committee. NHLSP gave presentations at the NHLC meetings on February 3 and March 8 to explain the legal need and purpose for the DRF and FMP. NHLSP asked DRF legislation sponsor NHLC Chairperson Tso to sponsor a resolution to be introduced to BFC in April 2022 to approve the FMP.

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 once the FMP is approved by the Budget and Finance Committee and the account(s) are set up with the Office of the Controller.

NHLSP and Chapter Unit attorneys also reviewed and advised the NHLCO on the legal sufficiency of a Memoranda of Agreement (MOA) between NHLCO, the FBFA Chapters, and/or Choice Humanitarian ("Choice"), a non-Navajo, non-profit organization, which has its own federal grant funding. Choice Humanitarian would provide the FBFA Chapters with technical assistance in purchasing materials and hiring contractors to expend funds allocated to each of the 9 FBFA Chapters by the NHLC in 2013 from the FBFA Escrow Fund for housing repair, rehabilitation, and/or replacement. Non-LGA certified Cameron Chapter is willing to work with Choice Humanitarian, but cannot directly enter into contracts with 3rd parties, so the MOA was structured so that NHLCO and Choice Humanitarian are the parties to provide technical assistance for Cameron Chapter's benefit. On the other hand, LGA-certified To'Nanees'Dizi Chapter has elected not to work with Choice Humanitarian and has entered into a MOA with NHLCO only, and To'Nanees'Dizi will use its allocated FBFA Escrow Funds to purchase materials and hire contractors to remedy housing issues for the FBFA residents in the chapter. NHLSP also participated in meetings with NHLCO and OPVP this quarter to discuss the MOAs and the status of expenditure of FBFA Escrow funds by each FBFA Chapter. In addition, NHLSP responded to concerns regarding expenditure of the

## QUARTER 2

<January to March 2022>

---

FBFA Escrow Funds and participation by Choice Humanitarian by providing the OAG with the MOAs and the original 2013 NHLC resolution which allocated the FBFA Escrow Funds, and clarified that Choice Humanitarian is not receiving FBFA Escrow Funds for its role as a technical assistant to the FBFA Chapters that have agreed to Choice's participation.

Additionally, NHLCO, NHLC Chair Tso, and NHLSP attended a meeting with ONHIR, including ONHIR New Lands staff, on March 8, 2022 to discuss outstanding issues with ONHIR with New Lands consultant Tim Varner. NHLSP researched the Navajo Nation legislative history and authorities of NHLC and NHLCO, and their joint roles in advising on the Navajo-Hopi land dispute, land selections, and assisting relocatees. NHLSP recommended the NHLCO Plan of Operations be amended since it was first adopted in 1990 and has not been updated.

5. Federal Legislative Policy and Advocacy for Navajo Relocatees by the NHLC and Hobbs Straus Dean & Walker: Mr. Greg Smith of 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, outside counsel participated in several lengthy calls with the NHLC regarding overall strategy, etc. Mr. Smith also provided regular detailed email updates to Navajo leadership, DOJ, NNWO and NHLCO.

This quarter, Mr. Smith drafted detailed appropriations testimony for Chairman Otto Tso, and assisted with President Nez's testimony on Navajo-Hopi issues. He also submitted the testimony and shared it with key offices, especially in anticipation of meetings held by the President and NHLCO Director Robert Black during the week of March 27th. Mr. Smith also reported on ONHIR funding in the FY 2022 Omnibus Appropriations and proposed funding in President Biden's FY 2023 budget.

Outside counsel scheduled or otherwise supported with briefing materials, key meetings the week of March 27th intended to advance scheduling of a hearing and appointment of an ONHIR commissioner. Related to this, they met multiple times with President Nez and Chairman Black. They also met with Navajo Thaw representative, Brian Cole. Separate from these meetings, Hobbs Straus held multiple calls with congressional staff during this period.

During this quarter, outside counsel continued discussions with Executive Branch officials, especially regarding appointment of an ONHIR commissioner. Hobbs Straus participated in the first litigation settlement discussions and also followed up with the federal administration once advised by USDOJ that they did not want to participate in further discussions until the Court of Federal Claims and District Court of Arizona ruled on their motions to dismiss.

Mr. Smith was involved in various calls and research related to issues raised by the Hopi and San Juan Southern Paiute Tribes, including calls with both the Hopi and SJSP DC lobbyists. Hobbs Straus also prepared for and participated in a meeting between the Navajo President and the Hopi Chairman. The firm also participated in two special briefings of the NPL chapters and reviewed legislative language they would like added to the Navajo Technical Amendments bill (H.R. 6141). They also participated in several meetings with Second Generation representatives, as well as reviewed proposed Second Generation legislative language that they would like added to the Technical Amendments. During this period, outside counsel also continued to follow closely and report extensively 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: DOJ, with the assistance of outside counsel Dan Rey-Bear, represents the Navajo Nation and Relocation Beneficiaries<sup>3</sup> in two (2) lawsuits filed in the Court of Federal Claims in Washington, D.C. and the District Court of Arizona. The CFC case seeks monetary damages in the amount of \$40 million from the U.S. in its mis-handling 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 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.

NHLSP has continued to assist by following up to ensure that Navajo Nation departments and divisions which may have information and documents potentially relevant to the litigation pending against the federal government in federal courts have read, signed and returned Acknowledgments of receipt of OAG's Legal Preservation Notice/Records Hold issued on February 15, 2022 to OPVP and various other Executive and Legislative Branch divisions, as well as Navajo Nation enterprises such as NTUA.

The U.S. filed a partial Rule 12 (b)(6) Motion to Dismiss in the CFC case, to which a response was filed on March 15, 2022. The U.S. filed a full Rule 12(b)(6) Motion to Dismiss all claims in the District Court of Arizona, and the Navajo Nation's response was filed on March 30, 2022. In addition, Mr. Rey-Bear, Mr. Greg Smith, DOJ/OAG, ONHIR, DOI, and attorneys from the U.S. Solicitor's Office and U.S. Attorneys had a virtual meeting to discuss both the litigation and issues that can be settled outside the litigation, such as the Nation's request for President Biden to appoint a Commissioner for ONHIR. The Navajo Nation has formally requested a consultation with the U.S. to settle the litigation and the non-litigation issues relating to relocation, which the U.S. has sought to delay until the outcome of its pending Motions to Dismiss.

7. HPL Rent: The Navajo Nation continues 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. The federal government's prolonged delay in making decisions continues to negatively impact the Nation and these litigation matters continue to drag on in the meantime. The Nation made its most recent annual rent payment for 2021 in the amount of \$134,000.00 for Navajo use of HPL for grazing, farming, and homesites by Navajo signers of the Accommodation Agreement leases. DOJ prepared and filed a notice of the rent payment with the U.S. District Court of Arizona. DOJ is recommending elevating this extreme delay issue regarding HPL rent within the federal administration and to include it as part of any formal consultation with the U.S. (mentioned above).

8. Navajo HPL Residents/AA Signers: In early March 2022, NHLSP researched the Accommodation Agreement to advise the Chapter and Natural Resources Units on whether Navajo residents of the HPL who are AA signers are entitled to receive hay/feed distribution from the Navajo Agricultural Infrastructure Fund ("AIF"). A NNC Delegate reported that Navajo HPL residents who are AA signers and registered members of the Jeddito Chapter were refused hay and feed assistance, and sought assistance from OLC and DOJ. Under the Accommodation Agreement, Navajo HPL AA signers are entitled to an allocation of livestock and to receive grazing permits issued by the Hopi Tribe, and are also entitled to receive

---

<sup>3</sup> Defined as Navajo citizens who resided on the HPL on December 22, 1974, the date of passage of the original Relocation Act.

