

# NAVAJO NATION DEPARTMENT OF JUSTICE

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<JANUARY TO MARCH 2019>

Acting Attorney General: Doreen N. McPaul

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## **1. 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 Legal Secretaries, and three Support Staff. OAG oversees the Office of the Prosecutor and Juvenile Justice, six DOJ units, and the NHLSP.

President Nez and Vice President Lizer appointed Doreen N. McPaul as Attorney General in January and she began working for DOJ on February 4, 2019. President Nez and Vice President Lizer also appointed Kimberly A. Dutcher as Deputy Attorney General in March 2019, and she began working at DOJ on April 8, 2019. Both appointments are subject to confirmation by the Navajo Nation Council. Prior to Ms. Dutcher's appointment, Ms. Cherie Espinosa served as Acting Deputy Attorney General. She has since returned to her assigned position within the HGSU unit in DOJ.

Acting Attorney General McPaul has spent much of this quarter learning about DOJ while managing the office, providing guidance and direction within DOJ, as well as building and rebuilding relationships within DOJ and with DOJ clients and others working with the Nation.

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 and Juvenile Justice**

The Office of the Prosecutor manages and oversees the prosecution of adult and juvenile criminal cases, dependency cases, and CHINS cases for the twelve Judicial Districts across the Navajo Nation. This includes working with other law enforcement agencies, the Department of

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Family Services (DFS), federal agencies, and such to ensure the successful investigation and prosecution of alleged violations of the Navajo Nation criminal law and for successful adjudication of cases of child abuse and/or neglect.

**PROSECUTION**

Districts	Cases Received	Cases Filed	Cases Dismissed	Cases Declined	Cases Closed	Cases Pending	OSC
Alamo	16	6	n/a	1	10	5	n/a
Aneth	41	29	n/a	n/a	3	42	n/a
Chinle	383	157	7	18	672	362	1
Crownpoint	327	308	n/a	10	236	324	4
Dilkon	120	75	2	26	281	112	25
DzilYijiin	178	51	n/a	13	102	169	n/a
Kayenta	373	309	n/a	72	726	627	n/a
Ramah	186	75	n/a	23	100	188	n/a
Shiprock	445	385	n/a	25	25	452	n/a
Tohajillee	30	28	n/a	n/a	11	30	n/a
Tuba City	1048	698	n/a	122	1304	2157	n/a
Window	435	250	n/a	83	595	435	14
TOTALS:	3582	2371	9	393	4065	4903	44

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**JUVENILE JUSTICE**

Districts	Cases Received	Cases Filed	Cases Closed	Cases Pending	OSC
Alamo	4	2	6	4	n/a
Aneth	7	5	2	7	n/a
Chinle	15	9	21	15	1
Crownpoint	12	11	5	12	3
Dilkon	15	14	7	14	n/a
Dzil Yijiin	7	7	3	7	n/a
Kayenta	21	18	26	28	n/a
Ramah	9	3	5	9	n/a
Shiprock	32	12	10	32	n/a
Tohajillee	4	4	1	4	4
Tuba City	53	17	34	52	n/a
Window Rock	28	25	22	28	1
<b>TOTALS:</b>	207	127	142	212	9

The Office of the Prosecutor's focus during the second quarter has been (1) ensuring Prosecutor coverage for the Chinle/Pinon District and Tuba City District Offices and (2) hiring for vacant legal positions. At the beginning of the second quarter, the Deputy Chief Prosecutor resigned which left Tuba City District without legal staff. The Chinle/Pinon District Senior Prosecutor was on administrative leave for most of January and February to study for and take the AZ Bar Exam, which left the Chinle District without legal staff in that duration. Legal staff from Dilkon, Shiprock, and Window Rock were primarily assigned coverage during the 2nd quarter. Two legal staff were hired: a prosecutor in Tuba City and a prosecutor in Chinle.

This quarter, the OTP made two new legal staff hires: Marie Jim, Prosecutor, Tuba City and Vernon Jackson, Prosecutor, Chinle/Pinon District. The OTP was not able to retain all legal staff this quarter. At the beginning of January, the Deputy Chief Prosecutor resigned. The Ramah

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District's Attorney, Jennifer Henry, is the Acting Deputy Chief Prosecutor until a new deputy can be hired. The OTP expects the Deputy Chief Prosecutor and Kayenta Attorney position to be advertised during the next quarter.

During the first quarter, the Office of the Prosecutor made one permanent support staff hire: Legal Secretary – Shiprock District. The Office advertised and recruited for several grant funded records clerk positions. Selected applicants are currently undergoing a background check. With regard to legal staff retention, the OTP is experiencing difficulty retaining legal staff due to high stress levels, high caseloads, lack of competitive salaries, and commute issues. The Deputy Chief Prosecutor resigned at the beginning of the quarter. In order to ensure coverage in Tuba City District, Kandace Littlefoot, Prosecutor in Shiprock District, was temporarily reassigned to Tuba City for two months until new legal staff was hired. Legal staff from Dilkon assisted with coverage in Tuba City, Pinon, and Chinle. Window Rock legal staff assisted with coverage in Chinle and Pinon. By the end of the 2nd quarter, Chinle District has two legal staff members, which has not happened in years, and Tuba City District has a permanent legal staff member.

The OTP submitted the Phase 2 grant application for the OVC-Tribal Set Aside for victim services on January 4, 2019. In Mid-October we received word that the Navajo Nation received a maximum award amount of \$1,981,400.00 to fund 7 Victim Advocate positions. The OCP has not received a notice regarding its Phase 2 application. The Office of Justice Programs will make Final Award Agreements on or before April 15, 2019.

