

NAVAJO NATION DEPARTMENT OF JUSTICE

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< APRIL TO JUNE 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.

During the 3rd quarter, the Office of the Attorney General has continued to be deeply involved in all legal aspects of ensuring the Navajo Nation government is adequately prepared to respond to the myriad of challenges presented by COVID-19. OAG and its team have drafted and reviewed Emergency Declarations, Public Health Emergency Orders, and Executive Orders. OAG continues to staff a Donations Section, first, under the Logistics Branch of the Health Command Operations Center, and later as part of Humanitarian Aid under the Department of Emergency Management. DOJ's work to facilitate the contribution of monetary and property donations to the Nation has resulted in over \$6 million dollars in monetary donations to the Nation as well as substantial donations of medical supplies, fabric face masks, hand sanitizer, cleaning supplies and other needed goods. The Attorney General and the Deputy Attorney General have also participated in countless online Town Hall meetings and numerous phone calls with leadership and the Health Command Center.

Notably, DOJ participated in litigation against the U.S. Department of the Treasury concerning the eligibility of Alaska Native Corporations (ANC) for CARES Act funding set aside for "tribal governments." DOJ has participated with two different groups of tribal plaintiffs in the case, discussing legal strategies and providing research support. After an initial win at the preliminary injunction stage, Judge Mehta of the Federal District Court for the District of Columbia on June 26, 2020, ruled that ANCs were eligible. The tribal groups are considering whether to appeal to the D.C. Circuit, which may depend on the outcome of a motion for injunctive relief to stop Treasury from making any payments to ANCs pending a final decision.

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On June 19, 2020, a team of six DOJ attorneys and two lawyers from the Nation's Washington, DC office collaborated to submit a report on the effects of COVID-19 on the Nation to the United Nation's Special Rapporteur on Human Rights. The Report will be featured on the Special Rapporteur's website in the near future.

Notwithstanding the COVID-19 pandemic, during this quarter, DOJ hired 4 staff members, all of whom are Navajo: 1) two Attorney Candidates that will work for both the ECDU and Chapter units; 2) a Principal Tribal Court Advocate for HSGU; and 3) a Senior Attorney for LU and OAG. Internally, an Assistant Attorney General transferred from ECDU to HSGU and two Senior Attorneys were promoted to Principal Attorney positions.

The current vacancies in DOJ include:

- Assistant Attorney General (WRU) – Position vacated on 8/5 and is being advertised; 1 application received; applicant hired as Senior Attorney
- Senior Attorney (HSGU) – Position vacated 2/14 and is being advertised
- Attorney Candidate (CU) – Position vacated on 12/19; position reclassified as Attorney on 4/16/20; applicant interviewed on 7/7/20
- Sr. Programmer Analyst (OAG) – Position vacated on 10/25; position being re-classified; reclassification pending

This quarter, DOJ arranged for voluntary in-house continuing legal education for DOJ attorneys and staff with the webcast of the following online seminars: “*Legal Challenges for Tribal Attorneys During COVID-19*”, “*Indian Child Welfare Act (ICWA) Update*” and “*When the Government is the “Organizational” Client, The Complexity for Tribal AG Offices*”.

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

A. Office of the Prosecutor

The Office of the Prosecutor (OTP) manages and oversees the 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 and state 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

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assessment/treatment. The Office of the Prosecutor also presents civil traffic citations, animal control ordinance citations, civil fish and wildlife violations, and some election and EPA violations.

This quarter, OTP created a Facebook page, which can be found at <https://www.facebook.com/NavajoOTP>. OTP aims to keep this page current, informative and responsive.

Dikos Ntsaaígíí

Along with other Navajo Nation government offices, our offices remain closed to prevent the spread of COVID-19. We are proud that despite the office closures, the OTP implemented its plan to remain fully operational within the limitations of our criminal justice partners. While we look forward to the Navajo Nation’s phased reopening, we are committed to increasing our telework efficiency and creativity. This quarter has proven to us that responsible teleworking does not decrease program productivity, and that it in fact brings a new work-life balance to our team in addition to alleviating many of the ongoing health and safety concerns posed by COVID.

The OTP legal team began working remotely full-time on March 16, 2020 with laptops. By April 5, 2020 the OTP had created and implemented remote work schedules for most of its support team, made possible by obtaining wifi internet adapters and cannibalizing desktop computers, monitors, scanners, printers and other equipment from the offices. Legal team members also removed docking stations, monitors and other equipment from their offices to increase work productivity at home, and the remaining wifi adapters were distributed to those who had no internet connections at home. We have 7 support team members who remain on full-time administrative leave due to space, IT or other limitations, and they are forefront in our minds as we explore how to distribute offline and other projects from district offices to them so that they can begin to contribute work to the program again, albeit probably in a slightly different manner than before the closures.

Court hearings, meetings with Navajo, state and federal law enforcement partners, defense counsel, and the OTP internal administration/case processing are ongoing and get smoother as everyone (internal and external to OTP) settles into this “new normal” and maximizes technology and electronic communications. It is worth noting, however, that the OTP’s “normal” is significantly hindered without in-person interactions with the public (witnesses, victims, families and defendants). We are communicating with the public by phone, but the very nature of our roles within our communities make that *much less* than less-than-ideal. We look forward to reopening our offices, but they are not well suited for socially-distancing from the public with whom we need to meet and explain documents, often in family-group settings. Several of our offices need physical improvements (Plexiglas installations and other physical lobby barriers; non-load-bearing walls to create office and conference room spaces) and OTP, like many others, need a reliable and consistent source of disinfectants and other cleaning supplies to maintain safety.

The OTP welcomed Raegan Chavez, a summer law school intern from South Dakota School of Law. She’s likely doing the strangest internship ever as it is fully remote from Salt Lake City, UT, although she has been participating in OTP conference calls and listening in to court hearings in numerous districts. Raegan is also participating in Megan’s Bar Study Group, which is providing a broad overview of Navajo law.

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 (both general funds and external funds); keeps the district offices supplied, paid, reimbursed and networked; coordinates all of our human resource matters; and fields phone calls and office visits (in pre-Covid times) from community members and OTP's public safety partners.

Staffing: Vacancies and Pending Reclassifications

Chinle: VACANT Victim & Witness Advocate, P/N 244592 – JVA closed 03/18/2020; 10 applications received from DPM; qualification assessments complete; interviews pending resumption of Executive Branch/DPM operations.

Crownpoint: VACANT Prosecutor, P/N 244220 – JVA closed 03/23/2020 with no applicants; will be re-advertised; VACANT Victim & Witness Advocate, P/N 244593 – JVA closed 03/18/2020; 5 applications received from DPM; qualification assessments complete; interviews pending resumption of Executive Branch/DPM operations; VACANT Legal Secretary, P/N 244396 – JVA closed 03/18/2020; 2 applications received from DPM; qualification assessments complete; interviews pending resumption of Executive Branch/DPM operations.

Dilkon: VACANT Victim & Witness Advocate, P/N 244594 – This position has not been advertised. A final decision on worksite for position is pending due to not having an office in Dilkon. RECLASS Records Clerk to Legal Secretary, P/N 244396 – Pending with DPM since 01/28/2020

Dzil Yijiin: VACANT Prosecutor, P/N 244602 – JVA closed 3/16/20 with no applicants; will be re-advertised.

Kayenta: VACANT Prosecutor, P/N 244513 – JVA closed with no applicants; will be re-advertised; VACANT Victim & Witness Advocate, P/N 244595 – JVA closed 03/18/2020; 3 applications received from DPM; qualification assessments complete; interviews pending resumption of Executive Branch/DPM operations; HIRING Records Clerk, P/N 244395 – Awaiting salary assessment from DPM since 03/06/2020.

Shiprock: VACANT Prosecutor, P/N 204739 – Advertising, Closing Date: Open Until Filled; CLASSIFICATION Victim & Witness Advocate, P/N XXXXXX – Awaiting grant approval; HIRING Senior Legal Secretary, P/N 202201 – Applicant was selected and was ready for background check but due to the OBI office closure, no action further action has been taken. Applicant is kept up to date with the closure of offices; VACANT Legal Secretary, P/N 297954 – JVA closed 3/16/20: 5 applications received from DPM; qualification assessments complete; interviews pending resumption of Executive Branch/DPM operations.

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To'hajiilee: VACANT Victim & Witness Advocate, P/N 244596 – JVA closed 03/18/2020; 2 applications received from DPM; qualification assessments complete; interviews pending resumption of Executive Branch/DPM operations.

Tuba City: VACANT Prosecutor, P/N 291150 – Advertising, Closing Date: Open Until Filled; CLASSIFICATION JVA closed; pending grant approval to change position from senior VA to VA.

Window Rock: HIRING Records Clerk, P/N 244397 – Advertised, received 19 applications; qualification assessments complete; interviews pending resumption of Executive Branch/DPM operations.

White Collar Crime Unit: RECLASSIFICATION JPO to Prosecutor, P/N 202268 – Reclassification completed; JVA will be ready on Tuesday 6/29 for advertising; RECLASSIFICATION Attorney to Investigator, P/N 204738 – Pending with DPM since 01/24/2020.

Office of the Chief Prosecutor: VACANT Chief Prosecutor, P/N 297943; advertising OUF; RECLASSIFICATION Senior Legal Secretary to Administrative Legal Secretary, P/N 226349 – Reclassification completed; application sent to OCP for assessment on 6/25/20.

Program Challenges: The programmatic challenge highlighted this quarter is with the Department of Personnel Management (DPM). The primary goal for FY20 has been to restructure OTP, and we received the general funding to do so. As reported previously, the OTP wishes to equalize and increase the salaries for all its positions. This requires reclassifications of many positions to simplify the program's structure, and also requires salary renegotiations for most of the legal team. This is necessary to recruit new team members, to retain our current team, and simply to create a fair program that reflects our work. Advocates and attorneys do exactly the same work, and yet attorneys are paid at a significantly higher rate than advocates simply for meeting the requirement of being state-licensed, which none of the attorneys use in their OTP roles for the Navajo Nation. Senior legal secretaries and legal secretaries, office technicians and records clerks share responsibilities, yet the classification plan has created an unequal and unfair scheme in our office. A number of classifications for new positions and reclassifications of current positions have been pending with DPM since before the closure of the government on March 13, 2020. Likewise, there are ongoing arguments with DPM about whether "prosecutors" are even legal positions. Unnecessary delay is caused by what the OTP perceives as DPM's inaccurate interpretations of the NNPPM, without any written justification or procedure. JVA postings are delayed, and once posted the links are frequently wrong. PAF approvals are significantly delayed. Every request from the OTP to DPM is assigned to a different DPM technician, which means that there is not one person to work with in implementing a holistic restructure nor anyone who understands the OTP who can assist us with this project. The same arguments, problems and delays occur repeatedly. These problems have not only delayed our program restructure, but frequently lead to tedious disputes on the eve of payroll to get current employees paid.

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The DPM is over-burdened and under-resourced, and may play an important role within the Nation with respect to other programs. But, the DPM should not have authority to dictate the structure of a program like the OTP which operates as a sophisticated and professional law firm in 11 offices throughout the Nation. The OTP's needs are not understood – nor need they be – by the DPM, and the OTP has outgrown DPM's HR expertise. Therefore, the OTP and OAG jointly recommended to its oversight committee (LOC) that OAG be allowed to oversee its own personnel management requirements, which would include both DOJ and OTP. The LOC is receptive to this resolution, and it will likely require legislative amendments that the OTP (hopefully with OAG's support) intends to pursue in the next quarter.

Technology/JustWare: Prosecutors were encouraged to take time during the office closures to comb through JustWare and clean up the old cases that need to be changed from “open” to “closed” due to statutes of limitation. This will be an ongoing project. Ms. Henry worked on the records in Shiprock, Tuba City and Chinle in an attempt to get some statistical backlogs out of those districts. In the coming quarter, Ms. Henry intends to do the same for the other districts, which will make the JustWare statistics even more accurate. Ms. Henry and Melanie Price (Judicial Branch) worked together to resolve some JustWare statistics reporting problems that will also make reporting easier and more accurate. Ms. Henry was tasked to generate a variety of statistics reports in response to projects by other entities this quarter. Although other NNIJISP partners also use JustWare, the OTP's willingness and ability to share statistics leads to numerous inquiries for them. Therefore, it's incumbent on the OTP to make our statistics as easily-minable as possible through JustWare.

It is ironic that JustWare issues are finally being resolved within the OTP, as it has learned that the platform will no longer be supported some time in 2021. Ms. Henry has talked a little with Ben Mariano (Judicial Branch) and other NNIJISP partners about future plans, and it seems that the Judicial Branch is looking at migrating to eCourt. Journal Technologies also produces eProsecutor, which is a criminal justice case management system that may be ideal for OTP and would sync well with eCourt. It is likely that our JustWare data would be portable to eCourt and eProsecutor, as both are produced by the same parent technology company as JustWare. We will need to re-evaluate with our other NNIJISP partners, and review other criminal justice case management systems.

The OTP hopes that as programs are required to use more technology than they are accustomed to due to Dikos Ntsaaígíí “new normal,” we continue to progress with issues like information sharing and electronic filing and correspondence, rather than to regress to the old ways.

The OTP worked with OAG/DOJ and submitted a proposed budget regarding CARES Act funding on May 11th, within which a significant amount was requested for IT/equipment packages for each of our team members in our 11 offices. Those packages were carefully designed by Kyle King, and it is important to OTP that those packages be purchased to remain fully operational into the future. The OTP does not have nearly sufficient general funds to purchase the packages, and are hopeful that the OTP's CARES Act funding request is approved as soon as possible.

Example: if all offices were equipped with a comprehensive video conferencing kit (~\$20,500.00/unit), victims, witnesses and families could come to any of our offices and use a dedicated room to speak via video to any of our prosecutors no matter where the prosecutor was working. Similarly,

as courts remain closed and/or to assist a victim in not having to sit next to an abuser in a small courtroom, victims and witnesses could participate in court via video from any of our district offices. For OTP, the silver lining of the COVID-19 pandemic must include the ability to better serve and protect our communities within the criminal justice context.