**QUARTER 2**  
**<January to March 2022>**

---

Navajo-related tribal benefits and services. As long as Navajo HPL residents who signed AA leases with the Hopi Tribe have a grazing permit issued by the Hopi Tribe and are registered voting members of a Navajo Chapter, such as Jeddito, and as long as all AIF requirements are met, Navajo HPL applicants can receive Chapter assistance.

The recently-enacted Dine' Relocatee Fund ("DRF") enabling legislation and 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. Navajo HPL residents who are AA signers are also beneficiaries of the DRF who could be eligible to receive housing assistance, infrastructure assistance, and education assistance from the DRF. 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.

NHLSP counsel met on March 7th with several AA signers and Wil Goy to discuss requests from these signers to make certain changes regarding their AA leases. In one instance a signer wishes to make adjustments to the configuration of her homesite resulting from health and cultural concerns. Another signer wishes to transfer his AA lease from the homesite where he originally signed to the homesite of a relative. A third signer wishes to expand her homesite beyond the original three acres in order to accommodate the growth of her extended family.

All three such requests are provided for in the 2017 AA Clarification Agreement between AA signers and the Hopi Tribe, and a request to expand the homesite beyond three acres is provided for in the original AA and reaffirmed in the AA Clarification Agreement. NHLSP will be making these specific requests to the Office of Hopi Lands on behalf of the AA signers. The 2017 Agreement provides that the Hopi Tribe will respond to these requests within 30 days, either approving the requests, or if declining to approve, providing a specific reason for denial with suggestions as to adjustments in the request that would enable it to be approved.

### **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: Legislation No. 0208-21, which includes the Carbon Development and Marketing Agreement (CDMA) and limited waiver of sovereign immunity to participate in the California Air and Resources Board (CARB) Cap-and-Trade Program, passed all committees and is awaiting final approval from the Navajo Nation Council before the CDMA is executed by the President. As indicated in previous reports and at the request of the Office of the Speaker, the Department began coordinating public information sessions for the carbon sequestration or offset project and associated legislation. These public information sessions are scheduled to conclude prior to the Spring

Council Session, and the Department of Forestry will compile a report or other summary of the public comments and questions to supplement its presentation at Spring Council Session.

2. Department of Water Resources:

a. ARPA. Work related to large-scale water infrastructure projects continued, and is anticipated to increase as multiple funding sources become available through the passing of the American Rescue Plan Act of 2021 (ARPA), including the establishment of the Navajo Nation Fiscal Recovery Fund and NNFRF Office, and the Infrastructure Investment and Jobs Act (IIJA), also referred to as the Bipartisan Infrastructure Law (BIL). For example, the Subrecipient Agreements with the Navajo Tribal Utility Authority (NTUA) for the Defunded CARES Act projects were approved through Section 164 Review process. The effective date of the Agreements is March 1, 2021. This effective date is in accordance with U.S. Treasury guidance and the eligible use of NNFRF funds for these particular projects; however, the Office of Management and Budget determined the Agreements were insufficient due to the start date of services occurring before the Section 164 Review and execution by the Navajo Nation President. This determination is likely to occur for the future use of NNFRF funds, or other infrastructure-related funding, where the start date for eligible services will pre-date the Section 164 Review.

b. Navajo Gallup Water Supply Project: Work on this essential project continued. A federal project manager retired and assignments within the Bureau of Reclamation shifted accordingly. As previously indicated, additional congressional appropriations are necessary to complete the project and lobbying efforts are underway. The technical group continued negotiating the final terms of the Cutter Lateral Operation, Maintenance and Repair Contract between the Nation, NTUA, and Reclamation. More information and construction updates on the project may be accessed on Reclamation's project website: <https://www.usbr.gov/uc/progact/navajo-gallup/index.html>.

c. 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. The Nation's engineer, Souder Miller and Associates, is coordinating project efforts because of its complexity, including multiple funding sources, and in accordance with existing contracts. The Nation will lease water from the Jicarilla Apache Nation, which will be treated and delivered by the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) to a bulk meter at or near the chapter boundary, which will then be distributed to the To'hajiilee community through the existing and upgraded system within the chapter boundary. Negotiations related to an agreement for the treatment and delivery of water by ABCWUA are scheduled next quarter.

3. Navajo Parks and Recreation Department's Reopening Tribal Parks:

a. Tour Operator Permits: 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. Proposed Amendment to NPRD's Plan of Operation: A proposed reorganization of the Navajo Nation Museum under NPRD was introduced under Legislation No. 0053-22. The legislation was tabled pending a Resources and Development Committee work session. While the

**QUARTER 2**  
**<January to March 2022>**

---

amendments were not an issue, the formatting of the proposed amendments needed additional work. NRU reviewed and compared the proposed amendments to the NPRD Plan of Operation that reflected this reorganization in July 2021, and issued a memorandum and version of the proposed amendments that incorporated prior amendments pursuant to RDCO-79-16 and RDCJY-031-19, neither of which was included with 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. RDC scheduled a work session for April 11.

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 U.S. 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 will be hosting several public meetings as well as undertaking formal Tribal consultation. The public comment period was extended an additional 30 days and will conclude on May 6. Additional public meetings have been scheduled at San Juan College on April 27th, Nageezi Chapter House on April 28th, and at the Navajo Nation Indian Programs Training Center on April 29th. RDC had a Leadership Meeting with the Farmington BLM Field Office on March 11 to discuss and raise concerns regarding the proposed withdrawal. In addition, NRU and LU met with RDC on March 28<sup>th</sup> to get more background information and obtain additional documentation regarding this matter. On March 28, DOJ also received notification from the BIA and BLM indicating that they wish to engage in tribal consultation with the Nation.

5. Utah Hunting Agreement: NRU participated in several calls with Utah officials to discuss the idea of re-negotiating the Utah hunting agreement; the Utah officials were very supportive of the idea, and recommended the Navajo Nation draft an agreement that better serves the Navajo people, and to present that agreement to the State of Utah. An update was provided to OPVP legal counsel at the request of the Navajo Utah Commission, and Utah to renegotiate the cooperative agreement regarding hunting and DOJ was asked to go back to the Navajo Utah Commission (NUC) to get concrete recommended changes instead of their generalized asking points. NRU requested a meeting with NUC Director Clarence Rockwell so that it can start working on getting more information as to the specific asks that the NUC want incorporated into the agreement. NRU provided a short update to the NUC at their March 8<sup>th</sup> meeting on where the Hunting Agreement is with respect to the request that the Nation renegotiate the agreement. The Agreement can be amended but it requires a request before January 31<sup>st</sup>. The Nation still has time to discuss this matter with the NUC and settle on which requests to present those to Utah.

6. Bears Ears:

a. Bears Ears Inter-Tribal Coalition/Commission (BEITC): NRU Attorney Paulene Abeyta 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 Albuquerque, NM on February 23-24, 2022. TPO's and POC's were invited to participate in discussions, work timelines, and network with

**QUARTER 2**  
**<January to March 2022>**

---

BLM & USFS officials. Both Ms. Abeyta and Jason Searle from the Litigation Unit participated in the meeting. The next meeting will be held in Durango, Colorado from April 13-14, 2022. HHPD completed the drafting of the land management plan and the Navajo Nation is on schedule with tasks for the commission.