The OTP worked with the other Public Safety System partners in submitting proposals for the CTAS2019 grant. The OTP prepared and submitted proposals to fund (1) an additional investigator for the White Collar Crime Unit and (2) a Senior Attorney who could prosecute tribal, state, and federal crimes. The CTAS Grant application was submitted March 12, 2019. Several other departments applied for funding as well.

The OTP has also been working with BIA and Navajo Nation DOJ regarding money available through the TIWAHE program. The OTP prepared a Statement of Work and budget which has been sent to the BIA. At present, the review is at a standstill as the OTP awaits an answer from the BIA regarding a grant agreement.

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## **B. DOJ Units**

This quarter, DOJ received 742 Requests for Legal Services and completed 615. 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.

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

LU is led by Assistant Attorney General Paul Spruhan who manages two Attorneys and one Legal Secretary. LU handles the Nation's many of internal and external litigation matters. LU has one attorney vacancy and is currently recruiting for a mid-level attorney. This quarter's notable projects include:

#### 1. Navajo Nation v. Pic-n-Run Litigation

This case concerns a gas spill under the Pic-N-Run station that occurred in 2005. The United States Environmental Protection Agency issued an order under the Resources Conservation and Restoration Act against a number of entities involved in the spill, but not their insurers. The Nation filed a complaint in 2013 against all of the principals who were involved in the spill, and their insurance companies. The Nation alleged trespass, violations of the business site lease, and other claims for damages against the principals, and for the insurance companies, the Nation sought an order stating they had the obligation to pay for those damages under the insurance policies. During this quarter, DOJ attended a mediation session without resolution. The mediator required the insurance companies to create a proposed term sheet, which is a positive development, but several of the insurance companies continue to refuse to meaningfully participate, making a global solution difficult.

EMC, one of the companies, recently filed a complaint in the Federal District Court of Arizona seeking an injunction because it believes the Chinle Court wrongfully ruled it had jurisdiction. Summary judgment motions have been filed by both sides, and we await action by the federal judge. In the meantime, it appears Zurich Insurance Company may imminently file its own federal case. In the Navajo Nation courts, Ohio Casualty Insurance Company recently filed its own petition for a writ of prohibition with the Navajo Supreme Court. Though the Court had

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denied three previous writs, it accepted this one, and has invited us and other parties to file a response by April 12. It has already scheduled oral argument for June 6, 2019, at the annual NNBA conference.

**2. Collective Bargaining Agreement**

The Executive Branch Collective Bargaining Agreement with the United Mine Workers Union expired on August 26, 2018. The Division of Human Resources negotiating team and I met with the Union prior to the expiration to discuss how to conduct renegotiations. The prior administration offered to extend the agreement through mid-October, but the Union declined. There are two cases pending concerning this CBA. In the Navajo Supreme Court in *Arviso v. Gallup Dept. of Behavioral and Mental Health Services*, which was a union grievance dismissed by the Office of Hearings and Appeals due to the expiration of the CBA. There is a second case recently filed in Window Rock District Court on the same person, seeking to overturn OHA's decision under the Navajo Arbitration Act.

**3. Employment Matters**

Attorneys in our unit have gotten several employment cases dismissed for various procedural reasons. LU continues to provide trainings on employment grievances to Nation programs. LU also represents personnel actions pending before the Office of Hearings & Appeals ("OHA"), Navajo Nation Labor Commission, Navajo District Court, and the Navajo Supreme Court. Numerous hearings and pleadings were managed by LU this quarter.

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

HSGU is led by AAG Kandis Martine who manages seven Attorneys, two Tribal Court Advocates, and three Legal Secretaries. HSGU is our largest Unit because it assists eight (8) Divisions/Departments consisting of over 65 programs. This quarter, notable projects include:

1. Head Start Appeal of Disallowed Costs

The Administration for Children and Families issued a decision on January 11, 2019 disallowing \$729,203 in costs for the Navajo Head Start Program. The disallowance was based on the allegations that NHS failed to meet its match in the amount of \$419,447 and also did not properly document the allowable expenditures in the amount of \$309,756. On March 18, 2019, DOJ appealed the decision.

2. 638 Contract Appeal

DOJ appealed the partial declination from the BIA regarding four contracts funded by that office. The appeal relates to the BIA striking certain language from the Navajo Nation's 2019 Successor Annual Funding Agreement proposals and stating that such language indicates that the Navajo Nation is saying that it cannot satisfactorily provide contracted services. DOJ and outside counsel requested an informal conference with the BIA pursuant to the appeals procedures under 25 C.F.R. 900.154-156. The informal conference was held on March 18, 2019, and the hearing officer upheld BIA's partial declination. The Nation has until the end of April to appeal that decision.

3. Navajo Head Start – CACFP Appeal

HSGU assisted NHS on submitting CACFP Renewal Applications to the Arizona Department of Education ("ADE"). On February 5, 2018, NHS requested assistance in appealing the ADE determination that NHS was ineligible to submit claim reimbursements for October 2018 for sites located in Chinle and Fort Defiance. DOJ was not aware that an NHS staff person submitted the appeal until a hearing was scheduled. After careful review, HSGU determined that an appeal was likely going to fail. Under 7 C.F.R. §226.6(k)(2)(ix) the appeal was unlikely because NHS did not submit a claim reimbursement to ADE as required. HSGU also found that an appeal under 7 C.F.R. §226.6(k)(2)(x) is unlikely because NHS is not requesting an exception for a late claim. Finally, HSGU found that NHS would not be successfully on an appeal under 7 C.F.R. §226.6(k)(2)(xi) because the actions by ADE were reasonable under the circumstances. NHS also admitted to not submitting the claim within the 60 days and failing to assign the submission of the claim to another NHS employee.

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4. Ramah Chapter – One Million Dollar Loss

This concerns the Ramah Chapter President investing Chapter funds without authorization. HSGU is assisting with submitting the loss to the Navajo Nation's Carrier. This quarter, HSGU provided additional documentation to the carrier's forensic accountants/adjusters.

