

# NAVAJO NATION DEPARTMENT OF JUSTICE

## QUARTER 2

<JANUARY TO MARCH 2021>

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

## **STATUS OF THE DEPARTMENT**

The Department of Justice (DOJ) is established by statute. The purpose of the DOJ is to provide legal services, subject to available resources, to the Navajo Nation Government, including the three branches of government, the Executive Branch Divisions, the 110 chapters, and entities. DOJ is also charged with administering the Navajo-Hopi Legal Services Program (NHLSP) and the Offices of the Prosecutor and Juvenile Justice. 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 Code of Professional Responsibility.

Within DOJ, there is an Office of the Attorney General (OAG) consisting of the Attorney General, Deputy Attorney General, two (2) legal secretaries, and three (3) support staff. OAG oversees the Office of the Prosecutor, seven (7) DOJ units, and the NHLSP. 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.

Since March 2020 and during the 2nd quarter, the Office of the Attorney General has continued to be deeply involved in all legal aspects of ensuring the Navajo Nation government is adequately prepared to respond to the myriad of challenges presented by COVID-19. In the year that has passed since COVID-19 appeared on the Navajo Nation, OAG and its team have drafted and reviewed orders, agreements, and other documents related to the emergency. Throughout the past year and during the two closures of the Nation's government, almost all DOJ attorney, advocates and prosecutors have worked and continue to work full time and more from home. Notably, in the past year, DOJ offices have not been closed due to COVID-19 exposure or outbreak at any of its Window Rock, Tuba City and 11 district prosecutor offices. This is a testament to OAG prioritizing employee safety and DOJ employees' adherence to safety protocols when working on site. As of April 7, 2021, 88% of DOJ employees have been fully vaccinated against COVID-19.

The COVID-19 pandemic and the Nation's ensuing receipt of federal Coronavirus Aid, Relief and Economic Security (CARES) funds significantly increased the legal needs of the Nation, and DOJ attorneys, advocates and prosecutors have worked throughout the government closures last and this year, and their workloads have increased due to 1) ongoing COVID-19 related litigation; 2) drafting and enforcement of the Nation's public health emergency orders; 3) addressing legal issues presented by CARES funding and procurement issues; and 4) Donation Branch work. DOJ attorneys, advocates and prosecutors have met these needs without additional resources. In anticipation of the Nation receiving American Rescue Plan (ARP) funding and in anticipation of increased client needs, DOJ anticipates a need for additional resources to: 1) hire additional legal staff, including for DOJ's Litigation, Chapter and Human Services and Government units as well as additional prosecutors to handle natural resources related offenses; 2) address DOJ's outdated technology, which has not been upgraded since 2010; and 3) provide, modify and repair office spaces for our Office of the Prosecutor.

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OAG continues to staff a Donations Section under the Logistics Branch of the Health Command Operations Center and as part of Humanitarian Aid under the Department of Emergency Management. In a January 8, 2021 press release, Attorney General McPaul cautioned the public to be alert and aware of potential COVID-19 related scams and fraud. The nationwide outpouring of support for the Navajo Nation during the COVID-19 pandemic resulted in tribal, federal, and state law enforcement agencies across the country receiving reports of scammers attempting to deceive the public and take advantage of the ongoing pandemic for personal gain. Some of the most common schemes are related to the fraudulent solicitation of monetary donations for individuals, groups, and areas severely affected by COVID-19, and fraudulent schemes related to COVID-19 PPE, antibody testing, and vaccines. Building upon DOJ's Donation Branch work to support the Nation's COVID-19 relief efforts, DOJ has begun work to improve oversight, and perhaps regulation of those who raise funds purportedly for the benefit of the Nation and/or its members. To date, DOJ's work to facilitate the contribution of monetary and property donations to the Nation has resulted in over \$9.8 million dollars in monetary donations to the Nation as well as substantial donations of medical supplies, fabric face masks, hand sanitizer, cleaning supplies and other needed supplies. Most recently, on March 13, 2021, DOJ's efforts resulted in a \$365,000 donation from Together Rising (facilitated by Direct Relief) to the Nation's Department of Health and the Brigham & Women's Hospital Outreach Program to support mental health programs for health professionals that serve the Navajo people.

On January 13, 2021, DOJ announced a settlement with Kinross and Sunnyside Gold Corporation, resolving the Navajo Nation's claims against the mining companies for creating the conditions that led to the August 2015 Gold King Mine spill. This unprecedented disaster, triggered by the United States Environmental Protection Agency (USEPA) and its contractors, released millions of gallons of toxic acid mine waste into the waters upstream of the Navajo Nation, which then coursed downstream in a yellow plume through two hundred miles of the Nation's sacred San Juan River. Under the terms of the settlement, Sunnyside, on behalf of itself and Kinross, will pay the Navajo Nation ten (10) million dollars. The Nation filed suit in United States District Court for the District of New Mexico in August 2016. The Navajo Nation's claims against the USEPA and its contractors remain pending despite the U.S. government's repeated efforts to avoid responsibility. Claims also remain pending on behalf of approximately 300 individual Navajo tribal members. Those claims were filed in a separate 2018 lawsuit and are handled by the Egolf Ferlic Martinez & Harwood Law Firm in Santa Fe, New Mexico.

This quarter, the Acting Chief Prosecutor, an Attorney with the Natural Resources Unit, and a Principal Tribal Court Advocate resigned. Long serving Principal Attorney (and acting AAG) for the Water Right Unit, Kate Hoover retired after twelve (12) years of service to DOJ and the Nation. Notwithstanding the continuing COVID-19 pandemic, during this quarter DOJ hired 1 staff member, an Attorney Candidate who will work in the Human Services and Government Unit. DOJ is promoting two (2) Attorneys to Senior Attorney positions and a Senior Attorney to a Principal Attorney position. Jordan Oglesby will be promoted from Attorney Candidate to Attorney after passing the New Mexico bar exam. Four (4) attorneys took the Navajo Nation bar examination in March, and await results.

The current vacancies in DOJ include:

- Chief Prosecutor (OTP) – Position advertised since 6/2020; filled on a delegated/acting basis
- Principal Attorney (TFU) – Position vacated when incumbent was promoted on 7/31/20; new hire to start in May.
- Principal Attorney (WRU) Position vacated on 3/12/21; position has been advertised; requested to advertise OUF
- Senior Attorney (HSGU) – Position vacated on 2/14/20; position is being advertised
- Attorney (NRU) – Position vacated on 1/9/21; requested to re-advertise
- Principal Tribal Court Advocate (HSGU) – Position vacated on 3/12/21; preparing to advertise

Within DOJ, the Office of the Prosecutor and Juvenile Justice have important legal enforcement responsibilities. A quarterly report from the Office of the Prosecutor as well as a report regarding the quarterly work of each unit within DOJ follows.

#### **A. Office of the Prosecutor**

The Office of the Prosecutor (OTP) manages and oversees the initiation and resolution of adult criminal and juvenile delinquency cases, white collar crime/government corruption cases, child dependency cases, and child in need of supervision (ChNS) matters for the thirteen Judicial Districts across the Navajo Nation. This includes working closely with other law enforcement agencies, the Department of Family Services (DFS) and Ramah Navajo Social Services, federal and state agencies and programs and others to ensure the successful investigation and prosecution of alleged violations of the Navajo Nation criminal law and for successful adjudication of cases involving our children. The OTP also has the statutory authority to intervene or bring civil matters on behalf of the Navajo Nation, including exclusion proceedings and petitions for involuntary assessment/treatment. The OTP also presents civil traffic citations, animal control ordinance citations, civil fish and wildlife violations, and some election and EPA violations. The OTP is also responsible for seeking Extradition Warrants from the Navajo Nation President whenever a jurisdiction so requests, and for initiating petitions for both extradition and detainer when a defendant demands a hearing.

The mission of the Navajo Nation Office of the Prosecutor is to do justice. We recognize the power given to us by the People of the Navajo Nation, knowing that as naat’áanii, we exercise our duties with fairness, integrity, and humility. We serve the People of the Navajo Nation, support victims of crimes, hold individuals accountable, and advocate for the best interests of the Navajo Nation’s children. We strive to do our work in a way that promotes K’é and hózhó to ensure the health, safety, and welfare of all of the citizens of the Navajo Nation.

We work every day to protect victims of crime, abuse, and neglect and make our communities safer places through restorative justice principles. Our primary focus is promoting public safety especially for those most vulnerable in our communities: women, children, and elders. Nevertheless, we remain under-resourced and unacknowledged.

**DIKOS NTSAÁÍGÍÍ**

The OTP remained fully operational throughout the pandemic and two government closures. Most of our team has been working remotely since March 2020, currently every member of our team is working full time. This quarter, with careful and strategic planning to accommodate social distancing and other COVID-19 safety precautions, several members of our staff have returned to work at their district office worksites while the other staff are working full time remotely. This quarter has proven again to us that responsible teleworking does not decrease program productivity, and that it brings a new work-life balance to our team in addition to alleviating many of the ongoing health and safety concerns posed by COVID-19. The delegated OCP staff have provided the team with additional direction and support to ensuring every district has the resources and information necessary to handle cases this quarter and to meet the program's goals. These supports include simple technological adjustments, setting clear expectations, and a unified system of organization that allow for clearer digital communication between staff and implement accountability measures for prosecutors and support staff. As a result of these improvements, there has been a dramatic increase in districts meeting their quarterly goals. As individual circumstances or the needs of a particular district change, the OTP team adapts.

Court hearings, meetings with law enforcement partners, calls from the public, and defense counsel continue to be conducted by phone and video. Several of our offices still require physical improvements (plexiglas installations and other physical lobby barriers; non-load-bearing walls to create office and conference room spaces). It is unsafe to reopen our offices to the public, even though some of our team members have returned to the worksites, without these safety measures in place. Likewise, OTP continues to promote remote working to protect the safety of our staff and communities. Signs on all doors indicate that the buildings are closed to the public, and invite anyone who needs assistance to call the office to make arrangements for meetings. To remain as available as possible in light of our support staff successfully telecommuting, OTP has migrated from telephone land lines to cellular phones. All of the district offices' primary land lines have been ported to cellular phones, which are in the possession of each primary legal secretary in the districts. All of the supervising prosecutors have duty cell phones, and we are working to cancel all land lines and purchase additional cell phones for every team member, as funds allow.

Most OTP staff have received COVID-19 vaccinations, and having our staff protected from the virus brings us a collective sense of safety, hope, and relief and has reduced our concerns about the safety of our team members and their families.

This quarter OTP received 60 citations regarding Public Health Emergency Order enforcement from our Police Departments.

**REPORT – STAFFING, ADMINISTRATION, DISTRICT OFFICES**

**Staffing:**

New Team Members:

- Crownpoint: Legal Secretary, P/N 2911159 – Amanda Arthur, started on March 29, 2021
- Window Rock: Senior Legal Secretary, P/N 204558 – Joni Pino-Begay, accepted offer of employment, start date on April 12, 2021
- Shiprock: Prosecutor, P/N 204739 – Brittany Yee, accepted offer of employment, start date on April 26, 2021
- Kayenta: Victim & Witness Advocate, P/N 244595 (OVC grant) – Olivia Begay accepted offer of employment, start date on April 26, 2021
- Tohajiillee/Alamo: Victim & Witness Advocate, P/N 244296 (OVC grant) – Calandra Willie started on February 1, 2021

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Retirement/Resignation:

- Acting Chief Prosecutor, P/N Unknown,– Jennifer Henry resigned in early January 2021, after 2 years of service in this position
- Ramah Attorney, P/N 243867 – Jennifer Henry resigned early in January 2021, after 5 years of service
- Crownpoint: Legal Secretary, P/N 2911159 – Tamara K. Begay, resigned March 12, 2021, after 4 years of service
- Chinle: Senior Prosecutor, P/N 204556 – Tyson Yazzie resigned on April 1, 2021, after 10 years of service

Dilkon:

- Legal Secretary, P/N 244396 – applications received, awaiting the scheduling of interviews

Chinle/Dzil Yjiin:

- Prosecutor, P/N 244602 – applications received, interviews completed, awaiting background check

Kayenta:

- Prosecutor, P/N 244513 (TIWAHE grant) – applications received, interviews completed, awaiting background check

Ramah:

- Attorney, P/N 243867 – Vacant and being advertised

Shiprock:

- Senior Legal Secretary, P/N 202201 – applications received, interviews completed, awaiting background check
- Victim & Witness Advocate, P/N 244712 (OVC grant) – applications received, interviews completed, awaiting background check

Tuba City:

- Prosecutor, Tuba City P/N 291150 – applications received, interviews completed, awaiting background check
- Victim & Witness Advocate, P/N 244713 (OVC grant) – applications received, interviews completed, awaiting background check

Window Rock:

- Prosecutor, P/N 244713 – applications received, interviews completed, awaiting background check
- Victim & Witness Advocate, P/N 244594 – applications received, awaiting the scheduling of interviews

White Collar Crime Unit:

- Investigator, P/N 204738 – applications received, awaiting the scheduling of interviews
- Sr. Investigator, P/N 151469 – applications received, awaiting the scheduling of interviews

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Office of the Chief Prosecutor:

– VACANT Chief Prosecutor – P/N 297943; advertised as OUF

**Program Challenges:** There are two primary programmatic challenges currently faced by the OTP: 1) a lack of sustainable leadership in the Chief Prosecutor Position and 2) a significant lack of funding.

After the appointment of Chief Prosecutor Gertrude Lee ended in the spring 2019, a permanent chief prosecutor has not been hired due to lack of applicants. Jennifer Henry served as Acting Chief Prosecutor and when Ms. Henry resigned in January 2021, Attorney Brandon Bitsuie was designated as the Acting Chief Prosecutor. Having the acting Chief Prosecutor performs these duties while also performing their district prosecutor duties at district prosecutor pay rate causes significant strain and stress on them and prosecutors and support staff as they are often called upon to fill unmet needs without compensation, title, or time to do so. As a result, many staff regularly work more than 8-hour days, feel stretched-thin, and experience low morale. This causes the program to be operating constantly in a crisis mode with instability instead of having a sustainable state of balance where the program, its goals, its advocacy, and its staff are able to grow and progress.

Although the Chief Prosecutor position has been repeatedly advertised for the past several years, we have yet to receive any applicants. The statutory and JVA requirements for this position seem too stringent to make any person possibly interested in the position eligible to apply and be appointed. We desperately need support and quick action from Council, the Attorney General, and the OPVP to adjust the requirements for the position, assist in recruiting, and appoint a committed leader. Such action is vital to the retention of staff and the success of our advocacy for the people of the Navajo Nation especially vulnerable victims of crime such as women, children, and elders.

The lack of funding to operate also threatens OTP's stability and ability to provide core functions. OTP's operating budget is not sufficient to cover basic office supplies or PPE necessary to operate in offices at this time. The OTP believes that the OTP's role to advocate for the people of the Navajo Nation, promote public safety, and protect the most vulnerable in our communities within the government are misunderstood as it continues to be allocated additional responsibilities with fewer resources or financial opportunity to grow or restructure.

**Office of the Chief Prosecutor (OCP)**

The Office of the Chief Prosecutor is the OTP's administrative office. The team includes Cindy Roanhorse, Administrative Legal Secretary; Eveline Curley-Sandoval, Senior Program & Project Specialist; Erica Christie, Administrative Services Officer, and Kyle King, Senior Network Specialist. Together, the OCP team manages the OTP budgets (both general funds and external funds); keeps the district offices supplied, paid, reimbursed and networked; coordinates all of our human resource matters; and fields phone calls and office visits from community members and OTP's public safety partners. The OCP remains closed to the public, but Eveline Curley Sandoval and Cindy Roanhorse are manning the OCP full-time.

Eveline Curley-Sandoval, Senior Programs & Projects Specialist and Cindy Roanhorse, Administrative Legal Secretary:

Ms. Curley-Sandoval has worked to ensure that staff who worked throughout the COVID-19 pandemic received Special Duty Pay, completed budget transfers, PAFs, verified payroll for General Wage Adjustments, completed backpay requests, and completed the required documentation to be in

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compliance with the new salary schedule for the Navajo Nation FY2021. She has also, completed an unmet needs request for American Rescue Plan funds, pursuant to the OPVP via the Attorney General with the hope that this will draw down funds to the OTP. In regards to staff, Ms. Curley-Sandoval prepared seventeen (17) JVAs for vacant positions for General Fund and grant positions, and processed employee appraisals and evaluations. Ms. Curley Sandoval assisted with grant reviews, budget revisions, financial reviews, 164 reviews, and compliance with OOC and grant SOW. She has also been designated an FMIS approver. Finally, Ms. Curley-Sandoval assisted the Attorney General's office with personnel, budget revisions, and personnel questionnaire forms.