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 Navajo Nation's support, the plan is to open Bears Ears: Living Land as the first exhibition in Summer 2023 or Spring 2024. During a March meeting with HHPD, DOJ learned that the Bears Ears Museum Project was transferred from HHPD to the Navajo Nation Museum. HHPD recommended that the \$5,000 grant funding for the project, provided by the LACM be used for honorarium for the elders and/or Navajo members who will assist the NN Museum in the creation of the exhibit. This recommendation is allowable according to the project parameters and there were no objections to the recommendation from the LACM or the Museum. This funding helps cover Part 1: Concept and Schematic Design (with estimated completion in December 2022). An additional MOU/Scope of Work with additional compensation (\$5000 per Tribe) will be created and made available for the final phases of the project, under different funding.

7. Navajo Land Department:

a. Allotment Appeals: NRU coordinated with the Litigation Unit on the filing of Notices of Appeal for several allotments. The Navajo Nation filed its Notice of Appeal from the Decision of Acting Regional Director rejecting the proposed sale of several allotments. NRU reached out to the BIA about potential settlement of the nine (9) allotment-sale-decision appeals; unfortunately, they declined and wanted to proceed with the scheduled briefings. After further discussion with the Navajo Land Department, they determined that it was no longer in their best interest to proceed with the Appeal and requested dismissal of the Appeal. One major factor in the dismissal was that the appraisals were old and needed to be updated. On January 19, 2022, the Navajo Land Department (NLD) sent a letter to the BIA requesting for the reimbursement of \$278,885.00, which was the amount the Navajo Nation submitted for the allotment sales. More recently, the NLD has requested an update from BIA on their request for reimbursement and BIA indicated that the requests for disbursements were submitted through the BIA Disbursement Process but they were not able to provide a definite timeline for full disbursement.

b. Ute Mountain Ute Tribe: In 2019, NRU worked on a proposed fence agreement with the Ute Mountain's General Counsel. The Ute Mountain Ute Tribe (UMUT) and the Navajo Nation share a common border for several miles along or near the border of Colorado and New Mexico, Colorado and Utah and in New Mexico (Shared Boundary). The UMUT had sent the Navajo Nation a draft fence agreement that would address grazing, fencing and roads along the Shared Boundary by setting forth protocols for the capture of stray or trespassing livestock and for the return of such livestock to its proper owner, when possible, accounting for damage to Tribal property and resources that is caused by trespassing livestock. This agreement came up again when RDC requested a meeting on February 4, with the Ute Mountain Ute Tribe Chairman Manuel Heart and others to discuss the feral horses that have impacted both Navajo and Ute Mountain especially with the drought situation, boundary issue, fencing and enforcement. The meeting included DNR, NNDA, DFW, NLD, DRE and OPVP. There are a lot of unanswered questions about how this can be accomplished in light of the limited resources of the Navajo Nation. RDC believes that the fencing and maintenance costs

should be a BIA responsibility; however, the Ute Mountain Ute Tribe is not willing to defer completely to the BIA. RDC will be scheduling a tour of the areas in question and will be having another meeting with the parties along with BIA and BLM.

8. General Land Development Department (GLDD):

a. Mission Site Permit Regulation: (On-going) NRU first reviewed these regulations in 2018; however, they were not approved by 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 March 15, 2022, with GLDD and the NLD to further discuss the regulations and proposed amendments. RDC has scheduled a meeting for April 23 so that RDC can discuss and get input on the proposed regulations from church leaders. GLDD made additional changes to the proposed regulations that have not been reviewed by NRU. NRU reviewed the most recent draft and provided comments and edits to the regulations.

b. Cemetery Lease: NRU reviewed the lease and suggested edits (took out provisions that were not applicable) and condensed the lease as much as possible. We also had additional questions such as whether GLDD will be charging a fee, term of the lease, etc. NRU 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.

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 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. NRU is coordinating with OLC on the legislation for the delegations. NRU have had several calls with GLDD to discuss the Plan of Operation and they have made edits based on our recommendations. There were also several meetings to discuss getting DOJ on GLDD’s electronic review system. GLDD provided a presentation of the system and how it works. Once DOJ is added to the system as a reviewer, NRU can start reviewing documents submitted from GLDD electronically.

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 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 have not handled requests like this before. NRU had several calls with IHS to explain their transfer process and clarify what documentation is needed to achieve this transfer.

Based on the information provided, there will be a separate legislation for each lease. One for the transfer of ownership for IHS' purposes. The resolution will need to state that the “Navajo Nation authorizes the WIHCC to own the DMC after WIHCC acceptance (substantial completion) and the “Navajo Nation authorizes the WIHCC to assume operation and maintenance of the DMC after WIHCC acceptance (substantial completion). Once the IHS receives the Resolution authorizing WIHCC to own the DMC, IHS will transfer ownership to the WIHCC via a Transfer Agreement. IHS will also send written notification to the Navajo Nation terminating the respective land lease for the DMC and the north staff quarters site. At that point, WIHCC can begin processing its request for a new lease for WIHCC. The second legislation will be for the approval of the land lease for WIHCC

Currently, IHS is ready to transfer ownership for the DMC and housing units since construction is complete. However, IHS is saying they will transfer ownership of the staff quarters at a later date when construction has been completed under a separate transfer agreement. So WIHCC should only be processing documents for the transfer of ownership of the DMC and the housing units at this time. NRU had two meetings with RDC to go over the process and for IHS to explain what is needed to accomplish the transfer.

9. Navajo Nation Department of Agriculture (NNDA):

a. Update of District Grazing Committee’s (GGC) Operating Manual: (On-going) NRU is assisting NNDA in the update of their DGC Operating Manual. NNDA requested NRU clarify the term “beneficial use” to be used in the updated DGC operating manual. The NNDA sought guidance on defining beneficial use in reference to agricultural permits in the definition section of the Manual. In the Estate of Benally, 1987 Navajo Nation Supreme Court case law, the Navajo Nation Supreme Court stated that Title 3 of the Navajo Tribal Code gave Courts the discretion in the division of estates so that tracts of land are kept intact and so that the most beneficial use of the land is encouraged. NRU issued a memo to NNDA defining beneficial use. The memo was broken down into two sections. The first is a short answer section which included a sentence by sentence break-down of the definition and the second is an analysis of why the definition is appropriate for the District Grazing Committee Manual and its relevance to Agricultural Land Use Permits. The definition is complicated, but will assist NNDA in amending the District Grazing Committee manual to include the legal definition.

b. San Juan River Farm Board: NRU attended 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 NNDA take place to determine the best approach to effectively administer Agriculture Land Use Permits (ALUPs). NRU also advised the Farm Board many of its issues are administrative, not legal, so the Farm Board must also meet with the NNDA to discuss various issues involving issuance of administrative decisions, permittees blocking other permittees from accessing irrigation lines, participating in ongoing litigation as a governmental entity, Fee Assessments, and issuing Notices to ALUP holders. NRU is also assisting the Farm Board navigate the legal ramifications of correspondence in the form of letters between the Farm Board and the BIA and providing copies of relevant sections of the Navajo Nation Code and CFR.

c. NPL Carrying Capacity and Stocking Rate: This continues to be a sensitive issue. Under 25 CFR 161.402, the BIA is required to submit a current carrying capacity and stocking rate along with a list of names for the NPL precincts. The regulations also clarify how the BIA is to

**QUARTER 2**  
**<January to March 2022>**

---

prescribe carrying capacities and establish stocking rates. The BIA, with the concurrence of the Navajo Nation, will: a) prescribe, review and adjust the carrying capacity of each range unit by determining the number of livestock, and/or wildlife, that can be grazed on the NPL without inducing damage to vegetation or related resources on each range unit and b) establish the stocking rate of each range or management unit based on forage production, range utilization, the application of land management practices, and range improvements in place to achieve uniformity of grazing under sustained yield management principles on each range or management unit. See 25 C.F.R. §161.204.