5. McNeal Certiorari Petition

This matter involves a state court action the Nation appealed to the Tenth Circuit. The Tenth Circuit in turn issued a favorable ruling for the Nation on the issue of whether the state court lacked jurisdiction because neither IGRA nor Navajo law permits the shifting of jurisdiction to a state court over personal injury claims.

6. NDOH - Non-Emergency Medical Transport Regulations

Issues concerning the NEMT Regulations were brought to the attention of the new NDOH Director and HSGU. It appears the previous Director was making decision contrary to the Regulations, such as capping the number of permits issued and attempting to make changes without submitting back through the formal approval process. NDOH has established regular meetings to address some of those previous decisions, as well as, other issues that have developed regarding the current regulations. HSGU participates in those meetings and provide recommendations. One recommendation was to amend the Regulations to close loop holes and for clarity. NDOH is working on amendments.

7. Indian Child Welfare Cases

With the constitutionality of ICWA in question, the ICWA social workers are contacting more regarding legal questions that are coming up in their cases. Multiple cases are arising currently in the State of Texas due to the constitutionality of ICWA being questioned. HSGU has worked on multiple transfer cases from the State of Texas and New Mexico as well as intervened in Texas and Oklahoma cases.

8. Texas v. Barnhardt

The State of Texas ICWA case that was appealed to the Northern District of Texas and that Court issuing a decision declaring ICWA unconstitutional. This decision creating issues with the Nation's ICWA cases in Texas. DOJ with the assistance of outside counsel was successful with intervening in the federal case. An initial brief and reply, which DOJ provide input on, were filed in the case. On March 13, oral arguments were heard before the 5<sup>th</sup> Circuit Court of Appeals.

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**Natural Resources Unit (NRU)**

NRU is led by Assistant Attorney General Veronica Blackhat who manages three Attorneys, one Tribal Court Advocate, and one Legal Secretaries. Primarily, NRU provides legal assistance to the Division of Natural Resources, Division of Transportation and the Navajo Environmental Protection Agency. However, NRU is also involved in many other matters affecting our natural resources and our environment. In this quarter, notable projects include:

1. NPL Listing for Eligible Permittees

Under the regulations, the BIA with the concurrence of the Navajo Nation will only reissue permits to individuals that meet the eligibility requirements. BIA developed a listing of former permittees whose permits were cancelled and forwarded the list to the Nation. At that point, NPL District Grazing Committee (DGC) was tasked with the responsibility of making recommendations to the Resources and Development Committee (RDC) on the granting of permits to eligible permittees based on the criteria developed by the Nation. In order to prepare the NPL DGC, DOA provided training on the eligibility requirements for the reissuance of NPL grazing permits. DOA developed a work plan and process for NPL DGC members to use when making their eligibility determinations. On November 13, 2018, the NPL DGC passed a resolution recommending a list of individuals for grazing permits. On November 21, 2018 the RDC concurred with the NPL DGC's list of proposed permittees. The DOA met with BIA to discuss the DGC's list of proposed permittees. The reissuance of permits will occur in two phases, the first phase will be the living permittees and the second phase will be permits of deceased permittees. The final listing will be published in the local papers and the Federal Register. It is anticipated that the first round of permits will be issued in July 2019.

2. Canyon de Chelly Reburial

DOJ litigated and assisted with the reburial efforts in the Canyon de Chelly case. A meeting was held on February 12, 2019 to discuss logistics for the reburial. This is part of the settlement agreement to end litigation between Navajo and Hopi regarding the ownership of the remains. National Park Service (NPS) will notify the land owners that the burial will be taking place as planned on April 4, 2019. On April 1, NPS rangers traveled to WACC to pick up the remains. WACC will work on the necessary paperwork to transport the remains and give custody to NPS, who will then transfer custody to HHPD. A representative from Navajo will accompany the transport. The remains will be transported to a secured facility in Chinle late Tuesday or early Wednesday for storage until the burial. Navajo will have five people assist with the burial. Hopi will have 3 or 4 people assist. NPS will have five people as well. The remains have been matched with their respective burial artifacts. A week after the burial, a permanent fence will be erected in the area. Reseeding will also be done where the ground has been disturbed. The monitoring plan will need to be formalized as well.

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3. San Juan River Farm Board

During this quarter, DOJ became aware of the activities of the San Juan River Farm Board. The San Juan River Farm Board (SJRFB) had distributed “Farm Permittee Survey Questions” (Survey) to farmers in the Shiprock area over the objections of fellow Farm Board members. The Department of Agriculture (DOA) was not aware of the Survey nor of any activities relating to the Survey until several complaints were received. There were two problems with the Survey. First, the Survey stated: “FAILURE TO RETURN THIS SURVEY MAY RESULT IN REVOCATION OF YOUR FARM PERMIT.” Second, some of the questions in the Survey were concerning as they were specific to the growth/cultivation of hemp. As a result, a letter was issued by DOJ to all the members of the SJRFB notifying them that the Farm Board lacked the authority under Navajo Nation law to revoke or cancel Farm Permits on its own and until the Navajo Nation creates a regulatory system for industrial hemp and obtains the necessary and applicable permits for industrial hemp, there is no authorization for the cultivation, growth possession, development or propagation of industrial hemp on the Navajo Nation. DOJ also learned that the SJRFB had submitted proposed regulations regarding hemp to the USDA on behalf of the Navajo Nation when they obviously lack the authority to do so.