Cindy Roanhorse-Avery processes most of the paperwork at the OTP and distributes documents to the district offices, fields OCP phone calls, completes master timesheets, requisitions supplies and other items through FMIS, follows up on all pending matters at OMB and DPM, and facilitates work orders to facilities maintenance for our buildings, and all the other daily matters to keep the OTP operational.

Kyle King, Senior Network Specialist

Mr. King has provided remote and on-site IT assistance for the OTP team, primarily installation, configuration, setup and trouble-shooting for JustWare, Email Exchange, Skype for Business, Sonic Wall NetExtender, Sharepoint and MIFI wireless hotspots. Mr. King continues to attend TAP, Open Fox Messenger, JTI eSeries demos, JWIN Training, Cyber Team, DIT and OTP webinars and conference calls. This quarter Mr. King has regularly provided 'help-desk assistance' to OTP and OCP staff, sets up work stations for new staff, successfully had the office landlines ported to cellular phones, and advocates for new computer equipment for staff.

Erica Christie, Administrative Services Officer

Ms. Christie oversees and administers both of OTP's external grants: USDOJ OVC set-aside (victim advocate program) and BIA TIWAHE (juvenile justice). Ms. Christie has been learning to navigate the new federal grant reporting system, JustGrants. Ms. Christie was able to acquire part of the computer equipment for the OVC grant, participated in 164 review processes, ensured the OVC grant was extended to April of 2023, and worked to adjust the OVC budget to include a consultant.

In regards to the OVC grant, Ms. Christie's goals are to acquire cellular phones, the remaining computer equipment, and tribal vehicles for each of the seven (7) Victim Witness Advocate positions, and to secure a consultant to assist in establishing the Victim Witness Advocate program with a strong and sustainable foundation. In regards to the TIWAHE grant, Ms. Christie aims to collaborate with the BIA to secure grant funding for FY20-FY21.

Brandon K. Bitsuie, Acting Chief Prosecutor

Brandon K. Bitsuie was appointed Acting Chief Prosecutor shortly after the former acting Chief Prosecutor resigned in January 2021. He is also serving as the supervisor of the Window Rock District, the Supervisor of the White Collar Crime Unit and a SAUSA for the District of Arizona. With several vacant positions due to the recent retirement of staff and his assignment as Acting Chief Prosecutor, Prosecutor Brandon K. Bitsuie is being pulled between several roles and additional duties without title or compensation which creates a high stress work environment that is unsustainable both for Mr. Bitsuie and the future of the OTP. We desperately need to fill the Chief Prosecutor position to ensure staff retention, stable leadership, and program success.

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Mr. Bitsuie continues to support all the team members throughout the offices, act on administrative matters, and conduct the affairs of the Window Rock District and the White Collar Crime Unit. In addition to its regular activities, the OTP continues to participate in projects with other programs/entities. On behalf of the OTP, Ms. Bitsuie participated in meetings regarding Missing and Murdered Indigenous Relatives, the Diné Action Plan, OVC set-aside consultation, hemp activities within the Shiprock area, court-ordered isolation sites, and child advocacy centers, as well as provide reports to the Law and Order Committee and Resources and Development Committee. Mr. Bitsuie's ongoing goal this quarter was to promote and strengthen strong relationships between the OTP and its Navajo, other sovereign Nations, state and federal partners and to ensure stability within the OTP. Mr. Bitsuie also facilitated federal detainers and extradition requests.

**White Collar Crime Unit:**

The WCCU consists of Brandon K. Bitsuie, Attorney, Cornelia Yazzie, Prosecutor, and Joni Pino-Begay, Senior Legal Secretary. The WCCU is in the process of hiring an Investigator and Senior Investigator. This quarter, the WCCU received six new referrals and opened investigations for them. Without investigators and a full-time prosecutor, the WCCU work has slowed, however Attorney Brandon K. Bistuie continues to speak with referring parties, conduct investigations, review documents, and participate in WCCU hearings.

**Alamo and To'hajiilee Districts:**

The district team includes Marguerite Charley, Senior Legal Secretary, Calandra Willie, Victim Witness Advocate, and Cathy Begay, Senior Prosecutor. Marguerite continued to provide remote support for Alamo and To'hajiilee as well as assisting with training the new legal secretary in Shiprock. Senior Prosecutor Cathy Begay has been temporarily assigned to handle the criminal cases in the Ramah District after the resignation of the Ramah Prosecutor until that position is filled. The Alamo and To'hajiilee Districts were slow this quarter, with three (3) adult criminal cases and two (2) juvenile referrals in To'hajiilee, and only three (3) adult criminal cases and four (4) juvenile referrals in To'hajiilee.

The district team is working to develop local processes and routine for new Victim Advocate to increase OTP support for victims in these communities. One of the challenges the To'hajiilee and Alamo OTP is facing is that there is a very limited police presence in the districts and officers are not regularly submitting reports and criminal complaints to OTP for these districts. District Prosecutor Cathy Begay is working with the local police departments to initiate and encourage officers to write and submit reports with criminal complaints.

**Chinle & Dzil Yijiin Districts:**

The Chinle District support team consists of Shirley Bedonie, Senior Legal Secretary and Garveda Harrison, Records Clerk, Althea Bezahloni, Senior Legal Secretary, who provides support for the Dzil Yijiin district, and Marie Jones, Victim Witness Advocate. Tyson Yazzie, Senior Prosecutor, and Ruby Benally, TIWAHE prosecutor, comprise the legal team for both Chinle and Dzil Yijiin. The entire team is working full-time.

This quarter, prosecutors Tyson Yazzie and Prosecutor Ruby Benally advocated for the Navajo Nation in Chinle and Dzil Yijiin districts telephonically or by Skype due to court building closures and safety precautions against the spread of COVID-19. In addition to his regular duties covering all criminal proceedings for the Chinle and Dzil Yijiin Districts, Prosecutor Tyson Yazzie participated in interdisciplinary case staffing meetings for adult criminal cases, led a two-day training for Chinle Corrections officers on the Violence Against Family Act, bail agreements, and

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denial of bail/36-hour holds, led training for three new Navajo Nation police officers, and led training for two Navajo Division of Natural Resources Rangers. Additionally, prosecutors Tyson Yazzie and Ruby Benally participate in weekly case staffing meetings with Tsaile Health Center and Chinle Unified School District concerning children who are involved in delinquency and dependency cases.

The most significant challenge faced by the Chinle and Dzil Yijiin Districts is the recent resignation of veteran prosecutor Tyson Yazzie on April 1, 2021. As Mr. Yazzie was the sole criminal prosecutor in this district and prosecutor Ruby Benally is not authorized under the TIWAHE grant funding to prosecute criminal cases, other prosecutors from other districts will cover the Chinle Court hearings until a licensed criminal prosecutor is hired and trained. The resignation of prosecutor Tyson Yazzie exacerbates the OTP-wide problem of vacant legal staff positions and the vacant Chief Prosecutor position, and will surely burden the existing staff with additional uncompensated duties. Another challenge these districts are facing is a lack of Department of Family Services case managers and CPS workers for both Chinle and Dzil Yijiin Judicial Districts.

**Crownpoint and Pueblo Pintado Districts:**

The district team consists of Vernon Jackson, Prosecutor; Ryan Sandoval, Prosecutor (TIWAHE prosecutor); Michael Platero, Attorney Candidate/Tribal Court Advocate; Mary Tom, Victim Advocate; and Tamara Begay, Senior Legal Secretary. In March 2021, Legal Secretary Tamara Begay resigned and the position was filled with legal Secretary Amanda Arthur. The Crownpoint District has been working remotely full-time since March of 2020 and have successfully performed their duties without lapses in service.

This quarter the Crownpoint/Pueblo Pintado District staff have led efforts to establish a *Skype for Business* connection between DOC, Courts and Prosecutor's Office, assisted the Window Rock OTP with a dependency action involving an informal adjustment, and lead efforts to ensure that sexual assault kits are now being examined for Navajo Nation cases at the New Mexico Crime lab. One challenging case the Crownpoint District team handled was a search warrant case related to the seizure of a cell phone belonging to a local police officer. Charges were filed against the officer and the cell phone contents were analysed at the New Mexico Computer Forensic Lab in Albuquerque.

The Crownpoint/Pueblo Pintado District staff also conducted two meetings with police supervisors to discuss improving Family Violence Act case processes, and worked with DFS to discuss recent trends involving juvenile justice cases and recent decisions rendered by the court.

**Dilkon District:**

The Dilkon district consists of Brenna Hanley, Prosecutor. Ms. Hanley is working from home full time because there is no office space for the Dilkon OTP. Securing an office space in the Dilkon community creates a significant challenge for Dilkon OTP and causes barriers to hiring additional staff and providing services. The Dilkon OTP is in the process of hiring a legal secretary but questions remain as to where the legal secretary will work. Despite the challenge of not having an office space and the assistance of a legal secretary, and in addition to filing 87 cases received this quarter, prosecutor Brenna Hanley filed 154 cases from 2020 that have been pending due to the pandemic. These filings are a major success as there are no pending cases in the Dilkon District at this time. On February 5, 2021, prosecutor Brenna Hanley met with the FBI to discuss future approaches on drug cases and repeat offenders. In addition to filing criminal and ABBA cases, Prosecutor Brenna Hanley filed a civil Vulnerable Adult Protection Order case as well as a civil guardianship case to protect a disabled 20-year-old adult from neglect and abuse.

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**Kayenta District:**

The Kayenta OTP team consists of Megan Horning, Attorney; Charmaine James, Prosecutor; Chandra Kinlacheeny, Legal Secretary; and Ericka Joe, Records Clerk. The Kayenta OTP is in the process of hiring two additional staff; a juvenile justice prosecutor and a Victim Witness Advocate. The Kayenta OTP staff works collaboratively to ensure the office duties are 100% complete. Several staff are working remotely. The Kayenta OTP team has developed innovative ways to use technology creatively so that it can maintain social distancing and ensure duties are completed at the highest standard.

Newly licensed prosecutor, Charmaine James, is excelling in her new role. She is gaining confidence and skill in handling criminal and ABBA cases and exercising prosecutorial discretion and can handle her hearings independently and is becoming a strong legal writer and negotiator. Prosecutor Charmaine James and Prosecutor Megan Horning have processed 100% of the Criminal and ABBA cases for Quarter 2 of FY 2021. This ensures that there is not a backlog of cases for the Kayenta District.

This quarter the Kayenta prosecutors have filed and prosecuted numerous strangulation and severe domestic violence cases and have successfully coordinated for numerous ABBA parents and criminal defendants to be quickly admitted to inpatient substance abuse rehabilitation in the Phoenix area. There are fewer unsheltered individuals in Kayenta and fewer incidents of public intoxication and other crimes due to these efforts.

Additionally, Prosecutor Megan Horning attended a Kayenta District Navajo Nation Police and Criminal Investigators training on Police Report Writing, and led training on Navajo Nation detainer law for Kayenta District law enforcement officers. Both Kayenta prosecutors attended a meeting to meet the new assistant U.S. Attorney in Utah. Prosecutor Megan Horning also prepared a curriculum for and led eight (8) 2-hour study sessions for prospective prosecutors in preparation for the Navajo Nation Bar Exam including practice bar exam questions and feedback. This study course was intended to increase the number of licensed prosecutors in OTP.

The resignation of former Acting Chief Prosecutor Jennifer Henry has presented a significant challenge for prosecutor Megan Horning as she has been assisting with some of the duties of the acting chief prosecutor including assisting with coordinating the VWA grant, quarterly reporting, OMB statistics compliance, and staff evaluations. Though Ms. Horning welcomes the opportunity to learn and grow professionally, it is challenging to balance OCP work with her regular duties. With the loss of each employee, the remaining staff are burdened with additional duties which affects morale.

**Ramah District:**

Due to the recent resignation of Acting Chief Prosecutor/ Ramah Prosecutor Jennifer Henry, the district team consists only of Senior Legal Secretary, Sylvia Kelsey. Alamo/Tohajiillee Prosecutor, Cathy Begay, and Dilkon Prosecutor Brenna Hanley have been covering the hearings in Ramah this quarter. Legal Secretary Sylvia Kelsey is doing her best to keep the office organized for any future prosecutor and Cathy Begay made some progress reviewing, filing and declining criminal cases this quarter. She plans to keep the momentum going to prevent a backlog of cases in Ramah.

Besides the challenge of not having an assigned district prosecutor, another challenge the Ramah District faces is that the Ramah Officers are not drafting criminal complaints. Prosecutor Cathy Begay is working to address this issue with the local chief of police.

**Shiprock and Aneth Districts:**

The district team consists of a Karen Bernally, Attorney; Davena Sam-Noble, Prosecutor (TIWAHE prosecutor); and Gwendolyn Coleman, Legal Secretary. Ms. Coleman and Ms. Bernally are working full-time from the office in Shiprock; Ms. Sam works full-time remotely. Marguerite Charley (To'hajiilee/Alamo), Chandra Kinlacheeny (Kayenta), Philandra Adison (Tuba City), and Megan Horning (Kayenta) provided remote support and training for new legal secretary Gwendolyn Coleman. The Shiprock District is in the process of hiring a third prosecutor and a Victim Witness Advocate.

Prosecutor Karen Bernally has participated in several meetings regarding organization of her office and her staff as well as meetings with the local police department. Prosecutors Karen Bernally and Davena Sam also participated in a meeting in Kayenta to welcome the new tribal liaison assistant U.S. attorney for the district of Utah.

Challenges the Shiprock District are facing are the recent closure of the Shiprock Department of Corrections, issues with getting parents served in dependency cases, and ensuring their office space is organized in a manner to accommodate all of their duties, sufficiently large for their growing staff, and safe from the spread of COVID-19 from adjacent offices.

**Tuba City District:**

The district team consists of Marie James, Prosecutor, Philandra Adson, Senior Legal Secretary, and Jerriellane Edwards, Records Clerk. The Tuba City District is in the process of hiring a second prosecutor and a Victim Witness Advocate.

Prosecutor Marie James continues as the sole prosecutor for all Tuba City criminal and juvenile justice cases. She has been participating in hearings telephonically. The Tuba City team has made tremendous progress processing newly received criminal complaints and has met OMB performance goals by bringing a subpar case processing rate of 17% to an excellent rate of 95% in just one quarter!

Challenges the Tuba City team face include being required to draft numerous orders for the Court, obtaining police reports from Navajo Police Department in a timely fashion, the lack of a bail system, and a series of withdrawal motions from the Office of the Public Defender which delayed cases and left defendants without timely, effective assistance of counsel.

**Window Rock District:**

The district consists of Brandon K. Bitsuie, Attorney/Acting Chief Prosecutor, Ella Wilson, Senior Prosecutor, Mikki Deerwater, Prosecutor, Rebecca Gene, Senior Legal Secretary, Pamela Carl, Records Clerk, Joni Pino-Begay, White Collar Crime, Senior Legal Secretary (recently promoted), and Cornelia Yazzie, White Collar Crime Prosecutor. Brandon Bitsuie and Cornelia Yazzie (White Collar Crime Unit) are coordinating to cover the vacant prosecutor position until a new prosecutor is hired. Part of the staff have returned to work in the office while others have remained at home, striking a balance that ensures the office duties are completed while also taking all necessary precautions against the spread of COVID-19.

Attorney Brandon K. Bitsuie is currently serving as Acting Chief Prosecutor, the supervisor of the Window Rock District, the Supervisor of the

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White Collar Crime Unit and SAUSA. Prosecutors Ella Wilson and Cornelia Curley continue to work on criminal cases while Prosecutor Mikki Deerwater handles juvenile justice cases. New Prosecutor Cornelia Yazzie is making progress in learning how to draft pleadings and participate in court hearings.

The most significant challenge the Window Rock OTP and the White Collar Crime Unit face is legal staff being stretched thin. With several vacant positions due to the recent retirement of staff and the reassignment of Brandon K. Bitsuie to acting Chief Prosecutor, he is fulfilling several jobs and roles without title or compensation.

**OVERVIEW OF QUARTERLY STATISTICS**

This quarter, the Office of the Prosecutor has continued to review, upload, and make filing decisions from the police reports, criminal complaints, and juvenile justice referrals received. As the Judicial Branch has increased its services, the OCP has encouraged staff to return to filing cases at a regular pace, and in response, prosecutors have begun filing and declining cases at a steady rate and in a timely fashion. To support this process, OTP leadership has implemented clear expectations as to meeting OMB goals and have provided trainings, instruction guides, and other resources to support the districts in meeting these goals. The result of this effort has been tremendous, with all but two districts meeting the required 80% goal for criminal cases and all but one district meeting or exceeding the 95% goal for juvenile cases. This has translated to the fact that this quarter all of the district prosecutor offices combined have processed 92% of criminal cases and 94% of juvenile cases. These efforts demonstrate a whopping 104% growth in case processing from the previous quarter.

