

NAVAJO NATION DEPARTMENT OF JUSTICE

QUARTER 2

< JANUARY TO MARCH 2020 >

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 and Juvenile Justice, 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.

On January 6, 2020, DOJ started full implementation of its new time and attendance and workforce management system, Novatime. All DOJ employees, including the Office of the Prosecutor (OTP) at its 11 district offices, are now able to clock in and out, submit and approve leave requests, and manage time and attendance through automated web, mobile app, and desktop applications thereby eliminating most of DOJ's paper based timekeeping, except for timekeeping submitted to the Office of the Controller's Payroll department.

This quarter, OAG worked on various voting related issues. In February 2020, Attorney General McPaul provided testimony to the U.S. House Subcommittee on Elections of the Committee on House Administration. There was a bill pending before the Arizona legislature that would have affected the redistricting of the Nation's state legislature district. DOJ drafted a proposed Council Resolution opposing this bill. Finally, DOJ filed an amicus brief regarding a petition for an extraordinary writ filed directly in the New Mexico Supreme Court by a number of county clerks against the New Mexico Secretary of State. The case concerns how to conduct the state primary election during the COVID-19 outbreak, and a fuller update is contained in the Litigation Unit section of this report.

Since the first week of March, the Office of the Attorney General has been 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. DOJ offices are closed, but AG McPaul and Deputy AG Dutcher are in the office daily and limited staff come into the offices on an alternating basis to keep the office functioning. Additionally, all of our Prosecutor's Offices are closed to the public, but all prosecutors are working remotely. Acting Chief Prosecutor Henry is in the office daily either in Window Rock or Ramah, and has 2 support staff members who come into the office in Window Rock on a limited alternating basis to keep the office functioning. All DOJ legal staff is working remotely, although we have some challenges with remote internet and data access for some of our legal staff. DOJ also has some support staff without a work laptop or internet access at home to be able to work remotely, and those

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individuals are on paid administrative leave. With the diligent assistance of the Department of Internet Technology, our legal staff at DOJ has for the first time in years been able to access our internal server and information remotely to continue essential operations.

Almost all DOJ employees completed the mandatory FEMA Incident Command training. With respect to legal work specific to the public health pandemic, DOJ has assisted with drafting and review of emergency orders, as well as providing legal guidance regarding authorities and enforcement, as well as HIPAA, Free Exercise, employment issues, liability and risk management issues. DOJ also assisted legislative counsel with the price gouging and other emergency legislation. The Attorney General has also participated in online Town Hall and other public awareness meetings, in addition to numerous webex and phone calls with leadership and the Health Command Center.

The Health Command Center has tasked DOJ to assist with the Donation Branch under the Logistics Section. AG McPaul is the assigned Branch Chief and Deputy AG is the assigned Deputy Chief. The Donation Branch is staffed by DOJ employees who answer and follow up on donation inquiries and otherwise facilitate monetary and non-monetary donations coming to the Nation. Monetary donations are coordinated with the Office of the Controller and non-monetary donations are coordinated with the Health Command Center Operations and Logistics Sections, which identify the current needs as well as facilitate distribution to meet those needs. Donations that come through the Donation Branch are documented on an ICS 213 form and DOJ maintains a log of these donations.

Regarding DOJ hiring efforts this quarter, DOJ hired an Attorney Candidate for the HSGU unit. Interviews of four (4) candidates for DOJ's Senior Programmer Analyst position were conducted this quarter, but hiring was unsuccessful and the position will be reclassified and advertised. Internally, an ECDU member transferred to the TFU unit and another transferred to HSGU. A Senior Attorney resigned to work at another Navajo Nation department. Deputy AG and a couple of our DOJ team members participated in public sector recruiting events this quarter, including at the UofA, ASU, and UNM. Since the Navajo Nation government's shutdown on March 13, 2020 due to the spread of COVID-19, hiring activities through the Department of Personnel Management have paused, though, we understand that applications for DOJ advertised positions are still being received.

The current vacancies in DOJ include:

- Assistant Attorney General (WRU) – Position vacated on 8/5 and is being advertised; 1 application received
- Assistant Attorney General (HSGU) – Position vacated on 11/18 and will be filled by internal lateral transfer
- Principal Attorney (TFU) - Position vacated on 8/7 and is being advertised
- Principal Attorney (HSGU) - Position vacated on 11/18 and will be filled by internal lateral transfer
- Attorney (ECDU) – Position vacated on 8/30; three (3) applications received
- Attorney (LU) – Position advertised; two (2) applications received
- Attorney Candidate (CU) – Position vacated on 12/19; position reclassified as Attorney on 4/16/20 and will be advertised
- Principal Advocate (HSGU) – Position vacated on 12/19; three (3) applications received

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- Sr. Programmer Analyst (OAG) – Position vacated on 10/25; position being re-classified

In the 2st quarter, three (3) attorney candidates took state bar examinations in February, and will receive results in early May. One attorney candidate was scheduled to take the Navajo Nation Bar exam, but it was cancelled due to COVID-19. DOJ arranged for voluntary in-house continuing legal education for 11 DOJ attorneys and staff with the webcast of the following online seminars: “*Tribal Lawyer Regulation & Nation Building*” and “*Tribal Enterprise Case Law Update*”.

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 manages and oversees the prosecution 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 (RNSS), federal agencies, and others 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. The Office of the Prosecutor 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 Office of the Prosecutor also presents civil traffic citations, animal control ordinance citations, and civil fish and wildlife violations.

Office of the Chief Prosecutor

The Office of the Chief Prosecutor is the OTP’s administrative office. Staff includes Cindy Roanhorse, Senior Legal Secretary; Eveline Curley-Sandoval, Senior Program & Project Specialist; Erica Christie, Administrative Services Officer, and Kyle King, Senior Network Specialist. Together, the OCP staff manages the OTP budgets; keeps the district offices supplied, paid, reimbursed and networked; coordinates all of the human resource matters; manages the General Funds and all external funds budgets; and fields phone calls and office visits from community members and OTP’s public safety partners.

Staffing:

Vacancies and Pending Reclassifications. [All positions currently in the hiring process have been put on hold due to the Executive Branch closures and limited services provided by DPM; waiting for applications from DPM on several closed and OUF JVAs; have been directed by DPM that no contact may be made with applicants until Navajo Nation government resumes “full operations.”]

Chinle:

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1. VACANT Victim & Witness Advocate, P/N 244592 – Adverting, Closing Date: 03/18/2020

Crownpoint:

2. VACANT Prosecutor, P/N 244220 – Advertising, Closing Date: 03/23/2020

3. VACANT Victim & Witness Advocate, P/N 244593 – Advertising, Closing Date: 03/18/2020

4. VACANT Legal Secretary, P/N 244396 – Pending posting with DPM since 03/13/2020

Dilkon:

5. VACANT Victim & Witness Advocate, P/N 244594 – Awaiting decision on position placement.

6. RECLASS Records Clerk to Legal Secretary, P/N 244396 – Pending with DPM since 01/28/2020

Dzil Yijin:

7. VACANT Prosecutor, P/N 244602 – Advertising, Closing Date: 03/16/2020

Kayenta:

8. VACANT Prosecutor, P/N 244513 – Re-advertising pending posting with DPM since 03/13/2020

9. VACANT Victim & Witness Advocate, P/N 244595 – Advertising, Closing Date: 03/18/2020

10. HIRING Records Clerk, P/N 244395 – Awaiting salary assessment from DPM since 03/06/2020

Shiprock:

11. VACANT Prosecutor, P/N 204739 – Advertising, Closing Date: Open Until Filled

12. CLASSIFICATION Victim & Witness Advocate, P/N XXXXXX – Awaiting grant approval

13. HIRING Senior Legal Secretary, P/N 202201 – Awaiting Background check of applicant

14. VACANT Legal Secretary, P/N 297954 – Advertising, Closing Date: 03/16/2020

To'hajiilee:

15. VACANT Victim & Witness Advocate, P/N 244596 – Advertising, Closing Date: 03/18/2020

Tuba City:

16. VACANT Prosecutor, P/N 291150 – Advertising, Closing Date: Open Until Filled

17. CLASSIFICATION Victim & Witness Advocate, P/N XXXXXX – Awaiting grant approval

Window Rock:

18. HIRING Records Clerk, P/N 244397 – Advertised, received 19 applications; interviews pending resumption of Executive Branch/DPM operations.

White Collar Crime Unit:

19. RECLASS JPO to Prosecutor, P/N 202268 – Pending with DPM since 03/12/2020

20. RECLASS Attorney to Investigator, P/N 204738 – Pending with DPM since 01/24/2020

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21. RECLASS Senior Legal Secretary to Administrative Legal Secretary, P/N 226349 – Pending with DPM since 03/13/2020

New Hires

This quarter, the OTP transitioned two team members in-house:

1. Tamara Begay moved from the Crownpoint Legal Secretary to that district's *Senior Legal Secretary*. She does great work and is a continuing asset and inspiration to the Crownpoint office.
2. Mikki Deerwater moved from her position as Juvenile Presenting Officer to Prosecutor under our TIWAHE grant. Ms. Deerwater was a Juvenile Presenting Officer with the OTP for more than 30 years and has developed excellent relationships with DFS workers and her clients. Ms. Deerwater was sworn in as a Prosecutor on February 18th by Associate Justice Shirley.

Resignation and Retirement: The OTP had both support staff team members from the Shiprock office leave us this quarter. Treva Morris, Legal Secretary, took a position with NHA in Ojo Amarillo. Barbara Bruce-Peterson retired from OTP after 39 years with us; she will always be a part of the OTP family, and we're considering re-conscripting her due to COVID-19.

JustWare: The ultimate goal with JW continues to be that the NNIJISP partners will be able to share information common to their roles while maintaining independence and confidentiality of other information ("One View"). This is Again, no progress was made toward this goal this quarter, and the Judicial Branch continues to decline One View implementation. The OTP continues to learn new aspects of JustWare to increase the amount and substance of data that it can mine from the database, and to learn ways it can input different case attributes into the system. Ultimately, though, JustWare will never be as robust as it was intended to be as an integrated justice information sharing tool without the Judicial Branch's cooperation.

We've made some adjustments to how certain citations are coded and uploaded into JustWare to track and provide reporting on the PHEOs and associated curfews during COVID-19.

COVID-19 will hopefully make something very clear to other programs (it has always been clear to the OTP): it is 2020 and we *must* make use of technology. The way that our courts and other programs are functioning is inefficient and detrimental to the Navajo People. The OTP hopes that as programs are required to use more technology than they are accustomed to due to COVID-19, that those programmatic changes become permanent and that we continue to progress with issues like information sharing and electronic filing, rather than to regress to the old ways.

NOVATime: This was the first full quarter with NOVATime being implemented, interrupted slightly by the Executive Branch office closures late in the quarter. All OTP team members are accustomed to punching in and out, and Supervisors are doing an excellent job at submitting reviewed timesheets for reporting on the manual master timesheet to Payroll Department. Keeping track of the number of hours worked by everyone will ultimately enable the OTP to more fully show how under-resourced it is given the caseloads and work to be done. This data, in addition to the data

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collected from JustWare, will be helpful in the FY21 budget cycle. From a leave-request and calendaring standpoint, NOVAtime is vastly superior to the system formerly implemented at the OTP, and has taken a huge burden off of the Acting Chief Prosecutor, easily shifting autonomy for leave approvals to the district Supervisors.

Grants/External Funding:

- OVC-Tribal Set Aside: The Victim & Witness Advocate positions were classified and advertised this quarter. Unfortunately, obtaining applications and proceeding with the hiring is stalled pending the reopening of the Executive Branch due to COVID-19. Regular meetings with the Tribal Financial Management Center (TFMC) team continued until suspended due to COVID-19, and the USDOJ OVC TMFC's plans to visit the Navajo Nation this quarter were suspended. Erica Christie, OCP's new Administrative Services Officer, has hit the ground running, providing all grants reports in a timely way, and has completed all necessary GANs.

- TIWAHE foundation (juvenile justice project): OTP hired the 4th Prosecutor under this grant in Window Rock this quarter, rounding out our juvenile Prosecutors in Chinle, Crownpoint, Shiprock and Window Rock). Two of our TIWAHE prosecutors are currently licensed with the Navajo Nation Bar Association, while two were on Professional Certification Administrative leave for much of the quarter, studying for the bar exam. Unfortunately, the March 20th exam was postponed due to COVID-19, and we're waiting for that to be rescheduled.