4. Consolidating Seasonal Grazing Permit with Regular Year Long Grazing Permits

In 2010, a rancher from out of Wild-horse Country Ranch, Oakridge, Arizona, from around Pine Springs, had petitioned the Acting Navajo Regional Director, BIA, to consolidate his Seasonal Permit No. 18-35-84 with his Yearlong Permit No. 17-18-91, but was denied by BIA. The rancher then appealed the denial to the Board of Indian Appeals (Board). In 2013, the Board vacated the BIA’s decision denying the rancher’s requests to consolidate his two permits and remanded the matter back to BIA for further action and consideration. The BIA was ordered to consult with the Navajo Nation and consider any applicable Navajo law or policy concerning the rancher’s request. The BIA then consulted with the DOA and the District Grazing Committees. A decision was finally reached by both District No. 17 and 18 regarding the request to consolidate two grazing permits. The rancher requested District No. 17 and 18 to consolidate his two grazing permits. The issue of consolidating two grazing permits was denied based on Navajo Law. The grazing law states that a person cannot have two grazing permit regardless if one is from another district.

5. Navajo Generating Station (NGS)

The Nation is continuing its conversation with the Salt River Project (SRP) related to the NGS Extension Lease and the decommissioning of NGS. Additionally, the Nation has tasked the Navajo Transitional Energy Company (NTEC) with trying to negotiate a deal for the acquisition of NGS. Under the Extension Lease, SRP has the right to develop a new commercial landfill on the NGS site to dispose of material from the NGS decommissioning activities. The Nation had until December 22, 2018 to decide whether to participate in the commercial landfill, which would be used for an economic benefit and also a way to deal with the Nation’s lack of landfills. Upon further discussion, it was decided that

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it did not make sense for the Nation to participate in a landfill at the NGS site given the location. However, the NGS owners decided to still pay the Nation their portion of the money for the landfill, which is approximately \$3.6 million. A Memorandum of Understanding (MOU) was executed by the Nation and SRP and the money was transferred to the Nation. This money is designated to be used for waste disposal purposes.

6. McKinley County Assessment (Department of Agriculture)

This was a case that came up as a result of the Department of Agriculture (DOA) and McKinley County Tax Assessors inability to reach an agreement on Special Methods of Valuation Grazing Exemption. The McKinley County has increased the tax appraisal to non-agricultural land which is appraised at a higher value. The County claimed there are no valid grazing leases for the 58 parcels of fee lands and had designated the lands as nonresidential. Nonresidential lands are taxed at a higher rate than grazing lands. The DOA protested the determination and as of today 15 of the 58 protests have been approved. The Protest Hearing was held on November 20, 2018 before the New Mexico Taxation and Revenue Hearing Board. The Assessor's argument was centered on the fact that the Nation had expired grazing leases. The Nation's argument was that these lands were still being used for grazing even though there was no "formal" lease extension agreement in the file. Correspondence from the Tribal Ranches Program was provided to the Board indicating the leases had been extended and that Lessees would continue to be billed. We also argued that the annual applications that the Assessor insisted upon was not required by law. Interestingly, the Assessor did not disclose to the Board that they were continuing to tax the Nation for livestock (sheep and cattle). The Nation provided tax bills which continued to show taxation of livestock even though the Assessor claimed we didn't qualify for grazing rates due to expired leases. The Board issued a decision in favor of the Navajo Nation on January 18, 2019.

7. McKinley County Tax Assessor (Nation Land Department)

The McKinley County Assessor tried to claim that lands held in trust on behalf of the Navajo Nation by the federal government were actually still in fee and subject to taxation by the County. The County had removed 10 parcels from previously exempt status and taxed the trust lands. The Nation Land Department sought assistance from the BIA in obtaining documentation indicating that these lands had been placed in trust for the Nation. However, BIA has not been successful in locating such documents. Robert Medina attended a Protest Hearing before the New Mexico Taxation and Revenue Board on November 20, 2018. But because notice had only been provided four business days before the Hearing, the Hearing was continued. The Nation submitted a request for production of documents to the McKinley County Tax Assessor. We received documents from Land Department for one parcel currently under protest with McKinley County. A hearing was held before the New Mexico Taxation and Revenue Board on January 22, 2019. The Board dismissed the case as they were in agreement that the parcels in question were being held in trust for the Nation by the federal government so were not taxable by the County. We received a Decision and Order confirming the Boards decision on February 26, 2019.

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

NHLSP is led by the Office of the Attorney General who manages one Principal Attorney within the Natural Resource Unit and a Legal Secretary assigned to NHLSP. NHLSP is located in Tuba City, Arizona and is charged with representing relocatee applicants before the Office of Navajo-Hopi Indian Relocation (ONHIR). The budgeted attorney positions for NHLSP had not been advertised for some time, but those positions will be advertised at the beginning of the next quarter.

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

ECDU is led by Assistant Attorney General Latonia B. Johnson who manages five Attorneys and two Legal Secretaries. ECDU's primary clients are the Division of Economic Development, Division of Community Development, and the 110 Chapter governments. However, ECDU is also involved in other matters such as gaming. In this quarter, notable projects include:

1. DED/NNEPA Land Use Agreement

A previous Land Use Agreement (LUA) entered into between DED and Navajo Environmental Protection Agency (NEPA), executed by prior DED staff, expired. At the request of the current DED staff, ECDU researched into the reasoning and need for the LUA moving forward. The LUA came about because, with DED's approval, NEPA bought a building currently situated on land withdrawn for commercial use with the acknowledgement that there would be a LUA until such time as NEPA takes the necessary step to change the land use designation. After the administration shift, ECDU provided the LUA to the new DED Director.