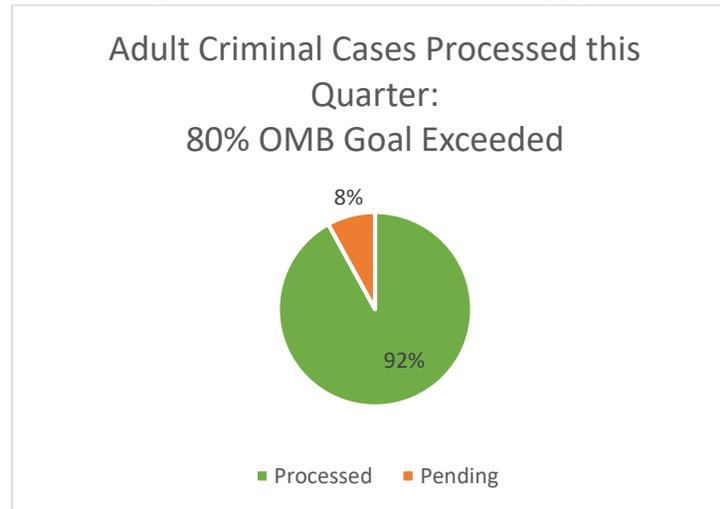
OCP will continue to work with the district prosecutors who did not meet their OMB goals this quarter to ensure they have the tools and direction to be successful. OCP will also work with districts to address pending cases from prior quarters to address any district backlogs. Overall, OCP is very proud of the district teams' ability to rise to the occasion and meet the OMB goals this quarter and looks forward to seeing more progress.

OTP has included statistics regarding the number of complaints we received for violations of the PHEOs. These complaints are being issued as citations are filed as Criminal Nuisance in violation of Title 17, Section 486. Each citation issued by NPD has a return date at the bottom of the citation that functions as an Agreement for Release on Personal Recognizance to that date. Each District Court has opted to treat these return dates differently, with some of the return dates being ignored.

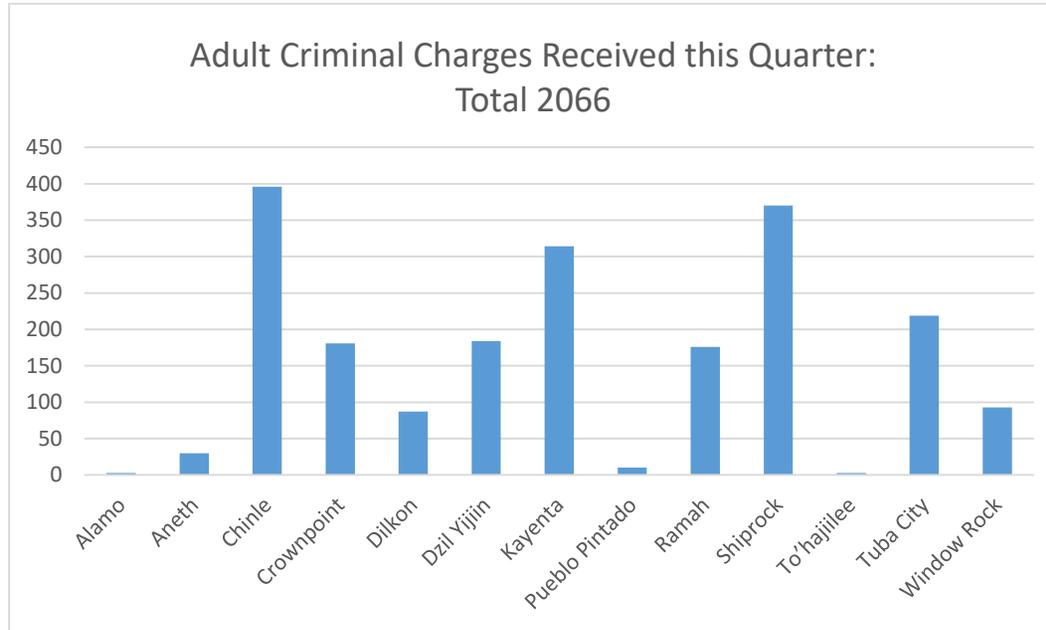
Additionally, OTP has reported some of the numbers of Family Violence Act and DUI cases filed by OTP prosecutors this quarter. We believe these statistics reflect our mission to do justice, protect vulnerable populations, and promote public safety in our communities.

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District	Total Cases Uploaded	ADULT COVID Citations Rec'd	Cases Filed	Cases Closed
Alamo	3	0	3	0
Aneth	30	0	29	1
Chinle	396	0	81	205
Crownpoint	181	18	70	77
Dilkon	87	22	50	37
Dzil Yijiin	184	2	105	79
Kayenta	314	10	158	156
Pueblo Pintado	10	0	10	0
Ramah	176	5	32	51
Shiprock	370	3	319	51
To'hajiilee	3	0	3	0
Tuba City	219	0	219	58
Window Rock	93	0	68	24
<b>TOTALS:</b>	<b>2066</b>	<b>60</b>	<b>1147</b>	<b>739</b>



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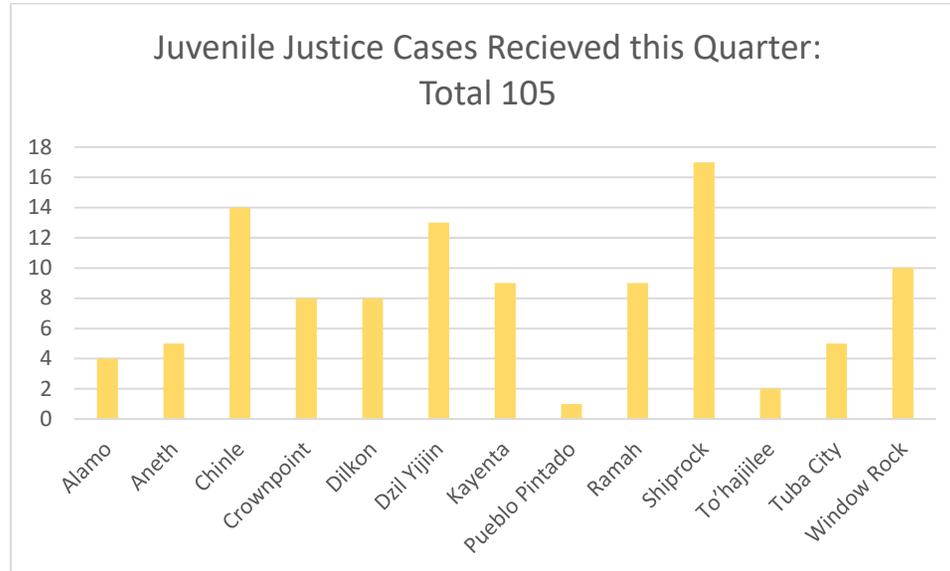


District	JUVENILE		
	Cases Uploaded	Cases Filed	Cases Closed
Alamo	3	1	1
Aneth	5	2	3
Chinle	14	13	0
Crownpoint	8	4	3
Dilkon	8	5	3
Dzil Yijiin	13	11	1
Kayenta	9	7	2
Pueblo Pintado	1	0	1
Ramah	9	0	9
Shiprock	17	8	9

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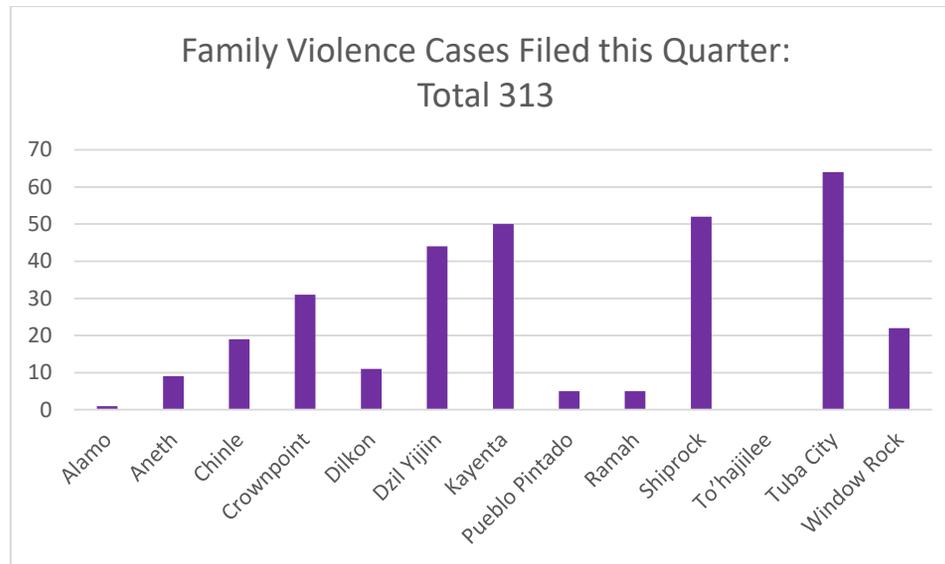
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To'hajiilee	2	1	1
Tuba City	5	3	2
Window Rock	10	7	3
<b>TOTALS:</b>	<b>105</b>	<b>62</b>	<b>38</b>

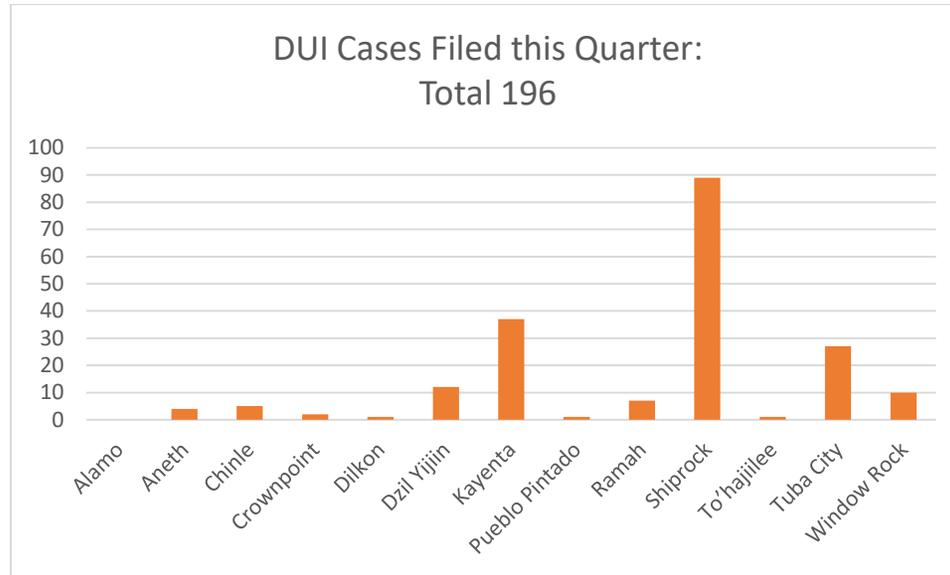


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**FINANCIAL REPORT**

Funding Source	# of Staffing	# of Vacancies	FY2020 Personnel Allocated	% of Personnel Expended	FY2020 Operating Allocated	% of Operating Expended
BU #104005 Prosecutor	42	12	\$2,745,035.00	35.4%	\$ 229,500.00	21.2%
BU #K190800 OVC	7	2	\$421,339.00	6%	\$23,633.17	46%
BU #K190770 TIWAHE	5	1	\$12,323.06	95%	\$6,435.00	1%

## **B. DOJ Units**

This quarter, DOJ received 632 Requests for Legal Services and completed 478. These requests do not include other work such as time spent in meetings, court appearances, time spent preparing for litigation, phone calls, and responding to work/client email.

Notable projects for each DOJ unit follow. These do not reflect all of the projects that DOJ is currently working on. As all projects have privileged and confidential elements, this report provides limited information. Where appropriate, additional information can be provided through private briefings.

### **Chapter Unit (CU)**

The Chapter Unit (CU) is led by Assistant Attorney General Rodgerick Begay and he oversees an Attorney and a Legal Secretary. The CU clients are primarily the Administrative Service Centers (ASC) of the Division of Community Development (DCD) and the 110 Political Subdivisions which are generally referred to as Chapters. CU also receives work from any Navajo Nation governmental client which has a Chapter related issue or a question on the Local Governance Act (LGA). This quarter, CU has engaged in the following notable projects:

1. Updated Guidelines and Chapter Return to Operations Plan. Last year in May 2020, CU issued a memorandum to all 110 Chapters which provided guidance on reconciling CMA-09-20, CAP-19-20, Executive Orders, Public Health Emergency Orders, and other guidance issued by DOJ and ASC/DCD. In August 2020, CU issued a Chapter Return to Operations Plan which has also been referred to as the Chapter Reopening Plan. This Plan was issued to all 110 Chapters and provided guidance on Covid-19 related matters such as personal protection equipment, social distancing, personal hygiene, cleaning/disinfection, CDC guidelines pertaining to public office/buildings, and how these apply to Chapter governmental services. In January 2021, CU updated both documents and combined them into one document. In January and February, through the assistance of the teleconferences normally conducted by the ASC to Chapter Officials/Staff, CU conducted a series of virtual presentations for Chapters about the combined document. In March 2021, CU updated the combined document again after meeting and conversing with several entities including the Community Mitigation Team of the Health Command Operations Center. CU then provided a detailed training to most ASC staff so that consistent information and education is provided to all Chapters.
2. Chapter Official Hold-Over Term and Subsequent Matters. Two days before the first swearing-in ceremony, CU was informed that Whippoorwill Chapter would not have any Chapter Officials to swear-in. In response, CU issued an advisory memorandum to allow hold-over terms for the former Chapter Officials. Basically, CU used the same analysis and the same line of reasoning that supported the hold-over term for former President Ben Shelly in early 2015. CU also provided an oral report to the Navajo Nation Council during a Special Session in mid-January which resulted in a need to coordinate with the Navajo Election Administration (NEA) and the Navajo Board of Election Supervisors (NBOES) on “other” types of vacancies at Chapters. CU attended a NBOES meeting and subsequently met with Chairperson Harrison. During this period, CU also communicated and met with the NEA. By early February, many of the outstanding issues were moot due to vacancies being declared and a new election scheduled and held.

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3. Chapter Investigations. CU continues to provide guidance and input on complaints filed against Chapter Officials and/or Chapter Employees. Every complaint is highly confidential and CU will not provide details on any investigation except to say that every complaint requires a great amount of time, resources, and coordination with other governmental entities.
4. Chapter Policies. CU participated in a workgroup consisting of ASC and Chapter Staff in preparing amendments to the Chapter Budget Procedures (Appendix M of the Budget Instruction Manual) and amendments to the Chapter Budget Policies (Appendix M-1). There were weekly meetings beginning in mid-February and continued into late March. The finalized amendments are expected to be sent to the Office of Management and Budget next quarter; CU is assisting the ASC to develop a template Plan of Operation to be used by Chapters for the Heavy Equipment that was purchased for Chapters. This is an ongoing project which is expected to be completed next quarter.
5. Draft Burial Regulations. CU was the primary drafter of the Burial Regulations. This quarter, CU participated in the January 13<sup>th</sup> RDC discussion and the March 5<sup>th</sup> RDC Leadership Meeting. The “illegal” burials continue to be a problem and one of the measures taken by CU was to remind all 110 Chapters on February 4<sup>th</sup> via email that Chapters do not have authority to sign the forms issued by the area funeral homes.
6. Chapter Orientations. CU participated in several virtual orientations conducted by the ASC in January and February. These orientations were primarily for new, incoming Chapter Officials but were also available for current Chapter Officials and Staff. CU provided information on DOJ services.
7. Chapter Reform. CU participated in work sessions conducted by the Commission on Navajo Government Development on March 25<sup>th</sup> and 26<sup>th</sup>. CU gave a PowerPoint presentation on the History of Navajo Local Governance. In light of the discussion that included making amendments to the existing Local Governance Act, CU anticipates continued work on draft amendments to the LGA. This will likely be an on-going project.
8. E-Rate. There are regular weekly meetings and while CU does not attend all, CU has attended a few this quarter. One of the CU projects has been commenting and editing the draft MOU that is to be used in order to facilitate the community libraries that is anticipated to require cooperation from all chapters. This will be an on-going project.
9. Internal Chapter Matters. CU continues to provide guidance to various Chapter Officials and Staff, Council Delegates, ASC Personnel, and others with regard to various internal Chapter matters. Due to the confidentiality of all matters, this report will only express that these matters also require a great amount of CU time and resources.
10. Requests for Legal Services. Despite orienting Chapters on how to submit a virtual request for legal services, Chapters and others continue to ask for legal guidance via email. This quarter, CU received sixty-one (61) requests and CU also provided sixty-one (61) responses containing legal analysis and guidance. These numbers do not include CU’s attendance at various meetings in which CU provides legal guidance. These numbers also do not include CU’s attendance at various meetings where CU does not provide any legal advice such as the RDC meetings, Naabikiyati

Committee meetings, Council meetings, Agency Council meetings, weekly ASC meetings and many of the other tele-video conferences wherein Chapter matters are discussed.