National Tribal Trial College/University of Wisconsin – Law School program: Last quarter we received notice that the NTTTC and the University of Wisconsin Law School were once again partnering to provide a free 21-week Tribal Court Legal Advocacy Certification course. OTP opened this opportunity up to interested legal secretaries, three of whom submitted applications with full support letters from Ms. Henry. In a disappointing decision, all three applicants were rejected by the program.

Trainings: Three prosecutors (Vernon Jackson, Megan Horning and Tyson Yazzie) attended a four-day training at the National Institute on the Prosecution of Sexual Violence in Indian Country in Columbia, South Carolina.

Consistent problems: Each district office has its own "flavor," its own trends and maintains varying relationships between programs. The OTP also regularly reports on ongoing problems it perceives with programs and departments such as DFS, DPM and NPD. It doesn't really feel right to complain about the other repeated and serious issues raised by the districts in the middle of COVID-19. Instead, the OTP chooses to believe that the issues raised in previous reports – which largely continue – will be addressed when the Navajo Nation government fully reopens with an enlightened sense of priorities and responsibility.

Leadership: Jennifer Henry is still juggling the roles of Acting Chief Prosecutor and Ramah district prosecutor. She continues to supervise the legal staff in all districts, and to provide advice in all the districts on cases and issues as they arise. As consistently reported, Ms. Henry is neither leading nor acting alone, and the entire OTP team continues to provide input and work into the leadership of the program. At no time has the OTP

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team coalesced as it has during this confusing time of COVID-19. Rather than report the standard information, we take this opportunity to share here the leadership decisions and functioning of the OTP since March 13, 2020.

On March 13, 2020 President Nez issued Administrative Order 001-20, declaring a State of Emergency and ordering Executive Branch office closures from March 16th through April 3rd. The OTP immediately realized that criminal and delinquent behavior was not subject to the closure order, and determined that all legal team members would continue to work full-time from home, while all support team members would remain on paid administrative leave. The Prosecutors pulled together to assist each other with all of the administrative tasks we're usually so spoiled as to have our support members provide for us. By March 23rd, the initial positive cases of COVID-19 were being reported in the Nation, and two things became fairly clear to the OTP: 1) that our work was going to increase rather than decrease, and 2) that the closures would likely be extended past April 3rd. With school closures and some of our team members home taking care of children and elderly family members, we wanted our program to be fully-operational, remotely, *before* April 6th, understanding that even reopening offices may require some of our staff to work remotely for a potentially protracted period of time. With emergency funding from NNIJISP (thank you!!), we obtained Mifi network adapters and data plans, and reached out to many of our legal secretaries and administrative staff who could get online from their residences with the assistance of the adapter. We scheduled staggered times for our team members to pick up equipment (PCs, monitors, docking stations, scanners, etc.) and set up workspaces in their homes. All support members working remotely have set schedules and times they are expected to be available to district prosecutors. The district prosecutors all continue to work full-time remotely and are available 24/7 by phone.

By the time Executive Order 002-20 was issued (extending office closures through April 26th), the Office of the Prosecutor was fully-functional, with legal and administrative support to every district and to the Office of the Chief Prosecutor.

The Office of the Prosecutor has also established a dedicated phone line to answer questions by the public – or anyone – regarding its services during COVID-19 and about citations received for PHEO violations.

Since March 16th the OTP legal staff have held almost daily conference calls to discuss issues related to COVID-19, including the enforcement of Public Health Emergency Orders, ongoing criminal and juvenile matters, how to keep cases progressing and our communities safe in a system with programs providing “limited services” and diverting needed resources to battle the public health crisis, the use of the Health Commitment Act to compel isolation/quarantine of those who test positive or who are symptomatic, and a myriad of other program issues.

Senior Network Specialist – Kyle King

During the quarter, Kyle King, Senior Network Specialist, continued to keep all the OTP team members online, provided JustWare support, administered the network infrastructure, and obtained numerous quotes for equipment required by the program. This is always a difficult responsibility because the OTP's offices are spread throughout the Nation. Mr. King provides support both in-person and via Team Viewer and Skype.

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This quarter Mr. King expanded his role from OTP into providing assisting with IT support within the Department of Justice. DOJ assistance has included Active Directory Accounts, assisting with email accounts and desktop/laptop-related support, and supporting DOJ's DOCSTORE3 server through a crash.

Mr. King has been truly invaluable as the OTP worked to become fully operational remotely due to COVID-19. He is working remotely full time through the office closures providing support to us all with network adapters, getting home internet set up for some, and teaching otherwise tech-unsavvy team members to use Skype, JustWare and SharePoint. Mr. King is the glue that's allowing the OTP team to continue communicating and working, and we are very grateful.

White Collar Crime Unit: The WCCU consists of Frank Brown, Senior Investigator; Brandon Bitsuie, Window Rock Attorney; and Joni Pino-Begay, Office Specialist. There is a vacant Attorney position, which is being reclassified (pending at DPM) to an Investigator position. Adding an investigator will bolster the unit's investigative ability and allow the unit to be more responsive to reporting parties.

This quarter the WCCU filed 98 criminal complaints regarding two chapter employees in Dilkon District Court, and 16 criminal complaints against an employee that embezzled from Church's Chicken in Kayenta District Court.

WCCU continues to build strong working relationships with the FBI and the Department of Interior Office of Inspector General by referring white collar crime cases and cases involving federal funds.

Brandon Bitsuie's official appointment as a Special Assistant United States Attorney (SAUSA) is still pending finalization by the Arizona US District Attorney's office. Mr. Bitsuie has been approached by the New Mexico US District Attorney's office for SAUSA consideration as well, and the OTP is excited to expand its operating capacity but increasingly concerned that someone will steal Brandon away from us, as he is clearly in high-demand.

A continued goal for the WCCU next quarter is to issue a statement about the damage that white collar crime causes to the Navajo Nation. This may be done in conjunction with the Public Integrity Task Force, and its purpose is to inform our communities about the costs and extent of white collar crime.

The WCCU continues to highlight the lack of certified chapter oversight as creating opportunities for theft, embezzlement and other crimes within the chapter.

During the COVID-19 State of Emergency, Joni Pino-Begay is providing support for both the WCCU and the Window Rock District office, remotely. **Alamo and To'hajiilee Districts:** The district staff includes Marguerite Charley, Senior Legal Secretary; and Cathy Begay, Senior Prosecutor.

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The workload in these districts continues to be low. Ms. Begay regularly highlights the lack of law enforcement presence, failure to receive incident reports and lack of service of process of criminal summons as primary concerns.

Last quarter, Ms. Begay reported a recurring issue in both districts is the apparent lack of involvement by the FBI in sexual assault cases and other offenses pursuant to the Major Crimes Act. Ms. Begay continues to reach out to key people within the Department of Family Services, Navajo Police Department, and the FBI and to build relationships not only with her district office but also between those programs. It's confusing that despite knowing about the child abuse and child sexual abuse instances, Ms. Begay has not received any dependency referrals from DFS for those matters, and she's concerned that children's safety is not being ensured.

This quarter there was a homicide in To'hajiilee, and the perpetrator was immediately taken into custody and is being federally prosecuted.

During the COVID-19 State of Emergency, Marguerite Charley is providing support for both the Alamo and To'hajiilee, as well as the Shiprock district office, remotely.

Chinle & Dzil Yi Jiin Districts: The district consists of four staff: Tyson Yazzie, Senior Prosecutor; Shirley Bedonie, Senior Legal Secretary; Garveda Harrison, Records Clerk; and Ruby Benally, Prosecutor (TIWAHE/juvenile).

The district office continues to coordinate with the Chinle Judicial District's Juvenile Healing to Wellness Court Initiative. A juvenile delinquency/beyond control referral process was finalized this quarter. Town Hall style meetings to roll out the project and gather community input were cancelled due to COVID-19. The goal of the initiative is to reduce formal court processing and to increase diversionary processes.

Ruby Benally has filed many juvenile matters, but due to COVID-19 those cases have yet to be adjudicated, and are now at risk of being dismissed for lack of service.

Adult incident reports are very inconsistently provided to the district. To be blunt: not all police officers are as efficient as others, and Mr. Yazzie has identified a few officers who submit almost all of the reports, while other no reports are received from other officers. Victims come to the Prosecutor's office seeking assistance/prosecution, which is not possible when we have not received an incident report.

Mr. Yazzie also reports that the Office of the Navajo Public Defender's office "shies away" from representing clients in criminal cases in the district, and moves to withdraw. This is unfortunate because it is a disservice to indigent criminal defendants. Frequent withdrawals cause defendants to become frustrated, pretrial conferences to be continued and delayed, which ultimately begins to violate the defendants' rights to a speedy trial by no fault of their own. One Public Defender in particular began handling cases in Dzil Yijiin, who was enthusiastic and worked hard on behalf of his clients; in that district, progress was made for a short time, but he has now transferred to work as a Staff Attorney at the Judicial Branch.

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District goals for next quarter include continuing to work on the 2017 and 2018 backlog, and to complete the hiring efforts currently on hold due to COVID-19.

Crownpoint and Pueblo Pintado Districts: The district staff consists of Vernon Jackson, Prosecutor; Ryan Sandoval, Prosecutor (TIWAHE/juvenile); and Tamara Begay, Senior Legal Secretary. Mr. Sandoval studied for and was prepared to take the NNBA exam in March, which was postponed due to COVID-19.

Mr. Jackson has prioritized establishing more coordination with the Crownpoint DFS, Probation/Parole Services, Police Department and Criminal Investigations Department. Mr. Jackson has a keen understanding that front-loading the hard work of coordination ultimately leads to smoother prosecutions and better relationships between programs. This quarter, Mr. Jackson wrote three letters to the district police command staff on various prosecution related matters, and held two meetings with the police department. Mr. Jackson held three meetings with the district probation officers, five meetings with the Gallup DFS social worker staff, one meeting with the Crownpoint DFS social worker supervisor, and a meeting with all the criminal investigators and supervisory criminal investigator.

After the monumental task of eliminating the district's backlog last quarter, Mr. Jackson has been able to file complaints as they're submitted to him.

Mr. Jackson highlights the following "good things" for the district this quarter: 1) he assisted on a children's case in Dilkon District with very good results and teamwork, 2) Tamara Begay's work ethic and work product is outstanding, 3) working with Animal Control officers to initiate a search warrant and filing of criminal charges as good learning experience, 4) refreshing and consistent routine being established with the new Pueblo Pintado Court.

During the COVID-19 State of Emergency, Tamara is providing support for both Crownpoint and Pueblo Pintado, as well as the Shiprock district office, remotely.

Dilkon District: The district consists of Brenna Hanley, Prosecutor; and Althea Bezahaloni, Senior Legal Secretary. The district continues to space-share in the Court, in two very tiny offices/closets. It's not ideal, to say the least, and this was reported last quarter. OTP has not been able to resolve this matter, although the Acting Chief Prosecutor intends to beg Chief Francisco to allow the district office to re-inhabit the now-vacant PD trailer that it was previously in. PD's plan to remove the trailer did not yet materialize, so OTP will be begging to use it. Just as soon as COVID-19 releases us.

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Ms. Hanley maintains an open-door (now open-phone due to COVID-19) policy and has very good working relationships with the court staff and other departments/programs within the community. Dilkon district has a steady and consistent flow of criminal and juvenile matters, and many cases were continued due to the COVID-19, with telephonic hearings now resuming.

A new judge was assigned to the Dilkon District, and there have been some speed bumps and a steep acclimation period for both the prosecutor and judge.

Kayenta District: The office consists of Megan Horning, Attorney; Charmaine James, Prosecutor; Chandra Kinlacheeny, Legal Secretary; and Ericka Joe, temporary records clerk. Ms. James studied for and was prepared to take the NNBA exam in March, which was postponed due to COVID-19. Ms. Joe awaits being hired as a permanent records clerk, as DPM hiring is postponed due to Mr. Sandoval studied for and was prepared to take the NNBA exam in March, which was postponed due to COVID-19.

Kayenta is consistently a high-volume district, and Ms. Horning continues to pursue it all enthusiastically and skillfully. OTP is disappointed that Ms. James' becoming licensed is delayed, but it is outside of our control. A Victim Advocate position and Prosecutor position are pending advertising and hiring, delayed due to COVID-19. It remains a major goal to get additional team members into Kayenta to have it fully staffed, and to ensure that Ms. Joe is hired permanently with benefits.