2. Tuba City Partnership / Western Regional Business Development Office

The Business Site Lease for Tuba City Partners (TCP) was canceled last year by the Bureau of Indian Affairs (BIA) office. One partner in TCP filed an appeal of the cancellation, filing an initial appeal complaint in late November 2018. This quarter, ECDU focused primarily on information gathering, trying to get as much detail about the leased premises and TCP partnership as possible. Additionally, ECDU spoke with the BIA attorneys working on the appeal to discuss DED's preferred next steps as the BIA was to provide a settlement discussion update to the administrative judge on March 18, 2019. DED requested that the BIA continue pursuing the lease cancellation, in conjunction with seeking an

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extension of time from the administrative judge in order to engage in settlement discussions with TCP. Additionally, BIA requested information from DED, in particular, information related to the lease, correspondence with TCP, and financial reports. DED is currently gathering the requested information. ECDU will advise DED that the Business Site Lease cannot be cancelled, based on the second Resolution passed by the 23rd Resources and Development Committee rescinding approval for cancellation of the lease.

3. Antelope Point – Agreements

The agreements governing the Glen Canyon Dam Area (Antelope Point), managed by the Navajo Nation and the National Park Services (NPS), are set to expire in 2020. Given the change in circumstances since the agreements were initially executed, both parties have agreed to collaborate on amending and streamlining the agreements to reflect each party's current needs and desires. As part of this effort, ECDU has been working with NPS on revised language, mostly reflecting support for continued economic development of the area, setting standards for future action by both parties, and recognizing the equal partnership of all signatories in the management of the area. Additionally, ECDU has been working with the 10 Chapters that are located around Antelope Point. ECDU is seeking and providing guidance related to the terms in which the Chapters would like to be reflected in the agreement, but also recommending to the Chapters to meet with various Navajo Nation departments to obtain technical assistance when considering development in its respective areas.

4. Business Site Lease

ECDU continues to assist DED with a number of non-compliance leasing transactions, which includes, but not limited to no valid lease/permit, default for non-payment of annual rent and illegal home sites on the business premise. ECDU is assisting and advising clients by drafting and negotiating settlement agreements, conducted litigation for a forcible entry detainer action, termination of leases and amending an Agreement between DED and the Office of the Controller in relation to depositing Security.

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**Tax and Finance Unit (TFU)**

The Tax and Finance Unit is headed by Assistant Attorney General Jana Werner who supervises two Principal Attorneys and one legal secretary. The Tax and Finance Unit provides legal services to the Budget & Finance Committee and the Investment Committee, and its primary clients in the Executive Branch are Office of Management & Budget, the Office of the Controller, Retirement Services, the Office of the Tax Commission and the Tax Commission.

1. Fuel Excise Tax IGA with Arizona

In 1999, the Navajo Tax Commission executed an Intergovernmental Agreement (“IGA”) with the Arizona Department of Transportation (“ADOT”) regarding administration of the Navajo Nation Fuel Excise Tax (“FET”) and the Arizona motor fuel taxes within the Navajo Nation. The IGA’s purpose was to address: collection of applicable taxes, cooperation with audits, enforcement, and investigations; and revenue sharing between the Nation and ADOT. Exhibit 2 to the IGA, which establishes the revenue sharing formula, was amended in December of 2002. ONTC’s Executive Director is interested in renegotiating the terms of the IGA. On February 4, 2019, ONTC Executive Director Marty Ashley and DOJ met in Phoenix with managers from ADOT to discuss such a revision, in particular the revenue sharing formula that dictates how much fuel tax ONTC must remit to ADOT.

2. OMB Budget Policies Manual

DOJ continues assisting OMB in preparing policies and procedures which relate to the budgeting and expending the Nation’s capital projects, chapter, and external funds. This drafting is incorporating 2014 Budget Policies as well as separating policies from procedures. DOJ has completed substantive drafts as well as redrafts this quarter and has met with OMB and OOC to complete this project.

3. Apache County Property Tax

TFU assisted in resolving the issue of Apache County unlawfully assessing 2018 property taxes against Native Americans who own fee property in the St. Michael’s area. In October of 2018, former AG Branch issued a letter to the Apache County Attorney stating the County lacked the legal authority to tax such parcels pursuant to Article 20, Section 5 of the Arizona Constitution; the County’s Attorney agreed with this assessment and advised the County Assessor to act accordingly. TFU then engaged in several communications with the County Attorney to discuss how the County would remedy the problem, including by providing adequate notice to property owners. TFU reviewed and edited the content of the County’s notices, prior to the County’s issuance to the affected property owners in December of 2018 and January of 2019. The notices explained that no taxes would be due from Native American property owners within the Reservation if the owners filled out a Tax Exemption Form and provided

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proof of tribal enrollment, and that property owners who had already remitted tax payments could contact the County for a refund. Apache County also used social media, radio, and newspapers to publish notice of its decision. Upon TFU's request, the County Assessor and staff also held open meetings at St. Michael's Chapter House in February of 2019 to answer questions and accept completed Tax Exemption Forms. TFU continues to field phone calls from confused property owners and informs them of the resolution of the issue without providing legal advice. We believe this matter has been resolved, though TFU plans to engage the County Attorney on the matter of property taxation of Native American owned fee parcels in the New Lands near Sanders, AZ.

**Water Rights Unit (WRU)**

The Water Rights Unit (WRU) is led by Assistant Attorney General Rodgerick Begaye who supervises three attorneys and two support staff. WRU is charged with securing and protecting the Nation's water rights. In doing so, WRU works closely with the Water Rights Commission and the Navajo Nation Water Management Branch.