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

The Economic/Community Development Unit (ECDU) is led by Principal Attorney/Acting Assistant Attorney General Katherine Belzowski who oversees two (2) Attorneys, an Attorney Candidate, and a Legal Secretary. Ms. Belzowski assumed oversight of ECDU in June when Assistant Attorney General LaTonia Johnson transferred to the Human Services & Government Unit (HSGU). ECDU assists the Division of Economic Development (DED), the Division of Community Development (DCD), and Navajo Election Administration. Below is a summary of ECDU's notable work this quarter:

1. Voting: *Brnovich v. Democratic National Committee* is a case that was argued before the United States Supreme Court on March 2, 2021. This case challenges Arizona's out-of-precinct policy and ban on third-party ballot collection. In January 2021, ECDU worked with the Litigation Unit to submit an Amicus Curiae brief to the Supreme Court. The brief highlighted many of the challenges that Navajo voters face when casting their ballot in state and federal elections, highlighting the need for third-party ballot collection and out of precinct voting. The brief also highlighted Arizona's history of discrimination against Native American voters, the lack of at-home mail delivery on the Nation, the long distances to travel to vote, delayed mail delivery, and the need for third-party ballot collection. A decision in this case has not yet been rendered. ECDU held a meeting with the Arizona Secretary of State's Office ("AZSOS") this quarter to discuss the successes and failures of the 2020 election and the next steps moving forward, and ECDU learned AZSOS has plans to create a Tribal Outreach Elections Plan. ECDU will be providing suggestions to AZSOS once their Tribal Outreach Elections Plan is created. AZSOS is also planning on updating and modifying the Arizona Elections Procedures Manual. The Inter-Tribal Council of Arizona will be looking into ways to require Arizona to consult with tribes before AZSOS begins making changes to the Manual.
  
2. Construction Contracting: ECDU is in the process of developing Navajo Nation specific contracts. Currently ECDU's clients are using standard contracts from the American Institute of Architecture ("AIA"). This quarter, ECDU began working with outside counsel to create a construction contract that will replace the AIA construction contracts. ECDU reviewed and edited construction contracts provided by outside counsel. ECDU worked with DCD to restructure the Indefinite Delivery Indefinite Quantity Contract (IDIQ) Request for Statement of Qualification (RSQ) packet to better implement the Scope of Work and evaluation criteria for the intended proposals. After multiple meetings and rounds of review, DCD approved the edited RSQ and attached exhibits and forms and by the end of the quarter was preparing to issue the RSQ. Once the IDIQ is issued DCD will work on selecting firms to provide on call architectural services for the Nation's construction projects. This is will significantly reduce the amount of time it takes for CPMD to design projects on the Nation.
  
3. Crownpoint Hotel: The work on the Crownpoint Hotel was on the forefront of discussions for the Nation, but not much tangible progress was made. There were internal Navajo Nation and Council Committee meetings to discuss the new intended structure of the project – a 40 room hotel instead of a 72 room hotel. Additional supporting documentation was requested from DED and the Lessees, including a detailed project proposal

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and updated feasibility studies to reflect the extended time change and the new project scope. While a project proposal was provided, it was not detailed and did not provide DOJ guidance needed to move the project forward. DOJ awaits client direction for the next steps of the project.

4. Census: Census work this Quarter was limited, but focused on staying abreast of current workings of the Census Bureau and the current litigation. The Census Bureau has provided multiple explanations on its use of Differential Privacy in the data collection and dissemination and potential implications on tribal populations. The exact effect is not known as the Census Bureau has not yet released its demonstration data utilizing the actual privacy loss budget for the 2020 Census. The litigation has been stalled as both sides work toward settlement. Additionally, the Office of President and Vice President decided that the Navajo Nation would continue its participation in the US Census Bureau's Census Information Center Program in which the Nation acts as a conduit for providing access to census data to the underserved population of the Navajo Nation. ECDU reviewed the MOA and provided updated and clarifying edits to the Census Bureau that were subsequently approved. The MOA has not yet been executed and is expected to go through the 164 process soon.

5. Gaming: The Nation is currently in the process of adopting the newly negotiated Arizona Gaming Compact (2021 Compact). The 2021 Compact modernizes gaming by allowing for sports betting (if passed in Arizona) and off-reservation gambling. ECDU has been attending various meeting with the Arizona Tribes, outside counsel for Navajo Nation Gaming Enterprise, and the State of Arizona. ECDU reviewed the language in the 2021 Compact; had discussions with the Office of Legislative Council; and drafted a memorandum discussing the Section 15's dispute resolution, raising concerns about a possible waiver of the Nation's sovereign immunity. ECDU has also kept up to date with the negotiation status of the three transfer pool agreements with Gila River, Fort McDowell, and Tohono O'odham tribes. ECDU has followed the negotiation of the universal transfer pool agreements that is between the State of Arizona and the Arizona Tribes that is currently under review with the Arizona Department of Gaming.

6. Intellectual Property: This quarter ECDU is continued to work with outside counsel to renew the Nation's intellectual property rights. Specifically, outside counsel filed a specimen with the United States Patent and Trademark Office. A specimen is how the Navajo Nation protects its trademark by demonstrating how the Navajo trademark is used in commerce. The specimen that was filed demonstrates the use of the Navajo trademark in household and kitchen utensils. The products used for the specimen were from Navajo Arts and Crafts. ECDU has also been working with TFU to finalize the Fund Management Plan for a future Intellectual Property office located within DED. ECDU also continues to work with outside counsel to send "cease and desist" letters to individuals and entities who are misusing or misappropriating the Navajo Nation name and trademarks, often to raise funds purportedly on behalf of the Nation and its members, and for other questionable purposes.

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

HSGU is led by Assistant Attorney General LaTonia Johnson. Ms. Johnson manages four (4) Attorneys, an Attorney Candidate, a Tribal Court Advocate, and two (2) Legal Secretaries. This quarter, a Tribal Court Advocate resigned and HSGU hired an Attorney Candidate who will begin work in May. HSGU assists eight (8) Divisions/Departments consisting of over 65 programs. This quarter, notable projects include:

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I. NAVAJO DIVISION OF PUBLIC SAFETY (NDPS):

1. Office of Inspector General (OIG) Audit: DOJ's outside counsel has been working with Office of Justice Programs (OJP) regarding the audit status. The audit is still being reviewed by the United States Department of Justice (USDOJ). The Navajo Nation previously submitted all required documents for USDOJ to complete its review, but the Navajo Nation understands that the delay is due to a transition to the new administration. Further, OJP was also conducting an informal review of the non-housing inmate data before the data is formally submitted to USDOJ. Department of Corrections will be obtaining the floor plans for the Kayenta facility which will be submitted to OJP for review.

Complications/Concerns: None other than the delay by US DOJ to finalize review and close out this audit.

2. Privacy Act Guidance Table and Frequently Ask Questions: HSGU is working with outside counsel and NDPS' Information Management (IM) to draft 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. HSGU receives numerous of these requests from NDPS. HSGU has met with the NPD IM to understand the issues NDPS has with responding to information disclosure requests to incorporate these issues into the Guidance Table and FAQ. The purpose of the Guidance Table and FAQ is to allow NDPS to review the documents and make a decision on disclosure of documents based on who the requesting party is and for what purpose(s) the document is requested. NDPS has also requested assistance with drafting language for Information Management Section Traffic History Record and Police Report request form that warns and informs the requester that requested records are not for the public and release to the public violates the Navajo Nation Privacy Act.

3. Navajo Police Department Modular Building: HSGU worked with NDPS, Division of Natural Resources (DNR), OPVP, and DOJ's Natural Resources Unit to purchase the BOXX modular building located on the Navajo Nation Fair Grounds in Window Rock and that was in use by the U.S. Census Office. HSGU reviewed multiple iterations of invoices and proposal and agreement of sale contracts proposed by BOXX Modular. HSGU submitted to NDPS a proposed contract that addressed the sovereign immunity concerns. Initially, BOXX Modular decided to not enter into an agreement with NDPS in which the Navajo Nation's sovereign immunity would not be waived, and informed NDPS that the modular building would be dismantled by BOXX and removed. However, HSGU received the professional service contract (PSC) with the above-mentioned BOXX modular contract. HSGU provided guidance on how to handle the Navajo Nation's PSC contract with the contract. HSGU also provided a draft Intergovernmental Space Use Agreement to be entered into between NDPS and DNR that would allow NDPS to occupy the land given that the land is withdrawn for DNR's purposes, but there were provisions that had to be negotiated between the divisions. HSGU has not received word whether it was executed.

II. NAVAJO DEPARTMENT OF HEALTH (NDOH):

1. New Mexico Indian Managed Care Entity (IMCE): In early January, HSGU received a request from the State of New Mexico Human Services Department (HSD) to meet regarding a letter signed by the Attorney General on whether the Nation should be signatory on the proposed IMCE contract with the Naat'aani Development Corporation (NDC) and Molina Healthcare (NDC's subcontractor). HSGU responded and provided some

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times to meet. However, NM HSD did not respond. There was no further communication from NM HSD on the matter and all IMCE work group meetings ceased in early January.

Complications/Concerns: There has been no further communication from New Mexico HSD to the Navajo Nation since early January.

2. Division of Behavioral & Mental Health Services – Intergovernmental Agreement with Arizona Health Care Cost Containment Services: HSGU assisted DBMHS with review and negotiation of the new proposed IGA as the current IGA expires in June. HSGU and DBMHS met with AHCCCS via teleconference to discuss the IGA regarding case management services. AHCCCS proposed several changes to the IGA to update the language at the first meeting. HSGU reviewed the proposed changes with DBMHS and discussed whether or not DBMHS agreed with the changes. HSGU and DBMHS attended a second teleconference regarding the proposed changes to the IGA. AHCCCS agreed to double-check on authorities for some of their proposed changes. There was to be a third teleconference in March but AHCCCS has not yet scheduled a meeting. HSGU will continue to provide legal assistance to complete the new IGA by the end of May 2021.

Complications/Concerns: AHCCCS included language in the IGA that requires DBMHS to abide by AZ administrative code for any client grievances or appeals, which would be an indirect waiver of the Navajo Nation's sovereign immunity. The Navajo Nation has requested removal of this language.

### III. DIVISION OF SOCIAL SERVICES (DSS):

1. Indian Child Welfare Act (ICWA) Program: ICWA cases: HSGU continues to work with the ICWA Program (ICWAP) to conduct case staffing of cases that are in state court and which require a request for legal intervention, and other related matters. This quarter, HSGU conducted six (6) case staffing and will continue to staff cases and answer related legal questions.

2. Kevin S. Settlement/ New Mexico State ICWA Bill: New Mexico Children Youth and Families Department (CYFD) provided notice to the Navajo Nation that it was going to introduce a State ICWA bill in September 2020. While CYFD held several consultation sessions with tribes, CYFD did not properly engage all tribes and did not engage tribes based on its government structure, and CYFD did not provide adequate government-to-government consultation. HSGU received the proposed draft of the New Mexico state ICWA bill on January 19, 2021, a day before CYFD's tribal consultation on the draft bill. The Dear Tribal Leader Letter dated January 15, 2021 stated that written comments on the draft bill would be accepted through March 15, 2021. HSGU learned during the January 19, 2021 tribal consultation that the bill's House and Senate Sponsors were planning to introduce the bill either by the end of the week or sometime during the following week. HSGU and outside counsel read the entirety of the New Mexico state ICWA bill and drafted 44 proposed amendments, and submitted them to CYFD. HSGU, on behalf of OPVP, drafted two letters to CYFD Secretary Blalock, dated February 3, February 19, 2021, expressing concern with the lack of meaningful tribal consultation in the drafting of the state ICWA bill. Soon after, HSGU met three times with CYFD's Office of the General Counsel on February 24, March 3, and March 31, 2021. HSGU continued to review subsequent draft bills and provided proposed amendments to the bill. HSGU coordinated advocacy efforts on amending the draft bill with three other tribes that also were advocating for amendments to the bill. On behalf of OPVP, HSGU drafted a

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letter expressing the Nation's support of the final version of the state ICWA bill, Substitute HB 209. The letter was emailed on March 11, 2021 to Rep. Louis and Sen. Shendo. HSGU worked with the Navajo Nation's New Mexico lobbyists on tracking the bill and with communicating with Rep. Louis and Sen. Shendo.

Complications/Concerns: New Mexico's 2021 Legislative Session ended on March 20, 2021 with the state ICWA bill having not been considered by the Senate Judiciary Committee to allow the whole Senate to vote on the bill. HSGU will continue to monitor the activities of the New Mexico Legislature. NM CYFD plans to reach out to New Mexico tribes to discuss next steps and potentially more amendments to the bill.

#### IV. BOARD OF EDUCATION (BOE):

1. Navajo Nation's Plan to re-open schools: Navajo Nation BOE issued Resolution NNBEMA-696-2021 on March 16, 2021. This resolution approved the updated Department of Dine Education (DODE) Reopening Plan, which provides guidance for the phased re-opening of schools. The resolution requires compliance of all schools on the Navajo Nation with the DODE Reopening plan, which was developed in collaboration with the Navajo Department of Health (NDOH). The resolution further acknowledges a change in status from Red to Orange, which permits hybrid instruction on the Navajo Nation.

Complications/Concerns: Council Resolution CO-84-20 sets a policy for online learning only. While this resolution was set to be rescinded this past March, the Naabi'kiyati Committee tabled the legislation. Therefore, the current Council position recommending online learning only remains. While the Council resolution does not use binding language, the Office of Legislative Council and the OPVP deem it the official policy of the Navajo Nation.

#### V. DEPARTMENT OF DINE EDUCATION (DODE):

1. Navajo Nation's Plan to re-open schools: DODE updated its Reopening Plan based on new guidance from the CDC and direct input from NDOH. With these updates, the plan allows for hybrid instruction for Red through Green status, providing for a limited percentage of in-person learning per status. This plan gives schools the choice to reopen, as well as honors parental choice to keep their children at home. The plan further provides schools with latitude on which students to bring back to campus, in accordance with federal and state guidance. The BOE affirmed this updated plan in Resolution NNBEMA-696-2021 as described above.

2. Tribal Consultation with School Districts: OPVP established a Tribal Consultation Team to address the directive from NMPED, which requires that any school district located on a tribal reservation participate in consultation meetings with the tribe to determine a plan for re-opening. HSGU was directed to be a part of this team. Since January, the consultation team has met with Gallup McKinley County Schools and Central Consolidated Schools in consultation meetings to discuss the school districts' COVID-19 relief efforts and plans for re-opening. These schools have been operating in hybrid status, contrary to Navajo Nation guidance for online learning only and despite state guidance requiring respect for tribal public health orders.

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3. Educational Sovereignty Efforts: DODE is working to establish a path forward for the Education Sovereignty of the Navajo Nation. In so doing, considerations as to how to best achieve this remain unclear. DOJ is providing research support to look into several options, such as establishing a 638 contract for BIE functions over schools, 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. There remains division within DODE, and among BOE members, of how best to do this. Given these challenges, HSGU applied to present a research paper at UNM Summit of Tribal Education Sovereignty in April on this subject and how it is impacted by the Yazzie/Martinez ruling. HSGU is working closely with DODE to begin comprehensive documentation of the different options and the pros and cons of each.

4. Impact Aid: The State of New Mexico appealed the U.S. Department of Education decision finding New Mexico ineligible to consider a portion of Impact Aid payments as resources in determining the State aid entitlements, but later amended its application and withdrew the appeal. Based on the amended application, the U.S. Department of Education conditionally certified the New Mexico state aid formula. The local school districts are working to appeal the decision and have reached out to the Navajo Nation to determine if it will join the suit. DODE is looking into hiring an Impact Aid expert to serve as a consultant to the Navajo Nation in order to ensure the Navajo Nation is fully informed on the processes taking place, as impact aid and the New Mexico State Equalization Guarantee Formula are highly complex. DODE and HSGU have also attempted multiple times to schedule a formal conference call with NM PED to further discuss its take on the Impact Aid formula. These efforts remain ongoing, as NM PED has been unresponsive. HSGU is monitoring the Impact Aid case and keeping in contact with school districts involved in the appeal.