Ms. Horning went above and beyond in providing ongoing presentations for the OTP's three team members studying for the NNBA exam this quarter. She continues that work, and to mentor Ms. James in the office. Ms. Horning also developed an outstanding tutorial for uploading pending reports into JustWare, intended for our legal staff who were without legal secretarial support for a couple of weeks and doing it themselves, and to assist all team members in general with becoming more efficient and accurate with JustWare.

Most Dependency actions in Kayenta involve or are related to methamphetamine use, as are most of the violent crimes in the district. Long-term methamphetamine use contributes to mental health issues and the legal incompetency of defendants. DBMHS is failing people who need substance abuse treatment in the district by responding very slowly or not at all in securing space in rehabilitation facilities; this is due to staffing issues and new Arizona funding rules.

Ms. Horning responded to two Supreme Court appeals this quarter following convictions at the district level.

The Acting Chief Prosecutor failed to meet the facility goals set out for the quarter, and will resume those efforts this quarter: an inward-opening back door; a security barrier/wall to separate the front door from the office space; and internal walls to create confidentiality in the office.

Ramah District: The district consists of Jennifer Henry, Attorney; and Sylvia Kelsey, Senior Legal Secretary. Ramah Navajo Chapter and the programs/services run through the Ramah Navajo School Board remain "unique" in their relationships with the rest of the Navajo Nation. The

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Ramah Navajo Police Department, Ramah Navajo Department of Behavioral Health Services, and Ramah Navajo Social Services function independently from NPD, NDBMH and DFS. Also, there is no division between the police department and criminal investigations in Ramah, with the Ramah Criminal Investigator being an officer within the RNPd. This uniqueness allows for independence and creativity (and more ease in program-management decision-making and coordination), but also means that the relationships formed by OTP with other Navajo Nation criminal justice partners must be continuously repeated in Ramah and leads to more mischief in certain programs. The new Criminal Investigator continues to be highly competent and as he develops strong relationships with the FBI and NM AUSAs, the district is seeing a drastic increase in federal prosecutions of our violent crimes and crimes against SLEC police officers.

The Chief of Ramah Navajo Police Department resigned abruptly in January, leaving the department in a bit of chaos. That's slowly being mended, and the decline in police reports being filed is now steadily on the rise again.

RNBHS continues to be a major concern in the district, with neither the Prosecutor nor the Court receiving presentence substance abuse screenings in time for sentencing hearings. Defendants are not getting the treatment they need or are required to do post-sentencing. The relationship between Ms. Henry and the RNBHS Director is mending slowly after a long period of deterioration, and the RNBHS Director is making some efforts to provide behavioral health services to inmates in the Ramah Adult Detention Facility.

The Healing to Wellness Court (funded through To'hajiilee/Alamo Judicial District), initiative has completely stalled in the Ramah District because the project was to be funded by a 2018 CTAS federal grant award, and those funds have not been released to the Judicial Branch.

Incident reports involving methamphetamines, heroin and cocaine remain steady, and both the police department and prosecutor know the primary dealers and users in the community. The ongoing problem remains that witnesses are hesitant (or outright refuse) to participate in the criminal justice process. There has been an increase in assaults, threats and batteries perpetrated against those who we believe would otherwise serve as witnesses and reporting parties to some of the drug use in the community.

Shiprock and Aneth Districts: The district staff consists of a Karen Bernally, Attorney and Davena Sam, Prosecutor (TIWAHE/juvenile). This quarter, the Senior Legal Secretary retired, followed shortly thereafter by the Legal Secretary's resignation. This has posed a significant support problem in the district, and other legal secretaries have been providing group support throughout the district. A candidate was selected for an OBI check, which is on hold due to COVID-19. Other districts will continue to provide remote support to the Shiprock and Aneth prosecutor until permanent hiring can be completed.

Ms. Sam studied for and was prepared to take the NNBA exam in March, which was postponed due to COVID-19.

This district has had a significantly disorganized filing system, as identified in previous quarters, for years. Ms. Bernally continues to work to resolve this issue with her team, and some progress continues to be made. The effort to correct organizational and data issues is imperative in

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Shiprock. The Acting Chief Prosecutor failed to remove the approximately 50 boxes of documents from the office that need to be destroyed. This will be done this quarter.

Adult and juvenile cases that involve methamphetamine are increasing constantly in the district. The crimes committed are also becoming more violent, and almost always involve immediate family members as victims. Ms. Bernally suggests that a criminal homicide involving a family member be added to the Violence Against Family Act. Ms. Bernally also notes an increase in missing person cases in the area, and suspects that many of the missing individuals are involved with methamphetamine, alcohol or other illegal substances.

The district has seen a decline in dependency referrals from the Shiprock DFS this quarter. DFS has no place to temporarily place children taken into custody.

Tuba City District: The district staff consists of Marie James, Prosecutor; Philandra Adson, Senior Legal Secretary, and Jerriellane Edwards, Records Clerk.

Like Kayenta, Tuba City is a high-volume district currently being covered by only one Prosecutor. Ms. James set a goal to catch up with the pending 2019 reports and to process all 2020 pending reports as they're submitted. She made significant progress until COVID-19 hit; all pending reports continue to be reviewed remotely, but not filed with the Court unless they involve motions to deny bail or an application for an arrest warrant. This is an OTP-wide issue, as NPD is not serving criminal summons while it is working so hard to battle COVID-19.

This quarter, Ms. James was successful in placing a number of defendants dealing with alcohol addiction into inpatient rehabilitation without the red tape of going through the DBHS. The Probation officer connected with a treatment center in Phoenix, which is quickly taking referrals without a waiting list or variety of applications and physical examinations. Ms. James is especially grateful that she was able to assist an elderly mom place her adult son into treatment after a very short detainment in jail.

A new judge was assigned to the district this quarter, which has vastly improved the flow of all cases and the relationships between programs, including the OTP.

Window Rock District: The district consists of Brandon Bitsuie, Attorney; Ella Wilson, Senior Prosecutor; Jane Nez, Prosecutor; Mikki Deerwater, Prosecutor; Rita Burbank, Senior Legal Secretary; Rebecca Gene, Senior Legal Secretary; and Pamela Carl, Temporary Records Clerk. After many months, the DPM finally classified a permanent Records Clerk position in WR, and our intent was to advertise in-house. DPM, however, directed that temporary employees are not eligible for in-house positions (something that the Acting Chief Prosecutor does not agree with based on the NNPPM) and the position was advertised. Applications have been received and assessed, but the hiring process is stalled due to COVID-19.

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Very early in the quarter, new judge assignments were made in the district, which were hoped to alleviate some of the delay in cases previously encountered and reported in previous quarters. However, one of the new judges was assigned to the Tuba City district, so whether the delays in cases will continue remains to be seen, especially in light of COVID-19.

The Window Rock team remains dedicated to community involvement and communications with other criminal justice agencies, including DPS, DFS, WRDOC, and NDBH. Ms. Jez meets regularly with probation and parole services; Ms. Wilson meets weekly with DFS, Public Defenders, and Window Rock officers. Ms. Wilson also attends the Duluth Model meetings and the Crisis Response Team (CRT) meetings with the Navajo Department of Behavioral Health.

Ms. Wilson has set the following goals for herself in the next quarter: to organize her case files for access and efficiency, and to prioritize her cases to ensure that the proper documents are in order.

The district prosecutors, led by Ms. Wilson, have been handling a triple homicide by vehicle with three different victims, and a motion hearing was held regarding double jeopardy issues raised by defense counsel. The written decision will be important and is anticipated by the OTP. Mr. Bitsuie continues to assist the other district prosecutors whenever necessary, in both adult and juvenile matters.

B. DOJ Units

This quarter, DOJ received 625 Requests for Legal Services and completed 455. 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)

DOJ's newest unit, the Chapter Unit, was initiated on August 5, 2019. CU is led by Assistant Attorney General Rodgerick Begay (who transferred from DOJ's Water Rights Unit). Presently, CU is comprised of Mr. Begay, and a Legal Secretary. CU's vacant Attorney Candidate position was recently re-classified as an Attorney position, and will be advertised in the third quarter. The CU clients are primarily the Administrative Service Centers (ASC) of the Division of Community Development (DCD) and all 110 Chapter Governments. However, the CU receives work from any Navajo Nation governmental client which has a Chapter related issue or a general issue dealing with the Local Governance Act (LGA). As previously reported, the goal for the first quarter was to complete all RFS that have been pending since 2017 and 2018. Unfortunately, there's still one RFS from 2017 and four RFS from 2018 still pending. When adding the outstanding RFS from 2019 and 2020, there were forty-one (41) RFS combined RFS pending by the end of the second quarter. This quarter, the CU has engaged in the following notable projects:

1. Chapter Budget Policies: The history of this project was mentioned in the first quarter report. In February 2020, CU finished the first draft of the Chapter Budget Policies. CU received comments from the ASC and also met with the ASC to discuss the first draft. Thereafter, CU incorporated comments and recommendations and submitted a "final draft" to the Office of Management and Budget (OMB) on March 25th for further review by OMB. Assuming there are no comments, the final draft may need to be considered by the Budget and Finance Committee as part of their review of the Budget Instructions Manual for FY21.

2. Chapter Policies: (RFS Nos. 19-0699; 19-2608; 19-2701; 20-003; 19-0929): These RFS involve requests for a legal review of Chapter policies developed by the Chapter. Examples include Chapter policies for Scholarship, Heavy Equipment, Housing, Public Employment Project (PEP), Propane, Student Enrichment, and Building Use. All policies drafted by Chapters have required some level of work. Some resulted in meetings with the Chapter employees and/or Chapter Officials to gain a further understanding of the goal of the policies. At minimum, the CU has redrafted and finalized all of the policies for the Chapters that have submitted an RFS as identified above. There are still five other RFS containing eleven total policies that are pending for review. This is an on-going project.

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3. ADA Compliance of Polling Places: The San Juan County (NM) entered into a settlement with the federal government wherein the County agreed to make polling places comply with the American Disabilities Act (ADA). There are thirteen (13) sites located on the Navajo Nation. Eleven (11) of which are at Chapter facilities. CU worked with the County to develop an Intergovernmental Agreement (IGA) to allow the County to come onto the Navajo Nation and perform the necessary work. The County executed the IGA on March 4th and President Nez signed on behalf of the non-governance certified Chapters on March 31st. Arrangements are pending for signatures from the Chapter Presidents for the five governance-certified Chapters.

CU attended a work session sponsored by the Office of Navajo Government Development (ONGD) on February 21, 2020. CU conducted a four-hour PowerPoint presentation on the History of Navajo Local Governance. CU provided trainings on the following dates and locations:

CU provided trainings on the following dates and locations:

1. 1/14 at Apache County (Chinle) on the History of Navajo Local Governance
2. 2/13 at Twin Arrows: Duties & Responsibilities of Chapter Officials

CU presented on Contract Law to the Navajo Nation Bar Applicants on March 12th

CU presented to Chapter Staff and/or DCD Staff:

1. 1/29 at Cornfields Chapter for Fort Defiance Agency Chapter Staff.
2. 1/31 at Dennehotso Chapter for ASC Staff

CU attended the following Agency Council Meetings:

1. 1/10 – Fort Defiance Agency

Important CU Issue: There continues to be a lack of understanding about Chapters. Some work is duplicative and many involve a decent amount of education which takes a lot of time. CU has thought about a Chapter Handbook which could contain frequently asked legal questions and background but that would be a huge project. Plus, there's no telling if any of the Chapter Reform measures by Navajo Government Development will come to fruition but if any of them did, a Chapter Handbook project could become obsolete. CU does not have the staff for such a project but given the amount of such work, a Chapter Handbook could be very useful in the long run if the 110 Chapters stick around.