Office of the Chief Prosecutor (OCP)

Eveline Curley-Sandoval, Erica Christie and Cindy Roanhorse have rotated through the office on separate days, as most of the files they need are physically in the office rather than kept electronically.

Eveline Curley-Sandoval, Senior Programs & Projects Specialist: Eveline completed two budget transfers and the necessary PAF documentation to extend temporary employment for two records clerks. Both positions have been established as permanent, but the hiring process is stalled due to the office closures. Both temporary team members are extended and funded through September 30, 2020. Eveline advised and provided documentation to correct the business unit ending dates for TIWAHE grant-funded team members, so that those prosecutors would have uninterrupted payroll. Additionally, Eveline completed a proposed budget for personnel/salaries for the CARES Act funding (operational funding was jointly requested with DOJ), continues to keep bills paid and timesheets submitted, and assisted with qualification assessments for some recently received employee applications. Eveline has been busy picking up mail from the Window Rock Court and Window Rock Detention Center, scanning those documents and emailing them to the appropriate Window Rock office staff. Another project Ms. Sandoval has been working on is updating OTP's annual performance evaluations and sending documents to supervisors who need to complete them.

Kyle King, Senior Network Specialist: Kyle has worked full-time remotely since March 16th, and continues to work with team members as they experience internet, software and equipment problems. Access to certain programs (JustWare, Sharepoint) when not directly connected to a navajo.org domain require the use of a VPN, and our team has experienced repeated problems with Sonic Wall NetExtender configuration and setup. Kyle also continues to support Tasheena Begay at DOJ with DOJ/OAG IT issues, including laptop, network printers, email spam, MS email accounts and software installation/reconfiguration and setup. Kyle continues to attend regular (now-online) meetings to keep OTP up-to-date and involved with our IT projects including Tribal Access Program (TAP), Navajo Nation Cyber Team, and DIT, and a Navajo Nation IT Strategy Workshop.

Erica Christie, Administrative Services Officer: Erica completed and submitted the OVC budget modification based on an approved Grant Adjustment Notice (GAN) that was approved by the USDOJ. Once the budget modifications are approved through OMB we will be able to expend funds to purchase equipment and lease GSA vehicles for the Victim Advocates that are pending hire. Erica also completed and submitted a budget modification for the TIWAHE grant to change "attorney" to "prosecutor;" the modification was approved by OOC and is now pending with OMB. This modification requirement came as a surprise to the OTP, as we sought and received approval from our grant administrator to hire "prosecutors" into these positions and the PAFs were approved by DPM months ago. For some reason, and on the eve of payroll, two prosecutors were flagged as "no check" due to the attorney/prosecutor discrepancy. Erica and Eveline's immediate action on the budget modification prevented payroll interruption.

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Cindy Roanhorse, Senior Legal Secretary: Cindy was working from the office for the first part of the quarter, and always instrumental in preparing RDPs, picking up mail throughout WR and distributing electronic copies where necessary, and returning voicemails left at the OCP. Cindy quarantined at home for a potential COVID-19 exposure, and subsequently sprained her ankle, requiring her to remain on administrative leave. Cindy participates in conference calls and continues to advise remotely about the projects she is involved in, but she does not have consistent internet access from home.

Jennifer Henry, Acting Chief Prosecutor: Jenn has primarily worked from the Ramah Office to minimize contact/exposure concerns from those working at the OCP in Window Rock. Jenn continues to support all the team members throughout the offices, act on administrative matters, and conduct the affairs of the Ramah district. In addition to its regular activities, the OTP has been involved in a variety of other projects it would not ordinarily find itself involved in such as compiling charging statistics and reviewing draft language for a UN Special Rapporteur document that included the impact COVID-19 has had on crimes against vulnerable Navajo populations; providing/reviewing Navajo Nation comments for submission about the Juvenile Justice Reform Act and Operation Lady Justice Task Force; working with HCOC and OPVP on a secured alternate care sites project using two juvenile detention centers; responding to numerous citizen complaints/concerns about all sorts of issues forwarded by Leadership; and drafting legislation at the request of delegates and standing committees. Jenn has also enjoyed a tighter-knit working relationship with LaTonia Johnson (DOJ/HSGU) as they have worked through ICWA transfer petitions, a /troubling dependency case (seeking outside counsel in Pennsylvania) and coordinated ICWA training through Casey Family Foundation.

The issue of Dineh Benally's hemp production and associated activities became a focus this quarter, and Jenn met with a number of people to report about THC testing issues in the Navajo Nation, provide updates on the pending civil and criminal proceedings, and to assist in legislative amendments to resolve some of these issues moving forward.

In March, Jenn established a dedicated OTP cell phone to answer questions by the public – or anyone – regarding its services during Dikos Ntsaaígíí -19 and about citations received for PHEO violations. Jenn continues to answer this phone 24/7.

Jenn has also continued to teach and participate in presentations, including an Academy for Justice – ILP Podcast episode about the impacts of COVID-19 on the Navajo Nation Justice System, a QuarantICA webinar about the enforcement of COVID-19 curfews/lockdowns, and an educational webinar forum to combat hate and hate crimes in the Navajo Nation. The Navajo Police Training Academy, Class 55, began on June 15th, at which Jenn regularly provides training on the Navajo POST-certified law block topics.

White Collar Crime Unit:

The WCCU has been significantly impacted by the office closures. Frank Brown, Senior Investigator, has been on administrative leave due to underlying comorbidities associated with COVID-19, and therefore unable to continue investigations. The OTP has had an investigator position

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pending classification with DPM since January 2020. Brandon Bitsuie, Attorney, has not been able to meet face-to-face with witnesses to conduct depositions or interviews. Brandon issued investigatory subpoenas to Dineh Benally and two of his companies this quarter, and will be able to review the large number of documents we anticipate receiving pursuant to those. Joni Pino-Begay, Office Specialist, has pivoted amazingly into providing legal secretary support for the Window Rock district office, and without her hard work that office would have struggled. The WCCU did not file any new complaints this quarter, and has received a number of referrals which are under investigation to the extent possible during the office closure.

Alamo and To'hajiilee Districts: The district staff includes Marguerite Charley, Senior Legal Secretary; and Cathy Begay, Senior Prosecutor. Marguerite is providing remote support for the Shiprock district office, as well as for Alamo and To'hajiilee. This quarter there were no new children's cases referred by DFS. There was a multiple stabbing incident in March, and Cathy filed criminal charges against and obtained an arrest warrant for the suspect, who fled the scene. The suspect was taken directly into federal custody after he fought with Navajo Police and the FBI during the arrest. This situation is one of several this quarter that raises red flags in our New Mexico district offices about federal circumvention of our detainer process.

Chinle & Dzil Yi Jiin Districts: The district consists of Tyson Yazzie, Senior Prosecutor; Shirley Bedonie, Senior Legal Secretary; Garveda Harrison, Records Clerk; and Ruby Benally, Prosecutor (TIWAHE/juvenile). Tyson, with the assistance of Chinle Probation & Parole Services and DBNHS, was able to release 15 inmates previously in custody to Infinity Group Homes residential group home for substance abuse treatment. Tyson also successfully entered a plea agreement with a defendant accused of Criminal Nuisance (curfew violation) in the Dzil Yijiin district, which resulted in a 30-day jail sentence. This defendant had prior criminal convictions, and appeared for arraignment on the Criminal Nuisance charge after being arrested for a Violence Against Family Act offense.

Crownpoint and Pueblo Pintado Districts: The district staff consists of Vernon Jackson, Prosecutor; Ryan Sandoval, Prosecutor (TIWAHE/juvenile), and Tamara Begay, Senior Legal Secretary. Tamara is providing remote support for the Shiprock district office, as well as for Crownpoint and Pueblo Pintado. Mr. Sandoval was scheduled to take the Navajo Nation Bar Association exam in March, which has been postponed to August. Vernon worked on a federal detainer issue in which defense counsel admitted that the Navajo Nation had proven all components necessary for transfer to federal custody, but that the district court should nevertheless certify questions to our Supreme Court about whether the detainer statute complies with Diné Bi Beehaz'áanii. The OTP objected to the certification of questions because the specific issue does not meet the threshold for our Supreme Court's consideration, and we are waiting for a decision. Ultimately, this is an interesting legal and philosophical question (regarding the death penalty, among other things), but it raised a serious red flag about our New Mexico federal partners' willingness to circumvent the detainer procedure. In summary, when the Crownpoint district court initially continued the detainer hearing to focus on the issue of these certified questions, the FBI and New Mexico US Attorney threatened to physically remove the defendant from the Crownpoint Detention Center on a federal writ. This is reminiscent of our Arizona federal partners recently threatening to arrest any Navajo employee who "stood in the way" of a transfer of custody on a federal writ alone. OTP was able to talk our federal partners, and by convincing the US Attorney that the defendant remains in custody and that it is in the best interests of the partnership for the Navajo Nation to exhaust its legal process, even if it includes certification of questions to our Supreme Court. As with the situation

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in To'hajiilee, though, it highlights the federal partners' growing impatience with our detainer procedures, their willingness to try to circumvent them, and our need to prioritize internal discussions about either statutory amendments and/or judicial education about the intent and implementation of the statute.

Dilkon District: The district consists of Brenna Hanley, Prosecutor and Althea Bezahaloni, Senior Legal Secretary. The “speed bumps and a steep acclimation period” with the new judge in this district (as described last quarter) continues. Our relationship with the Dilkon court has deteriorated and we therefore chose to remove our office from the space-sharing agreement in the courthouse a few weeks ago. The space was too small, and the court stopped providing due process by way of notices of hearing to our office because we were in the same building, and could be summoned to hearings without advance notice, and the Court sought to direct certain activities of the OTP and was uncooperative by declining to provide a key to the courthouse to Althea, limiting her ability to work outside of regular business hours. We hope that by leaving the courthouse we can grow those relationships again into where they should be, but we now have no office space in Dilkon. Jenn and Brenna are exploring some options, but this search has been ongoing for some time, and the options are sparse. NPD has obtained a modular classroom that is currently in Farmington, NM, that we could use if we able to move it to Dilkon. Aside from the funding problem that poses, Jenn has reached out to the Dilkon Chapter President to inquire about permanent space for building. We are thankful that this [temporary] homelessness occurred during a period when our offices were closed to the public, and temporary contingency plans are in place should we not have a physical office available when our offices reopen to the public.

Kayenta District: The office consists of Megan Horning, Attorney; Charmaine James, Prosecutor; Chandra Kinlacheeny, Legal Secretary; and Ericka Joe, temporary records clerk. Ms. James was scheduled to take the Navajo Nation Bar Association exam in March, which has been postponed to August, and she participates in Megan's Bar Study Group. Megan filed a petition pursuant to the Health Commitment Act this quarter, which is OTP generally refrains from doing unless there is no other way for us to help a defendant. Megan was able to coordinate with IHS and DOC to get the individual to a Level 1 psychiatric care and in a long term treatment center, where she's receiving needed medication. This case is ongoing. Megan also proceeded with a competency evaluation in a criminal case. She was able to obtain an evaluation but not able to use the evaluation and associated court order to place the defendant in an Arizona mental health treatment center. This case and the Health Commitment Act case highlight the need for legislative or rule amendments and/or significantly more cooperation between Navajo Nation and state programs. Megan received several referrals from DFS for dependency actions, at least two of which were due to the COVID-19 deaths of parents. Megan continues to spearhead the NNBA exam study group, including developing reading lists and practice essay questions, and providing feedback on the mock essays. Ms. Horning leads essay writing sessions as well as sessions on Navajo Nation case law.

Ramah District: The district consists of Jennifer Henry, Attorney; and Sylvia Kelsey, Senior Legal Secretary. Jenn has filed criminal complaints against 8 violent offenders this quarter, all of which involved seeking preliminary denial of bail. She works closely with the Ramah Navajo Criminal Investigator, who will be presenting these matters to the US Attorney's Office for federal prosecution. Jenn and the CI worked together to seek and execute two search warrants in conjunction with a particularly violent incident, and were able to accommodate the needs of the victim despite the office closure. A juvenile who has been in the custody of Ramah Navajo Social Services for more than two years, and against whom there are also numerous delinquency petitions, turned 18 this quarter. The week before his birthday, he was detained while intoxicated for a curfew violation and was in detention

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in the Crownpoint Juvenile Detention Center. The Court ordered he be held until his 18th birthday, and then released, and all juvenile cases against him dismissed. However, his birthday fell on a weekend during a lockdown, and Jenn was worried about him being released in Crownpoint and trying to make his way back to Ramah – without family or friends to pick him up and he does not have a physical placement or home. With the assistance of Crownpoint Juvenile Detention Center and Ramah Adult Detention Center, we were able to get a court order that got him transported back to Ramah and then released as soon as the lockdown was lifted. Unfortunately, the now adult has already resumed his criminal activity and has been charged as an adult since his birthday.

Shiprock and Aneth Districts: The district staff consists of a Karen Bernally, Attorney and Davena Sam, Prosecutor (TIWAHE/juvenile). Ms. Sam was scheduled to take the Navajo Nation Bar Association exam in March, which has been postponed to August; she participates in Megan’s Bar Study Group. There is not support staff for Shiprock/Aneth, and Tamara (Crownpoint) and Marguerite (To’hajiilee/Alamo) have worked hard to provide remote support, and without them this office would not be functional. A senior legal secretary candidate was selected for an OBI check last quarter, which is on hold due to the OBI office being closed. We received applications for the legal secretary position as well this quarter, completed the qualification assessments, and look forward to a fully staffed office soon. Karen was able to close two dependency actions this quarter, which is a big accomplishment. Dependency actions in this district tend to be long-term cases, and these were both successfully closed with good outcomes for the children. As reported in previous quarters, this office has been significantly disorganized for years. Karen has been making headway, and we are looking forward to a new support team here to implement a more functional and efficient system. Jenn, with Karen’s permission, culled through the district’s JustWare records and was able to close hundreds of pending and open cases that should have been closed years ago. Completing this cleans up our electronic case management system and provides a more accurate/realistic picture of the district when viewed through JustWare. This project is ongoing.