Complications/Concerns: The complexity of Impact Aid and the New Mexico State Equalization Guarantee Formula render it difficult for the Nation to adequately assess if joining the appeal is worthwhile, and HSGU is supporting DODE's search for an Impact Aid expert, and potentially a legal expert on Impact Aid if the Navajo Nation joins the litigation. The Litigation Unit and HSGU are working in tandem on this issue.

5. Johnson O'Malley: The Bureau of Indian Education and BIA requested the Navajo Nation to submit a Corrective Action Plan (CAP) for its handling of the Gallup McKinley County Schools JOM Program. HSGU worked with OMB to provide a response stating that a CAP was not appropriate, because the BIE/BIA did not follow the process required in the federal regulations leading to a CAP. HSGU argued that the BIA did not properly follow the monitoring requirements, nor did the BIA conduct the monitoring session on the Navajo Nation. Therefore, the Navajo Nation was not required to provide a CAP. The Navajo Nation's response further stated that if the BIA does want a CAP from the Navajo Nation, then BIA must follow the proper protocols, including providing information regarding what the Navajo Nation did incorrectly, with appropriate citation to the applicable laws, regulations, or procedures that the Navajo Nation did not adhere to. The Navajo Nation sent a letter dated December 18, 2020, and has not yet received a response. Further, tensions remain between GMCS and the Navajo JOM program, and it is difficult to determine if GMCS will continue with its subcontract with the Navajo Nation.

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Complications/Concerns: The Navajo JOM program has been unable to provide any strong documentation on the support it provided to GMCS, and this seems to be a recurring issue. The BIA is keeping a close eye on the Navajo Nation's program, and DODE is looking into assessing JOM leadership. GMCS is a major school district serving Navajo students, and if the subcontract ends, it may lead to further action by Navajo leadership and community members. DOJ continues to monitor the issue and encourages DODE to follow up with GMCS.

6. 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 is currently working to ensure that Head Start is complying with the corresponding requirements regarding internet safety.

Complications/Concerns: HSGU issued a memorandum to DODE warning of the tactics USAC uses to recoup money from recipients years later. The Navajo Nation is already engaged in litigation against USAC to appeal USAC findings against the Navajo Nation. Further, a recent court case (Bianca v. FCC) ruled that there is no statute of limitations for the FCC to recoup funding. This creates a risk that USAC may try to recoup the funding recently awarded to the Navajo Nation, as it does not conduct due diligence on eligibility prior to issuing awards, but usually scrutinizes awards years later. HSGU is doing its best to ensure Head Start is fully informed throughout the process.

7. Office of Dine Youth (ODY): 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 informed throughout the process. The construction has started, but due to the continual inability of the hired contractor to meet design specifications, the project is 5 months behind schedule.

Another issue affecting ODY is their current agreement with the Boys & Girls Club of America. Boys & Girls Club has strict insurance requirements, that the Navajo Nation does not currently meet, and the Navajo Nation has been unsuccessful in finding an external insurance provider who is willing to provide coverage for its related programs. ODY is working to set up a meeting with the program representative of Boys & Girls Club, OPVP, and DOJ to discuss the issue and see if a resolution can be reached.

#### VI. DIVISION OF GENERAL SERVICES:

1. Insurance Services Department (ISD): COVID Related Issues related to Employee Exposures: HSGU assists ISD to ensure that workers' compensation or employee benefits claims related to employees who have contracted the virus and/or self-quarantining are not unnecessarily denied when filed.

2. Risk Management Program: Legal assistance and advice are continually provided in the administration and defense of tort, civil rights violations related claims/cases; contract reviews for appropriate insurance requirements, including property damage (structural, etc.) and fire losses; fidelity bond (crime) coverage loss assessments; business interruptions; and insurance needs for newly acquired or expansion of properties and services, etc. Moreover, HSGU is involved in the investigations, evaluations, assessment of liability exposures, and settlement negotiations in pre-litigation claims.

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HSGU also assist with the defense of lawsuits pending in both tribal and federal courts on federal torts claims act (FTCA) claims arising from the actions/inactions of P.L 93-638 programs.

3. Litigation: Currently, there are seventy-four (74) pending cases (federal, state, and tribal courts) as follows: 67 tribal cases (twelve (12) appeals in the Navajo Supreme Court: all the cases have been fully briefed, oral arguments have yet to be scheduled; 55 District Court cases: There were two (2) bench trials held in 2 cases in January and October 2017, respectively, but rulings/judgments have not yet been issued. One new case was served this quarter; and one pending case was dismissed after the concurrent federal litigation was settled. The District Court cases are activated with motion hearings and pretrial/status conference. In the meantime, HSGU continues to assess the degree of liability exposures on other cases where settlement evaluations are pending as well.

There are now two (2) state court cases pending, one in Arizona and the other in New Mexico. In both cases, Navajo Nation employees are sued in their individual capacities; and the defense of the Nation's sovereign immunity could be impacted by the United States Supreme Court ruling in Lewis v. Clarke ruling.

4. FTCA Cases (AZ and NM District Courts) (5 Cases): there are five (5) ongoing cases, one of which was filed within this quarter. A sixth case was settled which also resulted in the tribal litigation dismissal reported above. As the assigned Navajo Nation FTCA Liaison, Arita, HSGU, is heavily involved with federal litigation. She 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 clients' signatures. In addition to these federal cases, there are quite a number of FTCA administrative claims which are pending and included within the pre-litigation count below.

5. Pre-litigation Claims: in addition to the above litigation cases, approximately forty-eight (48) pre-litigation claims are pending, out of which: (1) three (3) new notices of suit (threatened litigation) that were served upon the Navajo Nation within this quarter; and nine (9) new FTCA administrative claims. HSGU is assisting both the U.S. Department of the Interior/Regional Solicitor's Office staff attorney and the U.S. Department of Health & Human Services Branch Claims attorney FTCA administrative claims, some of which are moving toward potential litigation.

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

6. Workers Compensation Program (WCP): 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 deal with daily while attending to arrestees who are COVID positive, and other front-line responders. In this respect, HSGU provided a number of advisory memoranda which resulted in WCP acceptance of two COVID-related claims as compensable, i.e., one of which resulted in the issuance of death benefits.

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7. Other General Workers Compensation Claims: In addition to the above claims, HSGU assisted the WCP in five (5) other claims, three (3) of which relate to final settlement and closure of the claims; one relates to a potential settlement and closure; and one relates to the issue of whether the claim could be denied based on an “alleged” non-payment of premium by a participating employer.

8. Navajo Nation Workers Compensation Act, 15 N.N.C. §§ 1001, et seq. Training: HSGU provided a training on the mandates of the Navajo Nation Workers Compensation Act to the WCP staff on February 12, 2021. The training was necessary since the administration and adjudication of workers’ compensation claims are driven by the law itself.

9. Employee Benefits Program (EBP): Subrogation Liens and Life Insurance Distributions: HSGU continues to assist with subrogation lien recoveries/waiver issues and distribution of life insurance proceeds. HSGU is assisting EBP with an orientation/presentation requested by the Law and Order Committee Chairperson who expressed a desire to amend the Health Plan; continuation of the presentation is pending. HSGU assisted EBP in response to an issue raised on whether the Employee Benefit Plan Document can be amended if the Employee Retirement Plan is amended to include a provision for the retired employee’s continued participation in the Employee Health Benefit Plan.

**Litigation Unit (LU)**

LU is led by Assistant Attorney General Paul Spruhan who manages three (3) attorneys and two (2) legal secretaries. LU handles many of the Nation’s internal and external litigation matters. This quarter’s notable projects include:

1. Bia v. Navajo Nation Election Case: This case was filed in the Window Rock District Court by several individual members against the Nation seeking to hold a new general election, alleging election irregularities in the election held in November, 2018. We deposed three of the Bia plaintiffs, and then filed a motion to dismiss, arguing they did not have personal knowledge of most of the allegations in the complaint, and that they should have filed right after the election in the Office of Hearings and Appeals, as required by the Election Code. After we filed a motion to dismiss, the Bia plaintiffs filed their own motion to voluntarily dismiss the case. The Window Rock District Court signed the dismissal order on March 25, 2021, and the case is now closed.

2. CARES Act Litigation: DOJ continues to participate in litigation against the U.S. Department of the Treasury concerning the eligibility of Alaska Native Corporations (ANCs) for CARES Act funding set aside for “tribal governments.” DOJ on behalf of the Nation has participated with two different groups of tribal plaintiffs in the case, discussing legal strategies and providing research support. After an initial win at the preliminary injunction stage, Judge Mehta of the Federal District Court for the District of Columbia on June 26, 2020, ruled that ANCS were eligible. The tribes appealed to the D.C. Circuit Court, and that court held oral argument and issued a decision against the ANCs on September 26, 2020, concluding they were not “tribal governments.” The Secretary of the Treasury and the intervenor ANCs filed petitions for certiorari with the United States Supreme Court. The Court accepted the case, and briefing continues. The Supreme Court will hold oral argument on April 19, 2021, and we expect a decision by the end of June, 2021. If we prevail, there will be an additional \$500 million that Treasury will distribute to tribes under the CARES Act.

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3. Bears Ears Monument: With the inauguration of President-elect Joe Biden, there has been much work among the five tribes who advocated for the original Bears Ears National Monument to restore the original Obama Monument and add new land. LU has been working with the Native American Rights Fund, other tribal attorneys, and attorneys for allied environmental groups to advocate to the new administration to issue a proclamation again protecting the 1.3 million acres set aside by President Obama, and add .6 million acres originally proposed by the tribes. Soon after his inauguration, President Biden issued an Executive Order requesting the Department of Interior submit a report on monument boundaries and recommendations on what actions, if any, to take on those boundaries. Newly-confirmed Secretary of Interior Deb Haaland will be visiting the Bears Ears area and LU has been briefing OPVP and the Attorney General in preparation for the visit.

It is 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 are to submit a status report by June 3, 2021, and then every thirty days after that.

**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 Attorney Candidate Chris Benally and Legal Secretary Brela Multine. This quarter's notable projects include:

The NHLSP office reopened on February 8, 2021 after being closed since November 16, 2020, along with other Navajo Nation government offices. Legal Secretary Brela Multine has continued to staff the office while Attorney Candidate Chris Benally and Principal Attorney Susan Eastman alternate between working remotely from home and working at the NHLSP office to ensure NHLSP office coverage.

This quarter NHLSP staff continue to assist the Tuba City Child Support Services Office by attending staffing meetings and representing DOJ before OHA at the monthly child support hearings. They also drafted administrative child support orders after the hearings and submitted final orders to OHA.

Chris continued to assist outside counsel with contacting potential group representatives about participating in the planned litigation. Susan has also been involved with the preparation for the planned litigation and has provided assistance to outside counsel when requested. Chris assists the Chapter Unit with Navajo-language interpretation of the Quadrilateral Agreement in presentations given to affected chapters.

Susan has assisted and advised the Navajo-Hopi Land Commission Office ("NHLCO") by participating NHLCO's regular meetings as well as the NHLCO's work session on February 6, 2021 at which the NHLCO heard a report on the progress of the Navajo THAW Implementation plan and

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reviewed the Dine' Relocatee Fund Policies and Procedures. Subsequently, Susan and outside counsel met with NHLCO on to provide recommendations for revisions to the Dine' Relocation Fund Policies and Procedures Manual for re-submission to NHLC for review and approval before submitting to ONHIR. In addition, Susan reviewed a draft RFP by NHLCO for NPL Chapters and offered feedback for revisions before submitting to NHLC for approval.

NHLSP has two appeals pending the federal District Court of Arizona for NHLSP clients. Briefing on the motions for summary judgment and motion to strike was completed as of December 22, 2020 and a decision is pending.

1. Federal appeals of ONHIR denial determinations: NHLSP has two cases for NHLSP clients pending in FDC-AZ. As cases are filed pursuant to the federal Administrative Procedure Act, NHLSP cases are decided for our clients or ONHIR through Motion for Summary Judgment. NHLSP filed a new Complaint on March 10, 2021, and service of the Summons and Complaint upon the federal defendants via certified mail must be completed 90 days after filing the Complaint, so service will be initiated on ONHIR, the U.S. Attorney, and U.S. Attorney General in early June to comply with this requirement.

There are currently 11 cases pending in FDC-AZ, four (4) filed this quarter. Outside counsel filed 3 new Complaints in FDC-AZ this quarter and has 6 other pending cases filed in 2020.

There are two appeals pending in the Ninth Circuit. Oral argument is scheduled next month for one of these cases. For the other, the Court has scheduled mediation but ONHIR has refused to negotiate any settlement.

For a case in FDC-AZ in which the Court granted our motion for summary judgment and remanded the case back to ONHIR to address whether our client had a valid common law marriage under the Navajo law that was in effect at the time of her marriage, which ONHIR's Hearing Officer declined to consider at the administrative appeal level. ONHIR decided to offer our client a settlement in which ONHIR would agree to give our client relocation home benefits but would not concede that our client was eligible for such benefits. Finalizing the settlement agreement was delayed by an attorney fees issue and the Court denied our Motion for Attorney's fees. NHLSP has decided not to appeal the ruling on the attorneys' fees.

NHLSP continued to review NHLSP administrative appeal cases to recommend whether or not to take them to FDC-AZ. This quarter, four files were reviewed, one of which will be appealed.

2. Remands from federal court: A case that was remanded from the FDC in January 2020 still has not had the hearing go forward because NHLSP has not been able to contact its client. There are two (2) other cases remanded back to ONHIR, one from the 9<sup>th</sup> Circuit and one from the District Court. One will likely be heard in summer 2021 in a person hearing due to the client's lack of available internet and the other we have advised our client of the settlement proposed by ONHIR and she agreed to accept the terms ONHIR has offered.

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3. Assistance to Certified Applicants: Outside counsel is assisting a client who was certified eligible for relocation benefits in summer 2019 after a successful 9<sup>th</sup> Circuit Appeal. The client would like to relocate to Farmington, NM, even though she may not be able to meet ONHIR's off-reservation relocation requirements, but she is now willing to ask her husband to sign a disclaimer form in which he would disclaim any community property rights to her relocation home. A call with ONHIR to discuss our client's desires and ONHIR's issues to move her case forward.

4. Advice and Assistance to the Navajo-Hopi Land Commission: This quarter, NHLSP called into regular meetings and a work session with the Navajo-Hopi Land Commission in January, February, and March. The February 6, 2021 work session featured a report from NHLCO and the Navajo THAW contractors on the status of Navajo THAW projects and funding, and the Dine' Relocatee Fund ("DRF") Policies and Procedures. NHLC agreed that DRF Policies and Procedures need to be to comply with the requirements of Section 11(h) of the Settlement Act. NHLSP met with NHLCO and outside counsel to discuss the revised draft, and will be reviewed again by NHLC at an upcoming meeting.

NHLSP assisted NHLCO by reviewing a draft Request for Proposal ("RFP") for an "economic development project" for the NPL/Navajo Chapters impacted by Navajo relocatees who moved from the HPL to NPL Chapters. NHLSPs anticipate a meeting and more work on the RFP in the next quarter.

5. Federal Legislative Policy and Advocacy for Navajo Relocates by the NHLC: Outside counsel continued to provide counsel to the NHLC and NHLCO on a Navajo position for a congressional negotiation on the future of ONHIR. NHLSP followed closely and reported extensively on American Rescue Plan Act funding, as well as proposals for a major national infrastructure initiative, and how these opportunities could benefit relocation and freeze-impacted communities. Outside counsel developed, based on past positions, an FY 2022 appropriations paper (referencing maintaining ONHIR, transferring \$15 million rescission to the Navajo Rehabilitation Trust Fund, funding Navajo Thaw and forgiving the NRTF \$16 million debt) that was incorporated into the Nation's larger FY 2022 appropriations request. It would be very helpful if President Biden appoints an ONHIR commissioner supportive of the Nation's proposals for the future of ONHIR. During this period outside counsel prepared a letter for Navajo leadership to consider sending to President Biden requesting such an appointment. At the very end of the quarter, outside counsel reached out to the OIG and secured copies of draft reports for review and comment due by late April and provided a report to NNDOJ and Navajo leadership on the failure of OIG to conduct an audit of ONHIR.