Economic/Community Development Unit (ECDU)

ECDU is led by Assistant Attorney General LaTonia B. Johnson on an acting basis until the position is filled. She who manages two Attorneys and one Legal Secretary. This quarter, an ECDU Attorney Candidate transferred to the TFU unit. ECDU has had a vacancy since fourth quarter and has had three (3) individuals apply for the position. Interviews will be scheduled as soon as the Department of Personnel Management (DPM) resumes hiring activity that has been delayed due to COVID-19. ECDU's primary clients are the Division of Economic Development (DED) and the Division of Community Development (DCD). ECDU formerly also served the Nation's 110 chapter governments. DOJ's new Chapter Unit will now be meeting the legal needs of the chapters. In this quarter, ECDU notable projects include:

1. Sihasin Projects: This quarter, ECDU continues to assist Capital Projects Management Department (CPMD) of DCD with a number of issues related to the administration of the Sihasin projects as approved by the Navajo Nation Council through Legislation No. CAP-35-18. The last quarter, ECDU was requested to draft regulations that would allow the Budget and Finance Committee and Resource and Development Committee to delegate its approval authority of change projects to DCD. ECDU completed the regulations that outlines the process of DCD's authorities, process, and administration of the change project process. Lastly, ECDU continues to provide assistance to CPMD on a case-by-case basis related to construction and constructed-related contract review in terms of the Sihasin funding requirements and general Sihasin funding requirement questions.
2. Twin Arrows Business Site Leasing Issues: The NNGE entered into a business site lease (Lease) with the Navajo Nation for the construction of Twin Arrows in 2011. NNGE's Lease grants it the authority to develop, use, and operate the required utilities and infrastructure within the leased premise. NNGE solicited the assistance of Navajo Tribal Utility Authority (NTUA) to develop the telecommunication tower. NTUA and NNGE informally agreed to split construction costs of the tower. The tower was built and is currently operated by NTUA. NTUA and NNGE have negotiated a sublease. However, pursuant to the terms of the Lease, the Nation, with Office of Navajo Hopi Indian Relocation's (ONHIR) concurrence, is responsible for determining the rental rate in the sublease. Other than the rental provision, the Nation and ONHIR's concurrence is not required on the sublease. While DED found the rental amount between NTUA and NNGE acceptable, NNHLC and ONHIR did not. After several meetings, NHLC approved rental language that was concurred to by NNGE and NTUA. Additionally, ECDU is working with NNGE on finalizing a modification to the Lease for the inclusion of the Travel Plaza.
3. Nahata'Dziil Shopping Center: The Shopping Center was constructed by DED several years ago. Since it is located in Nahata'Dziil, ONHIR is involved. The Navajo Nation entered into a MOU with ONHIR pertaining to the business site leasing for the Shopping Center. Currently, there is a Bashas, Subway, and Pizza Parlor operating at the Shopping Center. Due to recent employment changes at DED, ECDU had to work with DED staff regarding a business site lease for the Bashas and an emergency operating agreement for Subway and Pizza Parlor. The negotiations for the lease have been slow. For the Bashas lease negotiations, it has been going particular slow because Bashas wants amendments to Part II and also there was a death in the Bashas' family.
4. Business Site Lease: Like the previous quarters, ECDU continues to assist the DED with a number of non-compliance leasing transactions, which includes, but is not limited to, issues of not having a valid lease/permit, default for non-payment of annual rent and illegal home sites on business premises. ECDU is assisting and advising clients by drafting and negotiating settlement agreements, conducting litigation for a forcible entry

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detainer action and terminating leases. Additionally, this Quarter, OOC and the RBDOs continued meeting to discuss outstanding lease non-compliance issues. The majority of the non-compliance issues include those of non-payment of rental or expiration of the lease or permit and failure to submit profit and loss statements. OOC, DED, and DOJ plan to continue meeting with each RBDO once per Quarter to stay up to date on any non-compliance issues.

5. Northern Navajo Fair: This quarter, ECDU worked with the Fair Board on it proposed changes to its Plan of Operation (POO). The Fair Board initially proposed amendments to the POO in June 2019, but did not submit an amended POO to the RDC for approval. After the 2019 fair, the Fair Board wanted to proposed additional amendments to the POO. ECDU attended a work session to assist the Fair Board as it worked through the POO and, afterward, reviewed all proposed changes for legal sufficiency. ECDU will continue to reach out to all Board Members offering ECDU's assistance for any legal issues that arrive.

Human Services and Government Unit (HSGU)

HSGU is led by Assistant Attorney General LaTonia Johnson. Ms. Becenti manages five Attorneys, one Tribal Court Advocate, and two Legal Secretaries. HSGU assists eight (8) Divisions/Departments consisting of over 65 programs. This quarter, the Unit has two Attorney vacancies and an Advocate vacancy. This quarter, notable projects include:

1. Office of Inspector General (OIG) audit of United States Department of Justice (USDOJ) for grants made to Navajo Department of Corrections (NDOC): Navajo DOC continued to communicate with USDOJ to address the remaining issues of the 2015 OIG Audit. NDOC submitted a letter dated February 14, 2020 to USDOJ to address audit finding #2. The Navajo Nation is awaiting a response. Additionally, the Navajo Nation submitted all information related to finding #9 and this information is under final review by the Audit Assessment and Management Office. The Navajo Nation, in a letter dated March 19, 2020, informed USDOJ that in response to COVID-19, the Navajo Nation has issued a shut-down of the Executive Branch and as a result, the Navajo Nation will be limiting its intake on new arrestees and issuing preventive measures. The limitation of services will impact USDOJ's requirements for the Kayenta and Tuba City correctional facilities to operate at 65%.
2. Navajo Treatment Center for Children and Their Families-CY 2020 P.L. 93-638 Contract Renewal: HSGU and Navajo Treatment Center for Children and Their Families management met with NAIHS to continue negotiations for the 2020 Contract Renewal. The Contract and SAFA were finalized in mid-February. Additionally, NTCCTF requested from NAIHS for the contract to be considered for "mature contract" status. NAIHS took it into consideration and provided notice to the Navajo Nation on April 2, 2020, that it declined to do so because the Nation has had "significant deficiencies" and "material weaknesses" in the past three (3) audits. DOJ will discuss with program and OMB whether they would like to appeal NAIHS's decision.
3. Navajo Nation Veterans Administration: The Navajo Nation Veterans Advisory Council (Advisory Council) met on February 27, 2020. Items on the Advisory Council's agenda included a possible vote of no confidence for Executive Director of the Navajo Nation Veterans Administration (NNVA). Additionally, the Advisory Board's agenda included a discussion item regarding amendments to NNVA's Plan of Operation without the Advisory Board's approval. The Executive Director is a non-voting member of the Advisory Council. Both the Advisory Council and NNVA are clients of HSGU. Pursuant to Navajo Nation law, the Advisory Board was created to provide *policy advice* to OPVP regarding issues involving veteran's issues. The Advisory Board is involved in the selection process for the Executive Director of the NNVA. HSGU's position is that the Advisory Board is an advisory board. However, the Advisory Board desires a larger role and attempts to expand its authority without amendments to Navajo Nation law.

Complications/Concerns: The Advisory Board does not have an office. It is comprised of the commanders of the various agency veteran's agency organizations. HSGU has informed the Advisory Board that it can it also provides legal assistance. In moving forward, HSGU would have to provide legal assistance the NNVA and Advisory Board based on Navajo Nation laws. If the Advisory Board wants to expand its authority, an amendment to Navajo Nation law would have to be enacted.

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4. Navajo Area Indian Health Services (IHS) Request for Repayment of Contract Support Costs for Contract Year (CY) 2014, 2016 and 2017: In June 2019, Navajo Area IHS sent a notice of overpayment of Contract Support Costs (CSC) to the Navajo Nation in CY 2014, 2016 and 2017 and requested for repayment of CSC from the Navajo Nation. At the time, HSGU sent the letter to outside counsel for assistance in the matter. In this quarter, HSGU followed up with the Navajo Nation's Office of Management and Budget (OMB) to gather requested financial information for those years to determine whether the Navajo Area IHS's calculations of overpayment are accurate. HSGU is waiting to hear back from outside counsel regarding the most accurate calculations before the Navajo Nation issues a response to Navajo Area IHS.

Complications/concerns: Navajo Area IHS has continued to email the Navajo Nation's OMB regarding the request for repayment. HSGU advised OMB to notify Navajo Area IHS that the Navajo Nation is still looking into this matter and will provide a response.

5. Indian Child Welfare Act (ICWA) cases: HSGU continues to work with the ICWA Unit to conduct case staffing of cases that are in state court and require a request for legal intervention, and other related matters. To date, HSGU has conducted 21 case staffings, and sent several cases for legal intervention in the State of Arizona and Oregon at the request of the ICWA unit. HSGU has also assisted on the checklist that was proposed by ICWA unit to assist Social Workers when conducting their duties on behalf of the Navajo Nation. HSGU will continue to staff cases and answer related legal questions.

6. Board of Education Closure of School Campuses on the Navajo Nation: In response to the recommended health measures from the Navajo Nation, as well as federal and state authorities, on March 13, 2020, the BOE issued Resolution, NNBEMA-608-2020, recommending closure of all schools operating on the Navajo Nation for a period of three (3) weeks. Specifically, the BOE "recommends the closure of all Public Law 100-297 grant schools, Public Law 93-638 contract schools, Bureau of Indian Education-operated schools, public schools (including charter schools) located on the Navajo Nation..." (NNBEMA-608-2020, para. 1.).

On April 2, 2020, after increased confirmed reports of the COVID-19 virus, BOE issued another resolution, this time directing the physical face-to-face closure of all school campuses located on the Navajo Nation, including private schools, higher education institutions, early childhood programs, including CCDF, Head Start, and FACE Programs, and all after-school programs for the remainder of the 2019/2020 school year. (NNBEMA-611-2020). The New Mexico Public Education Department and the State of Arizona have also directed the closure of all schools through the end of the school year. The State of Utah has directed school closures until May 1, 2020. Upon information provided by the BOE, all Bureau of Indian Education (BIE) schools are closed for the end of the school year.

The BOE resolution further directs that off-reservation residential halls/dormitories operating under the authority and jurisdiction of the Navajo Nation to follow closure procedures of their host school district. The BOE encourages all educational institutions operating on the Navajo Nation to use continuous learning activities, such as web-based technologies, video conferencing, or other alternative means of delivering instruction. The BOE directs schools to develop plans to continue serving breakfast and lunch to students while maintaining a safe learning environment, including social distancing measures.

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Complications/Concerns: The BOE Resolution does not explicitly reference the Navajo Nation President's Executive Orders or the Public Health Orders, and therefore risks breaking a clear chain of information and guidance. The BOE Resolution further does not provide detailed guidance, but remains very general. Many schools operating on the Navajo Nation are requesting additional guidance. HSGU worked with the BOE to draft a resolution empowering the Navajo Nation office of Dine Accountability and Compliance to issue a guidance policy to help support schools at this time. The Resolution NNBEAP-614-2020 was passed on April 2, 2020. Generally, there is an air of uncertainty and fear plaguing many schools and administrators working on the Navajo Nation, as well as lack of clarity around the jurisdictional hierarchy among states, the Navajo Nation, and the BIE. As more of these governmental bodies direct closure, there is less variance, however some does remain. HSGU recommends that the BOE and the Navajo Nation leadership work as collaboratively as possible with all school governing boards to ensure smoother implementation during this uncertain time.

7. Yazzie/Martinez, NMPED Motion to Dismiss: The State of New Mexico recently filed a motion to dismiss the court ruling held in the Yazzie/Martinez case, which held that the state of New Mexico Public Education Department (PED) failed to fulfil its obligation to provide at-risk students an adequate education under the New Mexico Constitution. In light of the motion to dismiss, which was supposed to be heard on March 27, 2020, OPVP asked DODE to prepare an analysis of the current state of implementation of the Yazzie/Martinez ruling. HSGU is working with DODE and OPVP on this matter.

Complications/Concerns: The delay in hearing the motion to dismiss does give the Navajo Nation more time to provide a genuine analysis and position letter. HSGU will work to ensure this project is addressed in a timely manner so that OPVP has adequate time to review and issue a statement.

8. Johnson O'Malley (JOM): On April 1, 2020, the Navajo Nation JOM was scheduled to have a teleconference with Gallup McKinley County Schools (GMCS) to finalize the terms surrounding a Subcontract between the Nation and GMCS. Due to technical difficulties, the teleconference did not take place. Given the already tense relationship between GMCS and JOM (due to general disagreement over the Navajo Nation's authority to regulate the GMCS JOM program), fundamental miscommunications and misunderstandings between JOM Program Director Ms. Eleanor Thomas and the GMCS staff, as well as the delay in finalizing the contract, the GMCS' attorney emailed HSGU stating that GMCS no longer wanted to continue its subcontract with the Navajo Nation and instead wanted to contract directly with the federal government. HSGU called GMCS' attorney to clarify some of the misunderstandings and to encourage the finalization of the Subcontract between the Navajo Nation and GMCS. After conferring with his client and agreeing to finalize the terms of the Subcontract, we rescheduled the teleconference to April 8, 2020. The rescheduled teleconference went well, and the remaining items were addressed. The Navajo Nation's JOM program is collecting the remaining documents and then sending the full Subcontract packet through the 164 process for signature.