The BIA completed a study in 2016 that only covered Precincts 1 & 3. The BIA and DOA reviewed 2004 and 2016 vegetative carrying capacities established from vegetation studies completed by BIA and grazing permit data. Based on that information, the BIA recommended a standard stocking rate of (1) 790lb COW or AUM = (4) 197.5lb Sheep or SUYL and a carrying capacity of 10 sheep units yearlong (SUYL), which the previous RDC concurred with (RDCMA-27-18) as required under the regulations. BIA also recommended the carrying capacities for the reissued permits be revisited and readjusted based on yearly range monitoring, range inventory data completed and conservation planning. However, since the initial determination by BIA, the carrying capacities for NPL have not been readjusted due to the lack of vegetation and forage. On January 10, 2022, RDC held a Leadership Meeting with the Dził Yíjiiin Naal Dłoshi Beini (four legged animal) Group, DNR, NNDA, NLD and BIA to discuss the ten (10) sheep unit limit in the NPL grazing area. There is a push to raise the limit to fifty (50) sheep units.

d. James v. DGC12: (On-going). NRU attorney Brian Curley-Chambers and advocate Irvin Chee 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 DGC will need to revise its Resolution to BIA and serve it upon Plaintiff James 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.

e. Tsaile-Wheatfields Grant Agreement: NRU 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. Concerns have been raised over misuse of funds for the project, and a Grant Agreement will be amended and implemented to prevent future abuse of the funding for the Agriculture Project. NRU has provided two updates to the BFC, reached out to the new project assignee DWR, met with the Tsaile-Wheatfields Farm Board president, and provided the standard legal template to the individuals overseeing the project’s success.

10. 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 amendments processed this quarter. The first initial funding agreement awarded the Navajo Nation \$3,695,403.10 and required the Navajo Nation to contribute a 5% match to go toward the project. The amendment waived the 5% match required from the Navajo Nation and NMDOT will fund the entire Project. The second initial funding agreement awarded the Navajo Nation \$2,327,500.00 and required the Navajo Nation to contribute a 5% match to go toward the project. The amendment waived the 5% match required from the Navajo Nation and NMDOT will fund the entire Project.



b. Memorandum of Agreement (MOA) with Enterprises: The purpose of the MOA was to establish a partnership between NDOT, NAPI, NTEC and NNGE to coordinate the installation of a signal light and related road work at the intersection of N36 and NM371. Each of the Enterprises contributed to the Project. Under the MOA, NDOT will coordinate with NMDOT to plan, build, design and construct the installation of a signal light and related work.

c. Intergovernmental Agreement (IGA) – ADOT: The purpose of the proposed IGA between NDOT and ADOT is to specify each Party's respective responsibility associated with the States' installation of lighting within the State's right of way at US 160 and State Route 98. Under the IGA, the Navajo Nation will be responsible for all costs associated with connection to a power supply and the ongoing power costs associated with the Project. The State will be responsible for maintaining the Project.

d. Memorandum of Understanding (MOU) - Coconino County: This MOU will allow the Navajo Nation and Coconino County to continue with an established framework of cooperation to address transportation projects and issues of mutual interest and benefit for the residents of the County and the Navajo Nation. The Navajo Nation and Coconino County agree to meet annually to establish goals, objectives, and define tasks relating to the implementation of projects of mutual concern.

e. Intergovernmental Agreement (IGA) - Coconino County: The IGA added the N21 Kaibeto Road Improvement Project to replace culverts, complete the subgrade preparation and to apply gravel to 5.4 miles on N21. The costs for the Project will be shared between NDOT and Coconino County.

f. Proposed Programmatic Agreement: The programmatic agreement would be between FHWA, NDOT and HHPD. NDOT will be doing rehabilitation, partial realignments, and safety improvements along several routes on the Navajo Nation. The projects will impact some historical and/or traditional cultural properties and the agreement defines the roles and responsibilities of the parties with respect to actions to be taken in the event of a discovery.

11. Fort Wingate NRD Settlement: The settlement covers natural resource damages (NRD) claims held by the State of New Mexico, through the Office of Natural Resources Trustee (ONRT), the Pueblo of Zuni, and the Navajo Nation, against the U.S. and the U.S. Army for injuries to natural resources caused by releases of hazardous substances at or from the Fort Wingate Depot Activity (Depot). The Depot, in McKinley County near Gallup, was used for storage and disposal of explosives and munitions, and ceased operations in 1993. Environmental remediation of the Depot is on-going under the authority of the New Mexico Environment Department Hazardous Waste Bureau. The Zuni Pueblo and Navajo Nation have longstanding historical interests in the area occupied by and surrounding the Depot. Separately and apart from this agreement, certain portions of the Depot will be transferred to the Bureau of Indian Affairs to be held in trust for the Zuni Pueblo and Navajo Nation. New Mexico also has trustee interests in natural resources injured by Depot activities, including groundwater. The parties have agreed, subject to final approval by their decision makers, to the terms of the settlement as memorialized in a proposed consent decree.

The proposed consent decree (CD) for the Ft. Wingate NRD Settlement was approved by the Naabik'íyátí' Committee, Resolution NABID-55-21, and was circulated to the parties for signature. For the Navajo Nation, the Attorney General and the President are the identified signatories. The proposed consent decree (CD) was filed in the U.S. District Court for the District of New Mexico, and an Order to Stay the Proceedings pending a 30-day public comment period was issued. Louis Mallette, Litigation Unit, entered an appearance and NRU will coordinate as needed. The Office of the Natural Resource Trustee (ONRT) is coordinating efforts on behalf of the plaintiffs, including collecting public comments. All parties are in agreement on the proposed CD and anticipate a quick resolution following the conclusion of the public comment period.

12. Bonita Peak Mining District (BPMD) Trustee Council: Pre-Assessment Screening (PAS): The BPMD Trustee Council was formed to investigate potential natural resource damages that resulted from the 2015 Gold King Mine waste water spill. NRU participated in monthly calls. The BPMD Trustee Council initiated a PAS for a potential NRD claim related to ecological resources; however, in light of ongoing settlement negotiations and potential resolutions, the State of New Mexico will no longer pursue the completion of a PAS. The Navajo Nation is faced with a similar decision and legal discussions on the matter are scheduled next quarter. All PAS efforts are on hold pending these discussions.

13. Navajo Nation Environmental Protection Agency (NNEPA) and the Navajo Superfund Program (NSP): NNEPA and NSP experienced staff turnover. NNEPA may be able to use NNFRF funds to temporarily address staffing deficiencies if NNEPA is able to show its proposed use of NNFRF funds is an eligible use of the funds, as indicated in the Initial Eligibility Determination. However, the proper use of NNFRF funds has been a challenge. NRU issued a memorandum on procurement for NNFRF-funded Goods or Services that addressed Emergency Procurement and expedited procedures set forth in the NNFRF enabling legislation, CJY-41-21, as well as a process to ensure compliance with the NBOA. Additionally, it has been difficult to track proposed NNFRF expenditures from the Initial Eligibility Determination to contracts submitted for Section 164 Review, so another memorandum was issued that indicated any document submitted for review that utilizes NNFRF funds should include: (1) a copy of the Expenditure Plan and Budget, as submitted for pre-eligibility review; (2) a copy of the Initial Eligibility Determination from the Department of Justice; and (3) a detailed explanation of how the use of NNFRF funds for the particular services is connected to the Expenditure Plan and Initial Eligibility Determination. We also noted that best practice is to distinguish those services to be paid by NNFRF funds from those to be paid by other funding sources, and that the use of NNFRF funds should be noted on the yellow Document Review Request form and in the memorandum to Section 164 Reviewers. In addition to making clear that the particular services are a permissible use of NNFRF funds, this amount of detail will facilitate future audits or other assessments of the use of NNFRF funds.