Tuba City District: The district staff consists of Marie James, Prosecutor; Philandra Adson, Senior Legal Secretary; and Jerriellane Edwards, Records Clerk. Marie was able to arrange residential treatment for 6 individuals this quarter, which is a significant accomplishment. The OTP is always proud when we can facilitate treatment in lieu of incarceration in appropriate cases, especially in light of COVID-19. Unfortunately, one of the individuals fled during transport to the residential treatment center, was apprehended, and was remanded to custody at the detention center.

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. Window Rock is a hectic district office, with the largest team. The team’s routine has been thrown off due to the office closure, and this is the district that has had the hardest adjustment period in terms of telephonic court hearings and coordination between prosecutors and support members. Jane works ever-diligently, head down and without complaint, and continues to review incident reports, file criminal complaints and negotiate plea agreements. Jane’s challenges in working from home, like some others, include lack of work space and equipment. Ella was able to successfully close a 2016 dependency action after presenting final hearings for Mikki, who is conflicted out of the case. Ella was able to facilitate a defendant’s admission to residential treatment after he was sentenced to a 365-day jail term. She also successfully settled some cases scheduled for trial, and continues to respond to defense counsels’ consistently heavy motion practice. Ella gave a presentation about Navajo Criminal Law and Navajo Court proceedings

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to 8 legal interns from DNA People’s Legal Services; the interns are located in Florida, New York, Connecticut and Illinois. Mikki, like Jane, is quiet and diligent and simply continues to do her work from home in a positive way as if the pandemic does not exist. It is a challenge for her and the DFS workers to present verbal reports and recommendations to the Court telephonically, although they are getting along with the new judge in Window Rock who presides over children’s cases. Mikki’s primary challenges in working remotely are accessing her case files through JustWare and reconciling her SharePoint calendar with the monthly docket provided by the Court, which frequently conflict. Brandon prevailed in a motion to deny bail to a homicide suspect. He also facilitated a juvenile’s admission to residential treatment; unfortunately, the juvenile was discharged for violations at the treatment facility.

OVERVIEW OF QUARTERLY STATISTICS

This quarter, the Office of the Prosecutor has continued to review and upload the reports/complaints received. However, due to the Judicial Branch’s limited services, we have not filed any complaints other than those wherein the defendant is in custody or wherein we have grounds to seek a warrant simultaneous to filing the complaint. The reasons for this are practical: 1) NPD is only serving summons/complaints in the most serious cases (and those for which we filed are already in custody, thereby easily served); and 2) the courts are operating with minimal staff and doing telephonic hearings only – to file the typical number of what could be considered “petty offenses” would clog the court system during this difficult time.

We have included statistics regarding the number of complaints we received for violations of the PHEOs. Those complaints are being issued as citations and filed as Criminal Nuisance in violation of Title 17, Section 486. Each citation issued by NPD has a return date at the bottom of the citation that functions as an Agreement for Release on Personal Recognizance to that date. On the return date, defendants are expected to return to Court for arraignment on the complaint/citation filed. The return dates are dates in the future – some as late as summer 2021. Therefore, citations are not being filed by the OTP with the courts until those return dates near.

During this quarter, since the OTP could not file its usual number of new cases, it also focused on reviewing the JustWare backlog and cleaning it up. The statistics for “cases closed” reflects that clean-up effort, which will be ongoing as we strive for a robust and accurate electronic case management system.

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ADULT

District	Total Cases Uploaded	COVID Citations	Cases Filed	Cases Closed
Alamo	2	2	0	0
Aneth	20	7	0	4
Chinle	257	119	27	244
Crownpoint	170	132	12	0
Dilkon	10	1	0	0
DzilYijiin	115	59	13	35
Kayenta	245	138	163	281
Pueblo Pintado	35	35	0	0
Ramah	187	57	8	243
Shiprock	197	67	0	327
Tohajilee	31	27	1	0
Tuba City	827	375	35	0
Window Rock	61	21	6	59
TOTALS:	2157	1040	265	1193

JUVENILE

District	Cases Uploaded	Cases Filed	Cases Closed
Alamo	0	0	0
Aneth	0	0	0
Chinle	2	0	9
Crownpoint	8	4	1
Dilkon	4	4	0
Dzil Yijiin	10	9	0
Kayenta	6	4	12

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Pueblo Pintado	2	2	0
Ramah	2	1	4
Shiprock	0	0	3
Tohajillee	1	0	0
Tuba City	9	6	140
Window Rock	1	1	0
TOTALS:	45	31	169

FINANCIAL REPORT

3rd Quarter - Office of the Prosecutor Financial Information						
Funding Source	# of Staffing	# of Vacancies	FY2020 Personnel Allocated	% of Personnel Expended	FY2020 Operating Allocated	% of Operating Expended
BU #104005 Prosecutor	42	13	\$3,116,360.00	48.56%	\$275,576.00	31.7108139%

3rd Quarter – OVC						
Funding Source	# of Staffing	# of Vacancies	FY2020 Personnel Allocated	% of Personnel Expended	FY2020 Operating Allocated	% of Operating Expended
BU #K190800 OVC	0	7	\$320,194.00	.00%	\$243,933.00	.00%

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3rd Quarter – TIWAHE						
Funding Source	# of Staffing	# of Vacancies	FY2020 Personnel Allocated	% of Personnel Expended	FY2020 Operating Allocated	% of Operating Expended
BU #K190770 TIWAHE	4	1	\$441,753.00	20.98601%	\$95,6790	13.00674%

B. DOJ Units

This quarter, DOJ received 151 Requests for Legal Services and completed 217. The completed Requests for Legal Services increased this quarter partly due to electronic submittals. 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). The

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government shutdown resulting from the Covid-19 pandemic brought forth a significant amount of work for CU. With 65 of the 110 Chapters being not governance certified, CU was relied upon heavily to provide guidance in a legal and non-legal sense to allow Chapters to minimally function. Legal assistance and workload for the other 45 governance certified Chapters remained steady this quarter.

As reported in the second quarter, the Division of Community Development was designated to lead the “Chapter Branch” under the Operations Section of the Navajo Nation Health Command Operations Center. Initially, there continued to be a lot of work in the third quarter but a change in the HCOC structure in early May also decreased CU’s workload related to the HCOC Chapter Branch. Nevertheless, CU’s workload remained very high. This quarter, the CU has engaged in the following notable projects:

1. CAP-19-20: In late March, CMA-09-20 was signed into law which allowed Chapters to conduct Chapter meetings with a minimum quorum of three Chapter Officials. CMA-09-20 did not address many of the pending questions and therefore CU coordinated with the Office of Legislative Counsel to draft legislation 0082-20. This was passed by Council and became CAP-19-20. Initially, CAP-19-20 was vetoed, but on May 15th, Council voted to override the veto. On May 26th, CU issued a comprehensive memorandum to all 110 Chapters covering many issues including but not limited to:
 - a. The need for every Chapter to plan and develop a mitigation plan to ensure safety measures are taken to limit the spread of Covid-19.
 - b. Guidance on how Chapters can conduct a three quorum chapter meeting including the procedures on how Chapters can pass resolutions on matters outside those limited under CMA-09-20. Some Chapters seem to comply as some have submitted requests for DCD/DOJ review of certain Chapter meeting agenda items to ensure that they can properly act on them. The memorandum also provides guidance on a host of other items including the meeting notices for telephonic chapter meetings, pro-tem Chapter officials, etc.
 - c. Guidance on the application of CAP-19-20 in allowing Chapter Officials to execute certain “executive” functions of the Chapter while some of the Chapter staff were on paid administrative leave. In particular, procedures on how Chapters can procure goods and services for this emergency and procedures to address stipend payments for Chapter meetings held while the administrative staff were on paid administrative leave. In mid-April, all Chapter staff were deemed essential employees but they were limited to perform only essential services.
 - d. Guidance on CMY-36-20 which was a supplemental budget appropriated to many chapters for emergency spending but CU received many questions about it including the restrictions. A supplement to the normal Chapter emergency priorities and the emergency procurement procedures were also developed in CAP-19-20 and further explained in the memorandum.
 - e. Chapter Public Employment Program (PEP). When the Navajo Nation Chapter Emergency Plan was implemented in March, there was some reliance on volunteers and some Chapter expressed interest in paying their volunteers. As a result, CAP-19-20 provided that option. In CU’s May 26th memorandum, CU provided some legal and practical requirements for Chapters to consider before paying volunteers. CAP-19-20 also provided Chapters with the option to provide Special Duty Pay to their employees using their PEP fund account. As such, CU performed

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a great deal of research on the Navajo Nation's Special Duty Pay procedures to ensure that any procedure performed at the Chapter level was consistent with the Navajo Nation's procedures.

- f. Donations. There have been numerous changes to the donation procedures involving donations to specific Chapters. What has remained constant is the need for coordination and cooperation between the HCOC, DOJ, DCD, and the applicable Chapter. The memorandum basically explains how Chapters need to coordinate and report all donations with DOJ, DCD, and the HCOC. In April and May, donations consumed a significant amount of CU time but there has been a significant decrease in workload in the month of June.

2. Plan for Re-opening: In anticipation for the plan to reopen Chapters, CU performed a significant amount of research into back to work plans, CDC guidelines, and related materials in order to facilitate and assist with the development of a reopening plan for Chapters. This is a significant project and ongoing project going into the next quarter. While CU does not expect a plan to be completed by July 6th, CU hopes that with collaboration and assistance from others, a plan will be finalized in the next quarter.

3. CARES Act Funding for Chapters: CU was not asked but has nevertheless participated in certain discussions surrounding this funding as it relates to Chapter issues. Mostly, CU provided insights to the Tax & Finance Unit. TFU provided training on the CARES Act Funding to the ASC staff on June 30th.

Other Activities

Teleconferences:

1. ASC teleconferences every Tuesday and Thursday. Additionally, provided a six-hour training to the ASC on CU's May 26th memorandum addressed to all 110 Chapters.
2. A few of the following: a) OPVP teleconferences for Chapters; b) Speaker's teleconferences for Chapters by Agency; c) Delegate E. Yazzie's teleconferences for District 13 Chapters; d) Delegate Freeland's teleconferences for Region 8 Chapters; e) Baca-Gallup Region Chapters; f) Coalmine Chapter.
3. Council and Naabikiyat'i and RDC Meetings.
4. Commission on Navajo Government Development: 6/5 and 6/19.

CU attended the following Continuing Legal Education Courses:

1. No Fooling, Covid-19 is Serious for Employers (April 1st);
2. Legal Ethics – Attorney Competency (April 9th);
3. Legal Challenges for Tribal Attorneys During Covid-19 (April 29th);
4. Productivity in the new Normal (May 6th); and
5. When the Government is the “Organizational” client – The Complexity for Tribal AG Offices (June 24th).

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Critical Issues

1. Attorney vacancy. Only one applicant who is a recent law graduate applied. There are plans to interview the applicant as an attorney candidate next quarter.
2. Need more staffing. DCD expressed willingness to create new staff positions for CU.

Accomplishments

1. Assisted with the drafting of CAP-19-20, which addressed many of the legal questions I was receiving directly and indirectly from Chapters in the months of March and early April. This accomplishment includes the issuance of a memorandum addressed to all 110 Chapters.
2. Educating employees and officials. On April 9th, I sent an email to numerous Council Delegates explaining the history and significance between a governance certified Chapter from one that is not. On April 22nd, CU responded to Bodaway-Gap Chapter's assertion that Chapters are under the Legislative Branch. The Speaker's Office and OPVP were included in CU's response educating all recipients on 1 NNC §2 which expresses that Chapters are not under any of the three Navajo Nation Branch governments.

Economic/Community Development Unit (ECDU)

ECDU is now being led by Acting Assistant Attorney General and Principal Attorney Katherine Belzowski. Assistant Attorney General LaTonia B. Johnson transferred to the Human Services and Government Unit (HSGU) this quarter. Ms. Belzowski manages one Attorney, two Attorney Candidates and one Legal Secretary. 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:** 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. ECDU reviewed the third year agreement between NTUA and the CPMD for Year 3 Sihasin projects. 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.

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2. CARES Act Procurement: ECDU has been working with DCD to figure out how to use CARES Act funding in conjunction with other funding sources. DCD has a number of projects that use multiple funding sources. In order to be compliant with these funding sources DCD must follow the Navajo Procurement Act. CPMD will need to follow the CARES Act Procurement Regulations that were passed by Council. This causes complications in regards to how CPMD contracts out projects, as CPMD will need to follow these CARES Acts Procurement Regulations in order to make sure it is in compliance for audit purposes. However, many of CPMD projects have multiple funding sources, including Capital Outlay and Sihasin funds. This means CPMD has to navigate which procurement process it uses for its projects. The procurement process for Capital Outlay is not the same procurement process for CARES Act funding. If CPMD does not adhere to the proper procurement process it runs the risk of a negative audit finding from its funding source. ECDU has been working with this procurement issue in regards to a contract DCD wants to enter into with NECA. DCD is looking to do an emergency procurement for the NECA contract but is running into issues with trying to use CARES Act for the contract because the CARES Act Procurement Regulations do not allow for emergency procurement. ECDU has also reached out to OOC to coordinate efforts on approving an emergency procurement request from DCD.

3. Construction Contracts: ECDU continues to assist the CPMD with its construction contracts through both final review and indication of legal sufficiency and through pre-review of project elements or contract language as needed by Project Managers. Even during the government shutdown, CPMD has been able to submit full contract packets for review via email and online file transmission, and has continued to do so. ECDU reviews the online file as if it were a paper copy and work with the Project Manager to ensure all aspects comply with Navajo Nation legal requirements.

Complication/concerns: One issue that has come up repeatedly on contracts this quarter is a request for the Non-Taxable Transaction Certificates (NTTC) for work done by architects in the state of New Mexico. This has impacted multiple contracts. ECDU has worked with the Office of the Controller to determine the best avenue for the NTTC and subsequently, the issue has been referred to the Tax and Finance Unit for clarification. These projects are pending until resolution from TFU of the NTTC request by the architecture firms.

4. Antelope Point – Agreements and Business Site Lease: This quarter ECDU made a presentation to the Naabik'iyati' Committee on the Quadrilateral Agreement and its subsequent agreements. ECDU provided an overview of the history of land and the details the Agreements. ECDU responded to the Delegates questions and concerns about the imminent expiration of the Quadrilateral Agreement and indicated that at this time ECDU is not leading any efforts to extend or revise the Quadrilateral Agreement. ECDU stated that it is waiting for direction from leadership on how it wants to approach the expiration. ECDU also stated that it recommends that the Nation request a short term extension of the Quadrilateral Agreement until the Nation either renegotiates the terms of the agreement or decides to not renew the agreement.