1. Little Colorado River (LCR) Basin. The LCR litigation continues to impact WRU human resources and financial resources on a significant level. The trial for the Hopi past and present water claims concluded in December 2018. Attention now turns to the next phase which is the Hopi's future water rights claims which has a trial date set to begin on June 1, 2020. Additionally, WRU met with representatives of the Secretary's Indian Water Rights Office and the Hopi Tribe on March 19 and 20 to continue efforts to resume settlement negotiations.
  2. Colorado River Basin. The Court heard oral argument on the Nation's motion to file its third amended complaint in Navajo Nation v. Department of Interior. The Court denied our motion on concerns that the Nation's claim was invoking the jurisdiction of the U.S. Supreme Court under AZ v. CA on the premise that the Nation's claims required the Court to find a water right in the Colorado River mainstream. The Court allowed the Nation to file its motion and amended complaint which were filed on January 10th. The U.S. filed in partial opposition and the remaining parties filed in total opposition. On January 31st, WRU and contract counsel filed a Reply. We are now awaiting a decision from the Court.
  3. San Juan River Basin (UT) – Navajo Utah Water Rights Settlement. Unfortunately, the settlement failed to get considered by Congress before the end of 2018. However, in the Senate, we anticipate Senator Romney to introduce a bill similar to the bill introduced by Senator Hatch last year. In the House, Representative Bishop has sponsored H.R. 644 and is co-sponsored by Representative McAdams. We expect a hearing before the Water, Oceans, and Wildlife Subcommittee in the next quarter.
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4. San Juan River Basin (NM). Appellant Briefs were filed in the prior quarter. The Nation and the U.S. filed its Joint Answer Brief on February 5th. Two parties filed a request to file Reply Briefs which, if granted, a date will be set by the New Mexico Supreme Court. If denied, the Court may set the matter for oral arguments. In any event, we are confident that the Court will uphold the settlement.
  5. Zuni River Basin (NM). The Zuni sub-proceeding continues to be stayed in order for the parties to consider settlement which Zuni provided to the parties in 2018. WRU participated in a meeting to discuss the US's response to the Zuni settlement proposal. The Navajo sub-proceeding is also stayed and WRU has performed a lot of work this quarter in order to develop a Navajo settlement proposal which is expected to be completed in the next quarter.
  6. Rio San Jose (NM). Ramsey Kropf has been selected as the mediator and the first mediation session is scheduled for April 3rd. Prior to that date, WRU expects to participate in a Tribal Meeting on March 28th. Additionally, WRU has put a great deal of effort towards a proposal which can be discussed further in a private setting.
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## 2. SUCCESS STORY



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

DOREEN N. MCPAUL  
Acting Attorney General

KIMBERLY A. DUTCHER  
Acting Deputy Attorney General

FOR IMMEDIATE RELEASE  
Date: April 8, 2019

**FORMER TO'NANEES'DIZI CHAPTER EXECUTIVE MANAGER SENTENCED TO JAIL, FINED AND ORDERED TO PAY RESTITUTION TO THE NAVAJO NATION**

WINDOW ROCK, NAVAJO NATION – The Navajo Office of the Prosecutor, through its White Collar Crime Unit, announced today that former To'Nanees'Dizi Chapter Executive Manager, Priscilla Littlefoot, has been sentenced to 165 days in jail, to be followed by 180 days of probation. She was also fined the maximum amount of \$90,000, which may be suspended upon completion of parole and ordered to pay restitution of \$30,038.58 to the Navajo Nation for the 18 counts of theft she admitted to under a plea agreement. Her crimes related to a long running scheme where she abused her position to divert Chapter funds for her own personal use.

For over four years, Ms. Littlefoot abused her position of trust and deprived the citizens of the Navajo Nation and the To'Nanees'Dizi Chapter of the funding that should have gone to provide scholarships, Veteran's benefits, capital improvements and other services to which they were entitled. With the closure of this case, the Nation continues to move in a new direction of accountability and to restore trust in government for Navajo people. "This is a victory for the Navajo Nation Department of Justice, its White Collar Crime Unit, and for our Navajo people," said Attorney General Doreen McPaul.

In this case, Defendant Littlefoot used her signature authority as the Chapter's executive manager to direct funds to herself and her family, take unauthorized reimbursements that she was not entitled to, and forge documents to try to conceal her theft. In one instance, Defendant Littlefoot authorized 11 payroll checks to herself on the same day for a total of \$15,106.74. In total, she received \$1,059,896 in Chapter funds from about October 1, 2007 to January 31, 2012, and was the primary signer on almost all checks she issued to herself. These funds largely came from the Chapter's tax revenue and should have gone to serve the people of the To'Nanees'Dizi Chapter for the operation and maintenance of their Land Claims Trust, Grazing Operations, Youth Funds, Chapter Stipend Fund, Scholarship Funds, the Veteran's Fund, Emergency Fund, and the Navajo Nation Capital Improvement Fund.

In a detailed and lengthy sentencing hearing, Judge William Platero, carefully reviewed the law and all facts of the case. Judge Platero examined how the Defendant had lost her way and strayed from Navajo teaching and responsibilities. Based on the harm she had caused he found that incarceration was warranted under the Uniform Sentencing Policy stating "it is impossible for

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[Defendant] to repay the Navajo Nation financially for the damage she has brought upon us, so she must pay in the only manner she is able, with her freedom." Defendant was taken into custody at the conclusion of the proceeding pending her transfer to Navajo Nation Department of Corrections.

This case was investigated and prosecuted by the Navajo Nation Department of Justice by Senior Investigator Frank D. Brown, White Collar Crime Unit and Special Prosecutor Charlie Galbraith.

To protect the Nation from such crimes, a Fraud Hotline has been created to accept tips and complaints about potential waste, fraud, and abuse of Navajo Nation programs. Professional staff are standing by to review information provided by phone to 1-844-747-2767 or by email at [fraudline@nnooc.org](mailto:fraudline@nnooc.org).