14. 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. Met with NNEPA to discuss the Navajo Nation Code provision for power and authority of NNEPA is geared toward regulatory and enforcement authority. NRU did identify NNEPA's code provisions that will likely need to be amended as well. NRU 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. Work is ongoing due to the pending federal statutory language.

15. Navajo Area Uranium Mines (AUM) Work:

a. Diné Uranium Remediation Advisory Commission (DURAC): Per their Plan of Operation (CJA-14-17) the commissioners' terms expired as of September 30, 2021. Because the commissioners' terms have expired, meetings and other DURAC functions have been discontinued. At this point, it's not clear what direction DURAC will go and if Council will extend their terms. However, there is a Plan of Operation that NNEPA worked on at the request of OPVP to reorganize DURAC so that it is more like the Regional Tribal Operations Committee (RTOC). The new version of DURAC would be called the Dine Environmental Advisory Commission (DEAC). They will focus on all environmental concerns and not just uranium clean-up. Jill Grant drafted the proposed legislation but it still needs additional work. NRU reviewed the proposed Plan of Operation at the request of the DURAC Executive Director. There will be a follow up meeting to discuss the new approach.

b. Draft Policy on the Sharing of Tribal Abandoned Uranium Mine (AUM) Information: The goal is to now encapsulate the relative protections for the sharing of sensitive information pursuant to applicable laws. NRU drafted a Policy pursuant to the Navajo Nation Privacy Act and NNEPA's authorities under NNCERCLA. The final version of the policy was submitted to USEPA for final review. USEPA Region 9 then intends to issue a letter emphasizing the agencies' commitments to adhere to their respective information protections during all AUM work, and the respective privacy policies and protections will be attached for reference. These documents may be subject to modification as the work progresses, and will be available on a shared site for USEPA and NNEPA. As of the date of this report, the policy is still pending review with USEPA.

16. 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: a 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 United States Environmental Protection Agency (USEPA) Region IX serves as the lead agency, while the second option would be the Navajo Nation's first attempt to use its own laws outside of NNEPA's general authorities for USEPA-led actions. The decision regarding the best or preferred option remains with NNEPA/NSP and discussions are ongoing.

17. Phase Two Trust: (On-going). The Phase Two Removal Site Evaluation (RSE) trust continues its work towards 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 being amended and expanded to include clean-up of Priority Orphan Mines, as contemplated under the Phase Two Trust settlement agreement. NRU received the finalized documents for the Expanded Trust agreement, and a memo addressed to the Attorney General that explains all the changes and the new Addendum 3 along with a summary of the changes. NRU worked with OAG's office to get those signed. The signed documents have been submitted to the Trustee for her review and signature, once those are completed the Trust can commence work on the Expanded Trust agreement work and the water studies part of the Addendum 2 sites. Jill Grant, USEPA, USDOJ, and NNDOJ met to finalize the reappointment letter for Trustee. Ms. Grant had some issues with the provision that requires her to seek approval from USEPA to have work outside of her work as the Trustee as to not create conflicts of interest.

18. Tronox Settlement – ARAR: NRU continues working on completing a comprehensive list of Navajo Nation ARARs to be used for uranium mine clean-ups. The draft ARARs table will be used as a template for incorporation in clean-up 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 clean-ups. The current plan is to incorporate fundamental law concepts by including a *hataalii*, or *traditional practitioner*, in the cultural resources survey that is required for each site prior to any invasive site investigation or clean-up activities. This approach will allow consideration of site-specific conditions and concerns in formulating any clean-up plans. USEPA asked the Navajo Nation to develop Navajo-specific ARARs that include Navajo Fundamental Law considerations. NRU submitted a table of laws and regulations proposing those as ARARs. The table is still a work in progress and NNDOJ is continually working with the assistance of outside counsel compiling the promulgated and unpromulgated laws and regulations for USEPA and Responsible Party reference. Those laws will be incorporated into the Engineering Evaluation and Construction Costs (EE/CAs). NRU continue to participate in recurring monthly calls on this issue.

19. 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 north-eastern Arizona. The responsible party, Cree Production Company, formerly operated Tsosie 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, NRU continued working with USEPA on revisions to the draft settlement and Statement of Work for investigation of uranium mines by Cree Production Company, and have come up with a final draft that everyone is comfortable with. On February 22, 2022, counsel for Cree provided comments and proposed edits to the agreement. USEPA is leading this removal action and uses a very standardized template for these types of agreements. However, it is willing to make limited changes when circumstances are warranted. NRU submitted its combined comments on the proposed changes to Jill Grant, reviewed our combined submissions, and sent a joint submission to counsel for USEPA. We are all in agreement that Cree was overreaching and attempting to make revisions that would be contrary to the best interests of the Navajo Nation. On March 10, USEPA and NNEPA, including Jill Grant, began the cumbersome process of going through the proposed

**QUARTER 2**  
<January to March 2022>

---

changes line by line and providing edits to the text and comments on why certain changes were accepted, rejected or modified. This process will continue with a scheduled meeting on April 11, 2022, and, if necessary, another meeting. After NRU is finished, we will send the revised draft back to Cree's counsel. NRU hopes that any remaining issues can be resolved quickly.

20. Utility Rate Cases:

a. 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 Navajo Nation with these efforts, along with outside counsel. Late last year, the ACC issued an order granting the Navajo Nation \$10 million in assistance related to the "just energy transition" or "coal community transition" (CCT), rather than the \$100 million that the Navajo 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 Navajo 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 also hosted a workshop related to the CCT issue and has formed subgroups focusing on various aspects of the CCT issue. Outside counsel and NRU have participated in the workshop and the subgroup meetings and will continue to participate in the subgroup meetings during the upcoming quarter. NRU participation includes providing written documentation to the Generic Docket in response to issues raised by ACC Commissioners and ACC staff during the workshop and subgroup meetings. NRU participates in monthly calls with APS to discuss all things related to their rate case and the Generic Docket.

In the ACC's order issued last year, it denied APS's cost recovery for the selective catalytic reduction equipment (SCRs) installed at the Four Corners Power Plant. APS filed a special appeal of the ACC's decision with the Arizona Supreme Court. NRU Attorney April Quinn assisted DOJ's outside counsel with the drafting of an amicus brief filed on behalf of the Navajo Nation in APS's special appeal. The Arizona Supreme Court ultimately denied APS's special appeal. APS will follow the normal appeals process and have their appeal heard by the Arizona Court of Appeals. DOJ may file a brief in that appeal, but it is still under discussion.

b. PNM Rate Case: Public Service Company of New Mexico (PNM) approached the Navajo Nation with the possibility of the Navajo Nation filing an amicus brief in PNM's appeal to the New Mexico Supreme Court. The appeal focuses on the recent order of the New Mexico Public Regulation Commission denying PNM's abandonment in the Four Corners Power Plant and the sale of their ownership interest to the Navajo Transitional Energy Company (NTEC). NRU conducted research, discussed the possible amicus brief with PNM and DOJ's outside counsel, and emailed the AG regarding the same. After some internal discussion, DOJ decided not to file an amicus brief in the case for several reasons, including the quick turnaround time that would be required. NRU will monitor the appeal as it is considered by the New Mexico Supreme Court.