ECDU followed up on a question raised by some of the Delegates about whether the Quadrilateral Agreement was terminated by Council in 2008. Based on the information accessible to DOJ, ECDU did not find any documentation that supported the position the Quadrilateral Agreement had been terminated. ECDU advised the Delegates that there may be additional documentation on this issue in the Office of Legislative Counsel and that if such documentation is uncovered DOJ is happy to revisit the issue.

ECDU is also currently drafting a memo at the request of Delegate Slater laying out the pros and cons of letting the Quadrilateral Agreement expire.

Complications/Concerns: If action is not taken by leadership to request an extension of the Quadrilateral Agreement, it will expire in September 2020. This will result in a lack of a legal basis for all the subsequent agreements that are tied to the Quadrilateral Agreement, including the MOU and Bridge Agreement that cover the business operations at Antelope Point. This could result in the substantial confusion between the Nation and the National Park Service regarding the operations at Antelope Point.

5. 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 EOA and lease have been slow. For the Bashas lease negotiations, ECDU has completed its review of the proposed business site lease. At this time, it is ECDU’s understanding that DED and Bashas’ are just finalizing some non-legal issues with the lease and then they will submit through the approval process. The lease will have to be approved by the DED Approving Committee. The Committee has not been meeting since the Nation closed in March.

Complications/Concerns: ECDU has been requesting updates as to whether the EOAs have been executed for the remaining businesses, has not yet received a response.

6. Trademark Office: ECDU has been working closely with DOJ’s outside Intellectual Property attorney during this quarter to monitor and enforce the Nation’s trademark and address confusion between the Nation and other entities soliciting Covid-19 donations.

Complications/Concerns: The time needed to effectively monitor the Nation’s intellectual property interests is significant. ECDU is addressing concerning accounts as they are brought to its attention. However, a more comprehensive approach would require full time monitoring.

7. Alternative Care Sites: ECDU has reviewed requests regarding business site leasing and the Alternative Care Sites, including 1) how to stop a pending new lease so that a revocable use permit may be issued for an Alternative Care Site; 2) whether a lease modification was necessary to allow a Lessee to grant the use of their site as an Alternative Care Site; and 3) what steps or procedures should be implemented or followed to grant rental abatements to Lessees who were forced to close their businesses because of the pandemic. ECDU also reviewed and redrafted a proposed Memorandum of Agreement between the Navajo Nation and the Navajo Nation Hospitality Enterprise for use of its Chinle, Tuba City, and St. Michaels Inn locations as an Alternative Care Sites or Quarantine locations during the pandemic, and reviewed and redrafted a MOU for its location within the Kayenta Township. All reviewed MOAs were transmitted to the NNHE.

8. Voting rights: This quarter, ECDU worked on various voting related issues. ECDU attended multiple meetings between the Nation, Arizona Counties, and Secretary of State. ECDU attended meetings with the individual parties as well as joint meetings with all the parties. ECDU has taken the lead on confirming the availability of polling locations on the Nation for the counties. The counties have had a difficult time reaching their usual contacts at these locations because of Covid-19 closures. ECDU is working to make sure these facilities are available so that the counties do not close them. ECDU has also been working with the Arizona Secretary of State's Office on an outreach strategy, recruiting poll workers for Election Day, and vote by mail efforts. ECDU has presented at the last three Navajo Council State Task Force Meetings on its voting work with Arizona Counties and Secretary of State. ECDU has provided a written summary to the Task Force on all of its efforts. ECDU has also responded to the Delegates' request for additional information on voting related matters. All of ECDU's efforts in this quarter have been for Arizona. In the coming quarter ECDU will need to check in with New Mexico Secretary of State and Counties to see how their efforts for the General Election are shaping up.

Human Services and Government Unit (HSGU)

HSGU is led by Assistant Attorney General LaTonia Johnson who recently transferred from ECDU. Ms. Becenti manages five Attorneys, two Tribal Court Advocates, and two Legal Secretaries. HSGU assists eight (8) Divisions/Departments consisting of over 65 programs. This quarter, the Unit promoted an Attorney, and hired a Principal Tribal Court Advocate.

This quarter, notable projects include:

1. Agreement between the Navajo Nation and the State of New Mexico regarding New Mexico Parole supervision: HSGU received an agreement between the Navajo Nation and State of New Mexico that would allow the State of New Mexico Parole Office to come on the Navajo Nation and monitor individuals who reside on the Navajo Nation with the assistance of a Navajo Nation law enforcement officer. After discussion with NDPS, it was agreed to include the Judicial Probation/Parole Officer (PPO). HSGU met with PPO and during that conversation, PPO informed HSGU that PPO already has an understanding with the county, state, and federal about parolees that the Navajo Nation PPO would conduct a courtesy supervision. Because this understanding is not reflected in writing, HSGU suggested that this understanding is noted in writing. As a result, PPO agreed to amend the proposed agreements provided by the State of New Mexico and Arizona to reflect the courtesy supervision.

2. NDOC-Serious Incident Reports: HSGU routinely receive copies of Serious Incident Reports (SIRs) submitted to the Bureau of Indian Affairs (BIA). From March 1st to date, HSGU received approximately twenty (20) SIRS and in HSGU's reviews, quite a number of the reports relate to NDOC's daily interactions with COVID-19 positive arrestees/inmates; and NDOC's constant sanitizations of the affected detention facilities and testing of its staff that oftentimes results in self-quarantining as well. What NDOC is dealing with daily does present serious liability and workers'

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compensation concerns, and HSGU is in constant communication, as well, with the Insurance Service Department (ISD) Manager to ensure the respective insurance programs immediately address concerns NDOC or its staff may present.

3. Office of Miss Navajo Nation's Plan of Operation: HSGU received a request from the Office of the President and Vice-President and Office of Miss Navajo Nation to provide an avenue that would allow the reigning Miss Navajo Nation to continue her term after the one (1) year period. After review of the Plan of Operation (POO), HSGU recommended amending the POO to reflect that there is a one (1) year term, and that in certain exigent circumstances, the one (1) year term may be extended and to be approved by Navajo Nation President.

4. 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. For this quarter, HSGU conducted seven (7) case staffings, and sent several cases for legal intervention in the State of Arizona at the request of the ICWA unit. HSGU also filed a petition to transfer jurisdiction from the State of Arizona to the Navajo Nation. The hearing to consider this petition will be considered on July 2, 2020. HSGU will continue to staff cases and answer related legal questions.

Casey Family Program-ICWA training: HSGU and the Office of the Prosecutor reached out to the Casey Family Program to conduct a training on ICWA and Title IV(E). We requested that the ICWA training first be provided to the Attorneys and Prosecutors, and another training specifically for the Social Workers and Case Workers. HSGU and the Office of the Prosecutors attended the ICWA 101 training. HSGU requested 201 training from Casey Family Program. The other training will be held in July 2020.

ICWA Court Roundtable: Casey Family Program invited HSGU and the Office of the Prosecutor to an ICWA Court roundtable to discuss the impact of COVID-19 of tribes being able to carry out their respective duties for the best interest of the child(ren) and the Navajo Nation, and how ICWA courts are handling cases. HSGU and Office of the Prosecutor briefly outlined the effects of COVID-19 to the Navajo Nation.

5. Navajo Nation's Plan to re-open schools: The Navajo Nation BOE will review the DODE plan for re-opening schools currently entitled the "Navajo Nation Roadmap to Reopening Schools" during its July 10 meeting. Currently, the draft plan offers recommendations for a return-to-school plan, which is intended to provide guidance to schools on the Navajo Nation as they work with local school districts to create individualized plans for re-opening. Arizona, New Mexico, and the Bureau of Indian Education have now all released their own re-opening guidelines for schools.

6. Wide Ruins Community School Due Process Hearing: The BOE has yet to schedule the Due Process Hearing for Wide Ruins Community School given the closure of the Navajo Nation Executive Branch. The BOE informed Wide Ruins that the Due Process Hearing will be rescheduled once the government reopens. DOJ did provide a training on the process of the Due Process Hearing to all Board members, which was productive and involved lots of interaction from the BOE.

Complications/Concerns: As stated in HSGU's second quarterly report, delay of the Due Process Hearing was proper under the COVID-19 circumstances. This will be the first due process hearing to take place on the Navajo Nation, and DOJ maintains that there are some potential conflict

of interest concerns given that the BOE and DODE are both arms of the Navajo Nation Government, which is an issue that may be challenged during the hearing.

7. Yazzie/Martinez, NMPED Motion to Dismiss: OPVP has been monitoring the State of New Mexico's motion to dismiss the Yazzie/Martinez Lawsuit. DODE and OPVP maintain opposition to the State's motion to dismiss, citing the argument that New Mexico has yet to meaningfully implement any systemic and notable changes to its administration of public education to Native students. DOJ drafted a public statement for OPVP in mid-April to this effect. In response to legislative action on June 22, 2020, OPVP requested a statement from DODE. DODE reiterated its stance that it opposes New Mexico's motion to dismiss.

Complications/Concerns: OPVP has directed DODE staff to undertake an ongoing analysis of the State's motion, as well as periodic updates to OPVP. Unfortunately, DODE has not been working on any such analysis, nor providing updates. In order to make up for this lack of research and analysis, HSGU has stepped in to provide updates, without the in-depth analysis asked of DODE.

8. Impact Aid: For State FY 2020, the U.S. Department of Education (DOE) determined that the State of New Mexico is not eligible to consider a portion of Impact Aid payments as local resources in determining the State aid entitlements. This is a break from past years, as DOE has traditionally approved New Mexico including impact aid funding in its State Equalization Guarantee (SEG) formula, where the federal funding is included in the overall pot of funding for New Mexico Public Education and redistributed to the local school districts. DOE's decision is positive for the Navajo Nation, as it means schools serving Native students will receive all of their Impact Aid funding in addition to state funding, as opposed to it being redistributed through the State Equalization Guarantee formula. The State of New Mexico intends to appeal this decision, and the Navajo Nation Council would like the Nation to intervene in this appeal and requested DOJ to look into this possibility. HSGU and the Litigation Unit are working to uncover the legal arguments relied upon by DOE to determine if it will be worthwhile for the Nation to intervene.

Complications/Concerns: HSGU's main concern is whether or not it will be worthwhile for the Navajo Nation to intervene, as the Navajo Nation may not have a strong argument for intervention. HSGU will be looking into this concern to determine what the best course of action.

9. Recommendations to the U.S. Department of the Interior & Department of Education for CARES Act Funding: The US Department of the Interior and DOE held a joint listening session on April 30th to gather input from tribal governments on the distribution formula and method for a Bureau of Indian Education fund under the CARES Act. HSGU worked with the Navajo Nation Washington Office and DODE to prepare talking points for the listening session. DODE identified the following primary issues to take into consideration when determining uses for the BIE fund: 1) increasing broadband internet access to students across the Nation so that they may access remote learning during school closures; 2) addressing the heightened wear and tear of school buses due to increased use from delivery of remote learning packets; 3) addressing the increased use of classroom materials to assemble remote learning packets, such as paper, printing, Xeroxing, and copying; 4) providing more meals to students to ensure no Navajo students go hungry during school closures; and 5) investing in cultural resources for Navajo students to strengthen culturally-sensitive education and trauma support for all students experiencing increased grief and confusion during the COVID-19 pandemic.

The Navajo Nation also recommended that Tribal Education Departments should also be included in the funding distribution formula, as they will be directly responsible for distributing the BIE funding, and will therefore see increased administrative costs when administering the funds. The Navajo Nation further recommended flexibility in fund usage and reporting requirements, as well as inclusion of tribal colleges and universities in BIE fund distribution. HSGU and NNWO worked to prepare the talking points and written recommendations to the DOI and DOE.

10. Johnson O'Malley (JOM): The Navajo Nation JOM renegotiated its subcontract with Gallup McKinley County Schools (GMCS) after the GMCS School Board dissolved the JOM Indian Education Committee, contrary to the terms of its existing Subcontract. After extensive negotiations (including HSGU and GMCS attorney Andrew Sanchez) and significant amendments, JOM and GMCS were able to agree to a new Subcontract for the remaining school year. It was not until June 22, 2020 that the Subcontract completed full Navajo Nation review, and the Subcontract has since been shared with GMCS.

Complications/Concerns: The review process for the Subcontract took several months, and GMCS expressed great consternation and concern that it took so long to process. The delay risked GMCS's ability to be reimbursed for all JOM expenses for the preceding school year, as the GMCS fiscal year ends June 30th. GMCS also reached out to the Bureau of Indian Education requesting direct JOM funding, as opposed to funding through a Subcontract with the Navajo Nation. On May 29, 2020, the BIA directed GMCS to ask for a resolution from the Navajo Nation authorizing GMCS to pursue a JOM contract directly. GMCS has yet to take this action. While the relationship between GMCS and JOM is tenuous, HSGU has been working to re-establish a tone of respect and mutual interest to ensure the JOM services to Navajo students are not unnecessarily restricted.

11. Navajo Head Start (NHS): 1303 Plan: On May 8, 2020, the Office of Head Start (OHS) sent an email informing the Navajo Nation that the proposed 1303 Construction Plan for an Early Head Start Center to be constructed in Window Rock was not approved because the budget was unreasonable. Mr. Kadan, the OHS Grants Management Officer, stated that the Navajo Nation's budget exceeded the approved carryover amount for the 1303 Plan. With input from NHS, HSGU drafted a response letter on June 19, 2020 providing a full accounting of why the Nation's 1303 Plan is financially reasonable and offering further arguments for the approval of the plan, requesting OHS to reconsider. The Navajo Nation awaits Mr. Kadan's response.