Complications/Concerns: BIA received the same complaint sent to HSGU by GMCS' attorney on April 1, 2020 and issued a letter the Navajo Nation inquiring into the situation. Now that the teleconference took place and the remaining issues were resolved, HSGU is working to draft a formal response letter to the BIA to explain the situation and indicate the accurate timeline of events, as well as to explain that the disagreement was resolved. HSGU has already been in contact with the BIA representative informally to let her know what is going on.

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9. Navajo Head Start (NHS): 1303 Plan: NHS continues to work to complete its 1303 plan application. The only remaining item is an appraisal of the planned building. The appraiser is working to finish the appraisal, but has requested several remaining pieces of information that have yet to be provided to him, including the legal description of the land. HSGU recently spoke with Mr. Tim Wolfe of Dibble Engineering who informed HSGU that everything is ready to go once the appraisal is finalized and the 1303 Plan is officially approved.

Complications/Concerns: The Office of Head Start remains reluctant to work with the Navajo Nation around finalizing the 1303 Plan. Each time NHS submits requested information, OHS, after several weeks without communicating, requests new information before it will officially approve the project. This has resulted in an extremely delayed review process and has hindered NHS in efficiently moving forward with processing of the project in accordance with the Navajo Nation's internal processes. However, OHS did approve the 6th year extension grant to allow the Navajo Nation to use carryover funding from earlier grant years to fund the construction project. Therefore, as long as everything is submitted to the satisfaction of OHS, OHS has indicated that it will approve the 1303 Plan.

10. Under-Enrollment Appeal: HSGU advised OPVP of the need for intergovernmental negotiations between the Office of Head Start and the Navajo Nation in order to remedy the often detrimental and misleading communications from the OHS staff. Further, HSGU recommended that OPVP also negotiate the under-enrollment finding, as OHS failed to provide the Navajo Nation its statutory right to technical support prior to issuing a finding of chronic under-enrollment. Unfortunately, OPVP has cancelled or failed to show up for two (2) meetings with OHS leadership. In order to amend the situation and issues at hand, HSGU continues to recommend intergovernmental negotiations. In the meantime, HSGU is speaking with Dr. Bitsoi to see if she is comfortable with HSGU speaking to the OHS representative directly to potentially address some of these issues.

11. Insurance Service Department (ISD): On February 25, 2020, the Navajo Nation Insurance Commission (NNIC) approved the FY 2021 premium rate projections for both programs after the actuarial consultant and the program staff (RMP and WCP) provided both written and oral reports.

12. Risk Management Program: HSGU provides legal assistance and advice relative to the processing and defense of tort, civil rights violation and other claims/cases, contract reviews for appropriate insurance requirements, contract reviews for property damage (structural, etc.) and fire losses; fidelity bond (crime) coverage loss assessments; other property and casualty related claims such as business interruptions, cyber; etc.; insurance needs for newly acquired or expansion of properties and services, etc. The FY 2021 renewal marketing process is in progress, and in this respect, HSGU telephonically participated in a strategic renewal meeting in February and another is scheduled for April 9th on the Pollution coverage renewal. Additionally, HSGU is involved in the investigation, claim evaluation, liability exposure and settlement of Risk Management Program pre-litigation claims. HSGU is also heavily involved with lawsuits pending in both tribal and federal courts (claims arising from the actions/inactions of P.L 93-638 programs – FTCA).

13. COVID – Property and Casualty Coverage Related Issues: Below are some of the issues for which HSGU provided guidance:

Whether the Business Interruption coverage extends to communicable disease resulting in the government and other insured enterprises' closures due to the pandemic. After considerable review of the current property policy and in discussions with the Navajo Nation's insurance broker agents, a determination was made that Business Interruption coverage excludes "contaminants" which in its definition includes "virus."

Whether the Division of Natural Resources (DNR) officers (Fish and Wildlife, Rangers, et al.) possess the necessary qualifications/training standards that would allow the NDPS Director to commission such officers to enforce Titles 14 and 17; an extension of the issue was further discussed on the respective plans of operations for each DNR program and other issues relating to the mandates of the P.L. 93-638 contract requirements for NDPS departments, i.e., police, criminal investigations and corrections. HSGU provided additional information on the general liability coverage.

Whether a proposed waiver of liability by volunteers at the Chapters would shield the Navajo Nation from any claims. HSGU provided a preliminary response that volunteers are cloaked and protected by the Navajo Sovereign Immunity Act if they are under the supervision or the Navajo Nation while in the course and scope of their duties. Moreover, the Navajo Nation's general liability policy also covers volunteers, again, provided they are performing services under the supervision of the Navajo Nation. And with the current emergency response protocols in place, it is apparent that volunteers cannot act on their own outside the scope of what is required by the Navajo Nation's Incident Command Center.

Whether Tele-commuting employees should be responsible for the maintenance or damage of privately owned equipment utilized during telecommuting work hours. This is an RFS which LU responded to, but HSGU was asked by the Human Resource Director directly to review as well relative to personal equipment maintenance/damage and workers' compensation coverage. The response provided for RMP is that if the employees are under the supervision of the Navajo Nation (serving the betterment of the government) and are in the course and scope of their duties when a damage occurs, coverage might be triggered through RMP. The impacted employees thereby can still file claims, and such claims will then be dealt with on a case-by-case basis.

14. Gold King Mine Spill Case: The Navajo Nation's outside counsel requested assistance in responding to a Request for Production which, among others, seeks "*insurance agreements for coverage of damages to the Nation suffered or expenses it incurred as a result of the Gold King Mine spill.*" The Request is also seeking documents on claims that may have been filed with RMP and any pay outs. A response was immediately provided that no claims were filed with RMP and payments were not issued either. However, HSGU is in the process of getting the applicable policies for transmittal to our outside counsel. HSGU reviewed the complaint and determined that the applicable policies to produce would cover August 2015 when the spill occurred. HSGU was also able to identify three (3) policies that will need to be produced i.e., general liability, property and pollution. HSGU is currently waiting for the Risk Manager and our defence counsel to provide a date and time convenient this week to engage in a tele-conference with the outside counsel to further discuss the policies and answer questions they may have, pending.

Litigation Unit (LU)

LU is led by Assistant Attorney General Paul Spruhan who manages three attorneys and two legal secretaries. LU handles many of the Nation's internal and external litigation matters. LU has one attorney vacancy for which it has received two applicants. This quarter's notable projects include:

1. Corona Virus Response Issues: LU's primary work in the last three weeks has been assisting OAG in legal responses to the COVID-19 outbreak. LU staff have researched Navajo Nation and federal law concerning the Navajo Nation government's authority to issue Emergency Declarations, Public Health Emergency Orders, and Executive Orders. LU has drafted or assisted in drafting a number of these documents, and internal memoranda on specific legal aspects of the Navajo Nation Government's response to the outbreak, including concerning the various departments and branches' authorities, free exercise of religion concerns, and the intersection of COVID-19 restrictions with employment. LU continues to work with OAG, other Assistant Attorney Generals, and the Office of the Chief Prosecutor on specific jurisdictional and other legal issues related to the outbreak, including analyzing jurisdiction over non-Indians and the authority of the Health Command Center to issue citations to non-essential businesses.

2. Bears Ears Litigation: While LU works on COVID-19 response issues, Jason Searle and I have been working with the Native American Rights Fund and other legal counsel to finalize and file the Tribal Plaintiffs' response and reply to the Federal Defendants' Cross-Motion for Summary Judgment in the Bears Ears litigation, titled *Hopi Tribe v. Trump*, currently pending in the Federal District Court for the District of Columbia. Jason Searle has taken the lead for LU in working on the case, and procured a declaration from a Navajo tribal member who uses the Bears Ears Monument area as support for the Tribes' standing to bring the Bears Ears litigation. The Response was filed on April 10, and briefing on standing and the merits issues of the case will continue until late May, 2020, after which the District Court for the District of Columbia can rule on the case. Whomever wins at the district court level, it is inevitable there will be an appeal, potentially all the way up to the U.S. Supreme Court, dependent on the outcome of the upcoming presidential election.

3. New Mexico Voting Rights: The county clerks in New Mexico filed a petition in the New Mexico Supreme Court to have in-person voting cancelled for the upcoming state primary election in June, due fears of the spread of COVID-19. Instead, the clerks asked that the court require that all voters vote by mail by having ballots mailed out, with the voter to return the ballot also in the mail. The Secretary of State's Office agreed with this proposal. Because of the difficulty with mail on the Nation, the Nation filed an amicus brief generally supporting the cancellation of in-person voting due to COVID-19, but with sites on the Nation staffed by the county clerks' offices for several weeks before the election to allow Navajo voters to get language assistance, pick up replacement ballots if they were not received in the mail or were lost, and to have a drop box for ballots so they would not be need to be returned in the mail. The Supreme Court held a hearing, and ruled that the New Mexico Election Code only authorized absentee ballot applications to be mailed to voters, and not actual ballots, and therefore denied the petition. The Court did direct the mailing of absentee ballot applications to all voters, which the voters would need to return to receive a mail ballot. The result is that in-person voting will continue as consistent with the Governor's health orders on public gatherings. The Nation will have to decide whether to allow physical voting sites on the Nation consistent with the Public Health Emergency Orders. If the Nation will not allow these sites, Navajo voters will file an absentee ballot application and vote by mail or have to or travel to border towns to early vote.

Natural Resources Unit (NRU)

NRU is led by Assistant Attorney General Veronica Blackhat who manages five Attorneys, one Tribal Court Advocate and two Legal Secretaries. NRU is fully staffed. Primarily, NRU provides legal assistance to the 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:

1. Carbon Sequestration Project: A draft of the agreement between the Navajo Nation and Bluesource, LLC has been reviewed. Outside counsel was compiling comments and revisions from the contract review team, but negotiations have also slowed significantly due to some extenuating circumstances and COVID-19. Erika participated in a call with the Department and outside counsel, Bill Sloan, to address the issues the Nation had with the draft agreement. Bill Sloan is the lead on the agreement and will be incorporating changes to begin negotiations with Bluesource. There are some issues regarding timber harvesting and those who live in the forest, so we need to refine the project area map as an exhibit to the agreement. We are also making sure cultural considerations are not omitted from the agreement.

2. Hemp Activities: (On-going). The 2018 Farm Bill removed hemp from Schedule 1 of the Controlled Substances Act and hemp may only be grown: (1) with a valid USDA-issued license, (2) under a USDA-approved State or Tribal plan, or (3) under the 2014 Farm Bill industrial hemp pilot authority. This pilot authority expires one year after USDA establishes a plan for issuing USDA licenses under the provisions of the 2018 Farm Bill. The 2018 Farm Bill directed USDA to develop a regulatory oversight program for hemp and include provisions for USDA to approve hemp production plans submitted by states and Indian tribes. USDA issued its Interim Final Rule on October 31, 2019. To date, USDA has approved 14 plans submitted by the several states. The USDA has also approved 17 plans for several Indian tribes, including a plan submitted by the Pueblo of Picuris.

- a. Navajo Nation: The Navajo Nation Council passed legislation (CO-75-18) amending the definition of industrial hemp to match the 2018 Farm Bill. In making this change the Navajo Nation Council expressly stated that it did not authorize cultivation, growth, possession, development or propagation of hemp until the Nation creates a regulatory system. On January 3rd, RDC held a Leadership Meeting to discuss the current status of hemp and their concerns regarding some Navajo Nation farmers growing hemp. The attendees included the Division of Public Safety, Division of Natural Resources, Department of Agriculture, Navajo Land Department, NAPI/NMSU, and DOJ. RDC was provided updates from the various Divisions and Departments. As a result of the meeting, RDC is now pushing for legislation that would: 1) reiterate that current status of hemp on the Navajo Nation; 2) direct BIA to cancel permits if farmers are found to be growing hemp; and 3) direct USDA to not approve plans not authorized by the Navajo Nation.