21. Navajo Nation Oil and Gas Company: Provided legal assistance on Legislation No. 0232-21 as it was being considered by RDC, the Naabik'iyáti' Committee, and the Navajo Nation Council. The legislation is for three helium operating agreements, two of which are located in the Sanostee Chapter and another in the Teec Nos Pos Chapter. There is concern about NNOGC's promises to provide the Chapters with a 1% profit sharing and the fact that the promise is not in writing. During Council Session, NRU Attorney April Quinn informed the Council that she could not assist with an amendment to the legislation regarding the profit sharing because she was not involved in the discussions between NNOGC and the chapters and

## QUARTER 2

<January to March 2022>

---

does not know what was discussed. The issues weretoo complicated to draft an impromptu amendment. DOJ was then directed by the Council to negotiate a profit-sharing agreement with NNOGC and have it ready by Council's Spring Session. The legislation was tabled to allow for the agreement to be negotiated. DOJ has been involved in various discussions related to the profit-sharing issue, including discussions with the Minerals Department and the Sanostee Chapter. DOJ has also spoken with NNOGC about the agreement. NNOGC produced a draft Memorandum of Agreement and DOJ prepared a counterproposal to NNOGC based on input from the Sanostee Chapter and the Minerals Department. The negotiations are ongoing.

22. Peabody's Kayenta Mine: Peabody's Kayenta Mine shut down in late 2019 and Peabody is currently in the process of conducting reclamation activities at the mine site. The Navajo Nation has the option to keep several things related to the mine, including roads, transmission, water wells, impoundments and buildings. A meeting was held on March 31<sup>st</sup> with Peabody and several Navajo Nation departments and programs to discuss next steps. It was decided that small teams should be formed to handle each of the substantive issues. DOJ was asked what legal agreements needed to be executed, but NRU advised Peabody that NRU will need to see how the conversations go on the various issues before DOJ could recommended specific agreements. It could be that some issues may include other parties beyond just the Navajo Nation and Peabody. For example, water agreements may include NTUA and possibly IHS.

### Tax and Finance Unit (TFU)

The Tax and Finance Unit is led by Assistant Attorney General Mel M. Rodis who supervises one (1) Principal Attorney, one (1) Attorney, one (1) Attorney Candidate, and one (1) Senior Legal Secretary. TFU is assigned to advise 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 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 also attends BFC meetings and provides assistance to the committee, as requested. Below are some of TFU's noted projects this quarter:

1. American Rescue Plan Act: The American Rescue Plan Act (ARPA), included \$20 billion of the Coronavirus State Fiscal Recovery Fund for Tribal Governments (Fiscal Recovery Fund or FRF). The U.S. Department of Treasury (Treasury) divided the first \$1 billion equally among all federally recognized tribes. Treasury allocated 65% of the remaining \$19 billion (\$12.35 billion) based on self-certified tribal enrolment data, and 35% of the \$19 billion (\$6.65 billion) was allocated based on employment numbers of tribal governments and tribally-owned entities for 2019. As of August 16, 2021, the United States Department of Treasury had allocated a total of \$2,079,461,464.93 to the Navajo Nation. In the first 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 to respond to the public health emergency with respect to COVID-19 or its negative economic impacts; to respond to workers performing essential work; for the provision of government services to the extent of reduction in revenue of the tribal government due to COVID-19; and to make necessary investments in water, sewer, or broadband infrastructure.

## QUARTER 2

<January to March 2022>

---

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 met individually with several Council Delegates to provide guidance on the FRF procedures for chapters and to provide updates on FRF eligibility reviews of chapter expenditure plans. TFU maintained regular communication with Office of the President and Vice President (OPVP) and its consultants on FRF matters. TFU edited OPVP's draft FAQs on NNFRF Hardship Assistance. TFU participated in a series of meetings with the Office of the Speaker (OoS), Office of Legislative Counsel (OLC), Office of Legislative Services (OLS), OPVP, FRF Office, Division of Community Development (DCD), Department of Water Resources, Navajo Tribal Utility Authority, and other DOJ units to prepare for FRF leadership meetings, work sessions, and Naabik'iyáti and Council meetings regarding FRF legislation 0257-21 and proposed amendments. TFU reviewed and provided substantive edits and comments to OLC's drafts of various proposed amendments to legislation 0257-21. TFU attended and presented at several leadership meetings and Naabik'iyáti work sessions regarding proposed FRF expenditure plans and legislation 0257-21. TFU participated in the Naabik'iyáti and Council meetings on legislation 0257-21. TFU reviewed and advised OPVP and the NNFRF Office about the eligibility of proposed FRF administrative cost budgets and budget revision requests for central support and regulatory offices. TFU advised OOC and OPVP on the allowable use of FRF administration funds to pay investment manager fees for the management of NNFRF investments. TFU advised OOC with respect to issues involving FRF revenue loss as well as the NNFRF Hardship Assistance Program, and advised leadership that Hardship Assistance checks issued to deceased individuals should be returned to OOC. TFU advised the NNFRF Office regarding procedures for emergency procurement and compliance with the NBOA for procurements using NNFRF. TFU consulted with and advised OOC on the investment of NNFRF and the need to ensure that investments are timed appropriately to coincide with the Nation's expenditure timeline for NNFRF projects and programs. TFU attended federal-tribal consultations, listening sessions, trainings, and other external meetings on FRF and other programs under ARPA; and TFU also worked with outside counsel to develop talking points and written comments for OPVP and NNWO in advance of federal consultations. To date, TFU, in consultation with outside counsel, has completed a total of **207 FRF initial eligibility determination reviews** for proposed expenditure plans seeking to utilize FRF, and **43** of those reviews were completed during the second quarter of FY2022. Although the FRF Procedures approved through BFS-31-21 allow DOJ **five** (5) working days to respond to requests for initial eligibility determination reviews, TFU's average response time is **four** (4) working days or fewer, while still responding to our assigned client needs.

2. Office of the Controller (OOC): TFU advised OOC with respect to issues involving FRF revenue loss as well as the NNFRF Hardship Assistance Program. TFU advised OOC and OPVP on the allowable use of FRF administration funds to pay investment manager fees for the management of NNFRF investments, KPMG's audit fees for the single audit of NNFRF and CARES Funds, and consultant fees and other costs of administering the CARES Hardship Assistance Program. TFU consulted with and advised OOC on the investment of NNFRF and the need to ensure that investments are timed appropriately to coincide with the Nation's expenditure timeline for NNFRF projects and programs. TFU advised OOC on hazard pay issues. TFU assisted OOC in preparing memoranda for the President's acceptance of COVID-19 donations, and drafted a template letter to issue to donors for tax purposes. TFU reviewed for legal sufficiency proposed Services Contracts between OOC and Michael P. Keiffer, Saintsbury Consulting, Jaeho Jang, Verity Management Consulting, Carolyn Atcitty, and KPMG, and reviewed and edited OOC's draft sole source procurement memoranda. TFU communicated with OOC and external auditor KPMG, in negotiating additional and clarifying terms of its Services Contract. 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 advised OOC on a department's proposed credit application with a vendor.