Complications/Concerns: OHS was aware of the proposed budget for the 1303 Plan in October 2019, yet it did not raise this as an issue preventative of OHS approval until May 2020. Indeed, the Navajo Nation hired an independent appraiser to review the design documents and prepare an opinion on the cost of the building per OHS request. The Navajo Nation abided by each and every request of OHS from February through May, only to be met with disapproval on an issue OHS was aware of in October 2019. Further, OHS only provided this response through an email (not a formal letter providing any appeal rights) due to specific request of the Navajo Nation. HSGU has suggested OPVP involvement for government-to-government negotiations to resolve the many communication issues, as well as systemic incapacity to effectively provide technical assistance and guidance to tribal governments.

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12. HHS Call for Input on Tribal Consultation: On June 10 and 11, 2020, the Health and Human Services, Administration for Children and Families held a virtual Tribal Consultation. HSGU worked with NHS to draft talking points and input on the annual OHS consultation, as well as general comments on the barriers to effective consultation with OHS and barriers for effective Head Start program administration. DOJ is working to finalize the written input, citing both communication barriers and systemic prejudices exhibited by OHS, and will work with the NNWO to submit final comments.

13. Navajo Nation Insurance Commission (NNIC): On April 27, 2020, NNIC conducted a tele-meeting and discussed the following: (1) The EBP third party administrator, HMA, provided a quarterly financial report, and the Group Health Benefit Fund is continuing to do well; at the time of this reporting, the revenue was at \$37.5M; (2) With the positive revenue highlighted above, the NNIC approved a \$6.5M repayment from the Group Health Benefit Fund to the Navajo Nation government, i.e., when the Fund was in a deficit for several years, the Navajo Nation Council (NNC), through three (3) legislations, approved appropriations to help EBP in processing and paying on the claims. Although the NNC legislations did not request a repayment, both the Program and the Insurance Commission deemed it only fair to repay the entire \$6.5M since the Group Health Benefit Fund is currently doing well. In any event, a check for \$6.5M was directed back to the NN General Funds; (4) NNIC approved another \$17.2M to be paid by the Group Health Benefit Fund for a four-month premium holiday covering June 1, 2020 to September 30, 2020 for the Navajo Nation government, and its participating insured Chapters and the enterprises. Thus, neither the employers or employees will pay into any premium costs for employee health benefits, and in this respect, for the Navajo Nation government itself, the employees will not see any deductions for health, life or short term disability payments on their paychecks from July 1, 2020 to October 9, 2020; and (5) NNIC acted on a final approval of NTEC's withdrawal of participation in all three insurance programs (RMP, WCP and EBP).

14. COVID-19 Related Issues: Employee Exposures: Due to reporting (through the media or otherwise) of Navajo Nation employees contracting the virus and/or self-quarantining, HSGU is in constant contact with the ISD Manager to ensure that workers' compensation or employee benefits claims are not unnecessarily denied should they be filed. *Volunteer Release and Waiver of Liability Form*: HSGU spent a considerable amount of time answering questions, researching and developing a Volunteer Release and Waiver of Liability Form for non-tribal organization who are not under the supervision of the Navajo Nation (its departments, enterprises, and Chapters that participant in the Nation's insurance programs). HSGU also provided a written analysis relative to sovereign immunity protection and the availability of liability and workers' compensation coverage for volunteers who are directly supervised by the Navajo Nation in their activities and services.

15. Litigation: HSGU continue to carry over seventy (70) pending litigation matters (tribal and federal courts). *FTCA Cases*: This quarter, HSGU devoted much time in assisting with the preparation of responses to extensive written discovery and finalization of motions in three (3) wrongful death cases, one of which was recently settled by the U.S. The second and third cases, in the meantime, are continuing with additional investigation and discovery practices. *Tribal Cases*: Three (3) new lawsuits were served upon the Navajo Nation this quarter, and we will be filing the responsive pleading as they become due. Most of the scheduled motion hearings, status/pretrial conferences, and trial settings for the other cases were, in the

meantime, vacated due to the government shutdown. We are nonetheless continuing with written motion and discovery practices and filing responsive pleadings as they become due. *Pre-litigation Claims:* In addition to the litigation cases, HSGU is carrying other pre-litigation claims, and within this quarter, three (3) new notices of suit (threatened lawsuit) were served. One of them involves an allegation of unlawful imprisonment and infliction of severe emotional trauma by a claimant who apparently was ordered to self-quarantine due to COVID, and HSGU suspect that the Navajo Nation will continue to see more claims of this type. In addition to the foregoing, HSGU is assisting with some property damage and business interruption claims.

16. Gold King Mine Spill Case: The Navajo Nation’s outside counsel requested assistance in responding to a Request for Production, which among other things, sought “*insurance agreements for coverage of damages the Nation suffered or expenses it incurred as a result of the Gold King Mine spill.*” Since the incident complained of occurred in August 2015, HSGU was able to identify three (3) FY 2015 policies (general liability, property and pollution) which was released in digital forms. Information was also offered that an insured enterprise, NAPI, might have been impacted, and RMP thereby went back on their records and determined no claim was ever filed. Outside counsel nonetheless was provided with the name and contact number for the NAPI insurance liaison to confirm the information provided by RMP.

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 interviewed a candidate for a Senior Attorney position this quarter. This quarter’s notable projects include:

1. Corona Virus Response Issues: Staff Attorneys Jason Searle and Louis Mallette have assisted OPVP and HCOC on drafting Public Health Emergency Orders and development of return-to-work plans. This has involved some complex questions of governmental authority over public schools, enterprises, and Executive Branch employees. As we get closer to actual re-opening, the questions from an employment perspective will become more complicated.
2. CARES Act Litigation: DOJ participated in litigation against the U.S. Department of the Treasury concerning the eligibility of Alaska Native Corporations for CARES Act funding set aside for “tribal governments.” DOJ on behalf of the Nation has participated with two different groups of tribal plaintiffs in the case, discussing legal strategies and providing research support. After an initial win at the preliminary injunction stage, Judge Mehta of the Federal District Court for the District of Columbia on June 26, 2020, ruled that ANCS were eligible. The tribal groups are considering whether to appeal to the D.C. Circuit, and the Chehalis tribal plaintiffs filed a motion for injunction pending appeal to try to stop the distribution of funds to ANCs before they appeal the case.

3. New Mexico Impact Aid Case: LU has been reviewing an appeal by the State of New Mexico to the Office of Hearings and Appeals for the U.S. Department of Education concerning Impact Aid funding. DOE awards such funding to schools serving reservation children, such as Gallup-McKinley and Central Consolidated School Districts, due to the lack of property taxes to fund such schools. Federal law allows a state to deduct such aid if it certifies it has an equalization plan to fund all schools in the state that does not have a disparity in funding of more than 25% from the lowest-funded school to the highest. DOE recently denied New Mexico's certification, concluding the State did not include certain funding in its disparity formula, which if properly included, would create a disparity of more than 25%. The States appealed that ruling. DOJ is reviewing whether the Nation can and should intervene in the appeal.

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: During this quarter there has not been any communication regarding the Project. First, there were issues communicating with outside counsel due to health reasons. Then, there was not any communication from the Department of Forestry or delegates participating in the Project. The biggest concern for the Project now is time. All proposals submitted to the California Air Resources Board (CARB) after November 2020 will be required to show Direct Environmental Benefits (DEBs) to the State in order to remain eligible. While the Consultant believes the Project area (Colorado Basin) will qualify the Project with the new DEBs requirement, it is an unknown variable of Project approval from CARB. Additionally, participation in the Project through CARB requires a limited waiver of sovereign immunity. Due to the COVID-19 pandemic and related issues for the Nation, I am doubtful this Project will be ready by November.

2. Hemp Activities: Research and the status of Industrial Hemp on the Navajo Nation has been compiled. NRU participated in a teleconference with Office of Legislative Counsel and the Office of the Prosecutor to discuss the status of Industrial Hemp on the Nation. Currently, Navajo Agriculture Products Industry has taken the lead initiative to properly recommend regulations to RDC. The San Juan River Farm Board has unilaterally submitted draft regulations to the USDA, which has since been rejected at NNDOJ's request to USDA because the SJRFB does not have authority to act as the Navajo Nation to pass industrial hemp regulations. During the call, Acting Chief Prosecutor recommended Council clarify by resolution, that Council shall be the only body to submit approved regulations. NRU concurred with Chief Prosecutor's position, and also recommended Council identify a department that could assist NNDA because they lack the requisite personnel to regulate Industrial Hemp across the entire Nation. Mariana Kahn (OLC) is making repeated attempts to contact NNDA Manager, but has not been able to make that connection.

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Council believes NNDA should draft the regulations as the foreseeable regulating body. NNDOJ will review for legal sufficiency, and NNDOJ made OLC aware that the regulations need to be drafted by the regulator to avoid creating regulations without practical application.

- a. NAPI: In 2019, 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. This May, Council passed CMY-43-20 that would allow for the extension of the Hemp Pilot Research Project ("Project") involving Navajo Agricultural Products Industry and New Mexico State University for another year and the expansion of the Project area to 5 acres for the 2020 crops season.
- b. Citizen Calls: NNDOJ filed a civil suit against Dineh Benally for improperly cultivating industrial hemp which is currently prohibited until regulations are established. Brian and Irvin have been following-up with individuals who reached out to NNDOJ with complaints about Mr. Benally's actions in the Hogback area. Every person is being instructed to submit any documents and statements that they have for recording, including any police reports.

3. Department of Water Resources: The Department of Water Resources (DWR) was placed in a challenging position as a result of the COVID-19 pandemic. Not only did DWR navigate approved projects within public health constraints, but many donation offers for water-related projects also came though. At the time of writing this report, it is unclear how water-related projects will be handled as a part of the Nation's COVID-19 relief efforts. Furthermore, DWR had several employees refuse to work due to lack of personal protective equipment (PPE) and fear of COVID-19 exposure. The employment issue was resolved through the Litigation and Employment Unit; however, DWR also issued letters detailing certain DWR employees as Essential Employees for purposes of the Nation's Public Health Orders. At the time of writing this report, DWR Essential Employees were still refusing to work due to a lack of PPE.

4. Navajo Gallup Water Supply Project (NGWSP): Despite the slowed construction and limited operations during the COVID-19 pandemic, the Operation, Maintenance, and Replacement (OM&R) Agreement for the Cutter Lateral was signed by the Navajo Tribal Utility Authority (NTUA). The OM&R Agreement governs the transfer of Federal Works from the Bureau of Reclamation (BoR), as NTUA will be the Nation's operator upon project completion. BOR will begin activating the system from Cutter Lateral in phases (by distribution system). According to the Water Rights Unit, the Nation was advised to not sign the Cutter Lateral Agreement until the Ability to Pay study is complete. At the time of this report, I do not believe the study has been completed. DWR continues to work with the chapters to develop a regional water plan in order to secure funding and connect existing systems to NGWSP. An additional note on funding is the fact that BoR will likely reach the budgetary ceiling for NGWSP, which will require additional allocations from Congress.

5. Issuance of Eagle Take Permit to Hopi Tribe: NRU was notified by the Department of Fish & Wildlife (DFW) that DFW issued its eagle take permit to the Hopi Tribe this year after months of negotiations and determining the effects of the public health orders on the Hopi Tribe's process

for gathering eagles for ceremonial purposes. DFW initially resisted granting the permit, and initially wanted to invoke the Joint Commission for an immediate decision regarding how the global health pandemic could affect the permit process this year. However, the Intergovernmental Agreement between Navajo and Hopi is clear, that the Navajo Nation cannot completely prohibit certain Hopi individuals from gathering eagles on Navajo Nation land for ceremonial purpose. The Agreement also prohibits invocation of the Joint Commission prior to an actual dispute. Accordingly, Michael worked with DFW to propose certain restrictions on the gathering process this year, but also stressed that DFW should ultimately issue the permit in order to avoid a violation of the Intergovernmental Agreement. Ultimately, the President instructed DFW to issue the permit, which it did.

6. Mexican Gray Wolf: We received a letter from the U.S. Fish and Wildlife Service (USFWS) inviting the Navajo Nation to participate in the agency's development of a supplemental EIS for the Mexican wolf population in NM and AZ. The letter also lays out the responsibilities of Cooperating Agencies and provides an opportunity to request to remain informed even if not participating as a Cooperating Agency. NRU forwarded this letter to the Department of Fish & Wildlife for comment.

7. Navajo Parks and Recreation Department: The Navajo Parks and Recreation Department (NPRD) significantly limited its operations due to tribal park closures. NPRD worked closely with federal park superintendents to ensure jointly-operated parks adhered to tribal public health orders. NPRD's greatest concern amid tribal park closures are the effects on vendors and tour operators. NPRD submitted an initial request to the Office of the Controller (OOC) to withdraw funds from the Parks and Recreation Enterprise Fund in order to support vendors and tour operators. The initial request was denied and a Resources and Development Committee (RDC) Leadership Meeting was held to address NPRD's concerns. RDC was in support of NPRD's use of the funds to support vendors and tour guides due to the delays in COVID-19 funding disbursement. NPRD's second request was submitted June 11, 2020. As of this report, NPRD has not received a response.

- a. Enforcement of Public Health Orders in Closed Tribal Parks: NPRD requested assistance regarding enforcement of the Public Health Emergency Orders in closed Tribal Parks. On June 22, 2020, it was brought to NRU's attention that an otherwise permitted tour operation was commencing tours in Canyon de Chelly, which along with all tribal parks has been closed to public access since March 14, 2020. Canyon de Chelly is jointly managed by NPRD and the National Park Service (NPS), and NPS has deferred to tribal orders in managing the park during the COVID-19 pandemic. Under typical circumstances, Navajo Rangers would enforce the tour permit requirement; however, NPRD indicated that the operator has a valid permit (permits have not been revoked as a result of the pandemic) but is operating during the Park closure.
- b. EJCDC – Lower Antelope Canyon: NPRD submitted an engineering contract for the Lower Antelope Canyon Parking Lot Project for review. While this project does not fall within the jurisdiction of the quadrilateral agreement, there are significant issues that may be better addressed once the agreement is revised. For example, NPRD would like to have greater control over the river itself. NPRD was issued a permit by the United States Army Corps of Engineers to construct a boat dock at Lee's Ferry; however, it was reported that the National Park Status asserted jurisdiction. This has not been finalized. We requested additional information from NPRD but as of the date of this report, have not received the requested information beyond a copy of the permit.