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### **3. PLANS FOR THE NEXT REPORTING QUARTER**

- The Attorney General has charge of all legal matters in which the Navajo Nation has an interest, and is required to defend and initiate and defend all actions in which the Nation is a party. The Attorney General is permitted to retain private counsel to handle any particular matter deemed appropriate, subject to availability of appropriated funds for that purpose. Private counsel may be retained to represent the Nation in distant forums, to provide specialized legal expertise not available within DOJ, and to respond to the exceptional demand for legal services.
    - OAG is currently reviewing the existing private contracts to understand the work being handled outside of DOJ, and to also evaluate the continued need for such contracts.
  - OAG is also reviewing the organizational structure with DOJ with respect to the six units and the allocation of work to determine how to DOJ can best serve its clients and improve delivery of legal services.
  - OAG is also planning to provide practical legal skills training for attorneys and advocates, as well as team building within DOJ.
  - OAG will also work on finalizing the plans of operation for DOJ.
  - DOJ will continue providing legal services to clients, as well as continue to enforce laws through the Office of the Prosecutor and Juvenile Justice.
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**QUARTER 2**  
<January to March 2019>

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**4. BUDGET STATUS:**

Program	Funding Sources	Number of Personn	Number of Vehicles	FY 2019 Personnel	% Used	FY 2019 Operating	% Used
Attorney General (***)	CF	47	4	4,189,203.00	41.78%	224,618.00	45.60%
Prosecutor	GF	23	2	1,934,740.00	20.78%	146,703.00	20.02%
Juvenile Justice	GF	10	2	787,602.00	20.80%	85,863.00	23.13%
Navajo-Hopi Legal Service	GF	3	0	199,908.00	14.84%	22,303.00	14.78%
(*) Fixed Cost Litigation	GF/CO	0	0	0.00	0.00%	4,000,000.00	96.00%
(**) Water Rights Litigation	Special Revenue/	7	1	753,933.00	93.00%	319,067.00	92.00%
(New) N01372 Water Rights Litigation	Transfer from FCL	0	0	0.00	0.00%	1,000,000.00	100.00%
Navajo-Hopi Part Lnd Rent	GF	0	0	0.00		120,400.00	100.00%
<b>TOTAL:</b>		<b>90</b>	<b>9</b>	<b>7,865,386.00</b>	<b>191.20%</b>	<b>5,918,954.00</b>	<b>491.53%</b>

(\*) Fixed Cost Litigation (N01000) – This is a continuation account since 1993 to present. FY 2019 Budget is at \$4,000.000

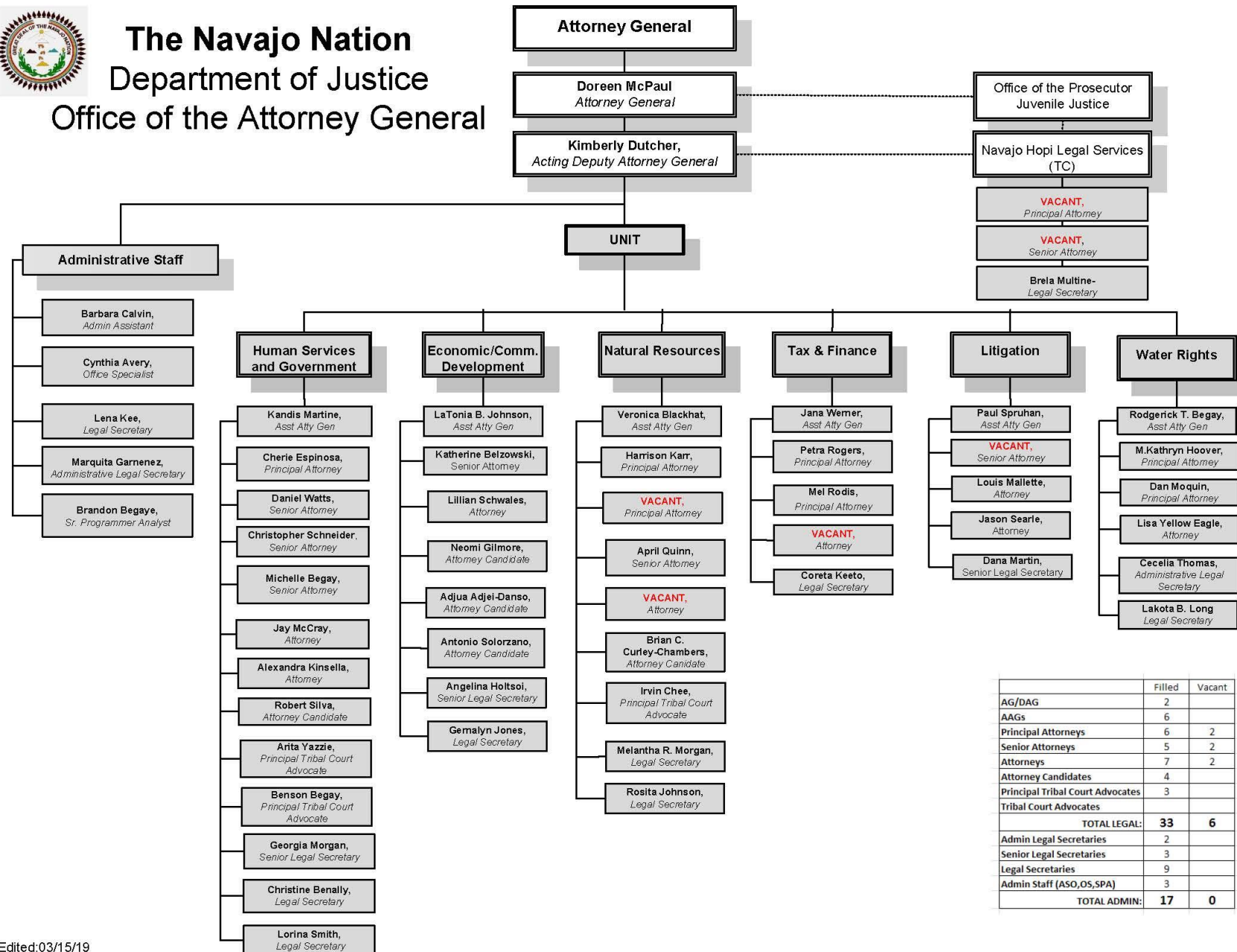
(\*\*) Water Rights Budget (N01152) – Pursuant to Resolution CMY-47-02 on May 20, 2002. This is a Continuation Account since Fiscal Year 2003.