Currently, Navajo Agriculture Products Industry has taken the lead initiative to properly draft and recommend regulations; however, these regulations have not been submitted to RDC for approval. The San Juan River Farm Board unilaterally submitted draft regulations to the USDA. Neither proposed regulations take into account the complexity of a regulatory plan on the Nation, and both documents are self-serving to the drafting party. SJRFB submitting a proposed hemp plan to USDA without consulting or seeking approval from the Navajo

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Nation. This resulted in two conference call with USDA to discuss Navajo Nation law; the Nation's position regarding the cultivation of hemp on the Navajo Nation; the authority of the Farm Boards; and the Nation's intent to submit their own plan. In the end, USDA indicated that they would not approve the plan submitted by the SJRFB and would provide the Nation and the SJRFB written notification of their decision. This quarter I spoke with Penny Coleman on this issue. She was hired by USDA to assist them with the Hemp Program based on her experience in working with Indian Tribes. She was following-up to confirm the Nation's position regarding hemp production and the SJRFB not having authority. I explained to Ms. Coleman that the Nation's position has not changed since our last call and that DOJ and Legislative Counsel are in agreement on this. Ms. Coleman indicated she would let USDA know and arrange another conference call if necessary.

- b. NAPI: Council passed CJN-24-19 to allow NAPI to enter into a research-based study on industrial hemp in partnership with the New Mexico State University (NMSU) and the New Mexico Department of Agriculture. The NMSU hemp pilot research Project was approved to occupy 200 square feet of the land leased to NMSU; the purpose of the Project was to determine the best hemp producing plants for cultivation in the many growing zones and conditions on the Navajo Nation. Currently, NAPI and NMSU have requested an extension to the hemp pilot research Project for another year and expansion of the Project area to 5 acres for the 2020 crop season. Legislation is still being drafted and has not been finalized or approved by RDC.

3. Department of Water Resources: The Department of Water Resources (DWR) would like to draft agreements that cover a larger scope and allow for multiple funding sources. Because most of the work done by DWR is funding-contingent, meaning the work does not happen unless and until funding is secured and that funding is generally limited to a specific action, DWR has asked for a more creative solution to project contracts. A meeting was held with DWR to discuss a potential umbrella agreement for wastewater connection and extension projects within the State of New Mexico. The geographic region of the projects is related to the type of funds available for these projects. In theory, one agreement would cover all potential wastewater connection and extension projects, most of which are in conjunction with NGWSP, and allow for the work to be completed as funding is secured. Based on preliminary research, we believe the Navajo Nation Code permits this more flexible contract, but we anticipate barriers due to the staggered nature of the agreement.

4. Violation of Intergovernmental Compact with Hopi: NRU was notified by the Department of Fish & Wildlife (DFW) that a Navajo individual recently began developing a homesite in an area where development is prohibited by an Intergovernmental Compact between Navajo and Hopi. The Intergovernmental Agreement with Hopi prohibits any development within the buffer zone and when the Tribe is notified of such development, it has 90 days to remove all man-made structures. DFW and Navajo Land Department (NLD) investigated the issue and determined that the family that had an executed homesite lease was indeed developing an area within the "buffer zone" as determined by the Compact. NLD is currently working with the family to find a new acceptable location for their homesite. Efforts were on track to do so, but the COVID-19 closures have delayed work. NRU has not yet determined how to access CMF funds to pay for the relocation, as NRU did in 2015 in a similar incident. This work also involved the drafting of a non-disclosure agreement regarding the confidential information contained in the Compact.

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5. Many Farms Irrigation & Agriculture Project: Delegate Kee Allen Begay requested NNDOJ assistance on this Project. The Budget & Finance Committee (BFC) provided funding to the Many Farms Chapter and the Irrigation & Agriculture project. The project involves creating a farm system similar to what NAPI has established. Currently the working group is still trying to work out the legal logistics. The biggest issues are applying for a chapter land withdrawal, and consolidating land use rights under one permit held by the Chapter. Deadlines have passed for the United States Department of Agriculture's Environmental Quality Incentive Program. The DOA intended to take full advantage of this program as part of the project efforts. The program is behind schedule, and the group was advised this would be a slow progressing project. The slow progress is a cause for concern as BFC would like to see progress with the allocated funding.

6. Navajo Engineering & Construction Authority (NECA): NECA informed NDOT of challenges in getting a consistent workforce on two construction projects (N27-Nazlini to Chinle and N12-Wheatfields/Tsaile) due to the situation regarding the COVID-19 and are trying to continue construction while compensating for the reduction in workforce. NDOT responded by sending a letter to Cary Patterson of NECA on March 25, 2020 indicating that these road construction projects are considered "Essential Infrastructure" and therefore, allows NECA staff to continue working on these construction projects, but to do such work in compliance with Social Distancing requirements. Employees of NECA also expressed concern about having to work and this was discussed during the RDC teleconference meeting on April 1, 2020. NECA provided assurances to RDC that they sympathize with the employees and are not going to force their employees to work if they do not want to. They also reported to RDC that they are looking out for the health and safety of their employees by reminding staff to practice safe distancing, washing their hands, providing PPE's and trainings on a daily basis. On April 9 NDOT received another letter from NECA notifying NDOT that they will be implementing a 2-week closure on the N12, N25 and N6330 construction projects to allow staff to stay home during that period to help prevent the spread of the Coronavirus. NDOT is an agreement with the temporary closure.

7. Navajo Area Uranium Mines (AUM) Work: The revised Navajo Nation Position Statement on uranium is being spearheaded by the Office of the Speaker. Prior to COVID-19, public hearings across the Nation were being held to seek additional input. Also, the Dine Uranium Remediation Advisory Commission (DURAC) re-drafted a position statement. DURAC was also working to complete their recommended policy on uranium waste disposal across the Navajo Nation and will need to hold public meetings. The United States Environmental Protection Agency (USEPA) presented the next Ten-Year Plan on AUM work to the President of the Navajo Nation and the 24th Navajo Nation Council. The Plan highlighted the progress on Eastern Agency work as actual remediation is expected to occur in 2021. The Plan also identified some of the barriers to AUM work, including the different United States agencies and bureaus responsible for oversight of the work depending on the mine or mill status. USEPA is working to bring its administrative counterparts to the table to discuss Navajo Nation priorities. As evidenced by the Plan presentations, there is a wide spectrum of understanding across the Navajo Nation when it comes to AUM work. Often concerns over the lack of progress are made without acknowledging the work that has been done and the efforts USEPA, particularly Region 9, has made to complete the work in a culturally competent manner.

8. Settlements with United States; Phase One and Phase Two Trusts: (On-going) Two Trusts have been working on the Navajo Abandoned Uranium Mines project. Both trusts were established and governed by settlement agreements between the Navajo Nation and the U.S., for mines at which no private responsible parties have been identified. The Nation considers the U.S. to be the responsible party liable for clean-up for these mines.

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Negotiations with the U.S. led to these settlements, under which mine investigation and clean-up activities are fully funded by the United States. The settlements include provisions for payment of costs incurred by the Navajo Nation in oversight of their work.

During this quarter, the work of the Phase One Trust has concluded except for resolution of final cost issues. Meanwhile, the Phase Two RSE trust has become more active. A two-day quarterly meeting was held with the Phase 2 trust, NNEPA, and USEPA, where the group discussed the trust's progress toward performing Removal Site Evaluations (RSEs) for multiple mine sites, as well as the trust's finances, complications in performing risk assessments, and other matters. Harrison also participated in regular conference calls regarding work being done by the Phase Two Trust for investigation and remediation of uranium mines. On-going discussions have continued internally with NNEPA and others regarding avenues to require the United States to commit to clean-up of additional uranium mines that have no identified private responsible party. Some mines are in close proximity to mines that are currently being addressed under existing settlements, and it could provide benefits both in cost and logistics to address these mines area-wide at the same time. Other mines are in areas with high public interest and community involvement, and prioritizing those mines could raise community support of our work.

9. Tronox Settlement Funds: (On-going). The Tronox settlement brought about \$985 million to United States Environmental Protection Agency (USEPA) to address certain former uranium mines in and near the Navajo Nation and \$44 million to Navajo Nation Environmental Protection Agency (NNEPA) for use by its Superfund Program. USEPA is moving forward rapidly in investigating the former Kerr-McGee/Tronox mines for which they received funding in the settlement. Harrison is assisting with access agreements for interim clean-up activities at some of these mine sites. Several of the Tronox mine sites are moving quickly toward preparation of Action Memoranda, which officially document the clean-up decisions for CERCLA removal sites. Prior to issuing an Action Memorandum for a non-time-critical removal such as the uranium mine sites, USEPA issues an Engineering Evaluation/Cost Analysis, or EE/CA, to identify and analyze various clean-up options. The EE/CAs could be issued as early as this year for several Tronox mine sites and include an evaluation of Applicable or Relevant and Appropriate Requirements, or ARARs. ARARs are laws and regulations promulgated by federal, state, local, or tribal government, that a CERCLA clean-up must either attain or waive. CERCLA on-site clean-up actions are exempt from compliance with many laws and regulations except to the extent that they are identified as ARARs. In preparation for issuance of the Tronox EE/CAs, Harrison drafted a table of Navajo Nation ARARs to serve as a template for uranium mine clean-ups. The draft ARARs table is currently being reviewed by NNEPA. Upon completion, it will be provided to USEPA for incorporation in clean-up decision documents.

10. Dine Uranium Remediation Advisory Commission: (On-going). The Diné Uranium Remediation Advisory Commission meets every two months, rotating meetings among various chapters that have been impacted by past uranium mining and processing. In addition, the Commission periodically meets for work sessions to discuss mine investigation results and application of Traditional Ecological Knowledge ("TEK") to cleanups of uranium mine waste and developing a on waste disposal options. The Executive Director of the Commission has faced many obstacles regarding the use of Tronox funds for operating expenses, including delays in processing budgets. OMB and OOC raised questions regarding the Commission's from the Special Revenue Account. Harrison worked with the Executive Director and Legislative Counsel on legislation amending the Commission's Plan of Operation to clarify its funding source and reporting structure. Proposed revisions were approved by the Commission, committees, and Council; however, the President vetoed the legislation. Legislation to override the President's veto was introduced and then withdrawn during the Winter Council session. Delegate Kee Allen Begay, Jr. was to schedule meetings with OPVP to resolve the impasse.

11. Navajo Partitioned Land (NPL) Issues: On November 25, 2019, RDC held a Leadership Meeting at NDOT conference room to discuss NPL issues. In attendance were the Dzsill yijijiin Naal Dloshi (four legged animal) Group, aka: Navajo Mountain Livestock Group; the Department of Agriculture (DOA) and the Bureau of Indian Affairs (BIA). The RDC requested the DOA and the BIA provide information on the following areas: (1) Possibly increasing the Sheep Units from 10 units to a higher number; (2) amending federal laws and Navajo Nation laws pertaining to the establishment of range management units and livestock management policies, and waiving the enumeration criteria policies for reissuing cancelled NPL Grazing Permits. The BIA and DOA explained to RDC the process they followed to determine the current carrying capacity on NPL lands. The BIA completed a study in 2016 and it only covered Precincts 1 & 3. The BIA and DOA reviewed 2004 and 2016 vegetative carrying capacities established from vegetation studies completed by BIA and grazing permit data. Based on that information, the BIA recommended a standard stocking rate of (1) 790lb COW or AUM = (4) 197.5lb Sheep or SUYL and a carrying capacity of 10 sheep units yearlong (SUYL), which the previous RDC concurred with. At the time, BIA also recommended the carrying capacities for the reissued permits be revisited and readjusted based on yearly range monitoring, range inventory data completed and conservation planning.

NRU was notified by Legislative that Delegate Yellowhair has submitted a request for proposed legislation to rescind RDCMA-27-18 and were seeking input from NNDOJ. RDCMA-27-18 implemented BIA's recommendation of ten sheep units year-long (SUYL) for NPL whereas the new legislation seeks to direct the DOA to implement a carrying capacity of 50 sheep units for each grazing permittee on NPL. The real question goes to the authority of the Navajo Nation to increase the amount from ten sheep units to fifty sheep units. This proposed legislation was also discussed at the RDC meeting in Pinon. Bart Stevens, BIA Regional Director stated that the BIA cannot issue sheep units in excess of ten sheep units because the vegetation studies and grazing permit data do not support that approach. Even if the Navajo Nation passes legislation increasing the carrying capacity, the BIA may not implement it. Under the regulations, the BIA has the authority to set the grazing capacity. It should also be noted that DOA is also in support of keeping it at ten sheep units. According to DOA, BIA may not issue any new permits if this becomes an issue.