8. Legislation Regarding Tribal Rights-of-Way: For the past several months, we have been working with General Land Development Department (GLDD) and Navajo Land Department (NLD) in developing their Tribal Access Authorization (TAA) regulations, intended to take advantage of new tribally-deferent Federal policies involving rights-of-way in Indian Country. Michael also assisted the Office of Legislative Counsel (OLC) in the development of the TAA legislation. This month, RDC passed the legislation 4-0 with no amendments. As far as we can tell, the Navajo Nation very well may be the first tribe to take advantage of this new federal policy in passing the TAA legislation. RDC held a leadership meeting on June 22 with GLDD, NLD, NDOT, DWR, IHS, and NTUA to discuss the new regulations.

9. FirstNet MOA with Cellular One and AT&T: NRU helped NLD, GLDD, and the Navajo Nation Telecommunications Regulatory Commission (NNTRC), along with the assistance of Vertical Bridge and other DOJ attorneys, negotiate an MOA (as directed in emergency RDC legislation) for the implementation of FirstNet on the Navajo Nation. We met with officials from Cellular One and AT&T regarding the MOA and successfully negotiated an MOA that is agreeable to both parties and also ensures the hasty implementation of FirstNet on the Nation. The MOA will also provide compensation to the Nation based on a percentage of what Cellular One earns from the project.

10. Horseman Lodge Fee to Trust Application: The Navajo Nation Gaming Enterprise (“NNGE”) acquired approximately 13.8 acres of land near lower Highway 89 in Coconino County, Arizona, referred to as the “Horsemen’s Lodge Properties”. NNGE is working with the Navajo Nation to put the Horsemen Lodge Properties into trust in accordance with the Navajo Hopi Land Settlement Act. The Navajo Hopi Land Commission passed Resolution NHLCMY-5-2020 supporting this selection. NLD was provided the due diligence documents for review. Participated in a teleconference call on June 22 to discuss the status and next steps for the Horsemen Lodge fee-to-trust application process.

11. Proposed NNWO Acquisition: The original plan was to use the Land Acquisition Trust Fund for the proposed purchase. However, there is a difference of opinion between DNR and OOC regarding the availability of funds for this purchase. DNR is looking at fund availability based on the calendar year as stated in the Land Acquisition Act and regulations and OOC is going by the fiscal year (October). OOC claims that DNR has already used funds for the fiscal year and would only have \$1.8 million available to go towards the purchase, and not \$5 million that the Division Director was hoping for. DNR/NLD would have to wait until October or go to Council for approval to dip in the principal. Both options would require more time and DNR/NLD was hoping to move forward with this sale quickly. DNR/NLD submitted the purchase agreement for review and are working on proposed legislation. Participated in teleconference calls regarding the same.

12. U.S. Census Office Permit for space at the Window Rock Fairground: (On-going). The only documentation evidencing an agreement is the federal permit to occupy trust land. The DOA provided a copy of the lease to a working group organized by Deputy Chief of Staff Milton Bluehouse. A meeting was held on February 6, 2020 with the Navajo Office of the Controller (“OOC”), and DOJ in attendance. Since that initial meeting, DOA has not provided additional information regarding an agreement with the U.S. Census Office. The permit to occupy describes \$598,226.16 to be paid, but without defined terms. The permit also designates payments be sent to the “Fair Account...” OOC did not have any information about such an account. It is unknown if any funds have been transferred to the Navajo Nation. NNDA Manager has been unresponsive to NNDOJ inquiries since the February 6th meeting. OOC is unwilling to move forward without a formal process to establish the account for this lease of Fair Ground

lands. Initially both the Fair Office and General Services were providing maintenance services per the agreement, but it is not clear which department is continuing to provide maintenance services.

13. AZ State Property Tax: NRU worked with TFU to issue a memo to NNDA analyzing the applicability of the Agriculture Infrastructure Fund (“AIG”) to pay for Coconino County property taxes. The conclusion was that the AIG fund could be used for such a purpose but must be done through an expenditure plan approved by RDC – however, the deadline to submit such a plan had expired. That deadline is by the end of October each year. The property was scheduled for foreclosure, but it is unclear what the County’s position is. NNDOJ has requested all documents pertaining to the land in question, but has not yet received them.

14. 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 COVID-19 and are trying to continue construction while compensating for the reduction in workforce. 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. NECA has been following the latest development and expert recommendations regarding the COVID-19 pandemic and have been temporarily stopping projects as needed. On April 25, 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 in agreement with the temporary closure.

15. Arizona Department of Transportation (ADOT) – IGA: The purpose of the IGA between NDOT and ADOT is to specify each Party’s respective responsibilities associated with the State’s installation of lighting along US 160, milepost 322.6 to milepost 324.5. The Nation will be responsible for all costs associated with connection to power supply and the ongoing power costs associated with the Project. The State will review the design plans and upon project acceptance by the State, will maintain the system and be responsible for repairs to lighting components, including poles and luminaries.

16. New Mexico Department of Transportation- Amendment #1: The Nation received \$25,000 from NMDOT. This amendment extends the term of the agreement and establishes a new fund reversion date of June 30, 2022. Funding from this agreement will be utilized to plan, design and construct improvements to the North Chapel Hill Road in the Rock Springs Chapter, McKinley County, New Mexico.

17. Voluntary Alternative Housing for Red Water Pond Community: In 2010 the United States Environmental Protection Agency (USEPA) began the Voluntary Alternative Housing Program for residents located near the Northeast Churchrock Mine (NECR) due to the disruptive nature of a large remediation project and the extensive timeline for project completion. NECR remediation was ultimately delayed until 2021, with an anticipated completion date in 2024. The 10-year delay brought additional challenges to the Program. USEPA and Navajo Superfund, with the assistance of Counsel and DOJ, identified the change in household circumstances (e.g. children aging into adulthood and divorce or separation) as a significant hurdle to implementing the Program in a uniform manner. Efforts to develop guidelines related to Program implementation continue.

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18. Uranium Position Statement: In the previous quarter, a significant development was the drafting and revision of a Navajo Nation Uranium Clean-Up Position Statement. Near the end of the quarter, Harrison re-drafted the position statement at the request of the Speaker's office, and submitted the revised draft to them. The Speaker's Office held several public meetings to discuss and receive public comments on the revised draft. As of this report, we have not seen a new draft.

19. Navajo Area Uranium Mines (AUM) Work. During this quarter, all field work on abandoned uranium mines (with the possible exception of a few emergency responses) has been paused, due to the COVID-19 pandemic and the Navajo Nation's closure to non-tribal members. We have continued working on some matters relating to contamination resulting from past uranium mining and processing in the Navajo Nation that are not dependent on field work.

20. 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 cleanup for these mines. Negotiations with the U.S. led to these settlements, under which mine investigation and cleanup activities are fully funded by the U.S. The settlements include provisions for payment of costs incurred by the Navajo Nation in oversight of their work. During this quarter, the Phase Two Removal Site Evaluation (RSE) trust continues its work toward issuance of removal site evaluation (RSE) reports for multiple mine sites, as well as performing risk assessments. Harrison participated in regular conference calls regarding work being done by the Phase Two Trust for investigation and remediation of these uranium mines.

21. 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. Several of the Tronox mine sites are moving quickly toward preparation of Action Memoranda, which officially document the cleanup 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 cleanup options. EE/CAs could be issued as early as this year for several Tronox mine sites. EE/CAs include an evaluation of Applicable or Relevant and Appropriate Requirements, or ARARs. ARARs are laws and regulations promulgated by federal, state, local, or tribal governments. A CERCLA cleanup must either attain or waive ARARs. CERCLA on-site cleanup actions are exempt from compliance with many laws and regulations except to the extent that they are identified as ARARs.

A major accomplishment for the quarter was the drafting and revision of a comprehensive list of Navajo Nation ARARs to be used for uranium mine cleanups. The draft ARARs table will be used as a template for incorporation in cleanup decisions. The table is all-inclusive, and is intended to be tailored to the circumstances of each individual mine site. It is most likely to be used to develop Action Memoranda for several Tronox mine cleanups later this year.

22. U.S. EPA’s Draft Federal Permit for Coal Ash: For several years, U.S. EPA has been issuing various regulations related to coal ash generated from coal-fired power plants. A couple months ago, U.S. EPA issued a proposed draft permit related to the regulation of coal ash. This federal permit would be applicable to power plants located in Indian country, which includes NGS and the Four Corners Power Plant. The problematic issue with respect to this proposed rule is that U.S. EPA is proposing to treat the Navajo Nation as the owner of both NGS and Four Corners and the actual owners of these power plants as merely the “operators”. What this means is that both the Nation and the “operators” would be responsible for obtaining permits for the coal ash. What is even more problematic is that if the “operator” of either power plant fails to comply with the permit requirements, the Navajo Nation would be liable.

U.S. EPA originally required all comments due on April 20th, but extended the comment deadline to May 20th. This Quarter, a request for another extension of the comment deadline was submitted for an additional sixty (60) days, primarily due to the fact that this rule would have huge implications for the Nation and that the Nation could not adequately weigh in on the rule under U.S. EPA’s deadline given everything going on with COVID-19. U.S. EPA granted the 60-day extension and comments are now due on July 21st. April has had several conversations with U.S. EPA Region 9’s attorney about various legal aspects of this proposed rule. There has also been continued discussions with the attorneys for APS, SRP and with Navajo EPA. Navajo EPA and April prepared for and participated in a government-to-government consultation with U.S. EPA headquarters and Region 9.

23. Arizona Corporation Commission Rate Cases: Per the request of President Nez, DOJ intervened in the Arizona Public Service Company (APS)’s ongoing rate case being heard by the Arizona Corporation Commission (ACC). Representatives from Arizona State University (ASU) are assisting the Nation with these efforts, along with outside counsel. April is still in the process of working on her application to appear in this matter pro hac vice since she is not licensed in Arizona. This quarter, we submitted our first set of data requests to APS, made various edits to the request, along with various calls with ASU and outside counsel.

24. 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 Hayookkaal Work Group decided it would be in the best interest of the Nation to do so. The deadlines for potential developers to submit a bid to SRP was June 15th. This quarter, April assisted the Nation to determine the appropriate price to charge potential developers for use of the Nation’s 200MW. This involved various internal discussions, along with conference calls with SRP, technical consultants, outside legal counsel and potential developers regarding the same.

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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. This quarter's notable projects include:

This quarter, due to the Declaration of a State of Emergency by the Emergency Management Commission and Executive Orders issued by President Nez since March 11, 2020 due to the spread of COVID-19 on the Navajo Nation, the NHLSP office has been closed and will remain closed the Nation re-opens. As a result of the closure of NHLSP's office in Tuba City, we have had any walk-in visitors or intakes via either phone or in person. Attorney Candidate Christopher P. Benally and Legal Secretary Brela Multine have been on paid administrative leave. Nevertheless, Mr. Benally has continued to assist the Tuba City Child Support Services office and responded to inquiries regarding the continuation or cessation of child support payments for Custodial and Non-Custodial Parents. Mr. Benally also participated in a conference call with outside counsel Daniel Rey-Bear on June 24, 2020 regarding Mr. Benally's anticipated role in preparation of the planned ONHIR claims (see below) by contacting and interpreting for Navajo relocatees. Ms. Multine has visited the NHLSP office at least once a week to collect and log in-coming mail and perform other necessary administrative duties.

NHLSP Director Susan Eastman is an "Essential Employee", and as such, Ms. Eastman has actively continued to work on Navajo-Hopi legal issues via telecommunications. Her activities have included participating in frequent conference calls with outside counsel; initiating service on the federal defendants via certified mail for the District Court of Arizona appeal filed on March 12, 2020; drafting and sending FOIA requests to ONHIR to support pre-litigation activities; and providing legal advice and assistance to the Navajo-Hopi Land Commission.

Ms. Eastman has also provided assistance to the Donations Branch of the Navajo Nation Health Command Center, as a member of the COVID-19 Donation Branch Staff. Ms. Eastman responded to inquiries from donors by phone and email, and traveled to Window Rock on May 1 and May 22 to assist with answering donor phone calls at the Department of Justice.

1. Advice and Assistance to the Navajo-Hopi Land Commission by NHLSP: Navajo-Hopi Land Commission Executive Director Robert Black asked Ms. Eastman to draft a Non-Disclosure Agreement ("NDA") between the Navajo Nation, Public Service New Mexico ("PNM"), and NextEra Energy ("NextEra") regarding the development of solar power known as the "Bitsi Solar Project" at Paragon Ranch in New Mexico. Paragon Ranch was one of the land parcels selected by the Navajo Nation pursuant to the Navajo-Hopi Settlement Act, which permitted up to 35,000 acres to be selected in New Mexico. NextEra will assist in the development of the project, and PNM is interested in purchasing solar power from the project once developed. Ms. Eastman has drafted and revised the NDA with assistance from DOJ attorney April Quinn, and has sent the revised NDA to PNM and NextEra for further review.

2. NHLSP Funding. Delegate Otto Tso introduced Legislation 104-20 to provide for supplemental funding for FY 2020 to fully-fund its two professional staff positions through the remainder of FY 2020. Legislation 104-20 has passed the Law and Order Committee, the Budget and Finance

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Committee, and the Naa'bik'iyati' Committee. It now awaits consideration before the full Navajo Nation Council. Funding for Attorney Candidate Christopher P. Benally's position was exhausted as of May 22, 2020. Funding for the Principal Attorney position is anticipated to be exhausted at the end of July 2020 under the current NHLSP budget.

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.

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. 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. **COVID-19:** TFU worked on the following matters related to COVID-19: Assisted the AG in drafting the following memoranda related to the NN CARES Fund: 1) Confidential Attorney General Memorandum to Speaker Damon regarding CARES Act Title V Coronavirus Relief Funds being Used to Pay for Existing Sihasin Fund Projects and/or to Reimburse the Nation for CMA-06-20 (\$4M UUFB to NDOH) Expenditures; 2) Attorney General Memorandum to President Nez, Speaker Damon, Command Center, and Controller Kirk regarding Donation Procedure Related To Tax-Deductible Charitable Contributions To The Navajo Nation; and 3) Memorandum regarding President's Line-Item Veto Authority Related to Resolution No. CMY-44-20.