(\*\*\*) \$478,681 Carry over from FY 2018 Consultant Contract.

**QUARTER 2**  
 <January to March 2019>



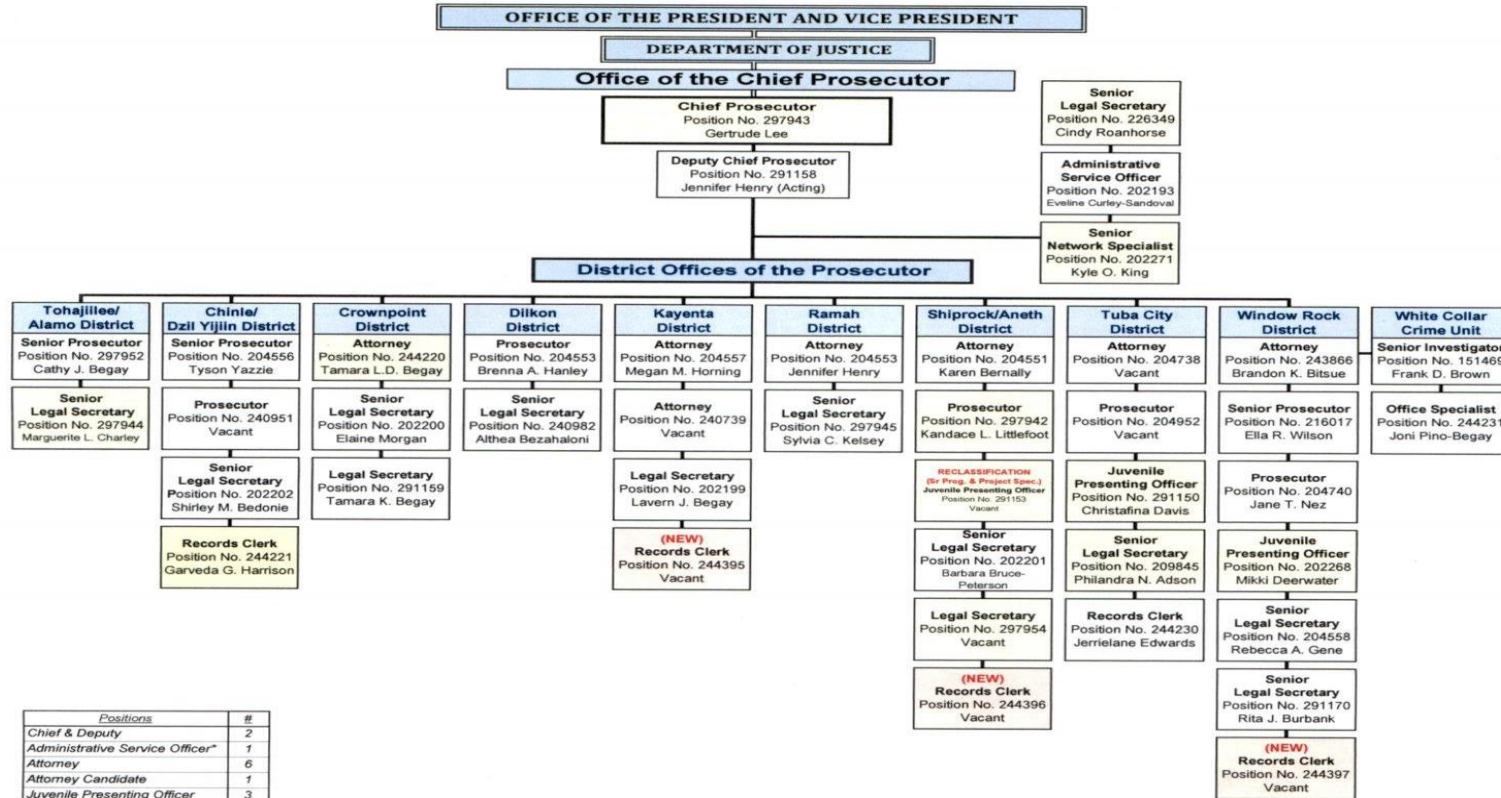
**The Navajo Nation**  
 Department of Justice  
 Office of the Attorney General



	Filled	Vacant
AG/DAG	2	
AAGs	6	
Principal Attorneys	6	2
Senior Attorneys	5	2
Attorneys	7	2
Attorney Candidates	4	
Principal Tribal Court Advocates	3	
Tribal Court Advocates		
<b>TOTAL LEGAL:</b>	<b>33</b>	<b>6</b>
Admin Legal Secretaries	2	
Senior Legal Secretaries	3	
Legal Secretaries	9	
Admin Staff (ASO, OS, SPA)	3	
<b>TOTAL ADMIN:</b>	<b>17</b>	<b>0</b>

**QUARTER 2**  
 <January to March 2019>

**Office of the Prosecutor Organizational Structure**



Positions	#
Chief & Deputy	2
Administrative Service Officer*	1
Attorney	6
Attorney Candidate	1
Juvenile Presenting Officer	3
Legal Secretary	3
Records Clerk (3 New)	5
Office Specialist	1
Prosecutor	5
Senior Investigator	1
Senior Legal Secretary	10
Senior Network Specialist	1
Senior Prosecutor	3
<b>Total Positions:</b>	<b>42</b>

Business Unit No. 104004 Positions in BU: 12
Business Unit No. 104005 Position in BU: 27
Business Unit No. K180302 Positions in BU: 3