12. FirstNet: Due to the State of Emergency, the Navajo Nation Council deemed it necessary to temporarily suspend the Navajo Nation's normal regulatory approval processes, including leasing and permit approval processes for the installation of FirstNet infrastructure at existing telecommunication locations until such time that normal Navajo Nation government operations resume and appropriate processes are in place. HSGU and NRU met with Chief Legislative Counsel, Dana Bobroff prior to this being initiated as emergency legislation to discuss concerns raised by NLD, GLDD and Navajo Nation Telecommunication Regulatory Commission (NNTRC) regarding the proposed legislation. Ms. Bobroff was trying to find a way to address this issue and had previously met with TRC and GLDD. We were informed that rather than draft legislation that would approve all permits for FirstNet, the other alternative was to handle this administratively through a MOA. The MOA would be entered into between NNTRC, NLD and the three service providers (Cell One, Comnet and AT&T). One of the terms of this MOA would be for all tower operators to have a valid NN lease in place for their towers within 18 months of executing the agreement (which would help rectify the problem of many companies currently operating without valid leases). The initial draft was to include a list of sites that would be approved under this legislation; however, the approved legislation did not appear to include those sites. Also, it does not appear that NNTRC, NLD and GLDD reviewed and commented on the legislation prior to it being approved by Council.

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13. Navajo Generating Station Retained Assets: SRP provided and update to the Nation regarding the decommissioning activities at the NGS site. They gave two updates: one to the President and one to the Speaker and other council delegates. NRU participated in both of these meetings.

14. Arizona Corporation Commission Rate Cases: The Nation believes that the owners of the Navajo Generating Station (NGS) should provide the Nation with “transition funds” to assist the Nation with the negative impacts that are occurring due to the shutdown of NGS. These dollars would be in addition to the payments that the NGS owners are required to pay under the NGS Extension Lease, as those payments are related to various issues pertaining to the NGS site itself. The Nation believes one way to request these “transition funds” is to intervene in the rate cases that some of the NGS owners have in front of the Arizona Corporation Commission (ACC). Representatives from Arizona State University (ASU) are assisting the Nation with these efforts.

15. Renewable Energy Development: (On-going)

- a. SRPs Request for Proposals: The Salt River Project (SRP) sought the Nation’s input on whether or not the Nation was interested in working with SRP on a potential solar project to be developed on the Navajo Nation. The project would also use 200MW of the NGS 500MW that the Nation received the right to use via the NGS Extension Lease. After internal discussion, President Nez and the Hayoookaał Work Group decided it would be in the best interest of the Nation to do so. SRP developed a Request for Proposals (RFP) to be sent out to potential developers. April assisted the Nation in the discussion with SRP to provide the Nation’s input on the RFP. The current deadline for bids from potential developers is May 4th, but SRP is debating whether to extend the deadline based on difficulties surrounding the COVID-19 virus issue.
- b. Draft Contract with the Energy Authority: The Nation had been negotiating a draft contract with The Energy Authority (TEA) for TEA to assist the Nation with the management of the 500MW. Those negotiations fell through after the parties could not reach an agreement on the dispute resolution provisions. TEA wanted a waiver of sovereign immunity, but President Nez did not want to seek a waiver from the Navajo Nation Council. As a result, the negotiations terminated. However, based on further internal discussions, including a discussion with Speaker Damon and other Council delegates, the Nation determined it was in its interest to enter into a contract with TEA and to seek a waiver of sovereign immunity. This was relayed to TEA and after a few weeks, they sent an updated version of the contract.

Navajo-Hopi Legal Services Program (NHLSP)

NHLSP is located in Tuba City, Arizona and is charged with representing relocate applicants before the Office of Navajo-Hopi Indian Relocation (ONHIR). We are pleased to report that NHLSP is now fully staffed since November 12, 2019 when NHLSP Director and Principal Attorney Susan Eastman resumed working for NHLSP. Attorney Candidate Chris Benally and Legal Secretary Brela Multine complete the NHLSP staff. Attorney Candidate Chris Benally took the Arizona state bar exam in February, and will receive results in early May. This quarter's notable projects include:

This quarter, NHLSP Principal Attorney and Director Susan Eastman, with assistance from Attorney Candidate Christopher P. Benally and outside counsel and investigator Glennas'ba Augborne, interviewed and prepared witnesses for the remand hearing for a NHLSP client that was scheduled for January 31, 2020. That hearing was vacated due to witness unavailability and is tentatively re-set for June 22, 2020. Another NHLSP client whose case was remanded from the District Court to ONHIR for further proceedings was finally certified as eligible for relocation benefits after the parties submitted briefs to the Hearing Officer on the remaining legal issue of the client's legal residency on the HPL.

Both Ms. Eastman and Mr. Benally provided assistance to the Tuba City Child Support Services Office by staffing cases and representing Tuba City CSS at hearings before the Office of Hearings and Appeals in January, February, and March. Ms. Eastman attended DOJ/OAG meetings in February and early March to provide a litigation update and to discuss possible litigation against ONHIR for breach of trust claims on behalf of the Navajo Nation and certified relocatees. Ms. Eastman was also invited to and presented a legal history of the former Bennett Freeze at the Navajo THAW conference on February 21-22, 2020.

There are currently five (5) cases pending in the federal District Court of Arizona. One of these federal appeals is being handled in-house by NHLSP, and the other four are being handled by outside counsel Barry Paisner. Mr. Paisner is handling one of the 9th Circuit Appeals and the law office of Lee Phillips and Bob Malone are handling the other pending 9th Circuit Appeal.

1. Assistance to Certified Applicants: One NHLSP client was certified as eligible for relocation benefits by ONHIR in August 2019 after a successful appeal to the 9th Circuit. However, this client has not yet received her relocation home benefits due to questions about her marital status and where she would like to relocate. ONHIR has special requirements and policies for certified applicants who are divorced and/or wish to relocate off the reservation and it is uncertain whether this client can satisfy ONHIR's off-reservation relocation requirements or how our client's uncertain marital status will affect her relocation plan. We met with our client and ONHIR's Relocation Specialist on January 3, 2020 at ONHIR to discuss the client's relocation plan and try to move her case forward. After the January 3, 2020 meeting with the client and ONHIR, there was no further contact with our client for several weeks. When contact was finally made, the client still expressed strong reservations about ONHIR's ostensible requirement for her to divorce her husband in order for her to get her relocation benefits. ONHIR had offered to pay up to \$1,000.00 of the client's legal expenses for obtaining a divorce in Navajo Nation Courts through representation by a tribal court advocate hired by ONHIR.

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Ms. Eastman advised the AG about the client's dilemma, and the AG retained outside counsel Colin Bradley to assist and advise this client with proceeding with her relocation plan. Further efforts will be made by Mr. Bradley in the next quarter to contact the client and assist her with moving her relocation plan forward.

2. Advice and Assistance to the Navajo-Hopi Land Commission (NHLCO): The Navajo-Hopi Land Commission requested Ms. Eastman to review the proposed Dinè Relocatee Fund Management Policies and Procedures drafted by contractor Christina Lewis. The purpose of the Dinè Relocatee Fund is to provide financial assistance to certified-eligible Navajo relocatees and/or their descendants who have received relocation homes from ONHIR. There are three (3) types of assistance NHLCO is making available to Navajo relocatees: 1) Housing repair; 2) Infrastructure assistance (electricity, indoor plumbing, etc.); and 3) Scholarship assistance. Ms. Eastman provided feedback to Ms. Lewis and NHLCO in the form of a memorandum dated January 14, 2020 and in a conference call on January 27, 2020. Ms. Eastman advised NHLCO to provide consistency of terminology and to clearly identify who is eligible to apply and receive assistance. Also, the Dinè Relocatee Fund Policies and Procedures, as drafted, requires applicants to obtain letters from ONHIR verifying that the applicant or applicant's ancestor received relocation benefits from ONHIR. I pointed out that this requirement is potentially problematic given ONHIR's anticipated closure, and suggested to NHLCO to obtain a list from ONHIR of all certified Navajo relocatees for NHLCO to keep to make eligibility determinations rather than sending each applicant to ONHIR to request a verification letter. The Dinè Relocatee Fund Management Policies and Procedures have also been reviewed by ONHIR with a similar suggestion. To date, the Dinè Relocatee Fund Management Policies and Procedures have not been finalized yet.

3. Navajo THAW: Navajo THAW is an initiative of the Nez-Lizer Administration which intends to address the profound impacts of the former "Bennett Freeze" on the Navajo people who reside in the nine (9) chapters in the Western Navajo Agency. These Navajos were the most adversely affected by the federal administrative and statutory freeze that prohibited any kind of improvement or infrastructure to be built for over 40 years. Ms. Eastman was invited by organizers of the Navajo THAW conference to give a presentation at Twin Arrows on February 21 and 22, 2020 on the legal history of the former Bennett Freeze. Ms. Eastman gave the presentation during a break-out session of the conference on February 21, 2020, which included a review of the 1934 Act which created the boundaries of the modern Navajo Nation reservation, and reviewed the litigation between the Navajo Nation and Hopi Tribe authorized by the 1974 Settlement Act as amended. Ultimately, the settlement of the long-standing dispute between the Navajo Nation and Hopi Tribe over each tribe's rights to the 1934 Act Reservation in 2006 through an Intergovernmental Compact led to the statutory lifting of the Bennett Freeze in 2009.

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Tax and Finance Unit (TFU)

The Tax and Finance Unit is headed by Assistant Attorney General Jana Werner who supervises a Principal Attorney, two Attorney Candidates and one legal secretary. This quarter, an Attorney Candidate transferred to TFU from ECDU. TFU provides legal services to the Budget & Finance Committee and its primary clients in the Executive Branch are the Office of Management & Budget, the Office of the Controller, Retirement Services, the Office of the Tax Commission and the Tax Commission and others. Below are some of TFU's noted projects this quarter:

1. Proposed Amendments to the Tax Code and Regulations: TFU is working with ONTC and the Navajo Tax Commission (NTC) on substantive amendments to the Navajo Tax Code, including: Uniform Tax Administration Statute (UTAS); Hotel Occupancy Tax (HOT) Statute; Sales Tax (ST) Statute; Fuel Excise Tax (FET) Statute, and the Healthy Diné Nation Act (Junk Food Tax). Mel Rodis met with ONTC staff, drafted proposed amendments to the Tax Code, drafted proposed NTC resolutions, and presented the proposed amendments and resolutions to the NTC. The NTC passed resolutions recommending that the Navajo Nation Council approve and adopt such amendments to the Tax Code. TFU will continue to work with ONTC as they seek legislative sponsors for legislation approving such amendments to the Tax Code. The Office of Legislative Counsel will draft the legislation. It will be subject to consideration by each standing committee before going to Council.

2. Apache County Property Tax: Whether Apache County has the legal authority to continue to assess and collect property taxes on fee property located in Nahata'Dziil Chapter and owned by enrolled members of the Navajo Nation. Mel Rodis communicated with the Apache County Attorney, Michael Whiting, to determine the County's position on its authority to tax these fee parcels given the fact that Article 20, Section 5 of the Arizona Constitution prohibits the state from taxing property of Native Americans within their own reservations. He further discussed the matter with outside counsel to get a second opinion regarding the boundaries of the Navajo Nation in the New Lands area and the County's taxing jurisdiction. Apache County Attorney Whiting asserts that the County has the legal authority to tax such fee parcels because he believes they are not located within the Navajo Reservation for purposes of Article 20, Section 5 of the Arizona Constitution since the fee parcels are not surrounded on all sides by trust land. Assistant Attorney General Paul Spruhan and outside counsel, concur with Mr. Whiting that Apache County has authority to tax such fee parcels, but based on different legal reasoning. DOJ and outside counsel have concluded that fee parcels in the New Lands area are not part of the Navajo Reservation because the Navajo-Hopi Land Settlement Act, which created the New Lands, did not explicitly define a new southern exterior boundary for the Navajo Reservation, thus only trust parcels are part of the Reservation. Therefore, since these fee parcels are not within the exterior boundaries of the Navajo Reservation, it is likely that the Nation would prevail in a legal challenge against Apache County. TFU and LU will continue to communicate with Mr. Whiting regarding the outstanding issue of reservation boundaries in the New Lands near Sanders, AZ. However, we do not recommend litigation at this time.