6. Pending Litigation: In the last quarter, NHLSP worked with outside counsel to address certain non-litigation matters and to prepare to file lawsuits.

7. HPL Rent Dispute Appeal by the Hopi Tribe: A final decision from the Interior Board of Indian Appeals ("IBIA") regarding HPL rents owed by the Navajo Nation for the 2000-2009 period based on the Hopi Tribe's appeal of the BIA's rent determinations for that period is pending. A final decision from the Hopi Agency Superintendent on the HPL rents for the 2010-2014 period is pending. The BIA Western Regional Director remanded the 2010-2014 rents determination to the Hopi Agency Superintendent with instructions to correct certain errors and better explain the rent determinations. As final decisions on these rents are still pending, no other work was performed during the second quarter.

8. Navajo THAW/Former Bennett Freeze Area On February 23, 2021, the NHLCO unanimously passed a resolution urging federal support of the implementation of the Navajo THAW Regional Recovery Plan. The enactment of the American Recovery Plan Act (“ARPA”) presents an opportunity to fund critical infrastructure projects in the former Bennett Freeze Area (“FBFA”) and NHLCO’s top priorities for funding include Navajo THAW/FBFA infrastructure projects.

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

NRU is led by Assistant Attorney General Veronica Blackhat who manages five (5) Attorneys, one (1) Tribal Court Advocate and two (2) Legal Secretaries. Attorney Michael Daugherty resigned this quarter. Primarily, NRU provides legal assistance to Division of Natural Resources and the Navajo Environmental Protection Agency. However, NRU is also involved in many other matters affecting the Nation’s natural resources and environment. In this quarter, notable projects include:

#### **I. DEPARTMENT OF FORESTRY**

1. Carbon Sequestration Project: Legal review of the Carbon Development and Marketing Agreement (CDMA) continued. Regular meetings with the Office of the Speaker and other Navajo leadership began and will continue at regular intervals next quarter. A limited waiver of sovereign immunity is required in order to enter the regulatory market under the jurisdiction of the California Air Resources Board. Once the CDMA is executed, and the inventory of the Navajo Forest project area is completed, discussions regarding commercial forest will begin.

2. Sale of Allotment Timber when the Nation is a Majority Interest Holder: The Department of Forestry’s relationship with the Bureau of Indian Affairs (BIA), namely the Awarding Officials Technical Representative, remained strained and communication is lacking resulting in confusion when Power of Attorney documents name individual allottees, even though the Nation is a majority interest holder (likely as a result of the Land Buyback Program). This required additional clarification in 2019 and again this quarter. Unfortunately, this issue may arise in the future as construction projects continue on allotted lands within the Navajo Forest.

#### **II. DEPARTMENT OF WATER RESOURCES**

The Department of Water Resources (DWR) was involved in numerous discussions regarding the Nation’s allocation of CARES Act funds. With respect to pandemic-related work, many water projects did not meet the internal deadline for the expenditure of CARES Act funds. Resolution CJA-01-21 bridged the gap between those planned but ultimately unfunded projects, and allowed for important water infrastructure projects to proceed.

1. Issues Related to the Reversion of CARES Act Funds Pursuant to Resolution NABIO-49-20 and Subrecipient Agreements; Bridging the Gap to Complete Water Infrastructure through Resolution CJA-01-21: Subrecipients withheld funds in violation of NABIO-49-20 and the Subrecipient Agreements for CARES Act funds. This created administrative issues with respect to the Hardship Assistance, and legal issues with respect to a

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breach of the Subrecipient Agreements. It was determined that the funds had to be returned unless and until alternative legislation addressed this specific issue. Multiple notices to revert the funds consistent with the legislation and the agreements were issued by the Office of the Controller, in coordination with the Tax and Finance Unit. The deadline to return specific funds was March 20, 2021, and NRU is unaware of the status of these funds. Additionally, the time-restraint placed on CARES Act funds was partly addressed by CJA-01-21. Pursuant to CJA-01-21, DWR continued water-related emergency infrastructure projects that did not meet the internal CARES Act fund deadlines, in order to carry on the Nation's mitigation efforts during the pandemic. Many of these projects were new construction or upgrades to existing systems in order to increase access to water and wastewater, including solar-powered cistern systems. In accordance with CJA-01-21, the funds allocated for these water projects must be spent or encumbered within one hundred twenty (120) days of distribution.

2. Navajo Gallup Water Supply Project (NGWSP): Notable accomplishments related to the NGWSP this quarter include: (i) a Memorandum of Agreement (MOA) for the Operation, Maintenance, and Repair (OM&R) of the Cutter Lateral facilities was signed by the Navajo Tribal Utility Authority (NTUA) and the President; and (ii) a Memorandum of Understanding between the Nation, the Federal Government, and the State of New Mexico for the regulation of the water and pipeline was signed by all parties. The MOA recently hit a budgetary hurdle because the initial OM&R costs will be covered by multiple years from the Permanent Trust Fund; however, it is expected that the issue will be resolved quickly. Other construction and related NGWSP activities continued this quarter.

3. To'Hajiilee Chapter Water Crisis: Some of the construction projects to mitigate the To'Hajiilee water crisis were delayed due to the CARES Act fund reversions. In accordance with CJA-01-21, these projects were restarted later this quarter. In order to deliver water to the community, a water lease agreement was entered into between the Jicarilla Apache Nation (JAN) and the Navajo Nation. The document packet is under review with the Office of the Controller. Upon approval and signature by the President, the agreement will be forwarded to JAN, and the Department of the Interior, for final review and approval.

### III. RE-NEGOTIATING THE OFF-RESERVATION HUNTING AGREEMENT BETWEEN THE NAVAJO NATION AND UTAH

NRU has participated in several calls with Utah officials to discuss re-negotiating the 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. The Utah officials also indicated that Utah's incoming governor wants to work cooperatively with Tribes and thus will likely support negotiating a new agreement. We also provided updates to the Navajo Utah Commission regarding our meetings with Utah officials as they initially requested the Navajo Nation to renegotiate the current agreement. Direction from Navajo Nation leadership will be obtained, after getting more input from Fish and Wildlife and Resource Enforcement, on its administrative, regulatory, and training capacities.

### IV. NAVAJO PARTS AND RECREATION DEPARTMENT (NPRD)

1. Reopening Tribal Parks: In accordance with the Nation's Public Health Emergency Orders, all Tribal Parks remained closed this Quarter.
2. Grand Canyon National Park: NPRD and the Grand Canyon National Park Tribal Program Manager began exploring National Park Service

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(NPS) funding and service options under Pub. L. 93-638. In the event an agreement with NPS is not available under Pub. L. 93-638, NPRD and NPS will explore alternative options. In accordance with the Navajo Nation's Public Health Emergency Orders, the East Entrance to the Park remained closed. Barring any opposition from the Nation or the local communities, the East Entrance is scheduled to reopen April 8, 2021.

3. Temporary Western Parks Office: An Intragovernmental Land Use Agreement between NPRD and the Tuba City Chapter was drafted for the use of Chapter land and temporary occupancy of a Western Parks Office. The Agreement was revised from the standard Chapter Facilities Use Agreement because NPRD will be providing the temporary office building. The goal is to establish a permanent Western Parks Office in Tuba City, Arizona because the majority of the Nation's Tribal Parks are located in the Western Agency. NPRD also hopes that establishing a permanent office will increase the Department's capacity to support the local community and enhance visitor services.

4. Enforcement Issues: NPRD was under the impression that once Navajo enforcement officers, including Park Rangers and Resource Enforcement Officers, completed the Police Officer Standardized Training (POST), those POST-trained officers would be granted the authority to enforce all laws, including criminal and traffic, across the Navajo Nation. Unfortunately, the issue of enforcement authority is multi-faceted and complicated by inconsistencies in the Navajo Nation Code, risk management considerations for officer liability and accountability, and the jurisdictional puzzle that is law enforcement in Indian Country. In addition to these fundamental limitations of law enforcement authority on the Navajo Nation, NPRD continued to raise the issue of limited resources to ensure adequate personnel at all Tribal Parks and it did not receive any Tribal Park revenue as a result of the closures, and its annual operating budget was significantly reduced for FY21.

5. Rule Changes for the Glen Canyon National Recreation Area (Recreation Area): The NRPD enforcement issues may also be exacerbated, especially in the Lake Powell Tribal Park, by a recent rule change permitting certain off-road vehicle (ORV) use in designated areas of the Recreation Area. This rule implemented a mixed use alternative by identifying and designating specific areas capable of ORV use while prohibiting ORV use in areas where resources and values may be at risk. Permits are required for all designated ORV locations except for designated routes in Middle Moody Canyon, East Gypsum Canyon, Imperial Valley, and Gunsight Springs. However, ORV use remains prohibited within all Navajo Tribal Parks and on Navajo lands adjacent to the Recreation Area.

6. Quadrilateral Agreement Task Force: NRU provided information as it related to NPRD. The purpose of the Task Force is to provide recommendations for renegotiating the Quadrilateral Agreement, and the associated Memorandum of Understanding and Bridge Agreement, which expired in September 2020. The enabling legislation has yet to be revised to reflect a change in the scope and purpose of the Task Force, which appeared to expand beyond the original intent.

#### V. NAVAJO NATION WASHINGTON OFFICE (NNWO)

1. NNWO Acquisition: DNR/NLD had submitted legislation for the Navajo Nation Council for the proposed acquisition of a building in Washington, D.C. to house the Navajo Nation Washington Office ("NNWO"). DNR had planned to utilize the Land Acquisition Trust Fund ("LATF") for the proposed acquisition, however, the LATF's Income balance was insufficient to fund the acquisition and the Navajo Nation Council

had not yet authorized use of the LATF's Principal balance. The Navajo Nation Council approved the use of the LATF principal for the purchase of the Washington DC building on January 29, 2021.

## VI. SAN JUAN SOUTHERN PAIUTE

1. San Juan Southern Paiute – Electricity: NLD was contacted by counsel for SJSP regarding SJSP's efforts to have utilities installed at various locations in the Navajo Mountain area where they plan to place or have placed the mobile homes that are the subject of the recent Naatsis'áán Chapter and the Navajo Utah Commission resolutions (presenting concerns regarding encroachment by SJSP without permission from NLD and grazing officials). According to SJSP counsel, SJSP is working with NTUA to get electric lines to those mobile homes seemingly without approved homesite leases. NRU will be meeting with NLD to discuss the issues presented and how to proceed.

## VII. TELECOMMUNICATION SITING REGULATIONS

The purpose of the regulations is to streamline policies and procedures for the issuance of telecommunication tower lease and permits as they relate to surface land use for telecommunications, as well as collocations on non-tower structures. NRU and HSGU provided comments regarding the proposed telecommunication regulations and leases submitted by GLDD. HSGU reviewed the regulations in relation to the Navajo Nation Telecommunications Regulatory Commission (NNTRC) and met with GLDD, NLD and Vertical Bridge to go over our comments and concerns and told the group that they need to coordinate with the NNTRC in the development of these regulations.

## VIII. DEPARTMENT OF AGRICULTURE

1. Update of District Grazing Committee's (GGC) Operating Manual. NRU is assisting NNDA to update its DGC Operating Manual and researched Navajo Nation Supreme Court case law for a definition of the term "Beneficial Use" for the NNDA to use. The NNDA is seeking guidance from NNDOJ on defining "Beneficial Use" in reference to agricultural permits in the definition section of the Manual.

2. James v. DGC12. (On-going). NRU entered a combined motion of appearance before the Office of Hearings and Appeals on behalf of the District 12 Grazing Committee ("DGC"). The case was dismissed for ripeness concerns, and due to a lack of a record on the matter. NRU will now work with the DGC to establish a record that supports that Due Process (notice and opportunity to be heard) being afforded. OHA dismissed the case so that the DGC could establish a record showing the Appellant was given adequate notice (via publishing a public notice in the newspaper), and provides Appellant with adequate opportunity to be heard (a chapter meeting or equivalent).

3. Bonding Waivers: The RDC, through the Office of Legislative Counsel, inquired about how to request bonding waivers from the BIA. NNDA has confirmed that the land the RDC is inquiring about is actually BLM and allotted land. Waiver requirements, if they exist for BLM land are likely different than what is stated in the 25 CFRs. Further legal research will depend on the land status of any ranch land in question. RDC will

need to provide additional information about the lots in question. Furthermore, any allotted land may require allottee involvement as BIA treats individual allottees as land owners.

4. Industrial Hemp: The San Juan River Farm Board (SJRFB) has sought guidance about unlawful hemp cultivation. Shiprock had been the center of hemp/marijuana production which is contrary to public policy and posed a threat to public safety. There has been public outcry for clean-up of the hemp farming equipment and trash left on the various properties in the Shiprock area. NNDOJ has assisted with initiating a number of judicial and administrative solutions, and both require time. A practical solution is for leadership to either task clean up to a specific division/department or to hire a consultant for clean-up, removal and storage of the local farm land, and the cost can later be added to the damages or NNEPA fines.

#### IX. NAVAJO DECISION OF TRANSPORTATION (NDOT)

1. San Juan County, Utah – IGA: The purpose of the IGA between NDOT and San Juan County, Utah is for the County to provide the Nation assistance with project planning, road maintenance and improvement projects. The latest project under this IGA is the McElmo Creek Bridge replacement, located approximately 10.60 miles northeast of Aneth, Utah on Navajo Route 407 within the Navajo Reservation. The current structure is considered functionally obsolete due to the geometry and safety features of the bridge and the proposed project will replace the existing McElmo Creek Bridge with a structure that will accommodate traffic and water flow. The new structure will be widened to allow both lanes of traffic to safely cross the structure simultaneously. The new project total is \$2,534,804.00 with a required matching share of \$170,997.00, which NDOT will be providing.

2. Transportation White Paper: Participated in several calls with OPVP, NNWO and NDOT regarding the Navajo Nation Transportation White Paper and also provided comments and edits to the draft white paper. The White Paper provides an overview of Navajo Nation's transportation system as well as the successes and challenges encountered. The paper also presents requests to: resolve conflicts in agency authority and jurisdictions; harmonize agency guidance with federal law to make Navajo roads safe; provide flexibility to the Tribal Priority Allocations (TPA) that the BIA uses for road maintenance so that TPA funds may also be used to fund tribal roads; ensure agency practices are consistent with policies to make the Navajo road system equitable; protect the integrity of tribal road funds so that they do not subsidize non-tribal roads; recognize that tribal bridges and roads present different exigencies of circumstance that require complimentary, not competitive funding sources; and promote tribal sovereignty by retroceding Secretarial approval over tribes who have demonstrated their own capacity for Federal regulatory compliance.

#### X. NAVAJO AREA URANIUM MINES (AUM) WORK

1. Voluntary Alternative Housing (VAH) for the Red Water Pond Road (RWPR) Community: The United States Environmental Protection Agency (USEPA) Region IX issued final eligibility determination letters to the remaining families at RWPR regarding VAH. All eligible families selected their preferred VAH option. Seven (7) homesite lease locations are pending approval.

2. Programmatic Agreement: A draft Programmatic Agreement between the NRC, USEPA, and state and tribal historic preservation officers

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circulated amongst the agencies. The Navajo Heritage and Historic Preservation Department led the Nation's effort since the Programmatic Agreement addresses cultural resources and inadvertent discovery. The draft should be finalized early next quarter.

3. Draft Environmental Impact Statement (DEIS) regarding the Nuclear Regulatory Commission (NRC) License Amendment for the United Nuclear Corporation (UNC) Mill Site as related to the Northeast Church Rock Mine Site (NECR) Cleanup: For context, the selected cleanup action for NECR is to move the mine site waste on top of the existing UNC mill site waste. In order for USEPA to perform this action, the NRC license must be amended to allow for the additional waste. The license amendment process requires public comment period for the DEIS. NRC held virtual public comment hearings on December 2 and 9, 2020. The significant lack of telecommunication services and broadband access for many communities adversely impacted the public's ability to participate in these virtual hearings. Related concerns were raised at both hearings. Furthermore, the virtual hearings were not designed to be conversational; rather, the comments made during the hearings would be compiled with those received in writing and NRC would issue summary responses. This raised cultural concerns regarding respectful engagement of the public and those who would be most affected by NRC's decision. The Nation submitted a formal request to extend the public comment period for the DEIS issued by the U.S. Nuclear Regulatory Commission (NRC); a necessary step to move the NECR waste on top of the existing mill site waste licensed by the NRC. The extended deadline for public comments on the DEIS is May 27, 2021. NRC made additional efforts to engage the public through virtual sessions and educational materials, including radio announcements.