**QUARTER 2**  
**<January to March 2022>**

---

TFU assisted OOC's Credit Services Department with a leasehold mortgage document, and advised on the write-off of delinquent home loans. TFU researched an issue for OOC's Property Management Department regarding disposal of office trailers. TFU advised Property Management about department policies and the surplus vehicle bid form. TFU researched and advised OOC on IRS W-9 requirements in order for OOC to process a contribution to an attorney's Interest on Lawyers' Trust Account (IOLTA). TFU consulted with OOC's Payroll Section on the withholding of state payroll taxes for Navajo Nation employees working remotely in states outside the Four Corners area. TFU consulted with OOC on use of Permanent Fund Income for the Crownpoint Hotel project. TFU worked with outside counsel on OOC's request to obtain additional data, documents, and portal access from a former consultant. TFU responded to a request from OOC's Contract Accounting Section regarding contract support costs. TFU worked with the Investment Section regarding funds from investment accounts bequeathed to the Nation from a deceased donor. TFU worked with OOC to propose revisions to the Master Investment Policy. TFU responded to requests from the Investment Section related to the Navajo Nation's dealings with the Department of the Interior's Bureau of Trust Funds Administration. TFU assisted the Investment Section in completing documents to engage a new investment manager and to begin termination of other investment managers, related to investing Navajo Nation funds. TFU assisted the Investment Section with proposed changes to the Finance and Accounting Scholarship Program. TFU contacted the IRS to obtain a letter regarding the Nation's federal Employer Identification Number (EIN).

3. Investment Committee (IC): TFU drafted multiple resolutions for the IC related to the Navajo Nation's various investment matters. TFU attended all IC meetings. TFU participated in meetings between OOC and NNGE and advised OOC regarding an extended forbearance letter agreement between the Nation and NNGE and restructuring of the gaming loan. TFU advised on the Navajo Nation process for engagement of a new investment manager and termination of other investment managers. TFU drafted resolutions for BFC consideration related to investment matters.

4. Office of Management and Budget (OMB): TFU worked with OMB's Contracts and Grants Section on issues pertaining to the Indirect Cost Rate Proposals (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 regarding treating chapter officials' stipends as fixed costs. TFU responded to OMB's request to review and propose edits to tribal grant procedures in section X of the Budget Instructions Manual, which was raised due to OMB's processing of multi-year grant agreements. TFU advised OMB and OOC regarding hazard pay approval procedures. TFU advised OMB on the procurement of a consultant. TFU continues to work with OMB and OOC on issues pertaining to use of the Phoenix Urban Navajo Trust Fund and the related grant to the Phoenix Indian Center.

5. Office of the Navajo Tax Commission (ONTC): TFU participated in multiple taxpayer conferences with ONTC and taxpayers and drafted conference decisions. TFU advised ONTC regarding its subpoena authority. TFU assisted ONTC to resolve an issue with a vendor that provided information technology equipment that did not conform with the terms of the contract entered into with ONTC. TFU assisted ONTC to prepare for Standing Committee meetings regarding legislations approving amendments to the Uniform Tax Administration Statute, Hotel Occupancy Tax, and the Sales Tax Statute. TFU advised ONTC on its authority to collect and use extraordinary administrative costs and legal fees incurred from ONTC's tax collection efforts. TFU drafted an administrative subpoena for ONTC to issue to a taxpayer to begin the tax audit process. TFU drafted memoranda from ONTC to taxpayers on the applicability of Navajo Nation taxes to business activity within the Nation. TFU drafted a private ruling for ONTC to issue to a taxpayer. TFU represented ONTC in hearings before the Navajo Office of Hearings and Appeals regarding taxpayer appeals.



**QUARTER 2**  
**<January to March 2022>**

---

of assessments issued by ONTC, met with opposing counsel for settlement negotiations, successfully negotiated settlements favourable to the Nation, and drafted tax closing agreements. TFU advised ONTC and helped provide technical assistance to chapters regarding enacting local sales tax ordinances.

6. Department of Retirement Services (NDRS): TFU advised NDRS on 401(k) Plan, Retirement Plan, and Deferred Compensation Plan matters. TFU generally advised NDRS and the Retirement Plan Administrative Committee (RPAC), drafted proposed RPAC resolutions, and attended monthly RPAC meetings. TFU participated in multiple meetings with NDRS, the Division of Human Resources, and Principal Financial Group in an effort to resolve issues stemming from the early implementation of the automatic enrollment and automatic escalation changes to the 401(k) Savings Plan. TFU advised NDRS on Navajo Nation Privacy Act matters. TFU has joined discussions with NDRS and actuarial consultant Willis Towers Watson, on recommending discount rates, fringe rates, and amortization periods for fiscal year 2023. TFU researched and presented reports to RPAC and DCPAC on proposed changes to final average earnings calculations for Navajo Nation delegates. TFU provided trainings to NDRS staff on QDRO determinations, 401(k) loans, and payments to minor beneficiaries. TFU completed legal reviews of NDRS' proposed Services Contracts.

7. 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 FRF matters. TFU attending Standing Committee meetings regarding legislation to amend the Navajo Nation Tax Code. TFU attended RDC work sessions on payment of stipends to Navajo Nation agricultural officials, including district grazing committee, farm board, and land board officials. TFU responded to a Council Delegate's questions on the Shiprock Hotel project. TFU responded to a request by OLC and a Council Delegate, researching and advising on possible amendments to the Budget Instructions Manual in order to amend the definition of "fixed costs" for purposes of budgeting for chapter official stipends. TFU responded to OLC's questions on legislations amending the Navajo Nation Sales Tax Statute. TFU responded to various questions by Council Delegates regarding FRF and related legislations. TFU consulted with OLC on various draft legislations and legislative amendments, provided feedback, and suggested edits. TFU drafted BFC legislation for approval of a COVID-19 Donation Response Fund budget transfer. TFU responded to questions from OLC regarding sanction withholding of stipend payments of deceased chapter officials of sanctioned chapters, and questions on withholding of Agricultural Infrastructure Fund allocations to sanctioned chapters. TFU drafted resolutions for BFC consideration related to investment matters.

8. Miscellaneous Matters: TFU assisted and advised the Office of the Attorney General (OAG) on various NNFRF matters and procurement matters. TFU frequently advised and assisted other units of DOJ with various requests for services for their respective clients. TFU provided trainings to attorneys from other units of DOJ. TFU advised NRU regarding the Agriculture Infrastructure Fund. TFU advised NRU regarding recommended amendments to the Acquisition of Lands Act and the Land Acquisition Trust Fund Statute. TFU reviewed and proposed edits to a draft fund management plan for the Diné Relocatee Fund. TFU assisted LU by advising the Office of Background Investigations and DPM on budget deficits as a result of credit card fees. TFU corresponded with HSGU, outside counsel, OOC, and Navajo Nation programs regarding Treasury offsets. TFU advised HSGU on the applicability of Navajo Nation Sales Tax to a particular contract for goods and services performed within the Navajo Nation. TFU collaborated with HSGU in proposing amendments to the Navajo Nation debarment and suspension certification form. TFU assisted HSGU with a request to OOC regarding Property Management Department policies. TFU advised HSGU on tax issues. TFU advised

**QUARTER 2**  
**<January to March 2022>**

---

HSGU on a restricted use budget matter. 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. TFU advised ECDU on the establishment of a fund for a new Intellectual Property Department within DED. TFU assisted ECDU in advising DCD regarding the proposed use of FRF administration funds. TFU advised ECDU on the Navajo Nation's tax status and DED's receipt of donations. A TFU attorney participated in the TICA/AZ State Bar presentation with UN Special Rapporteur José Francisco Cali Tzay. TFU attorneys attended various meetings, CLEs, and trainings on ARPA, and a TFU attorney moderated a CLE panel on COVID-19 legislation.