3. Retirement Services (NDRS): TFU drafted resolutions and exhibits for the Retirement Plan Administration Committee, including the adoption and use of actuarial assumptions based on the 2019 Experience Study; amendments to the Retirement Plan related to enrichment of benefits for certain commissioned law enforcement officers; and approval and adoption of the FY 21 Retirement Fringe Rates. TFU drafted resolutions and exhibits for the Deferred Compensation Retirement Plan Administration Committee to approve and confirm the eligibility of certain employees to participate in the Deferred Compensation Plan. Drafted resolutions and exhibits for the Retirement Savings Plan Administration Committee to amend

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the 401(k) Savings Plan to comply with federal regulations related to hardship withdrawals. TFU assisted NDRS in negotiating and drafting a services contract with the Nation's actuarial consultant, Willis Towers Watson. TFU advised NDRS that despite Judicial Branch's personnel policy for judges, which prohibits payments for unused sick leave upon termination, NDRS must comply with § 2.03 of the Retirement Plan by counting a retiring judge's unused sick leave hours as hours of Benefit Service in calculating retirement benefits. TFU drafted a checklist for LGA-certified Chapters to become Participating Affiliates.

4. Office of the Controller (OOC): The OOC-Payroll Section must continue to issue payments of monthly compensation for District Grazing Committee and Land Board officials during the government shutdown per the respective Plans of Operation, but that officials are not entitled to receive meeting stipends for meetings they do not attend. Proper classification of budget stipend payments for the Navajo Nation Veterans Administration staff; the degree of control by the Navajo Nation over the NNVA staff creates an employer-employee relationship between the Navajo Nation and NNVA staff for federal employment tax purposes. TFU reviewed contract between the Navajo and Luberta Corporation and returned as legally insufficient because of inconsistencies between Risk Management Program and the Certificate of Liability Insurance. TFU considered whether the NTUA is exempt from the Navajo Nation Business and Procurement Act. The NTUA is an enterprise and entity of the Nation and thus is exempt from compliance with the Act. TFU also considered the Navajo Times question related to the Privacy Act and legal issues regarding emergency procurements.

5. Office of Management and Budget (OMB): TFU advised OMB on multiple matters, including assisting OMB to draft RFP to solicit proposals from IDC consultants to prepare the Nation's FY 2021 through FY 2024 IDC Rate Proposals.

6. Investment Committee (IC): Jana Werner attended the Investment Committee Meeting on February 21, 2020, and drafted IC resolutions approving investment sub-policies for the Workers' Compensation Fund, the Handicapped Trust Fund, the Senior Citizens Trust Fund, and the General Fund.

7. BFC Meetings and Legislation: A TFU attorney attended all BFC meetings and reviewed and commented, as necessary, on all pending BFC-related legislations. TFU has assisted with and commented on drafts of legislation for the Permanent Fund Income Five-Year Plan for Fiscal Years 2021 – 2025.

8. TTAC – Treasury Tribal Advisory Committee: TFU assisted NNWO and outside counsel, Holland & Knight, to draft the proposed Navajo Nation position paper to be issued to TTAC. The position paper should be submitted as proposed legislation for the Nation's approval of the position paper.

9. Amended Fund Management Plan for the DOJ Fixed Cost Litigation Account: Assisted AG in drafting proposed Budget & Finance Committee legislation to amend the FMP for the FCL Account to supplement the funding source for the account to include the deposit of all attorney fees and costs recovered in litigation involving the Nation.

Water Rights Unit (WRU)

The Water Rights Unit (WRU) has been led by Principal Attorney Kate Hoover since August 5, 2019 when AAG Rodgerick Begay left WRU to lead DOJ's new Chapter Unit. The Assistant Attorney General position has been advertised since then and there has been only 1 applicant whose application is being reviewed. Kate 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. Below is a summary of WRU's work for this quarter:

1. Colorado River Basin. A large majority of the lands of the Navajo Reservation are located within the very large Colorado River Basin. The Colorado River Basin is divided for purposes of administration into the Upper Basin (with New Mexico, Utah, Colorado and Wyoming designated Upper Basin states) and the Lower Basin (with Arizona, California and Nevada designated as Lower Basin states). Water is allocated among the states pursuant to Compacts. Under the Upper Basin Compact, Arizona is allocated 50,000 afy in the Upper Basin for the northern portion of the state located almost entirely on the Navajo Reservation.

- a. Upper Basin. There is no pending litigation concerning water uses in the Upper Basin, where there are three primary landowners – the Navajo Nation, the City of Page, and the Glen Canyon Recreation Area. However, closure of the Navajo Generating Station located on Navajo lands, which used a significant portion of the Arizona allocation, has raised questions about future uses of water in the Upper Basin.
- b. Lower Basin. WRU attorneys are counsel of record with the Meyer, Walker, Condon & Walker law firm in *Navajo Nation v. Department of the Interior*, No. CV-03-00507-PCT-GMS. This action was filed in 2003 challenging the Secretary's decisions concerning the management of the mainstem of the Lower Colorado River, which we alleged failed to comply with NEPA and breached the fiduciary duties owed to the Nation. In 2014, the U.S. District Court of AZ dismissed the case, and WRU and outside counsel appealed to the Ninth Circuit, which upheld the dismissal of the NEPA claims but remanded the breach of trust claim. The District Court again dismissed the case on August 22, 2019, and WRU and outside counsel have again appealed the decision to the Ninth Circuit Court of Appeals. WRU attorneys also participate in the Western Navajo Pipeline TAG in efforts to identify additional opportunities to advance the Nation's water rights claims. There are two Adjudications to resolve claims in the Lower Basin in Arizona, the Little Colorado River Adjudication and the Gila River Adjudication.

2. Little Colorado River (LCR) Basin: The LCR Basin is a subwatershed of the Lower Basin of the Colorado River. The trial for the Hopi past and present water claims concluded in December 2018. The trial of the Hopi Tribe's future water use claims is set to begin on June 2, 2020, however, the COVID-19 pandemic will likely result in a delay of the trial. The Hopi Tribe moved to vacate the trial date indefinitely on April 6, other parties proposed a date certain for the trial to begin. The Nation joined the US in advocating for a September 15 trial start date, subject to future modification should the national emergency continue. The depositions of approximately 90 fact and expert witnesses in this subproceeding concluded in January. Further in this Quarter, numerous motions for partial summary judgment to dispose of significant issues have been filed, in addition to numerous motion in limine to limit testimony at trial. A joint pretrial statement is currently circulating among the parties, including identification of trial exhibits and depositions that will be introduced in lieu of direct expert testimony.

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The First Phase of the trial of the Navajo Nation's claims is set for trial on September 12, 2022. ADWR issued its Final Hydrographic Survey Report for the Navajo Reservation on December 1, 2019 and objections are due June 1. The litigation team continues to develop evidence to support the claims that will be presented in the three phases of the Navajo Nation contested case. Delays in the Hopi future uses trial will likely result in an adjustment to the deadlines in the Navajo case.

There continue to be meetings supported by work by WMB and the Nation's experts in the effort to settle the Navajo and Hopi claims in the LCR Basin, the substance of which are confidential and can be provided to governmental clients in a private setting. WRU is also working with other tribes and Interior regarding language in the pending settlement of the Hualapai Tribe with the potential to prejudice Arizona tribes in future water settlements. A meeting between the tribes, ADWR and other state parties occurred on January 13, with disappointing results. The Attorney General attended a meeting of the Arizona Governor's Water Augmentation, Innovation and Conservation Council (GWAICC) on March 13 in an attempt to state the Nation's views, but was shut out along with other tribal leaders. WRU continues to work with a small consortium of Arizona tribes to address Arizona's position on tribal water settlements.

3. Gila River Basin: The Gila River Basin is the other major subwatershed of the Lower Colorado River Basin in Arizona. The Navajo Nation is a party to this adjudication by virtue of its state-based water rights for the Big Boquillas Ranch. The Navajo Nation participated in certain interlocutory appeals to the Arizona Supreme Court on various issues of broad legal significance. The Nation monitors developments in the Gila Adjudication for additional matters with the potential to affect the Nation's water rights in either Basin in Arizona. WRU did not participate in any litigation matters this Quarter.

4. San Juan River Basin (UT): The San Juan River Basin is a subwatershed of the Upper Basin of the Colorado River. There is no pending litigation concerning the Navajo claims in the San Juan River Basin in Utah. However, the Nation, and the State of Utah reached a settlement agreement and the Navajo Utah Water Rights Settlement Act (NUWRSA) is currently pending in both Houses of Congress. In the House, Representative Rob Bishop's bill (R-UT) (H.R. 644) is co-sponsored by Representatives Stewart (R-UT), Curtis (R-UT), and McAdams (D-UT). In the Senate, Senator Romney (R-UT) introduced S. 1207, co-sponsored by Senators Sinema (D-AZ) and McSally (R-AZ). The bill has been reported out of committee in both houses of Congress. WRU briefed the NUC on January 12.

5. San Juan River Basin (NM): As with Utah, the San Juan River Basin in New Mexico is a subwatershed of the Upper Basin of the Colorado River. The Nation's San Juan settlement, while favorably decided by the trial court, continues to be pending before the New Mexico Supreme Court. Other work in the San Juan Basin include efforts to resolve protests to applications for change of purpose and place of use before the Office of the State Engineer based on concerns that the rights proposed for transfer have not been used and should be subject to forfeiture or abandonment. WRU continues to provide legal support for various activities undertaken to implement the Nation's San Juan River Settlement through construction of the Navajo Gallup Water Supply Project.

6. Zuni River Basin (NM): The Zuni River Basin is a subwatershed of the Little Colorado River Basin located in New Mexico, and part of the Lower Basin and includes lands in the eastern part of the Reservation and Ramah. In the Zuni River Basin federal court adjudication there are

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separate subproceedings for the tribal claims: Subproceeding I addresses the claims of the Zuni Tribe and Subproceeding II will adjudicate the Navajo Nation's claims. Both subproceedings are stayed while the Navajo Nation, Zuni Tribe, United States and State of New Mexico engage in settlement negotiations. The United States continues to adjudicate the claims of the non-Indian claimants separately. The settlement activities occurring this Quarter are confidential and therefore recommended to be presented beyond OAG in a private setting.

7. Rio Grande Basin: Parts of the Navajo Nation that are not within the Colorado River Basin are in the Rio Grande Basin. Like the Colorado, the Rio Grande is a large river with an extensive Basin. The Nation has no claims pending to the mainstem of the Rio Grande. The Nation holds reservation lands within the Rio San Jose, Rio Puerco (To'hajilee) and Rio Salado (Alamo) subwatersheds.

8. Rio San Jose (NM): The Rio San Jose Basin is a subwatershed of the Rio Grande Basin and encompasses lands on the far eastern extent of the Navajo Reservation. The general stream adjudication addressing claims to the Rio San Jose is currently focused on Subproceeding 1 addressing the claims of the Pueblos of Acoma and Laguna. The Pueblos are also engaged in settlement negotiations, and the Nation began actively participating in the negotiations to attempt to simultaneously resolve the Nation's water rights claims in the basin in July of 2018. This Quarter WRU participated in one mediation session and one discussion with the mediator. More confidential details can be provided outside of OAG in a private setting.

9. Lower Rio Grande Adjudication (NM): WRU is participating in an appeal arising from the Copper Flat Mine expedited *inter se*. WRU filed a motion and brief requesting to participate as amicus curiae on the standards for forfeiture and abandonment of water rights. Permission to file the Nation's amicus brief was granted November 5, 2019.

10. New Mexico OSE Permit Appeals: WRU represents the Nation's interests in two matters originating in protests of applications before the New Mexico Office of the State Engineer. WRU has been in negotiations in an effort to settle the Nation's protest of a permit to transfer water rights the Nation has reason to believe should have been rejected as forfeited or abandoned for non-use. Allowing "bogus" water rights to spring into existence prejudices the Nation's rights recognized in the San Juan River Basin settlement. Due to the Nation's efforts the permit application will likely be re-advertised for a significantly reduced amount of water. A second protest concerns an application by the Augustin Plains Ranch, LLC, for a permit to pump thousands of acre-feet of water with no identified use that has been challenged as speculative. The matter is now before the New Mexico Court of Appeals.