4. The Ten-Year Plan: After multiple revisions, including comments from NNDOJ, NNEPA, and OPVP, USEPA issued the Ten-Year Plan for the Navajo Abandoned Uranium Mines project in January 2021 which continues the effort of the previous Five-Year Plans and identified the next steps in addressing the human health and environmental risks associated with the legacy of uranium mining on the Navajo Nation. The Ten-Year Plan was developed in cooperation with multiple federal partner agencies including the Bureau of Indian Affairs (BIA), Department of Energy (DOE), Nuclear Regulatory Commission (NRC), Environmental Protection Agency (USEPA), Navajo Area Indian Health Service (NAIHS); and the Agency for Toxic Substances and Disease Registry to incorporate goals and milestones for achieving assessment and cleanup actions. The document contains sections that includes objectives for contaminated structures, water, drinking water, Tuba City dump site, health, community involvement and Navajo workforce development.

5. Diné Uranium Remediation Advisory Commission (DURAC) and Position Statement: The Diné Uranium Remediation Advisory Commission has continued meetings via webcast. After legislation to amend the Commission's Plan of Operation was vetoed, NRU has assisted the Commission to revise the amended Plan to address concerns. Legislation to approve the revised Plan will be introduced next quarter.

#### XI. SETTLEMENTS WITH UNITED STATES PHASE TWO TRUST (ON-GOING)

During this quarter, the Phase Two Removal Site Evaluation (RSE) trust continues its work toward issuance of removal site evaluation (RSE) reports for multiple mine sites, as well as performing risk assessments. NRU continues to participate in regular conference calls regarding work being done by the Phase Two Trust for investigation and remediation of these uranium mines. The Phase Two Trust is being amended and expanded to include cleanup of Priority Orphan Mines, as contemplated under the Phase Two Trust settlement agreement.

## XII. IMPLEMENTATION OF TRONOX SETTLEMENT FUNDS (ON-GOING)

Several of the Tronox mine sites are moving quickly toward preparation of Action Memoranda, which officially document the cleanup decisions for CERCLA removal sites. EE/CAs could be issued as early as this year for several Tronox mine sites. EE/CAs include an evaluation of Applicable or Relevant and Appropriate Requirements (ARAR)s. ARARs are laws and regulations promulgated by federal, state, local or tribal governments. A CERCLA cleanup must either attain or waive ARARs. CERCLA on-site cleanup action are exempt from compliance with many laws and regulations except to the extent that they are identified as ARARs. In order for state, tribal, or local requirements to be considered ARARs, they must be promulgated and more stringent than federal requirements. This quarter involved completing a comprehensive list of Navajo Nation ARARs to be used for uranium mine clean-ups. The draft ARARs table will be used as a template for incorporation in cleanup decisions and were submitted to USEPA for consideration in completing its EE/CAs. USEPA has the final say in selecting ARARS in accordance with the National Contingency Plan (NCP).

## XIII. GOLD KING MINE LITIGATION

NRU assisted outside counsel with discovery issues and questions regarding the damages incurred by the Navajo Nation as a result of the Gold King Mine spill and natural resource damages in the Gold King Mine litigation.

## XIV. CREE ADMINISTRATIVE SETTLEMENT AGREEMENT

This quarter, NRU began negotiating with USEPA on the terms of a new settlement agreement for investigation of contamination at two former uranium mines near Teec Nos Pos. The responsible party, Cree Production Company, formerly operated Tsoie No. 1 and Richard King No. 1 mines. The new draft settlement agreement will be presented to Cree Production Company for signature after we reach agreement with USEPA on draft language.

## XV. NAVAJO-GALLUP WATER SUPPLY PROJECT (NGWSP) MOU:

The Navajo Nation, New Mexico Environment Department (NMED) and the U.S. EPA recently signed an MOU regarding the NGWSP which describes the roles and responsibilities under existing law of the three agencies with regulatory oversight for different components of the NGWSP.

## XVI. ARIZONA CORPORATION COMMISSION RATE CASES

1. Tucson Electric Power Company: Tucson Electric Power Company (TEP) has an ongoing case before the Arizona Corporation Commission (ACC). The Nation was too late to intervene in the case, but the Nation submitted public comments in the matter. The ACC has created a separate

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docket in the case to look specifically at the issue of communities who are impacted by the closure of power plants owned by Tucson Electric. The Nation will formally intervene in the TEP rate case.

2. APS Rate Case: DOJ intervened in the Arizona Public Service Company (APS)'s ongoing rate case being heard by the ACC. Representatives from Arizona State University (ASU) and outside counsel are assisting the Nation. This quarter, NRU reviewed and provided edits to the draft agreement between the Nation and APS related to potential settlement of various matters; participated in numerous calls and exchanged numerous emails regarding the same and assisted with preparation for President Nez's oral testimony given on February 12, 2021. NRU also provided edits to the Nation's brief which was filed April 6<sup>th</sup>.

#### XVII. SALT RIVER PROJECT REQUEST FOR PROPOSALS

The Salt River Project (SRP) issued a Request for Proposals (RFP) for a potential solar project to be developed on the Navajo Nation and has tentatively selected NTUA's solar project in the Cameron area. The project would also use 100 MW of the NGS 500MW that the Nation received the right to use via the NGS Extension Lease. NRU has participated in calls with Office of Legislative Counsel (OLC) to discuss how to move forward. SRP is expecting written confirmation from NTUA and the Nation month that the issues have been resolved. SRP expects the lease between the Nation and NTUA to be executed soon.

#### XVIII. NGS 500MW

This quarter, a letter was drafted to the Western Area Power Administration (WAPA) to have WAPA post the Nation's 500MW on WAPA's Desert Southwest Open Access Same-time Information System (OASIS) system for sale. President Nez signed the letter and the megawatts will be posted for sale starting April 5<sup>th</sup>. The megawatts will be sold on OASIS for several months until DOJ can negotiate an agreement with TEA Solutions, who will act as the Nation's agent to actively market the 500MW for the next few years. The negotiation of that agreement had been delayed due to COVID-19, but the Nation touched base with TEA again this quarter to reconnect and to re-start the negotiations. Pursuant to Council Resolution CD-93-20, NRU is working with OPVP to finalize the FMP for submission to RDC.

#### XIX. RENEWABLE ENERGY

1. NTUA Red Mesa and Cameron Solar Leases: NRU worked with DNR and the Navajo Land Department to negotiate favorable terms for the Nation's lease with NTUA for the Red Mesa and Cameron Solar Projects. We reviewed amendments proposed to the lease by NTUA and were able to negotiate a lease acceptable to both parties. This involved several calls with DNR, Navajo Land Department, Minerals Department and NTUA. The Red Mesa and Cameron Leases were approved by the Resources and Development Committee on March 31, 2021.

2. Navajo Power Lease: Navajo Power has submitted a draft lease to DOJ related to a potential solar project in the Cameron area. DOJ provided edits to Navajo Power in January and they responded with additional edits. NRU is reviewing their latest draft and will be providing comments thereafter.

## XX. NTEC SURFACE LEASE

NTEC has a surface lease related to its mining activities at the Navajo Mine and is in the process of trying to extend the term of that lease with the Nation. However, the extension was not going to be done by the lease expiration date of April 1<sup>st</sup>. NTEC proposed that they be deemed a “holdover” tenant pursuant to 25 C.F.R. § 162.471, meaning that the Nation needed to notify BIA that the Nation and NTEC were negotiating a new lease and BIA should not take any action against NTEC for the lease expiration.

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

The Tax and Finance Unit is headed by Assistant Attorney General Mel Rodis who supervises two (2) Attorney Candidates and one (1) legal secretary. The Principal Attorney position is currently vacant. TFU is assigned to advise the Budget and Finance Committee (BFC); the Office of the Controller (OOC); the Office of Management and Budget (OMB); the Investment Committee (IC); the Navajo Tax Commission (NTC); the Office of Navajo Tax Commission (ONTC); the Department of Retirement Services (NDRS); and the Administration Committees for the Retirement Plan (RPAC), the 401(k) Savings Plan (RSPAC), and the Deferred Compensation Plan (DCPAC). Below are some of TFU’s noted projects this quarter:

1. American Rescue Plan Act: On March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA), which included a total of \$1.9 trillion for COVID relief and recovery and \$31 billion in funding for Indian Country. Of the \$31 billion, \$20 billion of the Coronavirus State Fiscal Recovery Fund for Tribal Governments (Fiscal Recovery Fund or FRF) will be distributed by Treasury directly to federally recognized tribes. Treasury has not yet released regulations or guidance detailing allowable expenditures of the FRF. ARPA also allocated approximately \$11 billion to federal agencies such as IHS, BIA, HUD, HHS, BIE, and DOE for distribution to tribes through grants. Treasury and these federal agencies have been holding consultations with tribal leaders as well as accepting written comments from tribes and the public. TFU is working with the Navajo Nation Washington Office (NNWO) and outside counsel on the Nation’s early response to the ARPA. TFU assisted outside counsel and the NNWO with a letter to a U.S. Senator Ben Luján regarding the Nation’s recommendations for the distribution formula for the \$20 billion allocation of the FRF. The Unit also coordinated trainings offered by DOJ on the ARPA to OPVP, the Naabik’iyáti’ Committee, and DOJ attorneys and advocates. TFU reviewed draft comment letters to Treasury and other federal agencies regarding the ARPA, and participated in meetings with the NNWO regarding comments for consultations on the ARPA. TFU is working with outside counsel on FEMA reimbursement of funeral expenses, and has attended multiple tribal consultations on the ARPA with the U.S. Department of Treasury and other federal agencies. TFU will continue to attend work sessions of the Naabik’iyáti’ Committee on the ARPA.

2. Enhanced Retirement Program: In the summer of 2020, OPVP asked the Navajo Department of Retirement Services (NDRS) to look into enhanced retirement options that would allow eligible Navajo Nation employees to elect early retirement, in response to the health impact of the Coronavirus. Working with NDRS, an actuarial consultant and outside counsel, options for an Enhanced Retirement Program were put together and presented to the Retirement Plan Administration Committee (RPAC) for consideration. After much discussion, the RPAC selected one of the presented alternatives for recommendation to the Budget and Finance Committee (BFC). Following RPAC action, TFU also assisted NDRS with gathering more information on the alternatives, including financial impacts if changes are made to the RPAC-recommended alternative, in preparation for discussion by the BFC. The Enhanced Retirement Program is awaiting consideration by the BFC.

3. Office of the Controller (OOC):

a. CARES Act Coronavirus Relief Funds (CRF) – Hardship Assistance: To ensure that the Nation expended its CARES Funds timely, Council approved provisions in CJY-67-20 and CS-73-20 so that funding for any project that had not made enough progress to demonstrate that it would be fully complete by December 30, 2020, would be reallocated to the Hardship Assistance Expenditure Plan. Resolutions NABIO-49-20 and NABID-63-20 established deadlines by which CRF had to be encumbered, unencumbered, and reallocated to the Hardship Assistance Expenditure Plan. TFU advised OOC on various issues involving the Hardship Assistance Program, such as the appropriate response to the accidental issuance of duplicate checks; solutions to the problem of minors who were included on multiple Hardship Assistance applications; and reporting of instances of check fraud.

b. CARES Act Coronavirus Relief Funds – Subrecipients: The Nation awarded CARES funding to many subrecipients, all of whom were subject to subrecipient agreements, and agreed to comply with financial reporting requirements; not to expend funds after December 30, 2020; and to return unexpended funds and funds expended in violation of the subrecipient agreement, and federal or Navajo Nation law. Some subrecipients failed to comply with financial reporting requirements, while other subrecipients were reluctant or even refused to return unexpended funds. On December 27, 2020, the federal Consolidated Appropriations Act of 2021 was enacted and extended the existing December 30, 2020 deadline in Title V of the CARES Act with regard to Coronavirus Relief Funds, such that costs may now be incurred up to December 31, 2021. The Nation did not extend its internal deadline for CARES expenditures, however, and some subrecipients and Navajo leaders were under the mistaken belief that subrecipients could continue expending the CARES subawards since the federal deadline was extended. TFU advised OOC on issues related to CARES subrecipient agreements and drafted notices of non-compliance and notices requiring subrecipients to return unexpended CARES funds pursuant to subrecipient agreement, expenditure plans, and NABID-63-20.

c. Other Assistance to OOC: TFU reviewed OOC's proposed Services Contracts and advised the Purchasing Section of OOC with regard to various procurement issues. TFU issued a memo to OOC regarding the Cove Chapter's Memorandum of Agreement with DCD-CPMD. TFU advised OOC regarding the FY21 Comprehensive Budget allocation of Veterans Housing funds to the Veterans Trust Fund for veterans' financial assistance. TFU revised a draft grant agreement between the Nation and NNGE for the grant of \$15 million from the UUFB. TFU reviewed investment subscription agreements for OOC, and advised OOC on the issue of the Nation becoming a qualified institutional buyer and made modifications to investment manager contracts.

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4. Office of the Navajo Tax Commission (ONTC): TFU participated in multiple taxpayer conferences with ONTC and taxpayers and drafted conference notices and ONTC Conference Decision letters. TFU also advised ONTC regarding possible penalties pertaining to a liquor-related incident at a casino. TFU drafted an ONTC Private Ruling and represented ONTC before the Office of Hearings and Appeals regarding a taxpayer appeal of a tax assessment and obtained a favourable judgment on behalf of ONTC.
  
5. Department of Retirement Services (NDRS): TFU advised NDRS on 401(k) Plan matters; generally advised NDRS and the Retirement Plan Administrative Committee (RPAC), and drafted proposed RPAC resolutions concerning the proposed Enhanced Retirement Program for the Navajo Nation Retirement Plan; participated in RPAC meetings; and drafted the RPAC resolution approving the Retirement fringe rate. TFU drafted BFC legislation to approve the Enhanced Retirement Program for the Retirement Plan amendment and restatement.
  
6. Office of Management and Budget (OMB): TFU met with OMB, OPVP, Head Start, OOC, and HSGU multiple times on issue of the Head Start grant and restricted use budget and reviewed and provided comments and questions on the draft FY21 Indirect Cost Rate Proposal (ICRP). TFU attended the BIA Contract Support Costs workgroup call and met with OMB, OLC, and OOC to discuss possible plans for mechanisms and procedures to conduct compliance reviews of proposed ARPA expenditure plans and budgets. TFU will work with OMB on its proposed amendments to the Budget Instructions Manual.
  
7. 24<sup>th</sup> Navajo Nation Council and Committees: TFU reported to RDC on the Tribal General Welfare Exclusion Act and drafted proposed amendments to legislation 0027-21 regarding veteran home program policies. TFU participated in multiple meetings on the Crownpoint Hotel project. TFU issued a memo concluding that the Land Acquisition Trust Fund should not be utilized to pay certain costs and for a proposed acquisition and proposed edits to draft legislation to establish a new fund for the Judicial Branch and reimbursing litigation costs. TFU participated in meetings with the Naabik'iyáti' Committee Title II Reform Subcommittee, OLC, and OPVP regarding reform of the 2 N.N.C. § 164 review process. TFU drafted Budget and Finance Committee legislations for modifications to investment manager contracts, amendment of the Master Investment Policies and Sub-policies, and for the amendment and restatement of the 401(k) and Retirement Plans. TFU assisted to coordinate training offered by DOJ and outside counsel on the ARP to the Naabik'iyáti' Committee.
  
8. Miscellaneous Matters: TFU participated in calls with tribal attorneys and tribal leaders for NM tribes with NM Tax & Revenue Department regarding NM internet sales tax and cooperative tax agreements. TFU assisted in the drafting of the Attorney Audit Letter to issue to auditors. TFU is revising a draft fund management plan for NNVA's desired Navajo Veteran Housing Program Trust Fund.