**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*: The WRU and Litigation Unit are handling this matter currently before the Ninth Circuit Court of Appeals. After the Ninth Circuit's decision favourable to the Navajo Nation was issued on April 28, 2021, the Intervenor-Appellees filed a *Petition for Rehearing En Banc and to Correct Opinion* on July 29, 2021. The Navajo Nation filed a response on September 30, 2021. The Ninth Circuit's April decision reversed a lower court's dismissal of the Nation's breach of trust claim alleging that the Federal parties failed to consider the Nation's yet-to-be determined water rights in managing the Colorado River. On February 17, 2022, the Ninth Circuit denied a Petition for Rehearing En Banc. The Defendant and Intervenor have 90 days from the decision to seek certiorari to the U.S. Supreme Court, or the matter will go back to the lower court on remand for trial. The U.S. has indicated that they may seek cert.. Accordingly, WRU, on behalf of the Navajo Nation, filed a stipulated motion to continue a scheduled status conference. The next hearing in the AZ Federal District Court matter will be in June.

2. Other Colorado River Matters/ Colorado River Tribes: Interior Secretary Deb 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 provided. Secretary Haaland committed to working with the Colorado River Basin Tribes on water issues affecting the tribes. WRU also 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

**QUARTER 2**  
**<January to March 2022>**

---

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 further 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.

4. Little Colorado River Basin (AZ):

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

b. *In re Navajo Nation, 6417-300*. Phase I. The Phase I trial is now scheduled to begin in April of 2023. WRU and ST continue to work on pre-trial matters. Depositions of the Navajo Nation's witnesses were scheduled to begin in January, 2022. As ordered, the Navajo Nation, the U.S. and SJSPT filed a joint report on the Navajo Nation – SJSPT Treaty on January 10, 2022.

- 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 Navajo 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 are due to be filed by April 28, 2022. ADWR sought, and was granted, an extension to complete the preliminary watershed HSR to March 31, 2022.

5. Zuni River Basin: The parties continue to work on a consensus hydrologic model that will allow the parties to evaluate impacts of various claims and future pumping scenarios 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 Navajo 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 to Congress in 2022. WRU and DWR participated in a Work Session with RDC in February and presented a detailed update on ZRB negotiations and Zuni's proposal for settlement.

6. Gila River Basin. No activity this Quarter.

7. San Juan River Basin (UT) Settlement Legislation, Funding and Implementation: NURWSA was included as Section 1102 of the Consolidated Appropriations Act, Public Law 116-94, approved by Congress December 21, 2020, and signed by the President on December 27, 2020. The Settlement was funded in the Bipartisan Infrastructure Bill. WRU participates with DWR-WMB in the implementation process. WRU in working with the U.S. Solicitor's Office and the Utah State Engineer's Office recently finalized conformation of the settlement with the Congressional Act. The conformed agreement must now go back to the NNC Naabik'íyátí Committee for final approval. Plans for a limited signing ceremony with the Secretary of Interior, Governor of Utah, Senator Romney, and the Navajo Nation is underway.

8. 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 NM Supreme Court denied objectors' motion to reconsider. The NM Supreme Court remanded the matter to the NM District Court to address any outstanding matters. The Navajo Nation did file a motion for Order to Show Cause for attorney's fees objectors were ordered to pay the Navajo Nation by objectors' attorney Victor Marshall. No response or decision has been filed in response to the Nation's motion for order to show cause.

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, 2021 by objectors to the settlement who were represented by Victor Marshall. Victor Marshall is the attorney who represents water user objectors in the cases filed in the State of New Mexico Court System. In this matter, Dr. Rudy Shebala, in his official capacity as DNR Executive Director, is named as a Defendant. Other Defendants include the Secretary of Interior, CEO of NAPI, and officials representing the State of New Mexico. The Navajo Nation, represented by WRU and the Litigation Unit, filed a joint motion to dismiss with NAPI counsel on January 14, 2022. On January 12, 2022, objector's attorney license to practice law was suspended by the NM Supreme Court. Since that time, two motions for order to show cause have been filed by the state disciplinary counsel stating that Marshall continues to practice without a license. As well, the U.S. District Court in this matter denied Marshall's motion for relief from rule of good standing and the Court ordered Plaintiff's to file notice of new council by April 5, 2022. The individual Plaintiffs in the matter filed notice of representation by the deadline, however, the San Juan Water Users Association did not and the Court dismissed them as a Plaintiff in the matter without prejudice.

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

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

- Navajo-Gallup Water Supply Project (NGWSP). The Cutter Lateral is online and is delivering water to the Huerfano, the Counselor, the Ojo Encino, the 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. WRU has met with Reclamation, the U.S. contractors, and the State of New Mexico to discuss the impact of the double taxation on the Project as well as how to remedy the issue. WRU researched this issue and found that the NM Supreme Court held that the State of New Mexico can impose gross receipts taxes on entities providing services on tribal land when the agreement is not with the tribe. The State of New Mexico has entered into agreements with a majority of tribes in New Mexico that authorizes the State to share GRT revenues; however, the Navajo Nation has not entered into such an agreement. There were amendments offered in a tribal tax bill during the 2022 NM Legislative Session that would have authorized a possible solution to the matter, however, due to the short notice of the proposed amendments, there was confusion, politics and differences of views between the Navajo Nation's two sets of lobbyists that resulted in the amendments being withdrawn from the legislation.
- Cutter Lateral Operations, Maintenance, and Replacement (OM&R) Contract. WRU continues to participate in Technical Meetings as well as Negotiation Meetings. Reclamation sent a letter to the Navajo Nation President informing the Navajo Nation that in accordance with Article 22 and Article 23 of the Settlement Contract, the Navajo Nation's allocated Project water is available for beneficial use by the Navajo Nation. The date of the declaration of Substantial Completion is October 6, 2021. Reclamation transferred Operations, Maintenance & Repair expenses to the Nation (and NTUA) on October 6, 2021. Reclamation declared the Cutter Lateral substantially complete even though the OM&R contract is not complete. The United States is waiving the Navajo Nation's proportionate share of OM&R costs for a period of three years. This three-year waiver will count towards the possible ten-year waiver of O&M costs that the Nation negotiated with the United States in its settlement agreement. (WRU is currently seeking an extension of that waiver from ten years to fifteen years.) In regards to the Contract, parties are now looking at timelines for signatures.

9. 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.

10. NMOSE Matters:

- a. City of Farmington. 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, 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.

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.

11. 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.

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 (3) 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.

d. Recoup of NN-NM Settlement Fund Interest. Reviewed proposed congressional amendments to PL 111-11 and provided comments to the U.S. House Committee on Natural Resources Subcommittee on Water, Oceans, and Wildlife. The amendments address the water settlement funds authorized for the NN-NM settlement of the SJR. The interest earned on the funds, that were mistakenly deposited in 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 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. This quarter, there were attempts to include the proposed amendments in a consent bill. Unfortunately, there wasn't agreement in the Committee to include the amendments. Once the bill is introduced, a hearing on the matter will be scheduled.

12. Additional Activities:

a. Westwater. In November, WMB requested WRU's participation regarding a power and water project for the Westwater community located on Navajo Nation fee land in Utah, consisting of approximately 29 homesite lots. WRU and WMB participate in weekly meetings with the Utah State Engineer, the USE staff, City of Blanding, NTUA and others. The project participants are seeking an award from the San Juan County Conservancy Board 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. A concerning issue for project participants is the Navajo Nation's contribution to funding the project. 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.

b. DROA/DROP. WRU and DWR/WMB continue to participate in various weekly meetings hosted by USBR, the State of New Mexico and others regarding drought impacts, operations management, interim guidelines and more.