TFU assisted various departments, including OLC, OMB, and NNWO, in drafting the following: 1) NNWO related to the NN Certifications to the U.S. Treasury Department relating to Coronavirus Relief Funds; 2) model NN legislation to establish the NN CARES Fund and to enact the NN CARES Fund Act; 3) model NN legislation for NN CARES Fund expenditure plans; 4) drafted the FMP for the Donations Fund; 5) drafted Expedited Procurement Rules and Procedures for the NN CARES Fund; and 6) drafted application and instructions to apply for NN CARES Funds.

TFU also presented a training to the Naa'bik'iyati' Committee on 5/27 regarding eligible uses of Coronavirus Relief Funds. TFU attended Regular and Special Meetings and Work Sessions with OPVP, BFC, Naa'bik'iyati' Committee, and Council regarding the Coronavirus Relief Funds;

TFU worked with NN Donations Branch of the Health Command Operations Center and 1) developed instructions for Volunteers; 2) drafted Donation Acceptance forms; 3) trained volunteers; 4) assisted OAG in coordinating and supervising DOJ volunteers to staff the Donation Branch;

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5) TFU attorneys and staff volunteered at Donation Branch headquarters of the Health Command Operations Center; and 6) coordinated monetary and supply donations for the Nation's COVID-19 relief effort.

2. FY 2021 Comprehensive Budget: TFU attended Three Branch Meetings and Regular and Special Meetings and Work Sessions of the Budget and Finance Committee regarding planning for the FY 2021 budget process and revenue projections.

3. Arizona liquor license for Family Dollar Store: TFU was asked to determine whether the Family Dollar Stores, located on fee land in St. Michael's, AZ and Tuba City, AZ within the exterior boundaries of the Navajo Nation, can lawfully sell packaged liquor on the Nation if the Arizona Liquor Review Board approves the pending liquor license applications. The Tax & Finance Unit of DOJ, with assistance from the Litigation Unit, drafted letters to the Apache County Board of Supervisors and the Arizona Liquor Review Board to strongly oppose the liquor license application of the Family Dollar Store in St. Michael's.

Complications and Concerns: There is concurrent state and tribal jurisdiction over regulation of liquor within the Navajo Nation. Federal law permits a tribe to regulate liquor sales on its reservation and in Indian country so long as the tribe's regulations are certified by the Secretary of the Interior and published in the Federal Register. The Navajo Tax Commission, with authority delegated by the Council, approved the Navajo Nation Liquor Regulations through TAX-08-208, which were certified by the Secretary of the Interior, and published in the Federal Register in December 2008. State regulation over Indian liquor transactions is authorized and not preempted, by the federal criminal statute 18 U.S.C. § 1161 providing that liquor transactions in Indian country are not subject to prohibition under federal law if such transactions are in conformity with state laws and tribal ordinances. The State of Arizona likely has the authority to issue liquor licenses to Family Dollar Stores within the Nation. However, Family Dollar would not be eligible for a Navajo Nation retailer license, since retail sales of liquor are limited to drinks served at Navajo Nation-owned casino facilities and at Antelope Point. Therefore, if Family Dollar decides to engage in retail sales of packaged liquor within the Nation, it would be in violation of the Navajo Nation Liquor Regulations and 17 N.N.C. §§ 410 and 411 of the Navajo Criminal Code.

4. Investment Committee: TFU drafted 1) Confidential Attorney General Memorandum to BFC, Speaker & President regarding Legislation 0133-20 Related to \$300 Million Direct Investment of Navajo Nation Master Trust Funds into Un-Named Company; and 2) Confidential Attorney General Memorandum to BFC and Investment Committee regarding Current Status of Due Diligence and Transaction Issues Related to Legislation No. 0133-20 (Relating to the Budget and Finance Committee, Approving a Direct Equity Investment in Company as Set Forth in NNICJU-08-20 Pursuant to the Navajo Nation Master Investment Policy). TFU and OAG are working with outside counsel to review the transaction.

5. NNGE Waivers. TFU drafted the Investment Committee and Budget and Finance Committee legislations to approve certain waivers and forbearance of certain NNGE obligations under the Nation's refinanced loan to NNGE.

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6. Frontier Communications Bankruptcy: TFU investigated whether Frontier Communications owes a debt to the NN to determine if we need to participate in bankruptcy proceedings and reviewed related documents and responded to emails.
7. Big Boquillas Ranch Property Tax: TFU and NRU issued a Joint Memo to OOC, OMB, and DNR concluding DNR could not use the Agriculture Infrastructure Fund or the Parks and Recreation Enterprise Fund to pay property taxes on BB Ranch.
8. Office of the Navajo Tax Commission: 1) Assisted NRU with response to investor for a future solar energy project regarding the applicability of the Business Activity Tax and Sales Tax to sales of energy; 2) Drafted tax provision for proposed Telecommunication Regulations; 3) Advised ONTC on the St. Michaels Family Dollar Store's application for an Arizona liquor license, and drafted letters opposing the application; 4) Advised ONTC bankruptcy of Frontier Communications and Navajo Communications and worked with outside counsel from Kutak Rock.

TFU opined on the Burger King Private Ruling regarding whether royalty fees collected for granting a franchisee the right to use a trademark in the operation of a franchise restaurant are subject to the Navajo Nation Sales Tax, and what is the proper method to calculate taxable gross receipts. TFU concluded that the royalty fees collected for granting a franchisee the right to use a trademark in the operation of a franchise restaurant are subject to the sales tax paid by a franchisee who is operating a franchise within the territorial boundaries of the Navajo Nation to a franchisor who is located off-the-reservation, is subject to the sales tax. The proper method to calculate the taxable gross receipts is to determine how much of the royalty fee is collected for the limited license to use the BKC trademark in the operation of a franchise BKC Restaurant.

TFU considered whether FuelCo, LLC is a fuel retailer or distributor and thus is subject to the NN FET. TFU's memorandum concerned whether FuelCo is a fuel distributor, fuel retailer, or neither, under the Nation's FET at 24 N.N.C. § 901 and whether FuelCo is liable for paying the FET. TFU concluded that the FET applies to FuelCo because FuelCo is a fuel retailer, and thus is secondarily liable for the FET when the distributor fails to timely pay in full.

TFU drafted letter to SRP Attorney addressing whether the Business Activity Tax ("BAT") or Sales Tax applies to a proposed SRP solar project within the Navajo Nation. TFU concluded that the BAT applies to electricity generated and distributed within the Navajo Nation, and the letter notifies SRP that the solar project is subject to taxation under the BAT, and which imposes a tax on the source-gains of a branch and applies to a solar project that is engaged in the production of marketable electricity on and within the territorial boundaries of the Navajo Nation.

TFU drafted response letter to Oscar Renda Contracting, Inc.'s letter in which it poses ten questions regarding the applicability of the Navajo Nation Sales Tax. Although the response is intended to answer questions, the letter is not a Private Ruling because according to the Tax Administration Regulations at § 1.125, no ruling will be given in any matter already under examination or appeal.

TFU considered whether gross receipts of non-emergency medical transport services are subject to the NN Sales Tax and whether tax remitted to NN are reimbursable by AHCCCS. TFU's memorandum advises ONTC that the gross receipts from non-emergency medical transport services are subject to the Navajo Nation Sales Tax, and AHCCCS will not reimburse taxes paid to the ONTC.

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9. Retirement Services (NDRS): TFU drafted contract modification to modify and extend the Wells Fargo service contract with the Nation for custody and recordkeeping services for the 401(k) Savings Plan. TFI drafted RSPAC resolution RSPAC-01-20 approving the modification of the Wells Fargo service contract with the Nation for custody and recordkeeping services for the 401(k) Savings Plan. TFU worked with outside counsel from Kutak Rock to draft amendments to the 401(k) Savings Plan document related to the CARES Act loan and withdrawal provisions and automatic enrollment, and to draft RSPAC resolution RPAC-02-20 approving and recommending to the Budget and Finance Committee the approval and adoption of the amended and restated Plan document.

10. Office of the Controller (OOC): TFU advised OOC-Purchasing Section on MOA with DSS and service provider, Annie Wauneka. TFU advised OOC-Purchasing Section on contract and procurement questions. TFU advised OOC-Payroll Section on payment of monthly payments but not meeting stipends to agricultural officials while no meetings are occurring during the government closure. TFU advised OOC-General Accounting Section regarding not using the Agricultural Infrastructure Fund or the Parks and Recreation Enterprise Fund to pay property taxes for the Nation's Big Boquilla Ranch. TFU assisted OOC by researching the Navajo Nation Code, reading and summarizing applicable Navajo Supreme Court case law, and gathering approved relevant budgets from OMB. TFU and NRU conclude that the Agricultural Infrastructure Fund (AIF) should not be used to pay state property taxes without a current project plan approved by the Resources and Development Committee ("RDC") authorizing such expenditure of the AIF.

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. This applicant was hired by LU. 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 Lower Basin. Navajo Nation v. Department of the Interior: The response briefs of the U.S. and defendant- intervenors (water entities from Arizona, California, Nevada and Colorado) were filed on April 27. WRU spent significant time in this Quarter reviewing the response briefs and researching and drafting its Reply to the U.S. response, which will be filed on July 7. Reply briefs are optional, and other than a reference to other pending litigation concerning the mainstem of the Colorado River, no further response to the intervenors was deemed necessary.

WNP TAG: This Quarter, the focus of the meetings was on providing water and sewage treatment services to LeChee, Antelope Canyon and Antelope Point and to extend infrastructure to serve the Bodaway-Gap Chapter. WMB is examining whether pipelines which served NGS can be repurposed to carry water for LeChee, Antelope Canyon and Antelope point. Additionally, the TAG is exploring grants and alternative funding

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sources for the projects. Navajo Parks and Recreation had previously expressed interest and availability of funds to expend on the efforts. However, it has not attended the last two meetings.

2. Other Colorado River Matters: WNP TAG. WRU attorneys also participate in the Western Navajo Pipeline TAG in efforts to identify additional opportunities to advance the Nation’s water rights claims. Ten Tribes Partnership (TTP): This Quarter, the meetings of the TTP have largely focused on organizational issues such as updates from the Media/Communications Committee and updates on the upcoming Strategic Planning Review. The primary substantive issue discussed is the upcoming review of the effectiveness of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines), operational guidelines developed by Reclamation that can be used to address the operations of the two reservoirs during drought and low reservoir conditions, and ensuring that the tribes have meaningful participation in that process, referred to as the “7D Review.” This Quarter, the Tribal Water Initiative approached the Nation seeking its support for an all-Arizona tribes letter to Reclamation addressing the 7D Review. President Nez indicated his preference for submitting a Nation specific letter, which WRU has drafted for his consideration.

3. Rio Grande Basin: Augustin Plains Ranch (APR) APR filed an appeal with the 7th Judicial District Court of New Mexico, case no. D-728-CV-2018-00026. On August 23, 2019, the Seventh Judicial District Court granted the summary judgment motion of the New Mexico Environmental Law Center, in which WRU had joined, and dismissed the Augustin Plains Ranch matter with prejudice. On September 23, 2019, an appeal was filed by APR. On Nov. 26, OSE filed a cross-appeal. WRU is monitoring the filings and will either join another party’s brief or file a brief in the matter.

4. Little Colorado River Basin (AZ): *In re Hopi Reservation HSR*, 6417-203. Hopi Future Claims. The “virtual” trial, to be conducted on the GoToMeeting platform is set to begin on August 17. In this Quarter, WRU and ST argued 6 motions for partial summary judgment on May 7, which consumed the entire day; 2 additional motions were argued on May 15. The Court has ruled on some of those motions this Quarter, most notable was the ruling on the attributes that must be proved for federal reserved water rights issued June 29. The U.S., joined by the Hopi Tribe had argued that federal reserved rights only required four attributes – an aggregate *quantity by type of use*, a *priority date*, and *water source*. WRU opposed this position because if adopted it would allow Hopi to use its decreed water rights anywhere on the Reservation, and given the time immemorial priority for it District 6 lands, had the potential to severely impair Navajo uses. The Court adopted the position of the objectors, including the Nation, that federal reserved water rights must have the additional attributes of place of use and point of diversion to allow for an enforceable decree. The parties joint pretrial statement was filed on May 18. Also in this Quarter, WRU and ST responded to some of the 14 motions *in limine* filed by other parties, as deemed necessary or appropriate, and filed 3 on behalf of the Nation. Motions *in limine* were heard on June 2. The Court heard oral argument on June 5 addressing the Hopi Tribe’s motion for a continuance to January 2021, which the Nation did not oppose. The court denied the motion and set the August 17 trial date, advising the parties that an in-person trial of this magnitude could likely not occur for at least a year. Hopi objects to a virtual trial as violative of the state constitution and because it disregards health hazards occasioned by people leaving their homes for various trial activities, if reliable internet was not available. The Court held oral argument on June 30 to hear the Hopi objections and took the matter under advisement. Hopi has also moved for a stay of the pending trial date to allow it to file a special action with the Arizona Supreme Court should their motion to extend the trial indefinitely to allow an in-person trial not be granted.

5. *In re Navajo Nation, 6417-300*. Phase I: WRU and ST continue to work with the Nation's experts to develop the Nation's DCMI, stock and wildlife watering claims. In the context of the Hopi contested case, the Special Master determined that federal reserved rights of small quantity (such as stockponds and stock and wildlife water uses) should not have the benefit of summary adjudication (an issue WRU contested to no avail, but which the U.S. supported because they argued it was unnecessary in light of their position that federal reserved rights need only be adjudicated in the aggregate – an argument recently rejected by the Special Master). Nevertheless, the Special Master has sought to address these types of use without requiring specific attributes for each use, such as assigning a quantity of water for use within a grazing district. So far such alternate approaches have been rejected by the other parties. The Nation has significant plans for future DCMI water development, much of it within the Sihasin funding plan. WRU retained an economist in this Quarter to assist with both supporting the DCMI claim, and developing a claim based on the Nation's future economic development that is part of the Phase II claim.