**Water Rights Unit (WRU)**

The Water Rights Unit is led by Assistant Attorney General Michelle Brown-Yazzie. Ms. Brown-Yazzie supervises two (2) attorneys and two (2) support staff. As noted in previously, Principal Attorney Kate Hoover retired this quarter. WRU is charged with securing and protecting the Nation's

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water rights. In doing so, WRU works closely with the Water Rights Commission and the Navajo Nation Water Management Branch. Below is a summary of WRU's work for this quarter:

1. Colorado River Basin (AZ), Lower Basin. *Navajo Nation v. Department of the Interior*. The matter was fully briefed in the Nation's second appeal to the Ninth Circuit Court of Appeals with the filing of the Nation's reply brief in July 2020. The Ninth Circuit held a virtual oral argument on October 16, 2020, but no decision has been entered.
2. Other Colorado River Matters:
  - a. WNP TAG. WRU is working with NRU to determine whether there is any provision in the agreement between SRP and the Navajo Nation concerning the closure of NGS that might allow the Navajo Nation more access to the site. Without additional access to the site, WNP might be delayed several years.
  - b. Ten Tribes Partnership. This Quarter, the TTP continued to work on organizational issues, receiving updates from the Media/Communications Committee and updates on the implementation of the Strategic Plan. Chairwoman Flores, CRIT, provided an update on the legislation that CRIT is proposing to introduce in Congress, which would authorize CRIT to lease its waters off-reservation. The Bureau of Reclamation provided an update on the Colorado River Basin hydrology. Reclamation reported that Lake Mead was at 41% capacity and Lake Powell was at 39% capacity. Reclamation also informed the TTP that it would be figuring out how they want to renew the 2007 Interim Guidelines. Reclamation will be asking for additional input from the tribes on how to go about developing the outreach plan.
3. Rio Grande Basin: Augustin Plains Ranch (APR). After having its revised permit application dismissed by the OSE hearing officer in August 2018, APR filed an appeal with the 7<sup>th</sup> Judicial District Court of New Mexico, case no. D-728-CV-2018-00026. On August 23, 2019, the Seventh Judicial District Court granted the summary judgment motion of the New Mexico Environmental Law Center, in which WRU had joined, and dismissed the Augustin Plains Ranch matter with prejudice. On September 23, 2019, an appeal was filed by APR. On Nov. 26, OSE filed a cross-appeal, which it subsequently dismissed APR submitted its Brief-in Chief on October 26, 2020. On September 11, 2020, WRU filed a Notice of Appearance. The Answer Briefs were due on March 12 and Reply Briefs are due on April 23. WRU filed a Joinder in the Community Protestants' Answer Brief.
4. State Engineer v. Gray. WRU motioned 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.
5. Little Colorado River Basin (AZ) *In re Hopi Reservation HSR*, 6417-203.

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- a. Hopi Future Claims. The virtual trial began on September 14. The testimony presented by the Hopi Tribe and the U.S. concluded on December 2, after a COVID-19 related stay from November 19 to November 30, 2020. Due to the postponement, the Nation presented its case in early December, followed by the LCR Coalition. The trial concluded on February 16, 2021. The closing arguments are scheduled for August 16-17, 2021.
- b. In re Navajo Nation, 6417-300. Phase I. WRU and ST continue to work with the Nation's experts to develop their expert reports concerning the Nation's DCMI, stockpond, livestock and wildlife watering claims. On the Nation's motion identifying impediments to timely completion of the expert reports including closures necessitated by the pandemic, the Court extended the filing deadline to April 30. WRU assisted ST with the search for Navajo tribal members to be fact witnesses in Phase I of the trial. WRU also participated in the interviews of some of the fact witnesses. In the context of the Hopi contested case, the Special Master determined that federal reserved rights of small quantity (such as stockponds, livestock and wildlife water uses) should not have the benefit of summary adjudication. Nevertheless, the Special Master has sought to address these types of use without requiring specific attributes for each use, such as assigning a quantity of water for use within a grazing district. So far such alternate approaches have been rejected by most of the other parties. The Nation has significant plans for future DCMI water development, much of it within the Sihasin funding plan that will support a claim based on a future population projection by the Nation's demographic expert. At a status conference on October 23, 2020, the San Juan Southern Paiute Tribe (SJSPT) sought direction concerning how its claims for water within the Navajo Reservation would be addressed. The U.S. recognized that it had a duty to assert claims on behalf of the SJSPT in a footnote to its amended SOC on behalf of the Nation, and the SJSPT filed objections to the Navajo Nation HSR. The Nation, the U.S. and SJSPT engaged in several discussion seeking a resolution acceptable to all parties, but could not reach agreement. The Special Master heard from the parties on the matter at a status conference on December 4, 2020. The Court issued an order requiring the SJSPT to submit a proposal for resolving its water rights claims in the LCR Adjudication by March 31, with responses due on July 30, and argument set for August 18. The Phase I trial is scheduled to begin on November 7, 2022.
- Phase II and Phase III. As previously reported, much work has already been done on the Navajo Phase II and III claims. The Nation and the U.S. have retained experts to develop reports on past, present, and future Navajo heavy industrial and commercial uses for Phase II and historic irrigation and PIA for Phase III, and again are working collaboratively with the U.S. to develop these claims. WRU's work with HPD, as described above, includes efforts to develop the Nation's claims for cultural uses of water. WRU retained a riparian/wetlands expert to develop claims associated with riparian areas, including collecting medicinal plants. WRU is working with NN Fish & Wildlife, to develop its claims for recreational uses of water on the LCR lakes, and for fisheries in LCR lakes and streams. WRU has retained a renewable energy expert to evaluate future economic development, and retained an economist to look more broadly at development to foster a future Navajo permanent homeland. Given the delay by ADWR in producing the Phase II HSR (until the summer of 2022), there has been some discussion about consolidating Phases II and III, particularly given that certain claims are no longer part of those Phases. The Court set a status conference to consider this issue for April 8, however, a decision was not made to consolidate and another status conference will be held in May of 2021. The Nation and U.S. filed their respective amended SOCs for Phase II on October 7. No trial date is set for Phase II or Phase III claims.

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c. In re Lower Little Colorado River Subwatershed, 6417-400. This proceeding has been focused on the preparation of the ADWR Technical Report on *de minimis* uses. The Nation objected to a number of matters addressed in the Report, but did not dispute that summary adjudication was appropriate for certain small uses. At a hearing on May 28, 2020, no party objected to the *de minimis* treatment of all stock and wildlife water claims and stockponds 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 April 28. ADWR sought, and was granted, an extension to complete the preliminary watershed HSR to March 31, 2022.

d. SW Navajo TAG. WRU regularly attends the monthly TAG meetings. No legal issues arose at the meetings this Quarter. However, the possibility that either insufficient water will be available or that the pipeline will not be completed for the IHS Dilkon Health Center when it is completed has increased. If there are no further delays it should be completed on time, but the time safety margin has been exhausted.

e. Zuni River Basin. The parties continue to work on a consensus hydrologic model that will allow the parties to evaluate impacts of various claims and future pumping scenarios continues as the settlement proposals are discussed. WRU is working with WMB to obtain complete available data on water use and to update maps on the trust lands given substantial trust acquisitions since the U.S. prepared its claims. This quarter, the modeling team reported that the steady state/historic model is still converging and running completely through all 217 stress periods. The goal for the April 2021 meeting will be to run a predictive transient model with the worst case scenarios (meaning the highest numbers for all parties). WRU met with WMB on March 24 to discuss current status of data gathering on water use in the Basin and next steps. WRU has reached out to the Ramah P.L 638 program to inform them of provisions in the American Rescue Plan Act that the program could use to fund water and sewer projects in the Ramah community.

6. San Juan River Basin (UT). Settlement Agreement and Legislation. WRU and WRU worked with the Nation's lobbyists and the NNWO to secure passage of the Navajo Utah Water Rights Settlement Act (NUWRSA). 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. That Act ratifies the proposed settlement agreement previously approved by the Navajo Nation Council; however, the agreement will need to be conformed to be consistent with that Act prior to execution by the Secretary of the Interior, the Governor of Utah and the President of the Navajo Nation. WRU continues to work with WRU, the Brownstein lobbyists and NNWO to secure funding necessary to implement the settlement. WRU met with the Utah Attorney General's office to discuss the passage of SJR 14 (State of Utah resolution in support of settlement) and SB 0225 (State of Utah resolution to support appropriation of funding for the settlement) and implementation of the settlement.

a. Utah TAG. WRU regularly attends the monthly meetings. This Quarter WRU provided updates on the status of NUWRSA, and obtained updates on the construction projects within Utah that are on-going. The Utah TAG has identified this project to assist way the NUWRSA implementation.

7. San Juan River Basin (NM) Adjudication (Main case 75-184). 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. The Nation has been invited to participate in those negotiations to resolve the Tribe's water rights claims in New Mexico. WRU executed a nondisclosure agreement on behalf of

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the Navajo Nation and will participate in settlement discussion on January 12. On March 17, WRU met with Ute Mountain Ute Tribe to discuss what they are thinking of for a possible settlement.

- a. Implementation of the Navajo Nation San Juan River Basin Settlement. Navajo-Gallup Water Supply Project (NGWSP). The Cutter Lateral is online and has begun delivering water to the Huerfano Chapter. As of March 10, the Counselor and Ojo Encino water systems are receiving water through the Cutter Lateral system. Nageezi, Torreon, and White Horse Lake will begin receiving water between April and May of 2021.
- Value Planning (VP). As of April 8, 2021, Reclamation is estimating a project cost shortfall of \$2954M for the NGWSP. Reclamation sought the input of all project participants in a VP exercise to address the projected cost overruns. WRU participated in weekly, then daily, calls with the Nation VP team in order to provide legal advice as needed. BOR is planning to schedule a meeting to explain the final VP Report in mid-April 2021.
  - Ability-to-Pay OM&R (ATP) Methodology. Reclamation released a Deliberative Draft of the ATP Study on April 24.
  - NGWSP Partnership Meetings. WRU participated in a Partnership meeting on January 28. The discussion centered on the NGWSP cost shortfall of \$240M, and how the Project Participants may need to go to Congress to ask for additional money and for amendments to P.L. 111-11 to address the issues that have arisen with the Project. The message from our federal partners is that the Project Participants must go to Congress together and agree on an approach in order to be successful.
  - NGWSP Depletion Guarantee (DG). The DG arises out of the Biological Opinion for the Project which requires the Nation to cut back on depletions of up to 20,782 AFY to avoid the total of all previously authorized depletions in the San Juan River basin from exceeding 752,127 AFY. WRU has had numerous discussions with New Mexico Interstate Stream Commission staff and other stakeholders regarding the DG. WRU is concerned that the DG not be used to offset the depletion impacts from future non-Navajo water development not included in the 752,127 AFY baseline. Accordingly, WRU is working to remove the DG requirement.
  - Cutter Lateral Operations, Maintenance, and Replacement (OM&R) Contract. WRU determined that the Nation should be a signatory to the contract. Reclamation questioned whether the Nation should be added to the indemnity provisions, currently limited to NTUA. In response, WRU requested that Reclamation secure an interpretation from the Solicitor's Office of language in the Settlement legislation that appears to limit the Nation's liability. WRU engaged in several conversations with the Solicitor's Office, but the matter is on hold until the new administration is in place. General contract negotiations have been at a standstill due to the COVID-19 pandemic.
  - Twin Lakes Excess Capacity Draft Contract between NTUA and Reclamation. DWR requested that WRU review the contract to ensure that the contract presents no issues for the Nation. WRU participated in three public negotiation meetings between NTUA and Reclamation. WRU participated in a fourth public negotiation meeting on January 20, during which the contract was finalized.

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b. Congressional Requests. As of April 8, 2021, the NGWSP has a cost shortfall of \$295M, thus there is a need to request an increase in the project ceiling as well as a request for additional funding to cover the cost overrun of the project. The Navajo team would also like to request that Congress make the discretionary waiver of O&M payments mandatory, extend the waiver from 10 years to 15 years, and provide the Jicarilla Apache Nation with an O&M waiver. There is also a need to extend the deadline for the completion of the NGWSP from Dec. 31, 2024 to 2029. WRU is in the process of hiring a lobbyist, Michael Connor (former Deputy Secretary of the Interior), to assist with the Congressional requests that the Navajo Nation will need to complete the Projects.

8. Other San Juan River Issues:

a. San Juan River Recovery Implementation Program (SJRIP). WRU participated in numerous calls to discuss Post-2023 funding for the SJRIP. A subgroup was established to consider the Nation's request to eliminate the DG.

b. NIIP/NAPI. WRU provided a legal update to the Naabik'iyat'i' Negotiation Subcommittee for the Completion of the Navajo Indian Irrigation Project (NIIP) on January 23. At the request of the NAPI Board, the Subcommittee has asked the Attorney General to initiate litigation to sue the U.S. for breach of trust for failing to complete NIIP and for a taking of Navajo water rights in exchange for the promise to complete NIIP. Discussion are on-going among DOJ, NIIP, and OLC.

9. NMOSE Matters:

a. City of Farmington. WRU filed its protest to Farmington's re-advertised permit application on May 22, 2020. The City of Farmington seeks a permit to change the purpose from irrigation and domestic use to irrigation and municipal use. WRU alleges on behalf of the Nation, that the current owners abandoned the subject water rights by non-use and that the transfer of the water rights would be detrimental to the public welfare and contrary to the constitutional requirement that "beneficial use shall be the basis, the measure and the limit to the right to the use of the water." WRU asserts that the water rights owners stopped beneficially using their water rights in 1995, when they stopped growing alfalfa. In addition, the laterals to deliver water to the subdivision are no longer in working condition thus, there is no way that the water rights owners could have been using water on the lots. Nevertheless, the Water Rights Division found no abandonment or forfeiture. WRU represented the Navajo Nation in an administrative hearing on December 8-9, 2020. WRU submitted updated exhibits as requested by the Hearing Examiner on January 12. The City of Farmington attempted to file new exhibits at this time, therefore the WRU filed its Objections to the COF's submission of new photo exhibits on January 13. The Hearing Examiner issued an *Order Excluding City of Farmington's New Photo Exhibits* on January 19, stating that the Navajo Nation's objections were well taken and supported the Order to Exclude. WRU filed its *Proposed Findings of Fact and Conclusions of Law* on February 10. WRU is waiting for a decision from the Hearing Unit.

b. Diamond K. Bar Ranch L.L.C. and Kysar Living Trust. On March 3, 2021 WRU protested an application to change the diversion point of a multitude of water rights. The amount of water involved is more than 400 afy. However, WRU believes that only around 10 afy is

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subject to a claim abandonment. Consequently, this dispute should be easy to resolve. Opposing counsel has contacted WRU to resolve the matter and the parties are working to schedule a meeting date.

c. San Juan Water Commission. The Applicant wants to lease water to co-Applicant Logos Resources II, LLC an oil company that engages in fracking. WRU has been evaluating the application that involves 700 afy. San Juan Water Commission received the water from the Bureau of Reclamation. It appeared to be eligible to not use water for forty years without facing a claim for abandonment or forfeiture. This is due to its status as municipal supplier of water. Under the circumstances involved in this application, there appears to be no basis to challenge the transfer. WRU has until April 23, 2021, to file a protest and is engaged in additional investigation.

10. Other WRU activities:

a. CLE: WRU attended the “Law of the Colorado River” conference virtually on March 11-12.

b. NN Water Rights Commission. WRU provided a work session for the NNWRC on February 12 to educate the newly appointed Commissioners on the water rights issues that the Nation is involved in and on the history and role of the Commission. WRU provides litigation updates to the Commission at their monthly meetings. Proposed appointments to the Commission must be approved by the RDC, and the Committee confirmed Lani Tsinnajinnie (Eastern Agency) and Joelynn Ashley (Western Agency) as Commissioners. This quarter, RDC confirmed Bidtah Becker as a Commissioner for the Fort Defiance Agency seat.

c. Tribal Leaders Forum. President Nez participated in the Tribal Leaders Forum on February 25, 2021. WRU wrote talking points to address the Navajo Nation’s issues in the Colorado River Basin. WRU also drafted a memo providing an overview of the Ten Tribes Partnership and the Navajo Nation’s participation in that Partnership as one of the founding tribes; an overview of the 2007 Interim Guidelines; and an overview of the Tribal Leaders Forum for President Nez.

d. FERC Pump Storage Applications. Several applications to develop pumped hydro-storage facilities proposed to be located on the Nation have been filed with the Federal Energy Regulatory Commission (FERC).

e. Beclabito Hydroelectric Energy Storage Center Project. Kinetic Energy LLC Application, FERC Project No. 15034-000. Kinetic Energy filed an application with FERC on September 21, 2020, for a preliminary permit to construct a large pump storage facility near Beclabito. Like the Daybreak Power Project, this project could potentially benefit the Nation and provide a source of revenue for a portion of its unused water rights in the San Juan River basin in New Mexico. On November 16, 2020, WRU filed a Notice of Intervention identifying the interests of the Nation. WRU has met the applicant, at the applicant’s request, concerning Navajo water rights and further steps that should be taken for the project to be given consideration by the Nation.

f. COVID-19. This quarter, WRU only dealt with donation emails if a repeat donor reached out to the attorneys who had worked with them previously.

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11. Accomplishments: LCR Adjudication. WRU and outside counsel represented the Nation for 32 trial days in the Hopi future uses subproceeding this Quarter. The trial concluded on February 17, 2021. Closing arguments and other post-trial procedures are still being determined.