Phase II and Phase III: As previously reported, much work has already been done on the Navajo Phase II and III claims. The Nation and the U.S. have retained experts to develop reports on past, present, and future Navajo heavy industrial and commercial uses for Phase II and historic irrigation and PIA for Phase III, and again are working collaboratively with the U.S. to develop these claims. WRU's work with HPD, as described above, includes efforts to develop the Nation's claims for cultural uses of water. WRU has retained a renewable energy expert to evaluate future economic development, and as noted above, this Quarter retained an economist to look more broadly at a future Navajo permanent homeland. WRU requested and originally denied a meeting with the federal team in April to discuss the progress in claims development. After making clear that this was unacceptable, the federal attorneys together with the chair of the federal team on May 21, and succeeded in securing support of the U.S. for the Nation's request to extend the deadline for filing its Phase II amended SOC by 3 months.

6. *In re Lower Little Colorado River Subwatershed, 6417-400*: This proceeding has been focused on the preparation of the ADWR Technical Report on *de minimis* uses. In the last Quarter, the Nation objected to a number of matters addressed in the Report, but did not dispute that summary adjudication was appropriate for certain small uses. At a hearing on May 28, no party objected to the *de minimis* treatment of all stock and wildlife water claims and stockponds with a capacity of less than 4 acre-feet as recommended by ADWR, but the Special Master has yet to rule on that issue.

7. Settlement Activities. LCR settlement activities have now been expanded to include all Navajo claims to the Upper and Lower Basin and are addressed in the Section devoted to the Colorado River. Hualapai Settlement: In an Arizona settlement related issue, the Secretary's Indian Water Rights Office informed WRU of concerns with the Hualapai Settlement, S. 1277, currently pending before Congress. In the settlement agreement, the Hualapai Tribe agreed to waive its ability to protect its groundwater in lieu of receiving Colorado River water. The State of Arizona and non-Indian parties have a history of taking concessions made by one tribe and treating them as mandatory provisions in subsequent settlements. Such a requirement would make an Arizona LCR settlement untenable, as the Nation is reliant on groundwater and will need to be able to protect its groundwater supplies from off-Reservation pumping – the previous settlements have included groundwater protection zones. In the past Quarter, WRU worked 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)

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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 attorneys for the Apache tribes with unresolved water rights claims to address these concerns.

8. SW Navajo TAG: WRU regularly attends the monthly TAG meetings. The May 7th TAG focused on the need to work better with local officials in the Ganado area on providing updates on water projects. The June 16th meeting was focused on the concerned that wells in the area may not be able to supply a sufficient amount of potable water to supply water projects being constructed.

9. Gila River Basin: *No activity this Quarter with the exception of monitoring developments with the potential to impact the Nation's rights, particularly in the LCR Adjudication. One matters of interest arose this Quarter.* Non-Indian Special Procedural Order: On May 28, the Arizona Supreme Court denied the motion by non-Indian parties for "Adoption of Special Procedural Order for Review and Approval of Water Rights Settlements Involving Non-Indian Claimants and Certain Non-Indian Federal Water Rights Claims." The matter was denied without prejudice, should the adjudication court with to pursue such a process. The Nation does not support a non-Indian settlement process until tribal rights have been adjudicated or settled.

10. San Juan River Basin (UT): Settlement Agreement and Legislation. WRU and Mr. Pollack continue to work with the Nation's lobbyists and the NNWO to secure support for NUWRSA in Congress. On June 4, the Senate approved S. 886, a package of bills originating from the Indian Affairs Committee, including NUWRSA. WRU is optimistic that the House will approve NUWRSA in the near future. WRU continues to briefing the Navajo Utah Commission and Navajo leadership on recent developments.

Utah TAG: WRU regulary attended the monthly meetings. At the May 7th meeting the discussion included a legal question about obtaining funding for an Oljato well. Funding of \$246,000 was identified from the Utah Navajo Trust Fund managed by Navajos and the Navajo Revitization Fund managed by the State of Utah would provide a matching amount. However, a legal issue had arisen on whether the funds must be used in Utah to obtain the full amount when a well drilled in Arizona might provide more water. WRU examined the Navajo Revitilization Fund's rules to determine whether placing the well in Arizona would result in a loss of 50% match by the Navajo Revitilization Fund. The rules did not explicitly prohibit such a project. However, due to the need to obtain the funds without delay, and the fact that there was not controlling authority, WMB decided to comply with the request to drill within Utah. At the June 16th meeting, the group discussed a groundwater project within Monument Valley and the need to comply with Covid-19 distancing restrictions. The issue of obtaining water for the community of Westwater in Utah has recently become more prominent in the meetings. This is a community, which is approximately 40% Navajo, next to Blanding, Utah is located on Navajo fee land and lacks both electric power and water.

11. San Juan River Basin (NM) Adjudication (Main case 75-184): Ute Mountain Ute Subproceeding. The litigation of the claims of the Ute Mountain Ute Tribe (UMUT) have been stayed while the Tribe is in negotiations with the State of New Mexico and the United States. Counsel for UMUT contacted Stanley in April to update him on settlement negotiations, to discuss possible settlement scenarios, and to advise that the Nation may be invited to participate in the negotiations.

Implementation of the Navajo Nation San Juan River Settlement: Navajo-Gallup Water Supply Project (NGWSP)

Value Planning: Reclamation is estimating a project cost overrun of \$240M for the NGWSP. Reclamation sought the input of all project participants in a Value Planning exercise to address the projected cost overruns. On June 2, WRU participated in a pre-planning teleconference to discuss the various phases of this exercise. There will be focus calls to discuss and analyze specific NGWSP capital and O&M cost topics to begin addressing the funding gap. The focus calls will be used to identify evaluation criteria or metrics for evaluating the final Value Planning proposals. Reclamation plans to hold the Value Planning meetings in the next Quarter. WRU will participate in the focus calls to identify potential legal issues. A call between the parties counsel has already been scheduled. WRU will continue to provide advice to the Nation's representatives in the Value Planning exercise as requested.

San Juan Generating Station (SJGS) Alternative: PNM is planning on shutting down the SJGS and approached Reclamation about incorporating the river diversion, raw water transmission pipeline, and reservoir storage facilities into the NGWSP.

NGWSP Depletion Guarantee ("DG"): The DG arises out of the Biological Opinion for the Project which requires the Nation to cut back on depletions, up to 20,782 afy, to avoid the total of all previously authorized depletions in the San Juan River basin from exceeding 752,127 afy. Stanley has had numerous discussions with NM Interstate Stream Commission staff and other stakeholders regarding the DG. WRU is concerned that the DG not be used to offset the depletion impacts from future non-Navajo water development not included in the 752,127 afy baseline. Accordingly, WRU is working to remove the DG requirement.

Arizona Water Supply: WRU drafted a letter from OPVP to Arizona Governor Ducey requesting the State of Arizona's support to amend subsection 10603(c) of P.L. 111-11 to allow 6,411 acre-feet of Arizona's Upper Colorado River Basin allocation to be delivered to Navajo communities in Arizona through the NGWSP without necessitating a Colorado River settlement. WRU drafted a proposed amendment to accomplish this purpose. During the June 11, 2020 Colorado River negotiation conference call, representatives of the Governor indicated the State was not willing to support the amendment. A letter from the Director of ADWR on behalf of the Governor reiterated the Governor's position.

Operations, Maintenance, and Replacement (OM&R) Contract for Cutter Lateral: WRU determined that the Nation should be a signatory to the contract. Reclamation. Reclamation has questioned whether the Nation should be added to the indemnity provisions, currently limited to NTUA. WRU has requested that Reclamation secure an interpretation from the Solicitor's Office of language in the Settlement legislation that appears to limit the Nation's liability. The negotiations have been at a standstill due to the COVID-19 pandemic. On May 29, DWR and NTUA sent a letter to Reclamation requesting that the negotiations be revived immediately.

12. Water Development Trust Fund: The Nation's settlement includes a \$50 million trust fund that is now fully funded. DWR developed the Water Resources Development Trust Fund Expenditure Plan in consultation with the federal implementation team. WRU reviewed and revised the Expenditure Plan and drafted a supporting resolution for Council approval. The demands of the COVID-19 pandemic have prevented OLC from assisting with the legislation, which awaits introduction. *No activity this Quarter.*

13. Other San Juan River Issues:

San Juan River Recovery Implementation Program: Mr. Pollack participated in numerous calls to discuss Post-2023 funding for the Program. He also participated in the annual meeting of the Program and the Coordination Committee meeting on May 14. A subgroup was established to consider the Navajo Nation's request to eliminate the DG.

NIIP/NAPI: Mr. Pollack frequently provides legal updates to the Naabik'iyati' Negotiation Subcommittee for the Completion of the NIIP. *There was no activity this Quarter.*

Animas La Plata Project. *No activity this Quarter.*

14. NMOSE Matters. City of Farmington. WRU filed its protest to Farmington's readvertised permit application on May 22. The Hearing Office held a virtual scheduling conference on June 22, set a discovery schedule, and set the matter for hearing December 8-9.

15. Other Activities:

- a. NN Water Rights Commission. There have been no meetings during this quarter due to the COVID-19 pandemic. WRU assisted the Commission staff in communicating with the three Branch Chiefs regarding their role in appointing commissioners and agreeing to a path for advertising and appointing all 5 commissioners. Ads soliciting applications to fill the Commission vacancies were run in numerous area papers and the application period expired February 14. Commission staff distributed applications to the appropriate Branch chiefs on February 28. However, to date (to WRU's knowledge) none of the Branch Chiefs have proposed appointments to the Commission, which must be approved by the RDC.
- b. To'hajiilee. WRU coordinated efforts to begin discussions with the Jicarilla Apache Nation (JAN) for an exchange of water for the community of To'hajiilee. In a meeting held June 3, WRU was informed that JAN is leasing all of its available water to Reclamation for 10 years, but did carve out 300 AFY for the Nation to lease for use in To'ha'jiilee when needed. JAN requested that the Nation propose a schedule for delivery of water to To'hajiilee, which will be prepared by DWR.
- c. San Juan Southern Paiute. WRU previously worked with counsel for the San Juan Southern Paiute Tribe (SJSPT) and the Nation's outside counsel Rey-bear & McLaughlin to clarify the water provisions of the Navajo-SJSPT Treaty. The Treaty was signed in 2000 by President Kelsey Begaye and further amended in 2004 by former President Joe Shirley, but must be confirmed by Congress to be effective. This issue has potential ramifications for both NUWRSA and the litigation of the Nation's claims in the LCR, and potentially Colorado River settlement negotiations. SJSPT had threatened to object to NUWRSA on the basis that its water rights were not addressed in or could adversely be affected by NUWRSA. In the LCR Adjudication, the U.S. included in a footnote to its Second Amended SOC on behalf of the

Navajo Nation filed July 30, 2019, a statement that it also represented the interests of the SJSPT for lands currently within the Navajo Reservation. During this Quarter, the SJSPT filed objections to the Nation's final HSR in the Phase I subproceeding, and filed a formal appearance in the case. The water provisions in the SJSPT-Navajo Treaty bill were resolved and there has been no further activity, and there has been no movement on the Treaty bill.

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

Navajo Nation Salt Trail Canyon Project. Pumped Hydro Storage LLC Applications for Navajo Nation Salt Trail Canyon Pumped Storage Project, FERC Project No. 14992-000 and Navajo Nation Little Colorado River Pumped Storage Project FERC Project No. 14994-000. FERC granted the Navajo Nation's motions to intervene in each of these preliminary permit applications to construct dams on the Little Colorado River. The motions articulate the Nation's opposition to the project based on concerns raised by the Department of Water Resources, the Historic Preservation Department and the Fish & Wildlife Department. Objections were also filed by numerous environmental NGOs and by the Hopi Tribe. The preliminary permits were approved on May 21, 2020; however, there is little chance that a license will be granted due to the potential adverse cultural and environmental impacts. FERC noted that the Navajo Nation is not associated with the development of either project and has directed the application to strike the reference to the Navajo Nation in the project name.

Navajo Nation Big Canyon Project. Pumped Hydro Storage LLC Application for Navajo Nation Big Canyon Pumped Storage Project, FERC Project No. 15024-000. Pumped Hydro Storage LLC filed an application on March 12, 2020 to construct a pump storage facility in Big Canyon within the Little Colorado River gorge. The applicant will withdraw the applications in Project Nos. 14992-000 and 14994-000 to dam the Little Colorado River if this application is granted. Rather than dam the LCR for its water source, this application proposes to pump groundwater from wells located in the LCR gorge and would dam Big Canyon, upstream of the Salt Trail. The application includes the proposed construction of three upper reservoirs to be constructed above the gorge in the Gap-Bodaway Chapter. FERC accepted the application for filing and issued notice of a sixty (60) day comment period commencing June 2, 2020. Stanley has contacted the Navajo Nation Historic Preservation Department and the Fish & Wildlife Department soliciting comments. He plans to draft a motion to intervene for filing within the comment period to set forth the concerns of the Navajo Nation.

Daybreak Power Project. Navajo Energy Storage Station LLC ("Daybreak Power") Application, FERC Project No. 15001-000. FERC accepted the preliminary permit for filing and requested comments and motions to intervene. A motion to intervene was filed on behalf of the Navajo Nation because the project would require the construction of reservoir on Navajo lands in Utah and rights-of-way across Navajo lands, including the right to use transmission lines on the Navajo Nation and the use of water that could be charged against the Navajo Nation's water rights in Utah. This project could potentially benefit the Navajo Nation, and NTUA may be a potential partner with the applicant, Daybreak Power, Inc. Intervention was necessary to ensure all Navajo interests will be represented, and WRU recommends that the Nation create a team to ensure that all Navajo interests are considered and to negotiate all necessary permits and agreements for the

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project to move forward. During the past quarter, Stanley spoke with the applicant and with NTUA concerning the application and made suggestions for appropriate points of contact within the Navajo Nation.

16. Water Settlements Funding. For many years, Stanley has participated in the Ad Hoc Working Group for Funding Indian Water Rights Settlements. He participated in a conference call on June 12 between the Working Group and Joshua Mahan, Democratic Senior Counsel, Senate Indian Affairs Committee, to discuss S. 886 and the reasons why the bill did not include an extension of the Reclamation Water Settlement Fund. The Ad Hoc Group is in discussions for a plan to address an extension and other funding vehicles moving forward.

17. COVID-19. WRU has been volunteering in some capacity almost every day, as part of the Donations Branch, to facilitate incoming donations through telephone calls and emails.